

**Ahousaht First Nation
Interim Agreement on Forest & Range Opportunities
(the “Agreement”)**

**Between:
Ahousaht First Nation**

As Represented by
The Ha’wiih of the Ahousaht First Nation
(the “Ahousaht First Nation”)

And

Her Majesty the Queen in Right of the Province of British Columbia
As represented by the Minister of Forests and Range
 (“British Columbia)

(Collectively the “Parties”)

WHEREAS:

- A. The Ahousaht First Nation has Aboriginal Interests within its Territory. Ahousaht asserts unextinguished aboriginal rights and title within their territories including, but not limited to, rights to use, govern and protect the lands and the resources within the Territory for social, cultural, spiritual, economic and other purposes.
- B. The Ahousaht First Nation has a relationship to the land and the resources that is important to its culture and the maintenance of its community, governance and economy.
- C. British Columbia and First Nations Leadership Council, representing the Assembly of First Nations-BC Region, First Nations Summit, and the Union of BC Indian Chiefs (“Leadership Council”) have entered into a New Relationship in which they are committed to reconciliation of Aboriginal and Crown titles and jurisdiction, and have agreed to implement a government-to-government relationship based on respect, recognition and accommodation of Aboriginal title and rights.
- D. This Agreement is in the spirit and vision of the “New Relationship”.
- E. Work is underway regarding the implementation of the New Relationship and that this Agreement may need to be amended in the future to reflect the outcomes of that work.

- F. The Parties wish to enter into an interim measures agreement in relation to forest resource development within the Territory.
- G. References in this Agreement to Crown Lands are without prejudice to the Ahousaht First Nation's Aboriginal title and/or rights claims over those lands.
- H. The Government of British Columbia intends to fulfil its obligation to consult and to seek workable Interim Accommodation with the Ahousaht on forest resource development activities proposed within the Ahousaht Territory that may lead to the infringement of the Ahousaht Aboriginal Interests.
- I. The Ahousaht First Nation intends to participate in any consultation with British Columbia in relation to forest and resource development activities proposed within the Ahousaht First Nation's Territory that may lead to an infringement of the Ahousaht First Nation's Aboriginal Interests.
- J. British Columbia and the Ahousaht First Nation wish to resolve issues relating to forest resource development where possible through negotiation as opposed to litigation.

THEREFORE THE PARTIES AGREE AS FOLLOWS:

1.0 Definitions

For the purposes of this Agreement, the following definitions apply:

- 1.1. "Operational Decision" means a decision that is made by a delegated decision maker with respect to the statutory approval of an Operational Plan that has potential effect in the Ahousaht First Nation's Territory.
- 1.2. "Operational Plan" means a Forest Development Plan, Forest Stewardship Plan or a Woodlot Licence Plan that has a potential effect in the Ahousaht First Nation's Territory.
- 1.3. "Aboriginal Interests" means asserted aboriginal rights and/or aboriginal title.
- 1.4. "Administrative Decision" means one or more of the following decisions made by a person under forestry legislation.

- The making, varying, or postponing of Allowable Annual Cut determinations (AAC) for a Timber Supply Area or a Forest Tenure;
- The issuance, consolidation, subdivision, amendment or boundary adjustment of a Forest Tenure;
- The extension of the term of, or replacement of a Forest Tenure;
- The disposition of volumes of timber arising from undercut decisions on Forest Tenure;
- The conversion of a Forest Tenure to a different form of Forest Tenure;
- The reallocation of harvesting rights as a result of the implementation of the *Forestry Revitalization Act*;
- The issuance of a Special Use Permit;
- The decision regarding approval or extension of a Tree Farm Licence Management Plan, Community Forest Management Plan and/or Woodlot Licence Management Plan;
- The deletion or addition of provincial forest;
- The transfer of AAC between Timber Supply Areas;
- The removal of private land from a Woodlot Licence or a Tree Farm Licence; and
- The establishment of an interpretive forest site, recreation site, and recreation trail.

