

UCLUELET FIRST NATION  
MONUMENTAL CEDAR AND CYPRESS  
HARVEST AGREEMENT

British Columbia  
Ucluelet First Nation

UCLUELET FIRST NATION MONUMENTAL CEDAR AND CYPRESS HARVEST AGREEMENT

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THIS AGREEMENT dated APR 01 2011

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE  
PROVINCE OF BRITISH COLUMBIA, as represented by the Minister  
of Forests, Lands and Natural Resource Operations  
("British Columbia")

AND:

UCLUELET FIRST NATION,  
as represented by the Ucluelet First Nation Government  
("Ucluelet First Nation")  
(collectively the "Parties")

WHEREAS:

- A. The Parties and Canada have entered into the Final Agreement.
- B. Chapter 21 Culture and Heritage of the Final Agreement provides that British Columbia and the Ucluelet First Nation will enter into an agreement that will provide the Ucluelet First Nation with the ability to harvest Monumental Cedar and Cypress on Provincial Crown Land within its Maa-nulth First Nation Area for Cultural Purposes.

NOW THEREFORE the Parties agree as follows:

**1.0. DEFINITIONS:**

- 1.1. In this Agreement:

"Agreement" means this Ucluelet First Nation Monumental Cedar and Cypress Harvest Agreement.

"Allocation" means the total annual harvest quantity or quota of Monumental Cedar and Cypress set out in 2.1.

"Cedar Harvest Plan" means a plan to harvest Monumental Cedar and Cypress,

developed in accordance with 3.0.

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

- a. was integral to the culture of the Ucluelet First Nation 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.

“**District Manager**” means “district manager” as defined in the *Forest Act*.

“**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.

“**Maa-nulth First Nation Area**” means the area of land described in Appendix A-5 of the Final Agreement in respect of the Ucluelet First Nation.

“**Maa-nulth First Nation Lands**” means the lands of the Ucluelet First Nation described in Appendix B-5 of the Final Agreement.

“**Maa-nulth-ah!**” means an individual who is on the Enrolment Register of Ucluelet First Nation established in accordance with Chapter 26 Eligibility and Enrolment of the Final Agreement.

“**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
- b. at least 100 centimetres diameter at 1.3 meters above germination point.

“**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.

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

**2.0 ALLOCATION**

- 2.1. Each calendar year, Ucluelet First Nation has an allocation of Monumental Cedar and Cypress to harvest for Cultural Purposes of up to 250 m<sup>3</sup> within the Maa-nulth First Nation Area. This Allocation is limited by measures necessary for the purposes of conservation, public health or public safety, or authorized uses and disposition of Provincial Crown Land that exists from time to time.

- 2.2. For greater certainty, if the Allocation of Monumental Cedar and Cypress for Cultural Purposes is not harvested in any given calendar year, the unharvested portion of that Allocation cannot be added to the Allocation of Monumental Cedar and Cypress to be harvested for Cultural Purposes in any subsequent years.

- 2.3. The Allocation of Monumental Cedar and Cypress for Cultural Purposes will be harvested within the Maa-nulth First Nation Area, including the Maa-nulth First Nation Lands, Provincial Crown Land, and any other sources, including tenures, available to the Ucluelet First Nation.

- 2.4. Ucluelet First Nation will make reasonable efforts to manage the Maa-nulth First Nation Lands so as to provide opportunities for an annual harvest of Monumental Cedar and Cypress for Cultural Purposes from such lands.

- 2.5. For greater certainty, in each year that the Ucluelet First Nation harvests Monumental Cedar and Cypress for Cultural Purposes from Maa-nulth First Nation Lands or from any other sources, including tenures, available to the Ucluelet First Nation, that Monumental Cedar and Cypress harvest will be included in and form part of the Allocation of Monumental Cedar and Cypress for Cultural Purpose provided to the Ucluelet First Nation in accordance with this Agreement.

- 2.6. Ucluelet First Nation will only seek to harvest Monumental Cedar and Cypress for Cultural Purposes in accordance with this Agreement, the Cedar Harvest Plan approved by the District Manager in accordance with 3.6, and the Final Agreement.

- 2.7. For greater certainty, nothing in this Agreement prevents the Ucluelet First Nation from making an application to British Columbia under Provincial Law for the harvest of trees other than Monumental Cedar and Cypress for Cultural Purposes.

