

UCHUCKLESAHT TRIBE
THUNDERBIRD'S NEST (*T'IITSK'IN*
PAAWATS) PROTECTED AREA
MONUMENTAL CEDAR AND CYPRESS
HARVEST AGREEMENT

British Columbia
Uchucklesaht Tribe

UCHUCKLESAHT TRIBE

**THUNDERBIRD'S NEST (*T'IITSK'IN PAAWATS*) PROTECTED AREA
MONUMENTAL CEDAR AND CYPRESS HARVEST AGREEMENT**

THIS AGREEMENT (the "Agreement") dated **APR 01 2011**

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA,
as represented by the Minister of Environment**

("British Columbia")

AND:

**UCHUCKLESAHT TRIBE,
as represented by the Uchucklesaht Tribe Government**

("Uchucklesaht Tribe")

(collectively the "Parties")

WHEREAS:

- A. The Parties and Canada have entered into the Final Agreement;
- B. Chapter 21 Culture and Heritage Chapter of the Final Agreement provides that British Columbia and Uchucklesaht Tribe will enter into an agreement that will provide the Uchucklesaht Tribe with the ability to harvest Monumental Cedar and Cypress on Provincial Crown Land within its Maa-nulth First Nation Area for Cultural Purposes.
- C. The Final Agreement also provides that British Columbia and Uchucklesaht Tribe will enter into an Agreement that will provide Uchucklesaht Tribe with the ability to harvest, each year, an Allocation of up to two Monumental Cedar and Cypress for Cultural Purposes from the Thunderbird's Nest (*T'iitsk'in Paawats*) Protected Area.

NOW THEREFORE the Parties agree as follows:

1.0 DEFINITIONS:

1.1. In this Agreement:

"Agreement" means this Thunderbird's Nest (*T'iitsk'in Paawaats*) Protected Area Monumental Cedar and Cypress Harvest Agreement.

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“Allocation” means the total annual harvest quantity or quota of Monumental Cedar and Cypress set out in the Harvest Agreement.

“Cedar Harvest Plan” means a plan to harvest Monumental Cedar and Cypress, developed in accordance with the Harvest Agreement.

“Cultural Purposes” means the use of Monumental Cedar and Cypress for a purpose that:

- a. was integral to the culture of Uchucklesaht Tribe prior to contact;
- b. is primarily for totem poles, dugout canoes, or large beams or poles to build longhouses, community halls or other similar community structures; and
- c. is not carried out for profit, commercial purpose, trade and barter, individual or community commercial gain, residential building construction, structures associated with a residential building, or for providing firewood for individual needs.

“Effective Date” means the date upon which the Final Agreement takes effect.

“Federal Law” means federal statutes, regulations, ordinances, Orders-in-Council and the common law.

“Final Agreement” means the Maa-nulth First Nations Final Agreement ratified by each Maa-nulth First Nation, British Columbia and Her Majesty in Right of Canada, as amended from time to time in accordance with its provisions.

“Harvest Agreement” means the agreement signed on behalf of Uchucklesaht Tribe and Her Majesty in Right of British Columbia, as represented by the Minister of Forests, Lands and Natural Resource Operations on the same date as this Agreement, as amended or replaced from time to time.

“Maa-nulth First Nation Area” means the area of land described in Appendix A-4 of the Final Agreement in respect of Uchucklesaht Tribe.

“Maa-nulth First Nation Lands” means the lands of Uchucklesaht Tribe described in Appendix B-4 of the Final Agreement.

“Minister” means the Minister responsible for the *Park Act*, R.S.B.C. 1996, c. 344 and *Protected Areas of British Columbia Act*, R.S.B.C. 1996, c. 17, and any person with authority to act in respect of the matter in question.

“Monumental Cedar and Cypress” means a *Thuja plicata* (western red cedar) or a *Chamaecyparis nootkatensis* (yellow cedar) that is:

- a. 250 years or older; and

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b. at least 100 centimetres diameter at 1.3 metres above germination point.

“Monumental Cedar and Cypress Plan” means a plan developed by Uchucklesaht Tribe and British Columbia in accordance with 3.0.

“Provincial Crown Land” means land, whether or not it is covered by water, or an interest in land, vested in the provincial government and to which the *Forest Act*, R.S.B.C. 1996, c. 157, applies but does not include any area established as a park, ecological reserve, conservancy or protected area under Provincial Law.

“Provincial Law” means provincial statutes, regulations, ordinances, Orders in Council, by-laws and the common law.

“Thunderbird’s Nest (T’iitsk’in Paawats) Protected Area” means the area described as “Subject Lands” in Appendix U of the Final Agreement.

1.2 Words and expressions not defined in this Agreement but defined in the Final Agreement have the meaning ascribed to them in the Final Agreement.

