

**Ehattesaht First Nation Forest Agreement  
(the "Agreement")**

**Between:  
Ehattesaht First Nation**

As represented by Chief Ernie Smith and Council  
(the "EFN")

**And**

**Her Majesty the Queen in Right of the Province of British Columbia**  
As represented by the Minister of Forests and Range (and Minister responsible  
for Housing)  
(the "Government of British Columbia")

(collectively the "Parties")

**Whereas:**

- The EFN has Aboriginal Interests within its Traditional Territory.
- The Parties wish to enter into an interim measures agreement in relation to forest resource development activities and related economic benefits arising from this development within the Traditional Territory.
- The Government of British Columbia intends to fulfil any responsibility it has to consult and to seek workable accommodation with the EFN on forest resource development activities proposed within the Traditional Territory that may lead to the infringement of the EFN's Aboriginal Interests.
- EFN agrees to participate in any consultation initiated by the Government of British Columbia or a Licensee, in relation to forest resource development activities proposed within the Traditional Territory, that may lead to an infringement of EFN's Aboriginal Interests.
- The Parties have an interest in seeking workable interim accommodation of EFN's Aboriginal Interests where forest resource development activities are proposed within the Traditional Territory that may lead to the

infringement of EFN's Aboriginal Interests and providing economic opportunities to enhance the capacity of EFN in the forest sector.

- The Government of British Columbia and the EFN wish to resolve issues relating to forest resource development activities where possible through negotiation as opposed to litigation.
- The EFN have an interest in the long term sustainability of the forest resources within the Traditional Territory and are developing an EFN land use plan.

Therefore the Parties agree as follows:

## **1.0 Definitions**

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

- 1.1 "Aboriginal Interests" means asserted and/or proven aboriginal rights and/or aboriginal title.
- 1.2 "Administrative Decision" means one or more of the following decisions made by a person under forestry legislation:
  - the decision setting or varying the Allowable Annual Cut (AAC) for a Timber Supply Area or a Forest Tenure;
  - the issuance, consolidation, subdivision, amendment or boundary adjustment of a Forest Tenure;
  - the replacement or extension of a Forest Tenure;
  - the disposition of volumes of timber arising from undercut decisions on a Forest Tenure;
  - the conversion of a Timber Sale Licence to another form of Forest Tenure;
  - the reallocation of harvesting rights as a result of the implementation of the *Forest Revitalization Act*;
  - the issuance of a Special Use Permit;
  - the deletion of land from provincial forest;
  - the transfer of AAC between TSAs; and
  - a decision regarding a Tree Farm Management Plan, a Community Forest Management Plan, and/or a Woodlot Licence Management Plan.
- 1.3 "Forest Tenure" means an agreement granting rights to harvest Crown timber as defined in the *Forest Act*.
- 1.4 "Licensee" means a holder of a Forest Tenure.

- 1.5 “Operational Decision” means a decision that is made by a person with respect to the statutory approval of an Operational Plan.
- 1.6 “Operational Plan” means a Forest Development Plan, Forest Stewardship Plan, or a Woodlot Licence Plan, that has an effect in the Traditional Territory.
- 1.7 “Response Period” means a period of up to 60 days from initiation of the processes set out in Sections 4 and 5 of this Agreement, where the initiation date is the date on which EFN is notified of an Administrative Decision or Timber Supply Review process, or in the case of Operation Plan reviews, the date on which EFN receives the plan to be reviewed. Where an emergency operation arises and/or expedited salvage has to occur, the Response Period will be shortened accordingly, but will not be less than the time period for advertising Operational Plans for those operations.
- 1.8 “Traditional Territory” means the EFN asserted traditional territory as shown on bold black on the map attached in Appendix A.

## **2.0 Purpose**

The purposes of this Agreement are to:

- 2.1 Increase the EFN’s opportunity for participation in the forest sector through an enhanced tenure opportunity.
- 2.2 Provide economic benefits to the EFN through a Forest Tenure opportunity and/or the sharing of revenues received by the Government of British Columbia from forest resource development activities.
- 2.3 Address consultation and to provide an interim workable accommodation as set out in this Agreement, with regard to any infringements of EFN’s Aboriginal Interests that result from Administrative Decisions and/or Operational Decisions relating to forest resource development activities within the Traditional Territory, during the term of this Agreement.
- 2.4 Provide a period of stability to forest resource development activities on Crown lands within the Traditional Territory during the term of this Agreement, while longer-term interests are addressed through other agreements or processes.

### **3.0 Economic Benefits to EFN**

During the term of this Agreement, the Government of British Columbia will adopt the consultation processes set out in Sections 4.0 and 5.0 of this Agreement and will provide the following economic benefits to EFN to address consultation and to provide an interim workable accommodation, as set out in this Agreement, in respect of any infringements of EFN's Aboriginal Interests during the term of this Agreement that result from Administrative Decisions and/or Operational Decisions relating to forest resource development activities within the Traditional Territory.

#### **3.1 Forest Tenure**

- 3.1.1 After the execution of this Agreement by the Parties, the Minister will invite EFN to apply under section 47.3 of the *Forest Act* for a non-replaceable licence (the "licence") for up to 31,080 cubic meters over 5 years in TFL 19.
- 3.1.2 After the execution of this Agreement by the Parties, and after the Minister has determined that sufficient volume is available for disposition to the Ehattesaht First Nation as a result of the implementation of the *Forestry Revitalization Act*, the Minister will invite EFN to apply under section 47.3 of the *Forest Act* for a non-replaceable licence (the "licence") for up to 2259 cubic meters per year for 5 years in TFL 19 and 5530 cubic meters per year for 5 years in the Strathcona TSA.
- 3.1.3 For greater certainty, the maximum volume that may be available under the licence referred to in Section 3.1.1 and 3.1.2 will be up to 70,025 cubic meters over 5 years.
- 3.1.4 An invitation to apply for a licence (an "invitation") and any licence entered into as a result of the invitation to apply under this Agreement may be combined with a tenure opportunity included in any subsequent agreement in accordance with the *Forest Act*.
- 3.1.5 If the intended holder of the licence(s) is a legal entity other than the EFN, this Agreement must include supporting documentation stating that the intended holder has been validly appointed by the EFN as its representative and that the EFN holds the controlling interest in that legal entity.
- 3.1.6 An invitation to apply for a licence (an "invitation") and any licence entered into as a result of the invitation to apply

under this Agreement will be subject to the policies, regulations and statutes of British Columbia as amended from time to time.

3.1.7 An invitation will be subject to a condition that prior to EFN making an application for the licence, EFN will contact the Ministry of Forests and the parties will endeavour to identify an operating area within Ehattesaht Traditional Territory that is mutually acceptable.

3.1.8 A licence entered into as a result of an invitation to apply under Section 3.1 of this Agreement will:

3.1.8.1 be for a term of no longer than 5 years, as determined by the Minister;

3.1.8.2 contain other terms and conditions required by law, including the condition that EFN must comply with this Agreement;

3.1.8.3 include a term that the EFN may not dispose of the licence except in accordance with the *Forest Act*; and,

3.1.8.4 include other terms and conditions as may be required by the Regional Manager.

3.1.9 The Minister may invite EFN to apply for a subsequent licence under the *Forest Act* for a term that would commence after the expiry of this Agreement, subject and subsequent to:

3.1.9.1 the Government of British Columbia and the EFN entering into another interim measures agreement providing for an invitation to apply for a licence; and,

3.1.9.2 the Minister determining that there is sufficient volume of timber available for disposition to EFN.

## **3.2 Revenue Sharing**

3.2.1 During the term of this Agreement, the Government of British Columbia will pay to EFN approximately \$ 129,820 annually for purposes described in Section 3.0.