**3.0 CEDAR HARVEST PLAN**

- 3.1. The Ucluelet First Nation and British Columbia will make reasonable efforts to identify suitable locations for the harvest by the Ucluelet First Nation of Monumental Cedar and Cypress for Cultural Purposes and prior to the Ucluelet First Nation applying for a free use permit to harvest Monumental Cedar and Cypress for Cultural Purposes will develop a Cedar Harvest Plan for such harvest consistent with this Agreement.

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- 3.2. The Cedar Harvest Plan will include provisions in respect of:
- a. the criteria to be considered in the determination of the suitability and adequacy of Monumental Cedar and Cypress for harvest;
  - b. timber volume proportions of the Allocation of Monumental Cedar and Cypress for Cultural Purposes and the locations of their respective harvests within the Maa-nulth First Nation Area, which include Maa-nulth First Nation Lands, Provincial Crown Land and other available sources;
  - c. the methods and timing of the harvesting of the Allocation of Monumental Cedar and Cypress for Cultural Purposes;
  - d. limits that may be imposed on the harvesting of Monumental Cedar and Cypress for Cultural Purposes that result from measures necessary for purposes of conservation, public health or public safety, and other authorized uses or dispositions of Provincial Crown Land that exist at the time within the Maa-nulth First Nation Area;
  - e. management of the Maa-nulth First Nation Lands so as to provide opportunities for an annual harvest of Monumental Cedar and Cypress for Cultural Purposes from such lands in accordance with 2.4;
  - f. any provincial legislative, regulatory and management requirements for forest resources, including Monumental Cedar and Cypress, on Provincial Crown Land; and
  - g. any other matters British Columbia and the Ucluelet First Nation consider appropriate in these circumstances.
- 3.3. In accordance with 2.4, where the Cedar Harvest Plan indicates harvesting of Monumental Cedar and Cypress for Cultural Purposes in locations that do not include the Maa-nulth First Nation Lands, the Ucluelet First Nation will be prepared to provide written reasons to British Columbia why Monumental Cedar and Cypress are not suitable and adequate for harvest from the Maa-nulth First Nation Lands.
- 3.4. Ucluelet First Nation and British Columbia will submit the Cedar Harvest Plan, or any proposed amendments to a Cedar Harvest Plan, which specifies the proposed use, species, volume and location of Monumental Cedar and Cypress to be harvested from Provincial Crown Land, to the District Manager for approval.
- 3.5. In considering the proposed use, species, volume and location of Monumental Cedar and Cypress to be harvested from Provincial Crown Land, the District Manager will take into account the following:
- a. conservation requirements;
  - b. public health and public safety;
  - c. other authorized uses or dispositions of Provincial Crown Land that exist at the

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- time;
- d. the suitability and adequacy of Monumental Cedar and Cypress on Maa-nulth First Nation Lands;
  - e. Ucluelet First Nation' reasons provided in accordance with 3.3, if any;
  - f. the harvest of Monumental Cedar and Cypress by non-Maa-nulth-ah;
  - g. any provincial legislative, regulatory and management requirements for forest resources, including Monumental Cedar and Cypress, on Provincial Crown Land; and
  - h. other relevant statutory considerations.
- 3.6. If the use, species, volume and location of Monumental Cedar and Cypress to be harvested on Provincial Crown Land as proposed in the Cedar Harvest Plan is consistent with this Agreement, the District Manager will, subject to the factors referred to in 3.5, approve, or vary and approve, the proposed use, species, volume and location of Monumental Cedar and Cypress that may be harvested from Provincial Crown Land in accordance with 4.0.
- 3.7. The District Manager will provide written reasons to the Ucluelet First Nation for any significant changes between the proposed use, species, volume and location to be harvested on Provincial Crown Land and the approved use, species, volume and location.
- 3.8. The Cedar Harvest Plan will be reviewed and amendments considered at such times as proposed by either the Ucluelet First Nation or British Columbia and the other Party will not unreasonably withhold consent to the review.
- 3.9. Notwithstanding 3.1, the Parties may waive the requirement to develop a Cedar Harvest Plan if the Ucluelet First Nation's annual harvest of Monumental Cedar and Cypress for Cultural Purposes is less than 50 m<sup>3</sup>.