2.0 THUNDERBIRD'S NEST (T'IITSK'IN PAAWATS) PROTECTED AREA

2.1 Pursuant to the Final Agreement, Thunderbird’s Nest (T’iitsk’in Paawats) Protected Area will be established as a protected area.

2.2 Pursuant to the Final Agreement, British Columbia will bear no responsibility for the transport of the felled trees from the Thunderbird’s Nest (T’iitsk’in Paawats) Protected Area.

3.0 MONUMENTAL CEDAR AND CYPRESS PLAN

3.1 Prior to the harvest of any Monumental Cedar and Cypress in Thunderbird’s Nest (T’iitsk’in Paawats) Protected Area, Uchucklesaht Tribe and British Columbia will develop a Monumental Cedar and Cypress Plan for the harvest of Monumental Cedar and Cypress for Cultural Purposes from the Thunderbird’s Nest (T’iitsk’in Paawats) Protected Area consistent with this Agreement.

3.2 The Monumental Cedar and Cypress Plan will be submitted by Uchucklesaht Tribe and British Columbia to the Minister for approval.

3.3 The Minister will provide written reasons to Uchucklesaht Tribe for any significant changes between the proposed Monumental Cedar and Cypress Plan and the approved plan.

3.4 The Monumental Cedar and Cypress Plan will be reviewed and amendments considered at such times as proposed by either Uchucklesaht Tribe or British Columbia and the other

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Party will not unreasonably withhold consent to the review.

- 3.5 If British Columbia and Uchucklesaht Tribe agree, the Monumental Cedar and Cypress Plan may be combined and included with the Cedar Harvest Plan.

4.0 HARVEST

- 4.1. Any harvest by Uchucklesaht Tribe of Monumental Cedar and Cypress from the Thunderbird's Nest (*T'iitsk'in Paawats*) Protected Area must occur in accordance with:
- a. the Monumental Cedar and Cypress Plan approved by the Minister in accordance with 3.2;
 - b. a park use permit issued pursuant to section 9 of the *Park Act*, R.S.B.C. 1996, c. 344;
 - c. the Harvest Agreement;
 - d. the Cedar Harvest Plan; and
 - e. this Agreement.
- 4.2. In each year, Uchucklesaht Tribe may, pursuant to a park use permit, harvest up to two Monumental Cedar and Cypress from the Thunderbird's Nest (*T'iitsk'in Paawats*) Protected Area. For greater certainty, these two trees are included in Uchucklesaht Tribe's Allocation.
- 4.3. Pursuant to the Harvest Agreement, in each year before harvesting from Provincial Crown Land or Thunderbird's Nest (*T'iitsk'in Paawats*) Protected Area, Uchucklesaht Tribe must either:
- a. first harvest Monumental Cedar and Cypress for Cultural Purposes from its Maa-nulth First Nation Lands and any other sources, including tenures, available to Uchucklesaht Tribe; or
 - b. provide reasons to British Columbia why Monumental Cedar and Cypress are not suitable or adequate for Cultural Purposes from its Maa-nulth First Nation Lands and any other sources, including tenures, available to Uchucklesaht Tribe.
- 4.4. The Minister may issue to Uchucklesaht Tribe a park use permit authorizing the harvest of up to two Monumental Cedar and Cypress each calendar year from the Thunderbird's Nest (*T'iitsk'in Paawats*) Protected Area, and may impose the following conditions:
- a. the term of the permit must not exceed ten years;
 - b. the Uchucklesaht Tribe may harvest up to two Monumental Cedar and Cypress

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for a Cultural Purpose from the Thunderbird's Nest (*T'iitsk'in Paawats*) Protected Area; and

- c. any other terms and conditions consistent with the Monumental Cedar and Cypress Plan or Provincial Law as determined to be necessary by the Minister.

4.5. Uchucklesaht Tribe is not required to pay stumpage to British Columbia for any Monumental Cedar and Cypress harvested for Cultural Purposes in accordance with this Agreement.

5.0 NATURE OF AGREEMENT

5.1. This Agreement:

- a. is not part of the Final Agreement; and
- b. is not a treaty or a land claims Agreement, and does not recognize or affirm aboriginal or treaty rights, within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

5.2. British Columbia is not required to incur any financial obligation(s) with respect to the harvest of Monumental Cedar and Cypress from the Thunderbird's Nest (*T'iitsk'in Paawats*) Protected Area by Uchucklesaht Tribe.

5.3. Each Party is responsible for their own costs in participating in this Agreement.

5.4. British Columbia is not responsible for the reforestation of the Thunderbird's Nest (*T'iitsk'in Paawats*) Protected Area after Monumental Cedar and Cypress have been harvested from that land in accordance with this Agreement except as required under Provincial Law.

5.5. Nothing in this Agreement shall create an obligation on behalf of British Columbia to manage, maintain or protect Monumental Cedar and Cypress in the Thunderbird's Nest (*T'iitsk'in Paawats*) Protected Area beyond any obligation that may be provided for in Provincial Law.