- 1.5. "Forest Tenure" means an agreement granting rights to harvest Crown timber as defined in the *Forest Act*.
- 1.6. "Territory" means the Ahousaht First Nation's asserted Territory as shown on bold black on the map attached in Appendix A.
- 1.7. "Licensee" means a holder of a Forest Tenure.
- 1.8. "Interim Accommodation" means an accommodation provided in this Agreement, of the potential infringements of the economic component of the Ahousaht First Nation's Aboriginal Interests arising from or as a result of forest and range development, prior to the full reconciliation of these Interests. The revenue component reflects the present budget limitations of the Minister of Forests and Range. It is acknowledged that other accommodations, including economic accommodations, may be jointly developed by the Parties during the term of this Agreement.

- 1.9. "Economic component of Aboriginal Interests" means the financial or commercial aspects of Aboriginal Interests related to forest resources.
- 1.10. "Ha'wiih" means hereditary chief.

2.0 Purpose and Objectives

The purposes and objectives of this Agreement are to:

- 2.1. Create viable economic opportunities and to assist in the improvement of social conditions of the Ahousaht First Nation through economic diversification.
- 2.2. Provide interim payment and other economic benefits to the Ahousaht First Nation through economic benefits related to forestry received by British Columbia from forest resource development.
- 2.3. Address consultation requirements and provide a workable Interim Accommodation, in respect of any potential infringements of the Economic Component of Ahousaht's Aboriginal Interests, with regard to Administrative and/or Operational Decisions relating to forest resource development within the Ahousaht Territory during the term of this Agreement.
- 2.4. Provide a period of stability to forest and/ or range resource development on Crown lands within the Territory of the Ahousaht First Nation during the term of this Agreement, while longer term interests are addressed through other agreements or processes.
- 2.5. The parties may differ on the question of the existence or extent of any duty or duties of consultation and/or accommodation owed by forest licensees to Ahousaht. Nothing in this Agreement, or the fact that the Parties have entered into this Agreement, is intended to limit or prejudice the position that either Party may take in litigation or other negotiations on the existence or extent of any duty or duties of consultation and/or accommodation owed by a forest licensee or other third parties to Ahousaht.

3.0 Economic Benefits to the Ahousaht First Nation

During the term of this Agreement, British Columbia will provide the following economic benefits to the Ahousaht First Nation to address a workable Interim Accommodation, in respect of any potential infringements of the Economic Component of Ahousaht's Aboriginal Interests, with

regard to Administrative and/or Operational Decisions relating to forest resource development within the Ahousaht Territory:

3.1. Interim Payment

- 3.1.1 During the term of this Agreement, British Columbia will pay to the Ahousaht \$843,074 annually for purposes described in Section 3.0.
- 3.1.2 The funding commitment set out in section 3.1.1 is subject to the availability of annual appropriations for that purpose by British Columbia.
- 3.1.3 For the purposes of determining amounts for partial years, one-fourth (i.e. $\frac{1}{4}$) of the annual amount will be used for each fiscal quarter or part thereof that the Agreement is in effect. Payments will be made quarterly.
- 3.1.4 If the Agreement is signed before March 31, 2008, the Ahousaht First Nation will be paid the full revenues for one year (\$843,074). Subsequent payments will be made at the end of each quarter starting at the quarter ending March 31, 2009.
- 3.1.5 In the circumstances that the Ahousaht provides notice under section 6.3. to terminate the agreement, and the termination date is after April 1, 2008 but prior to December 31, 2008, the Ahousaht agrees to reimburse the Government of British Columbia an amount equivalent to the total of the payment they have received under section 3.1.4 minus the amount calculated under section 3.1.6 for the period of time between April 1, 2008 and the date that the agreement is terminated.
- 3.1.6 For the purposes of determining the amount that the Ahousaht will reimburse to the Government of British Columbia under section 3.1.5, the amount will be determined by calculating the number of days between April 1, 2008 and the termination date, determining the percentage of the fiscal year that those days represent, converting that percentage into a dollar amount and deducting that dollar amount from the payment received by the Ahousaht under 3.1.4.
- 3.1.7 Upon signing of this Agreement, the Government of British Columbia will provide a one time funding amount of \$124,394 which the Ahousaht accepts in lieu of receiving

any tenure opportunity pursuant to section 47.3 of the *Forest Act* through this Agreement.