**4.0 HARVEST OF MONUMENTAL CEDAR AND CYPRESS**

- 4.1. Ucluelet First Nation will harvest Monumental Cedar and Cypress for Cultural Purposes on Provincial Crown Land in accordance with:
- a. this Agreement;
  - b. the Cedar Harvest Plan approved by the District Manager in accordance with 3.6, if applicable;
  - c. free use permits issued pursuant to section 48 of the *Forest Act*, R.S.B.C. 1996, c. 157;
  - d. other applicable Provincial Laws;

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- e. any applicable permits; and
  - f. any provincial land use designations, management plans or objectives.
- 4.2. Prior to harvesting Monumental Cedar and Cypress for Cultural Purposes on Provincial Crown Land, the Ucluelet First Nation must apply to the District Manager or authorized forest officer for a permit.
- 4.3. An application for a permit to harvest Monumental Cedar and Cypress will include the following information:
- a. a description of the intended purpose of sufficient detail to justify the volume of Monumental Cedar and Cypress to be used;
  - b. the species and volume of Monumental Cedar and Cypress required and how the volume was estimated;
  - c. if the application to harvest is for a volume exceeding 50 m<sup>3</sup>, but not exceeding 250 m<sup>3</sup> of Monumental Cedar and Cypress, a demonstration that the Monumental Cedar and Cypress are to be used for the construction of a longhouse, community hall or other similar structure;
  - d. a description of the proposed harvesting area, if appropriate; and
  - e. the desired time period for undertaking the harvest.
- 4.4. The District Manager or authorized forest officer will consider, in the context of assessing an application for a permit to harvest Monumental Cedar and Cypress by the Ucluelet First Nation, the following criteria:
- a. consistency with the Cedar Harvest Plan approved by the District Manager in accordance with 3.6, if applicable;
  - b. consistency with the approved use, species, volume and location of the Monumental Cedar and Cypress to be harvested from Provincial Crown Land pursuant to 3.6;
  - c. if the volume applied for exceeds 50 m<sup>3</sup>, but does not exceed 250 m<sup>3</sup> of Monumental Cedar and Cypress, demonstration that the Monumental Cedar and Cypress are to be used for the construction of a longhouse, community hall, or other similar structure; and
  - d. the volume of Monumental Cedar and Cypress applied for should be only the minimum necessary to complete the structure.
- 4.5. If the criteria set out in 4.4 are met, the District Manager or authorized forest officer will issue the permit in a timely manner and may impose the following conditions:
- a. the term of the permit must not exceed one year;

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- b. the Ucluelet First Nation may harvest the Monumental Cedar and Cypress for the purpose specified;
  - c. the Ucluelet First Nation may harvest the specified species, volume, and location if applicable; and
  - d. any other terms and conditions consistent with the Cedar Harvest Plan or Provincial Law as determined to be necessary by the District Manager or authorized forest officer to address such concerns as marking and transport of timber; harvesting and utilization of timber, equipment to be used in harvesting; disposal of slash, riparian areas, waste and silviculture.
- 4.6. Ucluelet First Nation 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 HARVEST 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 with respect to the harvest of Monumental Cedar and Cypress from Provincial Crown Land by the Ucluelet First Nation.
- 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 any Provincial Crown Land harvested in accordance with this Agreement except as required under Provincial Law.
- 5.5. Nothing in this Agreement creates an obligation on behalf of British Columbia to manage, maintain or protect Monumental Cedar and Cypress in Provincial Crown Land except as required under Provincial Law.
- 5.6. Ucluelet First Nation 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 Ucluelet First Nation or its agents pursuant to this Agreement.
- 5.7. British Columbia is not liable to the Ucluelet First Nation for injuries, losses, expenses or costs incurred or suffered by the Ucluelet First Nation 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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5.8. Nothing in this Agreement affects the ability of the Ucluelet First Nation to participate in, or benefit from, programs or management strategies established by British Columbia for aboriginal people in accordance with criteria established for those programs or management strategies from time to time.

**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 of 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 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 applicable 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 British Columbia and the Ucluelet First Nation 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, the dispute will be raised to more senior levels of British Columbia and the Ucluelet First Nation.
- 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.

**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 Forests, Lands and Natural Resource Operations  
P.O. Box 9525 STN PROV GOVT  
Victoria, British Columbia V8W 9C3  
Facsimile (250) 953-3687

**Ucluelet First Nation**

President  
P.O. