

Uchucklesaht Forest and Range Agreement
(the "Agreement")

Between:

Uchucklesaht Tribe
As represented by the Chief Councillor Charlie Cootes Sr.
(the "Uchucklesaht Tribe")

And

Her Majesty the Queen in Right of the Province of British Columbia
As represented by the Minister of Forests
(the "Government of British Columbia")

(collectively the "Parties")

Whereas:

- Uchucklesaht Tribe has Aboriginal Interests within their Traditional Territory.
- The Parties wish to enter into an interim measures agreement in relation to forest resource development and related economic benefits arising from this development within the Traditional Territory.
- This Agreement replaces the *Interim Measures (Extension) Agreement* between the Government of British Columbia, Huu-ay-aht First Nation and Uchucklesaht Tribe signed in February 28, 2001 and the *Huu-ay-aht and Uchucklesaht Tribe Interim Measures Agreement Regarding a Direct Award Tenure* signed January 28, 2003.
- The Government of British Columbia intends to fulfil any responsibility it has to consult and/or seek interim workable accommodation with Uchucklesaht Tribe on forest resource development activities proposed within the Traditional Territory that may lead to the potential infringement of Uchucklesaht Tribe's Aboriginal Interests.
- Uchucklesaht Tribe agree to participate in consultation initiated by the Government of British Columbia or the holder of a Forest Tenure in relation to forest resource development activities proposed within the Traditional

Territory, that may lead to the potential infringement of Uchucklesaht Tribe's Aboriginal Interests.

- The Parties have an interest in seeking interim workable accommodation of Uchucklesaht Tribe's Aboriginal Interests where forest development activities are proposed with the Traditional Territory that may lead to the potential infringement of Uchucklesaht Tribe's Aboriginal Interests.
- The Parties wish to resolve issues related to forest resource development activities 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 "Aboriginal Interests" means asserted 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:
 - 1.2.1 the decisions setting or varying the Allowable Annual Cut (AAC) for a Timber Supply Area or a Forest Tenure;
 - 1.2.2 the replacement or extension of a Forest Tenure;
 - 1.2.3 the disposition of volumes arising from undercut decisions on a Forest Tenure;
 - 1.2.4 the issuance, consolidation, subdivision, amendment or adjustment of boundary change of a Forest Tenure as defined as a major licence under the *Forest Act* and including woodlot licence, and community forest agreement and range tenure where such changes may have an impact on Aboriginal Interests;
 - 1.2.5 the conversion of a timber sale licence to another form of Forest Tenure;
 - 1.2.6 the issuance of a special use permit;

- 1.2.7 the establishment of an interpretative forest site, recreation site and/or recreation trail;
- 1.2.8 the reallocation of harvesting rights as a result of the implementation of the *Forestry Revitalization Act*;
- 1.2.9 decisions regarding a tree farm licence management plan, community forest management plan and/or woodlot licence management plan;
- 1.2.10 deletion of land from provincial forest; and,
- 1.2.11 transfer of cuts between timber supply areas.
- 1.3 “Forest Tenure” means an agreement granting rights to harvest crown timber as defined in the *Forest Act*.
- 1.4 “Response Period” means a period of 60 days from initiation of the processes set out in Sections 4.0 and 5.0 of this Agreement, where the initiation date is the date on which Uchucklesaht Tribe is notified of an Administrative Decision or Timber Supply Review process, or in the case of Operational Plan reviews, the date on which Uchucklesaht Tribe 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.
- 1.5 “Licensee” means a holder of a Forest Tenure.
- 1.6 “Operational Decision” means a decision that is made by a person with respect to the statutory approval of a forest development plan, a forest stewardship plan, or a woodlot licence plan that has an effect in the Traditional Territory.
- 1.7 “Operational Plan” means a forest development plan, a forest stewardship plan, or a woodlot licence plan that has an effect in the Traditional Territory.
- 1.8 “Traditional Territory” means Uchucklesaht Tribe’s asserted traditional territory as shown on bold black on the map attached in Appendix A.

2.0 Purpose:

- 2.1 The purposes of this Agreement are to:
- 2.1.1 increase Uchucklesaht Tribe's participation in the forest sector;
 - 2.1.2 provide economic benefits to Uchucklesaht Tribe by directly inviting Uchucklesaht Tribe to apply for a Forest Tenure and by sharing of revenues received by the Government of British Columbia from forest resource development;
 - 2.1.3 address consultation requirements and provide a interim workable accommodation in respect of the economic component of Uchucklesaht Tribe's Aboriginal Interests with regard to any infringements of those Interests that result from Administrative Decisions and/or Operational Decisions relating to forest resource development within the Traditional Territory during the term of this Agreement; and,
 - 2.1.4 provide a period of stability to forest resource development on Crown lands within the Traditional Territory during the term of this Agreement, while longer-term interests are addressed through other processes.

3.0 Economic Benefits to Uchucklesaht Tribe

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 Uchucklesaht Tribe to address consultation and to provide an interim workable accommodation, as set out in the Agreement in respect of any infringements of Uchucklesaht Tribe's Aboriginal Interests that result from Administrative Decisions and/or Operational Decisions relating to forest resource development within the Traditional Territory.

3.1 Forest Tenure

- 3.1.1 In January 2003, the Minister of Forests invited the Huu-ay-aht First Nation and the Uchucklesaht Tribe to apply for a 265,000 cubic metre Timber Sale Licence (TSL) as per the *Huu-ay-aht and Uchucklesaht Interim Measures Agreement regarding a Direct Award Tenure*. The TSL is over a 5 year-term using undercut volume in Tree Farm Licence #44.

- 3.1.2 After the execution of this Agreement by the Parties, and after the Minister has determined that sufficient volume of timber is available for disposition to Uchucklesaht Tribe as a result of the implementation of *the Forestry Revitalization Act*, the Minister will invite the Uchucklesaht Tribe to apply under section 47.3 of the *Forest Act* for a non-replaceable licence for up to 4,842 cubic metres annually over 5 years in Tree Farm Licence #44.
- 3.1.3 After the execution of this Agreement by the Parties, the Minister will invite the Uchucklesaht Tribe to apply under section 47.3 of the *Forest Act* for a second non-replaceable licence for up to 19,320 cubic metres in Tree Farm Licence #44.
- 3.1.4 For greater certainty, the maximum volume that may be available under the licences referred to in Sections 3.1.2 and 3.1.3 will be up to 43,530 cubic metres over 5 years.
- 3.1.5 If the intended holder of the licences is a legal entity other than Uchucklesaht Tribe, the Uchucklesaht Tribe must supply the Government of British Columbia with the supporting documentation stating that the intended holder has been validly appointed by the Uchucklesaht Tribe as its representative and that the Uchucklesaht Tribe 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 Uchucklesaht Tribe making an application(s) for the licence(s), the Uchucklesaht Tribe will contact the Ministry of Forests to discuss and provide input to assist the Ministry of Forests in identifying operating areas for the licence(s), which to the extent feasible will be within the Traditional Territory; and in the case of the licence referred to in section 3.1.2 the volume is to be identified from the west side of Alberni Inlet (Sproat Lake side) within Tree Farm Licence #44. For the licence referred to in section 3.1.3 the volume is to be identified on the east side of Alberni Inlet within Tree Farm Licence #44.

- 3.1.8 A licence entered into as a result of an invitation to apply under Sections 3.1.2 and 3.1.3 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 Uchucklesaht Tribe must comply with this Agreement;
 - 3.1.8.3 Include a term that Uchucklesaht Tribe may not dispose of the licence except in accordance with the *Forest Act*;
 - 3.1.8.4 Include other terms and conditions as may be required by the regional manager; and,
 - 3.1.8.5 Will be subject to any ~~Allowable~~ Annual Cut adjustments in the Tree Farm Licence #44 that result from the implementation of land use planning decisions.
- 3.1.9 If the term of the licences entered into as a result of an invitation to apply under this Agreement exceeds the term of this Agreement, then that licence may be referenced in and considered to be an economic benefit that addresses consultation and provides an interim workable accommodation in respect of any infringement of the Uchucklesaht Tribe's Aboriginal Interests in any subsequent agreement between Uchucklesaht Tribe and the Government of British Columbia, for the purposes described in Section 3.0.
- 3.1.10 Subject to:
- 3.1.10.1 The Government of British Columbia and Uchucklesaht Tribe entering into another interim measures agreement providing for an invitation to apply for a licence; and
 - 3.1.10.2 The Minister determining that there is sufficient volume of timber available for disposition to Uchucklesaht Tribe;

the Minister may invite Uchucklesaht Tribe to apply for a subsequent licence under the *Forest Act* for a term that would commence after the expiry of this Agreement.

3.2 Revenue Sharing

- 3.2.1 During the term of this Agreement, the Government of British Columbia will pay to Uchucklesaht Tribe approximately \$80,699 annually for purposes described in Section 3.0.
- 3.2.2 For the purposes of determining amounts for partial years, one-fourth (i.e. 1/4) of the annual amount set out in Section 3.2.1 will be used for each fiscal quarter or part thereof that the Agreement is in effect. Payments will be made quarterly.
- 3.2.3 The funding commitment in Section 3.2.1 is subject to the availability of annual appropriations for that purpose by the Government of British Columbia.
- 3.2.4 Upon signing of this Agreement, Uchucklesaht Tribe will be paid the full revenues for the quarter in which the Agreement is signed, with subsequent payments being made at the end of each quarter.
- 3.2.5 Uchucklesaht Tribe 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, Uchucklesaht Tribe will conduct an audit of the revenue sharing expenditures and will provide a copy of the audit to the Government of British Columbia.

4.0 Consultation and Accommodation Respecting Operational Plans

- 4.1 The Government of British Columbia agrees to consult with Uchucklesaht Tribe on Operational Plans that may potentially infringe Uchucklesaht Tribe's Aboriginal Interests within the Traditional Territory, except for any economic component of those interests provided for under Section 3.0 of this Agreement.
- 4.2 During the term of this Agreement, Uchucklesaht Tribe agree that the Government of British Columbia has fulfilled its duties to consult and seek interim workable accommodation with respect to the

economic component of potential infringements of Uchucklesaht Tribe's Aboriginal Interests in the context of Operational Decisions that the Government of British Columbia will make and any forest practices that may be carried out under the Operational Plan in the Traditional Territory.

- 4.3 Uchucklesaht Tribe agrees to fully participate, as set out in this section, in the review of all Operational Plans 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, Uchucklesaht Tribe 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 result from forestry development activities within the Traditional Territory, other than the economic component of those Interests addressed under Section 3.0.
- 4.5 Upon receiving the response from Uchucklesaht Tribe as specified in Section 4.4, the Government of British Columbia and/or the Licensee will discuss and attempt to resolve with Uchucklesaht Tribe any site specific operational impacts on Uchucklesaht Tribe's Aboriginal Interests that may occur as a result of proposed forest development activities other than the economic component of those Aboriginal Interests that the Parties agree are addressed by the economic benefits provided for in Section 3.0.
- 4.6 If no response is received from Uchucklesaht Tribe within the Response Period, then the Government of British Columbia may conclude that Uchucklesaht Tribe 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 Uchucklesaht Tribe, whether received directly or through a Licensee, and will consider whether concerns identified by Uchucklesaht Tribe have been addressed.

5.0 Consultation and Accommodation Respecting Administrative Decisions

- 5.1 The Government of British Columbia will provide to Uchucklesaht Tribe on an annual basis a list of all proposed Administrative Decisions anticipated within the year, and either upon the request

of Uchucklesaht Tribe or when the Government of British Columbia becomes aware of other proposed Administrative Decisions, will provide to Uchucklesaht Tribe an updated list.

- 5.2 The Government of British Columbia will meet with Uchucklesaht Tribe at mutually agreed times throughout the year to provide an opportunity for Uchucklesaht Tribe 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 Uchucklesaht Tribe in public Timber Supply Review processes that will lead to AAC determinations made pursuant to Section 8 of the *Forest Act* for the Arrowsmith Timber Supply Area and Tree Farm Licence #44.
- 5.4 Uchucklesaht Tribe agrees to fully participate within the Response Period, in public Timber Supply Review processes by providing all reasonably available information about their Aboriginal Interests or proven aboriginal rights 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 Uchucklesaht Tribe, the statutory decision-maker is of the opinion that an Administrative Decision creates a potential infringement of Uchucklesaht Tribe'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 either address the comments and concerns 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 Uchucklesaht Tribe as to how their concerns raised in Section 5.2 have been addressed.
- 5.8 Uchucklesaht Tribe agrees that in consideration of the economic benefits provided by the Government of British Columbia in Section 3.0 and the consultation processes in Sections 4.0 and 5.0 of this

Agreement, the Government of British Columbia has fulfilled its duties to seek interim workable accommodation with respect to the economic component of potential infringements of Uchucklesaht Tribe's Aboriginal Interests resulting from Administrative Decisions made by statutory decision-makers from time to time during the term of this Agreement.

- 5.9 Uchucklesaht Tribe 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 Uchucklesaht Tribe's Aboriginal Interests.

6.0 Stability within Uchucklesaht Tribe's Traditional Territory

- 6.1 Uchucklesaht Tribe will respond immediately to any discussions initiated by the Government of British Columbia and work co-operatively to assist in resolving any issues that may arise where acts of intentional interference by Uchucklesaht Tribe members with provincially authorized activities related to forestry resource development including timber harvesting or other forestry economic activities occur.