- 3.2.2 The funding commitment set out in Section 3.2.1 is subject to the availability of annual appropriations for that purpose by the Government of British Columbia.
- 3.2.3 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.
- 3.2.4 Upon signing of this Agreement, EFN will be paid the full revenues for one year (\$129,820). Subsequent payments will be made at the end of each fiscal quarter starting at September 30, 2006.
- 3.2.5 EFN will maintain financial records and prepare financial statements in accordance with generally accepted accounting principles for each year of this Agreement.
- 3.2.6 Upon request, EFN will conduct an audit of the revenue sharing expenditures and will provide a copy of the audit to the Government of British Columbia.
- 3.2.7 The revenue sharing set out in this Agreement reflects an amount that the Government of British Columbia is willing to pay, subject to available appropriations, as an interim measure and EFN has agreed to accept as an interim measure for the term of this Agreement.

#### **4.0 Consultation and Accommodation Regarding Operational Plans**

- 4.1 The Government of British Columbia agrees to consult with EFN on Operational Plans that may potentially infringe EFN's Aboriginal Interests within the Traditional 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 this Agreement.
- 4.2 During the term of this Agreement, EFN agrees that the Government of British Columbia has fulfilled its duties to consult and to seek interim workable accommodation with respect to the economic component of potential infringements of EFN's Aboriginal Interests in the context of Operational Decisions that the Government of British Columbia will make and any forest practices or range practices that

may be carried out under an Operational Plan in the Traditional Territory.

- 4.3 EFN agrees to fully participate, as set out in this section, in the review of all Operational Plans dealing with forest development within the Traditional Territory provided to them by the Government of British Columbia, and by Licensees.
- 4.4 In reviewing and responding to an Operational Plan submitted to them, EFN will, within the Response Period, 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 Traditional 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.
- 4.5 Upon receiving the response from EFN as specified in Section 4.4, the Government of British Columbia and/or the Licensee will discuss and attempt to resolve with EFN any site specific operational impacts on EFN's Aboriginal Interests that may occur as a result of proposed forest resource development activities within the Traditional 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.
- 4.6 If no response is received from EFN within the Response Period, then the Government of British Columbia may conclude that EFN 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.
- 4.7 In making a final decision on an Operational Plan, the Government of British Columbia will fully consider information it receives from EFN, whether received directly or through a Licensee, and will consider whether concerns identified by EFN have been addressed.

## **5.0 Consultation and Accommodation Respecting Administrative Decisions**

- 5.1 The Government of British Columbia will provide to EFN on an annual basis a list of all proposed Administrative Decisions anticipated within the year that will have an effect in the Traditional Territory, and either upon the request of EFN or when the Government of British Columbia

becomes aware of other proposed Administrative Decisions, will provide to EFN an updated list.

- 5.2 The Government of British Columbia will meet with EFN at mutually agreed times throughout the year to provide an opportunity for EFN to make known to representatives of the Government of British Columbia their concerns and comments relative to the effect of the Administrative Decision(s) on their Aboriginal Interests within the Traditional Territory.
- 5.3 The Government of British Columbia will include EFN in public Timber Supply Review processes that will lead to AAC determinations made pursuant to Section 8 of the *Forest Act* for the Strathcona Timber Supply Area and Tree Farm Licence 19.
- 5.4 EFN agrees to fully participate, within the Response Period, in public Timber Supply Review processes by providing all reasonably available information about their Aboriginal Interests within the Traditional Territory potentially affected by AAC determinations to be made pursuant to Section 8 of the *Forest Act*.
- 5.5 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.
- 5.6 If after considering the concerns and comments of EFN, the statutory decision maker is of the opinion that an Administrative Decision creates a potential infringement of EFN's Aboriginal Interests that is not adequately addressed by the economic benefits provided by the Government of British Columbia in Section 3.0, the statutory decision maker will seek to address the concerns and comments in the Administrative Decision or through the process in Section 4.0 of this Agreement.
- 5.7 The Government of British Columbia will provide a response to EFN as to how their concerns raised in Section 5.2 have been addressed.
- 5.8 EFN agrees that in consideration of the economic benefits provided by the Government of British Columbia in Section 3.0 and adherence to the consultation processes in Sections 4.0 and 5.0 of this Agreement, the Government of British Columbia has fulfilled its duties to consult and to seek an interim workable accommodation with respect to the economic component of potential infringements of EFN's Aboriginal Interests resulting from Administrative Decisions made by statutory decision makers from time to time during the term of this Agreement.



- 5.9 EFN further agrees that, in consideration of Sections 5.1 to 5.7 of this Agreement, the Government of British Columbia has, for the purposes of this Agreement, developed an adequate consultation and interim workable accommodation process with respect to potential infringements of their Aboriginal Interests resulting from Administrative Decisions made by statutory decision makers from time to time during the term of this Agreement that may go beyond the economic component of EFN's Aboriginal Interests.

## **6.0 Stability for Land and Resource Use**

- 6.1 EFN will respond immediately to any discussions initiated by the Government of British Columbia and will work co-operatively to assist in resolving any issues that may arise where acts of unlawful interference by EFN members with provincially authorized activities related to forest resource development activities including timber harvesting or other forestry economic activities occur.
- 6.2 The EFN may submit information to the Government of British Columbia concerning the long term impact and cumulative effects of logging activity within EFN territory, the sustainability of forestry activities within EFN territory, and the identification of areas of significant cultural and biological importance. Upon the request of either party, the EFN and the District Manager of the Ministry of Forests and Range Campbell River Forest District will meet to discuss these issues annually or at other agreed times.

## **7.0 Dispute Resolution**

- 7.1 If a dispute arises between the Government of British Columbia and EFN 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.
- 7.2 If the Parties are unable to resolve differences at the appropriate level, the interpretation issue will be raised to more senior levels of the Government of British Columbia and EFN.
- 7.3 The Parties may choose other appropriate approaches to assist in reaching resolution of the interpretation issue.

## **8.0 Term**

- 8.1 This Agreement will take effect on the date on which the last party has executed it.
- 8.2 This Agreement will terminate on the occurrence of the earliest of any of the following events:
- 8.2.1 five years from the effective date of this Agreement; or,
  - 8.2.2 the coming into effect of a treaty between the Parties; or,
  - 8.2.3 the mutual agreement of the Parties;
  - 8.2.4 written notice of withdrawal to the Agreement by either Party, which will take effect 90 days following receipt of the notice by the other Party; or,
  - 8.2.5 the date on which the Government of British Columbia cancels the economic benefits under this Agreement pursuant to Section 9.0.
- 8.3 If this Agreement is terminated in accordance with Section 8.2, then the Minister may terminate the economic benefits under this Agreement.

## **9.0 Suspension or Cancellation of Economic Benefits by the Minister**

- 9.1 Without limiting the actions that may be taken by the Minister of Forests or by the Government of British Columbia, the Minister or a person authorized by the Minister may suspend or cancel revenue sharing payments and the licence entered into as a result of the invitation under this Agreement, if the Minister or a person authorized by the Minister determines that EFN is not in compliance with this Agreement.
- 9.2 Prior to taking any action referred to in Section 9.1, the Government of British Columbia will provide notice to EFN of any alleged contravention of this Agreement that may lead EFN being determined to not be in compliance with this Agreement.
- 9.3 If, during the term of this Agreement, EFN challenges or supports a challenge to, an Administrative Decision and/or Operational Decision or an Operational Plan or activities carried out pursuant to those decisions/plans, by way of legal proceedings or otherwise, on the basis that the economic benefits set out in Section 3.0, and the consultation processes set out in Sections 4.0 and 5.0 of this Agreement are not adequate or sufficient to:

- 9.3.1 provide adequate consultation, to substantially address EFN's concerns and to provide an interim workable accommodation in respect of any potential infringements of EFN's Aboriginal Interests with regard to Administrative Decisions relating to forest resource development activities within the Traditional Territory, or
- 9.3.2 substantially address the economic component of EFN's Aboriginal Interests with regard to Operational Decisions relating to forest resource development activities within the Traditional Territory,

then, without limiting any other remedies that may be available to the Government of British Columbia, the Government of British Columbia may suspend or cancel the economic benefits set out in Section 3.0.

- 9.4 If the Minister or a person authorized by the Minister cancels any economic benefits as a result of this Agreement, then this Agreement may be terminated.

#### **10.0 Renewal of the Agreement**

- 10.1 Prior to this Agreement terminating in accordance with Section 8.2 and subject to Section 3.2.7, of the terms and conditions of this Agreement are being met, the Government of British Columbia and EFN will seek the necessary authorities and approvals to renew this Agreement.
- 10.2 Any subsequent agreement between the Government of British Columbia and EFN may provide for an opportunity to acquire a licence and/or other economic benefits, as well as terms and conditions that are agreed to by the Parties.

#### **11.0 Amendment of Agreement**

- 11.1 Any alteration or amendment to the terms and conditions of the Agreement must be in writing and duly executed by the Parties.
- 11.2 Either Party may request the participation of the other Party to review the effectiveness of this Agreement and consider amendments to this Agreement.

## **12.0 Entire Agreement**

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

## **13.0 Notice**

- 13.1 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.
- 13.2 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.
- 13.3 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) 387-3656  
Facsimile (250) 953-3687

**EFN**  
Chief and Council  
Ehattesaht First Nation  
P.O. Box 59,  
Zeballos, B.C. V0P 2A0  
Telephone: (250) 761-4155  
Facsimile: (250) 761-4156

## **14.0 Miscellaneous**

- 14.1 Nothing in this Agreement shall be interpreted in a manner that requires the Government of British Columbia to act in a manner inconsistent with provincial or federal law, or that fetters the statutory discretion of any government decision-maker.

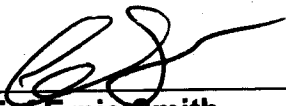
- 14.2 This Agreement is not a treaty or a lands claims agreement within the meaning of section 25 and 35 of the Constitution Act, 1982 and does not recognise, define, amend, affirm, deny or limit any priorities afforded to aboriginal rights, including aboriginal title, or treaty rights, other than as provided in this Agreement.
- 14.3 Subject to Section 9.3, this Agreement will not limit the positions that a Party may take in future negotiations or court actions.
- 14.4 This Agreement shall not be interpreted as addressing any potential infringements other than potential infringements that may result from decisions contemplated by this Agreement during the term of this Agreement. Nothing in this Agreement shall be interpreted to authorize any infringement that may occur following the termination of this Agreement.
- 14.5 This Agreement does not address or affect any claims by the EFN arising from past interference with its Aboriginal Interests or any future settlement related to an aboriginal right or title claim.
- 14.6 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.
- 14.7 There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.
- 14.8 The applicable laws of British Columbia and Canada shall govern this Agreement.

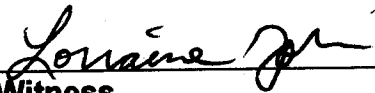
14.9 This Agreement may be entered into by each Party signing a separate copy of this Agreement, including a photocopy or faxed copy, and delivering it to the other Party by fax. Each facsimile will be deemed to be an original for all purposes and all counterparts taken together will be deemed to constitute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

Signed on behalf of:

EFN

Date: Sept 16/05

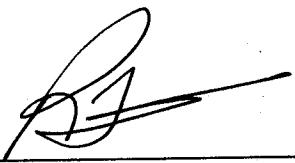
  
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Chief Ernie Smith

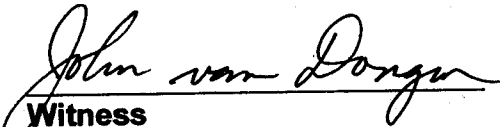
  
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Witness

Signed on behalf of:

Government of British Columbia

Date: Nov 3/05

  
\_\_\_\_\_  
Rich Coleman  
Minister of Forests and Range  
(and Minister responsible for Housing)

  
\_\_\_\_\_  
Witness



# EHATTESAHT TRIBE Traditional Territory

- Legend**
- Indian Reserve
  - Community
  - Ehatesaht
  - Road
  - Stream/River
  - Lake
  - 20K Mapsheet