3.1.8 British Columbia will not seek to direct or influence the expenditure of the funds provided to the First Nation.

4.0 Consultation and Accommodation Regarding Operational and Administrative Decisions and Plans

- 4.1. The Ahousaht First Nation is entitled to full consultation with respect to all potential infringements of their Aboriginal Interests arising from any Operational or Administrative Decisions or Plans affecting the Ahousaht First Nation's Aboriginal Interests, regardless of benefits provided under this Agreement.
- 4.2. During the term of this Agreement, and subject to the terms and the intent of this Agreement being met and adherence by British Columbia, the Ahousaht First Nation agrees that British Columbia will have provided an Interim Accommodation with respect to the economic component of potential infringements of the Ahousaht First Nation's Aboriginal Interests as an interim measure as a result of forest and range activities occurring within their Territory.
- 4.3. The interim payment set out in this Agreement reflects an amount that British Columbia, through the Minister of Forests and Range, is able to pay as an interim measure, which the Ahousaht First Nation has agreed to accept.
- 4.4. The Province acknowledges that any potential timber opportunities and funding provided through this Agreement are an interim accommodation only and that broader processes are underway that will assist in determining the appropriate accommodation in respect of impacts on the Ahousaht First Nation's Aboriginal Interests as a result of forest and range activities occurring within their Territory.
- 4.5. Nothing in this Agreement restricts the ability of Ahousaht First Nation to seek additional accommodation for impacts on its Aboriginal Interests from forest resources development within its Territory.
- 4.6. The Parties agree to develop consultation processes to address both Operational and Administrative Decisions and Operational

Plans, which may affect the Ahousaht First Nation's Aboriginal Interests within their Territory.

- 4.7. In developing such consultation processes, the Parties further agree to address consultation on Administration Decisions, Operational Decisions and Operational Plans through participation of the Ahousaht First Nation in strategic level planning and policy development processes.
- 4.8. Unless agreed to otherwise, the Parties will use every reasonable effort to agree upon a consultation process within 3 months of signing this Agreement. In the interim, the Parties agree to follow the interim consultation process attached to this Agreement as Appendix B.
- 4.9. Where Ahousaht First Nation is a member of a larger Tribal Nation, this Agreement does not limit the obligation of British Columbia to fulfill its consultation obligations with the Tribal Nation.

5.0 Dispute Resolution

- 5.1. If a dispute arises between British Columbia and the Ahousaht First Nation regarding the interpretation of a provision of this Agreement, the Parties or their duly appointed representatives will meet as soon as is practicable to attempt to resolve the dispute.
- 5.2. If the Parties are unable to resolve differences at the appropriate level, the interpretation issue will be raised to more senior levels of British Columbia and the Ahousaht First Nation.
- 5.3. If the interpretation dispute cannot be resolved by the Parties directly, they may appoint an independent and mutually agreeable mediator to resolve that dispute within 60 days, or such period as agreed upon, or the Parties may choose other appropriate approaches to assist in reaching resolution of the interpretation issue.

6.0 Term and Termination

- 6.1. The term of this Agreement is 5 years.
- 6.2. This Agreement will take effect on the date on which the last Party has executed it.

- 6.3. This Agreement will terminate on the occurrence of the earliest of any of the following events: expiry of its term; 90 days notice; or mutual agreement of the parties.
- 6.4. Neither Party shall terminate this Agreement on the grounds that the other Party has challenged an Administrative or Operational Decision by way of legal proceedings.
- 6.5. Prior to the expiry of the 90 days when 90 day notice of termination has been given under Section 6.3, the Parties agree to meet and endeavour to resolve the issue that has given rise to the 90 day notice of termination.

7.0 Renewal of the Agreement

- 7.1. Prior to the expiry of the term of this Agreement, if the terms and conditions of this Agreement are being met, British Columbia and the Ahousaht First Nation will seek the necessary authorities and approvals to enter into negotiations to renew this Agreement, or to conclude a new forestry agreement, consistent with the New Relationship.
- 7.2. Any subsequent forestry agreement between British Columbia and the Ahousaht First Nation may provide for other economic benefits, as well as other terms and conditions that are agreed to by the Parties.

8.0 Amendment of Agreement

- 8.1. Any alteration or amendment to the terms and conditions of the Agreement must be in writing and duly executed by the Parties.
- 8.2. Either Party may request the participation of the other Party to review the effectiveness of this Agreement annually and consider amendments to this Agreement.
- 8.3. The Parties agree that new approaches for consultation and accommodation, including benefit and revenue sharing, will be developed as a priority under the New Relationship by British Columbia and the Leadership Council. The Ahousaht First Nation may choose to opt into such approaches as they become available, through amendment of this Agreement or other mutually agreeable methods.

- 8.4. The Ministry of Forests and Range will attempt to locate volume of timber for the Ahousaht First Nation. Should a suitable volume of timber for a Non-replaceable Forest Licence, or Forestry Licence to Cut be identified by the Ministry of Forests and Range, this agreement may be amended to offer volume to the Ahousaht First Nation under section 47.3 of the *Forest Act*.
- 8.5. The Ministry of Forest and Range is seeking a decision from British Columbia regarding, amongst other items, First Nations forest revenue sharing. The Ministry of Forest and Range will discuss the outcomes of that decision as it may effect the revenue sharing component of this Agreement.

9.0 Entire Agreement

- 9.1. This Agreement and any amendment to it constitutes the entire Agreement between the Parties with respect to the subject matter of this Agreement.

10.0 Notice

- 10.1. Any notice or other communication that is required to be given or that a Party wishes to give to the other Party with respect to this Agreement, will be in writing and will be effective if delivered, sent by registered mail, or transmitted by facsimile to the address of the other Party as in this section of the Agreement.
- 10.2. Any notice or other communications will be deemed to have been given on the date it is actually received, if received before 4:00 p.m. If received after 4:00 p.m., it will be deemed to have been received on the next business day.
- 10.3. The address of either Party may be changed by notice in the manner set out in this section of the Agreement.

British Columbia

Deputy Minister
Ministry of Forests and Range
P.O. Box 9525 STN PROV GOVT
Victoria B.C. V8W 9C3
Telephone: (250) 356-5012
Facsimile: (250) 953-3687

Ahousaht First Nation

Chief Councillor
Ahousaht First Nation
General Delivery
Ahousaht, B.C. V0R 1A0
Telephone: 250-670-9563
Facsimile: 250-670-9696

11.0 Miscellaneous

- 11.1. This Agreement shall be interpreted in a manner consistent with provincial, federal and constitutional law.

- 11.2. This Agreement is not a treaty or a lands claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982* and does not define or amend aboriginal rights, or limit any priorities afforded to aboriginal rights, including aboriginal title.
- 11.3. This Agreement does not address or prejudice conflicting interests or competing claims between First Nations.
- 11.4. This Agreement will not limit the positions that a Party may take in future negotiations or court actions.
- 11.5. The Province acknowledges and enters into this Agreement on the basis that the Ahousaht First Nation has Aboriginal Interests within their Territory and further that the specific nature, scope or geographic extent of Aboriginal Interests of the Ahousaht First Nation have not yet been determined. Broader processes engaged in to bring about reconciliation will result in a common understanding of the nature, scope and geographic extent of Aboriginal Interests or treaty interests of the Ahousaht First Nation.
- 11.6. Nothing in this Agreement shall be interpreted to authorize any infringement that may occur following the termination of this Agreement, even if that infringement is caused by a decision that was made during the term of this Agreement.
- 11.7. This Agreement does not address or affect any claims by the Ahousaht First Nation regarding infringement of its Aboriginal Interests arising from past Operational or Administrative Decisions made previous to the signing of this Agreement.
- 11.8. This Agreement and any decisions and or Licenses issued during the term of this Agreement do not change or affect the positions either Party has, or may have, regarding jurisdiction and authorities.
- 11.9. Any reference to a statute in this Agreement includes all regulations made under that statute and any amendments or replacement of that statute and its regulations.
- 11.10. There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.
- 11.11. The applicable laws of British Columbia and Canada shall govern this Agreement.
- 11.12. British Columbia encourages Licensees to enter into mutually-beneficial arrangements with the Ahousaht First Nation.

11.13. This Agreement is not intended to limit any obligation of forest Licensees or other third parties to the Ahousaht First Nation.

11.14. This Agreement may be entered into by each Party signing a separate copy of this Agreement, including a photocopy or faxed copy, and delivering it to the other Party by fax. Each facsimile will be deemed to be an original for all purposes and all counterparts taken together will be deemed to constitute one document.

11.15. This Agreement does not exclude the Ahousaht First Nation from accessing forestry economic opportunities and benefits, which may be available, other than those expressly set out in this Agreement.

12.0 Giving Effect to the New Relationship

12.1. Notwithstanding this agreement, the Parties will, at the request of the Ahousaht First Nation, enter into discussions, and may negotiate interim agreements in relation to forestry, range and related planning that give effect to the New Relationship, which may include, but are not limited to the following components:

- (a) a process for shared decision making about the land and resources;
- (b) new mechanisms for land and resource protection;
- (c) a process for the Ahousaht First Nation's land use planning at all spatial scales and for reconciliation of Crown and the Ahousaht First Nation's plans;
- (d) dispute resolution processes which are mutually determined for resolving conflicts rather than adversarial approaches to resolving conflicts;
- (e) financial capacity for the Ahousaht First Nation and resourcing for British Columbia to develop and implement new frameworks for shared land and resource decision making and other components listed above; and
- (f) on a priority basis, interim protection for landscapes, watersheds and/or sites identified by the Ahousaht First Nation to be reserved from resource development pending the outcome of negotiation of agreements referred to in a-f above.

12.2. The Parties acknowledge that there are broader processes underway with respect to the New Relationship which will benefit and, at times assist, the Parties in negotiating with respect to the issues set out in section 12.1.

Signed on behalf of:

**Ahousaht First Nation
The Ha'wiih of the Ahousaht
First Nation**

Date: March 28/08

Tyee Maquinna Lewis George

Maquinna

Hayupiinulth Bill Keitlah Jr

Date: March 28th, 08

Keista Keith Atleo

Date: March 29, 08

Witness of Ahousaht First
Nation signatures

Signed on behalf of:

**Government of British
Columbia**

Rich Coleman
Minister of Forests and Range

Date: APR 28 2008

Witness of Minister signature

APPENDIX A
Map of Ahousaht First Nation Traditional Territory

**ASSERTED FIRST NATIONS
TRADITIONAL TERRITORIES,
MOF SOUTH ISLAND FOREST DISTRICT
AHOUSAIT FIRST NATION**

Map last updated August 15th, 2005
Source: Ahoosait Band Representatives

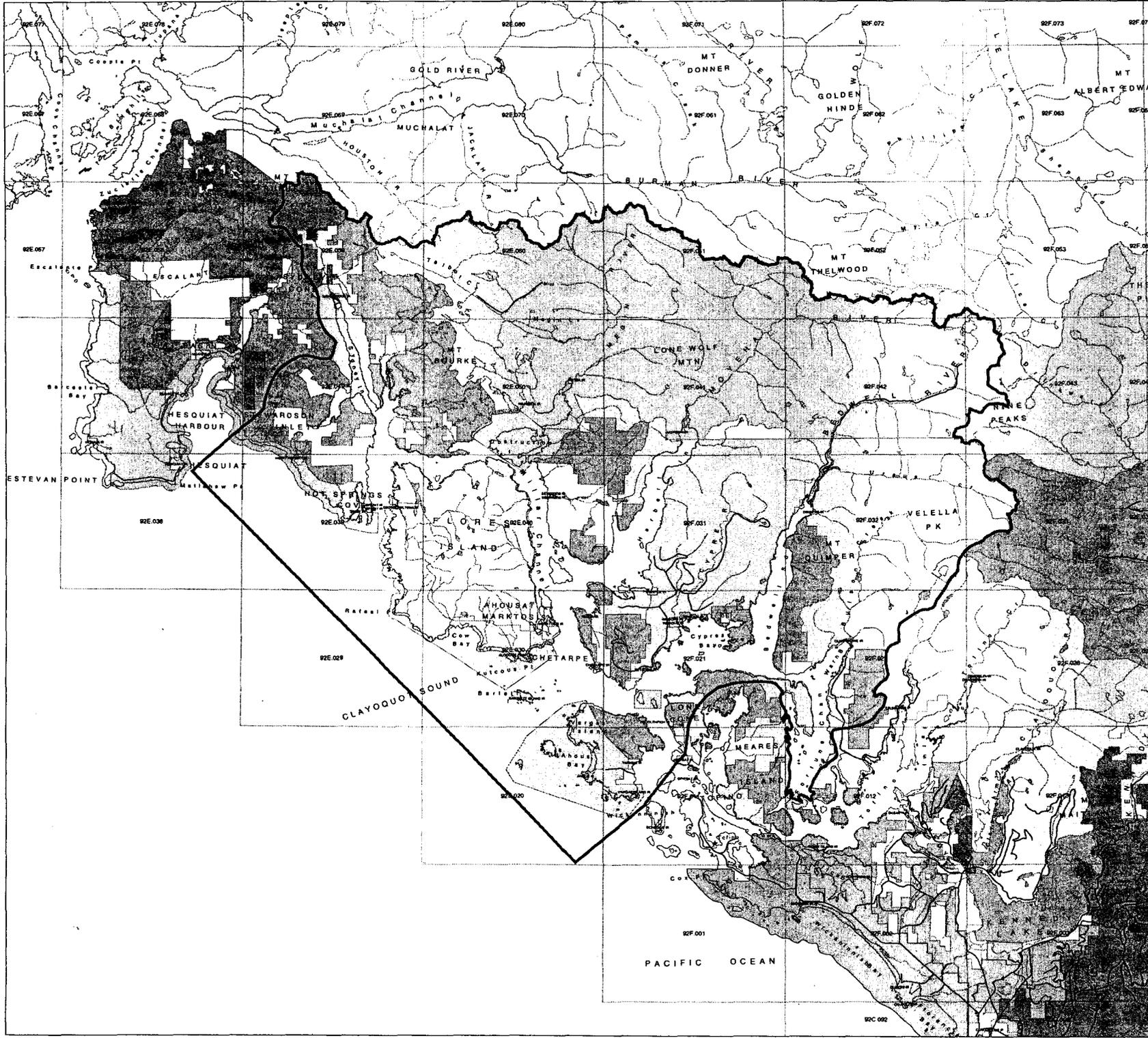
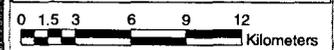


Legend

- Asserted First Nation
- Indian Reserve Boundaries
- Provincial Parks
- National Parks
- Community Forests**
- Community Forests
- Major Licenses**
- FOREST_FILE
 - A18234
 - A18235
- BCTS Admin Areas**
- BCTS Admin Areas
- Tree Farm Licenses**
- FOREST_FILE
 - TFL19
 - TFL25
 - TFL44
 - TFL46
 - TFL64
 - TFL67



This map is not intended to create, recognize, limit or deny any aboriginal right, including title, that First Nations may have or impose any obligations on Province of British Columbia, the Ministry of Forests or after the legal status, or resources within the Province or the setting legal authority of BC. First Nations update and modify periodically their asserted traditional territory boundaries, and although every effort has been made to ensure the accuracy, currency and reliability of the content, MoF accepts no responsibility in that regard.



APPENDIX B

Consultation Regarding Operational and Administrative Decisions and Plans

This appendix B contains an interim consultation process as referred to in Section 4.4 of the Agreement. It is expected that this interim consultation process may be amended and refined in due course.

1.0 Consultation Regarding Operational Plans

- 1.1 The Government of British Columbia agrees to consult with Ahousaht first nation on Operational Plans that may potentially infringe Ahousaht first nation's Aboriginal Interests within the Ahousaht Territory, except for any economic component of those interests that the parties agree are addressed by the economic benefits provided for under Section 3.0 of the Agreement.
- 1.2 Ahousaht First Nation agrees to fully participate, as set out in this section, in the review of all Operational Plans dealing with forest resource development activities within the Ahousaht Territory provided to them by the Government of British Columbia, and by Licensees.
- 1.3 In reviewing and responding to an Operational Plan submitted to them, Ahousaht First Nation will, within the Response Period of 60 days, provide the party that supplied the plan to them with all reasonably available information that will identify any potential impacts to their Aboriginal Interests that may occur as a result of proposed forest resource development activities within the Ahousaht Territory, other than the economic component of those interests that the parties agree are addressed by the economic benefits provided for under Section 3.0 of the Agreement.

1.4 Upon receiving the response from Ahousaht First Nation as specified in Section 1.3 of this appendix B, the Government of British Columbia and/or the licensee will discuss and attempt to resolve with Ahousaht First Nation any site specific operational impacts on Ahousaht First Nation's Aboriginal Interests that may occur as a result of proposed forest resource development activities within the Ahousaht Territory, other than the economic component of those Aboriginal Interests that the parties agree are addressed by the economic benefits provided for under Section 3.0 of the Agreement.

1.5 If no response is received from Ahousaht First Nation within the Response Period, then the Government of British Columbia may conclude that Ahousaht First Nation does not intend to respond or participate in the consultation process in respect of the Operational Plan and that a decision on the Operational Plan may proceed.

1.6 In making the final decision on an Operational Plan, the Government of British Columbia will fully consider information it receives from Ahousaht First Nation, whether received directly or through a licensee, and will consider whether concerns identified by Ahousaht First Nation have been addressed.

2.0 Consultation Regarding Administrative Decisions

2.1 The Government of British Columbia will provide to Ahousaht First Nation on an annual basis a list of all proposed Administrative Decisions anticipated within the year that may have an effect within the Ahousaht Territory, and either upon the request of Ahousaht First Nation or when the Government of British Columbia becomes aware of other proposed Administrative Decisions, will provide to Ahousaht First Nation an updated list.

2.2 The Government of British Columbia will meet with Ahousaht First Nation at mutually agreed times throughout the year to provide an opportunity for Ahousaht First Nation to make known to representatives of the Government of British Columbia their concerns and comments relative to the effects of the Administrative Decision(s) on their Aboriginal Interests within the Ahousaht Territory.

- 2.3 The Government of British Columbia will include Ahousaht First Nation in that stage of the timber supply review process referred to as “the public timber supply review process” that will lead to AAC determinations made pursuant to Section 8 of the *Forest Act* for the Arrowsmith timber supply area and tree farm licences 54 and 57.
- 2.4 Ahousaht First Nation agrees to fully participate, within the Response Period, in that stage of the timber supply review process referred to as “the public timber supply review process” by providing all reasonably available information about their Aboriginal Interests within the Ahousaht Territory potentially affected by AAC determinations to be made pursuant to Section 8 of the *Forest Act*.
- 2.5 The parties acknowledge that the public timber supply review processes will be consistent with approved land use plans when higher-level objectives have been established.
- 2.6 If, after considering the concerns and comments of Ahousaht First Nation, the statutory decision maker is of the opinion that an Administrative Decision creates a potential infringement of Ahousaht First Nation’s Aboriginal Interests that is not adequately addressed by the economic benefits provided by the Government of British Columbia in Section 3.0 of the Agreement, the statutory decision maker will seek to address the concerns and comments in the Administrative Decision or through the process in Section 1.0 of this appendix B.
- 2.7 The Government of British Columbia will provide a response to Ahousaht First Nation as to how their concerns raised in Section 2.2 of this Appendix have been addressed.
- 2.8 Ahousaht First Nation further agrees that, in consideration of Section 4 of the Agreement and Sections 1 and 2 of appendix B, the Government of British Columbia has, for the purposes of this Agreement, developed an adequate consultation and interim accommodation process with respect to the economic component of potential infringements of their Aboriginal Interests resulting from Operational and Administrative Decisions made by delegated decision-makers from time to time during the term of this Agreement.