7.0 Dispute Resolution

- 7.1 If a dispute arises between the Government of British Columbia and Uchucklesaht Tribe 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 the interpretation difference at the appropriate level, the issue will be raised to more senior levels of the Government of British Columbia and Uchucklesaht Tribe.
- 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 date this Agreement is executed; or
 - 8.2.2 the coming into effect of a treaty; or,
 - 8.2.3 the mutual agreement of the Parties; or
 - 8.2.4 the Government of British Columbia cancels economic benefits under this Agreement pursuant to Section 9.0.
- 8.3 If this Agreement is terminated in accordance with Sections 8.2.2 or 8.2.3, 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 Forest Tenure entered into as a result of the invitation to apply under this Agreement, if the Minister or a person authorized by the Minister determines that Uchucklesaht Tribe 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 Uchucklesaht Tribe of any alleged contravention of this Agreement that may lead Uchucklesaht Tribe to not being in compliance with this Agreement.
- 9.3 If during the term of this Agreement, Uchucklesaht Tribe challenges or supports a challenge to, an Administrative Decision and/or Operational Plan, by way of legal proceedings or otherwise on the basis that the economic benefits set out in Section 3.0, and the consultation/accommodation processes set out in Sections 4.0 and 5.0 of this Agreement are not adequate or sufficient to:
 - 9.3.1 substantially address Uchucklesaht Tribe's concerns and to provide a interim workable accommodation in respect of

any potential infringements of Uchucklesaht Tribe's Aboriginal Interests with regard to Administrative Decisions relating to forest resource development within the Traditional Territory; or

- 9.3.2 substantially address the economic component of Uchucklesaht Tribe's Aboriginal Interests with regard to Operational Plans relating to forest resource development 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 8.2.1, and subject to Section 10.3, if the terms and conditions of this Agreement are being met, the Government of British Columbia and Uchucklesaht Tribe will seek their necessary authorities and approvals to renew this Agreement.
- 10.2 Any subsequent forestry agreement between the Government of British Columbia and Uchucklesaht Tribe may provide for an opportunity to acquire a Forest Tenure, and/or other economic benefits and other terms and conditions that are agreed to by the Parties.
- 10.3 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 Uchucklesaht Tribe has agreed to accept as an interim measure for the term of this Agreement.

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 annually and consider amendments to this Agreement.

12.0 Entire Agreement

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
Minister of Forests
P.O. Box 9525 STN PROV GOVT
Victoria B.C. V8W 9C3
Telephone (250) 387-4809
Facsimile (250) 953-3687

Uchucklesaht Tribe

Chief Councillor: Charlie Cootes Sr.,
PO Box 1118, 5000 Mission Road,
Port Alberni, BC V9Y 7L9
Telephone: (250) 724-832
Facsimile: (250) 724-1806

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 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.
- 14.6 There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.
- 14.7 The applicable laws of British Columbia and Canada shall govern this Agreement.

14.8 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.

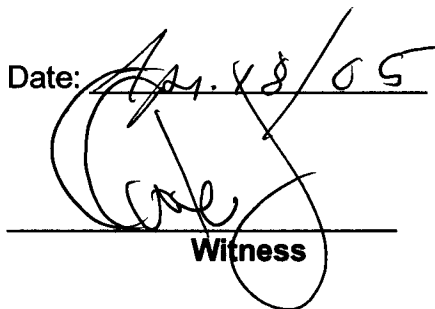
Signed on behalf of:

Uchucklesaht Tribe



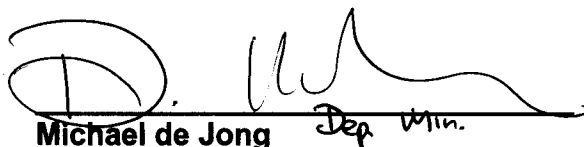
Chief Councillor Charlie Cootes Sr.

Date:

April 28/05

Witness

Signed on behalf of:

Government of British Columbia



Michael de Jong
Minister of Forests

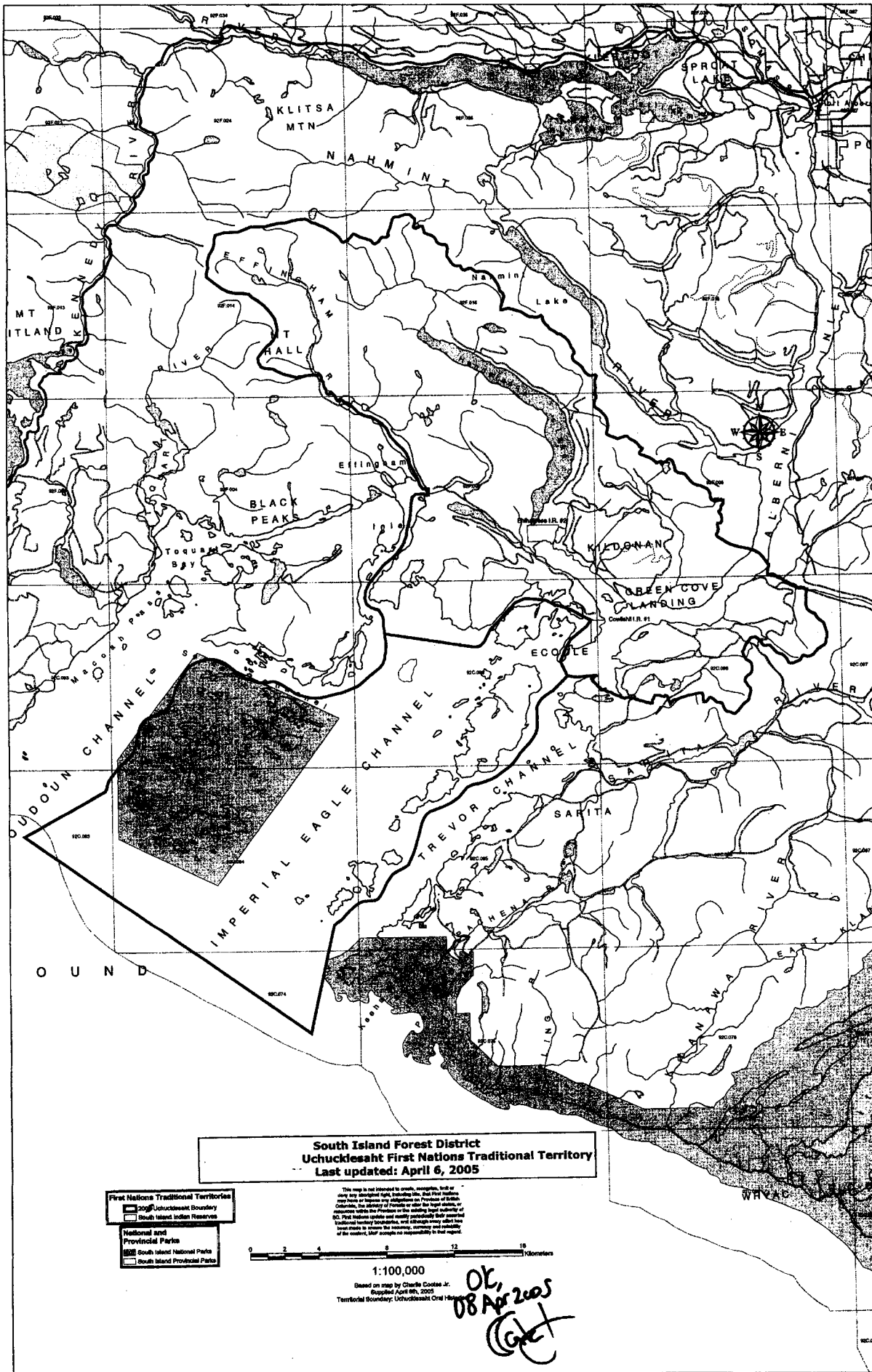
Date:

April 27/05


Witness

APPENDIX "A"

**THE ASSERTED TRADITIONAL TERRITORY
OF UCHUCKLESAHT TRIBE**



**South Island Forest District
Uchucklesat First Nations Traditional Territory
Last updated: April 6, 2005**

- | | |
|---------------------------------------|-------------------------------|
| First Nations Traditional Territories | |
| | 2005 Uchucklesat Boundary |
| | South Island Indian Reserves |
| National and Provincial Parks | |
| | South Island National Parks |
| | South Island Provincial Parks |

This map is not intended to create, strengthen, limit or vary any aboriginal right, including title, that First Nations, Métis or Inuit individuals or groups may have in Canada. It is not intended to create, strengthen, limit or vary any aboriginal right, including title, that First Nations, Métis or Inuit individuals or groups may have in Canada. It is not intended to create, strengthen, limit or vary any aboriginal right, including title, that First Nations, Métis or Inuit individuals or groups may have in Canada.



1:100,000

Based on map by Charles Dootson Jr.
Revised April 6th, 2005
Territorial Boundary: Uchucklesat First Nations

*OK,
08 Apr 2005
(Signature)*