5.6. Uchucklesaht Tribe will indemnify and save harmless British Columbia from any and all damages that British Columbia may suffer or incur in connection, directly or indirectly with, or as a result of any suit, action, cause of action, claim, proceeding or demand arising from or in any way related to the harvesting activities of the Uchucklesaht Tribe or its agents pursuant to this Agreement.

5.7. British Columbia is not liable to the Uchucklesaht Tribe for injuries, losses, expenses or costs incurred or suffered by the Uchucklesaht Tribe as a result, directly or indirectly, of an act or omission of a person who is not a party to this Agreement.

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6.0 TERM OF THIS AGREEMENT

6.1. Notwithstanding the date which it is signed by the Parties, this Agreement takes effect on the Effective Date.

7.0 AMENDMENT

7.1. The Parties will review this Agreement no later than five years after the Effective Date, and may amend this Agreement if both Parties agree.

7.2. In addition to the review under 7.1, either Party may at any time request the other Party to review this Agreement and to consider amendments to the Agreement, and the other Party will not unreasonably withhold consent to the review.

7.3. Any amendment to this Agreement must be in writing and executed by both Parties.

8.0 NO IMPLIED WAIVER

8.1. No term or condition of this Agreement, or performance by a Party of a covenant under this Agreement, will be deemed to have been waived unless the waiver is in writing and signed by the Party giving the waiver.

8.2. No written waiver of a term or condition of this Agreement, of performance by a Party of a covenant under this Agreement, or a default by a Party of a covenant under this Agreement, will be deemed to be a waiver of any other covenant, term or condition, or of any subsequent default.

9.0 FURTHER ASSURANCES

9.1 The Parties will execute any other documents and do any other things that may be reasonably necessary to carry out the intent of this Agreement.

10.0 ENTIRE AGREEMENT

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

11.0 INTERPRETATION

11.1. In this Agreement:

- a. headings are for convenience only, do not form part of this Agreement and in no way define, limit, alter or enlarge the scope or meaning of any provision of this

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Agreement;

- b. a reference to a statute includes every amendment to it, every regulation made under it, and any law enacted in substitution for it or in replacement of it; and
 - c. unless it is otherwise clear from the context, the use of the singular includes the plural, and the use of the plural includes the singular.
- 11.2. This Agreement will be governed by and construed and interpreted in accordance with Provincial Law and Federal Law.
- 11.3. There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.

12.0 DISPUTE RESOLUTION

- 12.1. If a dispute arises between the Parties regarding the interpretation of a provision of this Agreement, the duly appointed representatives of the Parties will meet as soon as is practicable to attempt to resolve the dispute.
- 12.2. If the duly appointed representatives of the Parties who meet in accordance with 12.1 are unable to resolve a dispute regarding the interpretation of a provision of this Agreement pursuant to 12.1, the dispute will be raised to more senior levels of British Columbia and Uchucklesaht Tribe.
- 12.3. If a dispute cannot be resolved by the Parties pursuant to 12.1 and 12.2, the Parties:
- a. may appoint a mutually acceptable mediator to attempt to resolve the dispute;
 - b. will, unless otherwise agreed, equally share the costs of the mediator they appoint under 12.3. a.; and
 - c. will each bear the costs of their own participation in any mediated process.
- 12.4. In addition to a mediated process as set out in 12.3, the Parties may use other appropriate approaches to attempt to resolve any disputes which may arise regarding the interpretation of this Agreement.

13.0 ENUREMENT

- 13.1. This Agreement will enure to the benefit of and be binding upon the Parties and their respective successors.

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14.0 NO ASSIGNMENT

14.1. This Agreement may not be assigned, either in whole or in part, by any Party.

15.0 NOTICES

15.1. A notice, document, request, approval, application, authorization, consent or other communication (each a "communication") required or permitted to be given or made under this Agreement must be in writing and may be given or made in the following ways:

- a. delivered personally or by courier;
- b. transmitted by fax; or
- c. mailed by prepaid registered post.

15.2. A communication will be considered to have been given or made:

- a. if delivered personally or by courier, at the start of business on the next business day after the business day on which it was received by the addressee or a responsible representation of the addressee;
- b. if transmitted by fax and the sender receives confirmation of the transmission, at the start of business on the business day next following the day on which it was transmitted; or
- c. if mailed by prepaid registered post in Canada, when the postal receipt is acknowledged by the addressee.

15.3. A communication must be delivered, transmitted to the facsimile number or mailed to the address of the intended recipient set out below:

British Columbia
Deputy Minister
Ministry of Environment
P.O. Box 9339 Stn Prov Govt
Victoria, British Columbia V8W 9M1
Facsimile (250) 387-5669

Uchucklesaht Tribe
Chief Councillor
P.O. Box 1118
Port Alberni, British Columbia V9Y 7L9
Facsimile (250) 724-1806