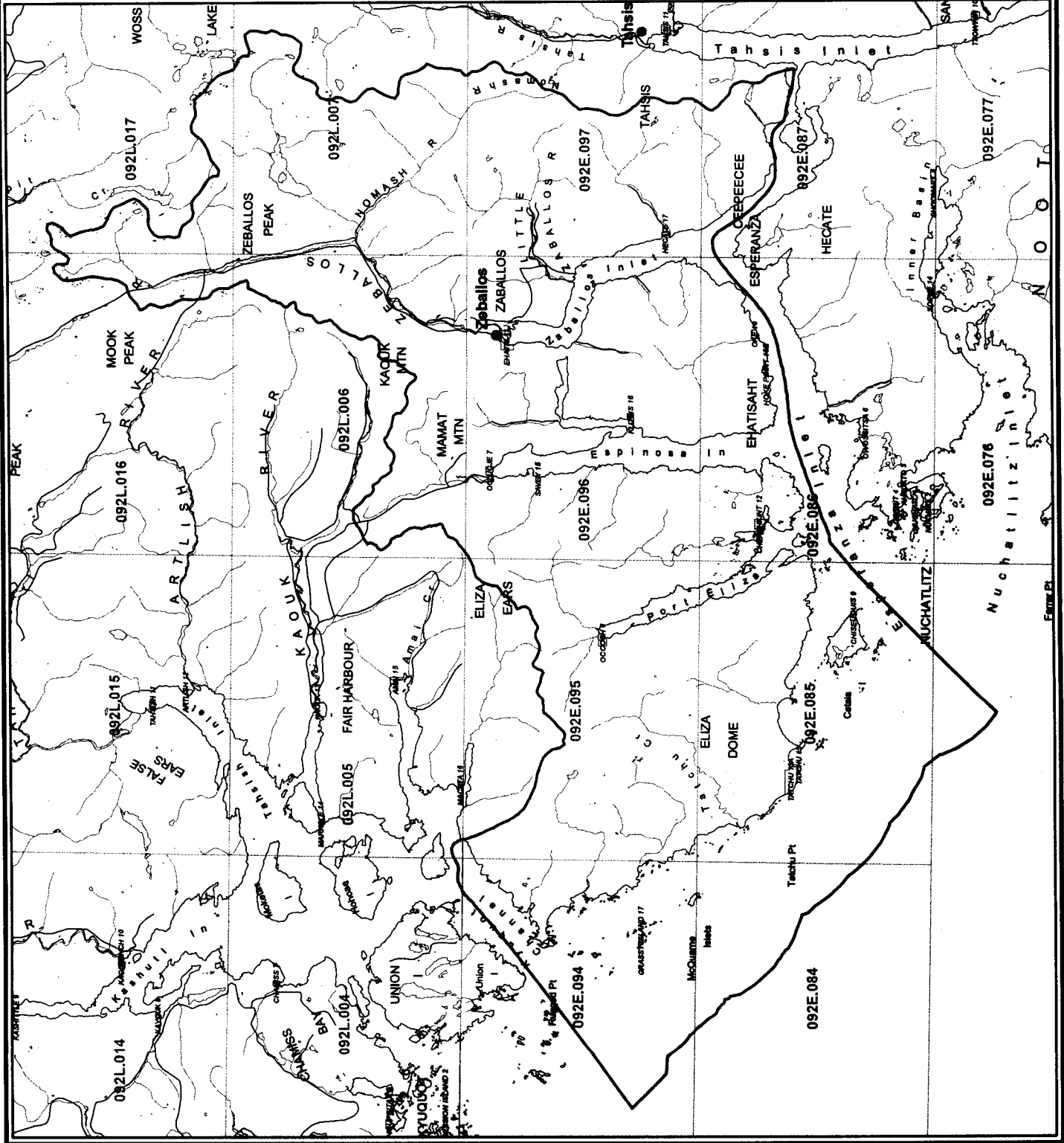
This map is to be used only for purposes related to this Agreement and for no other purpose. The map does not address or affect any claims by the EFN arising from past interference with its Aboriginal interests or any future settlement related to an aboriginal right or title claim.



Projection: Albers  
Datum: NAD83  
Unit: Meters



Map Produced By:  
 Geomatics Canada  
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 20 September 2005



**APPENDIX A  
EFN TRADITIONAL TERRITORY**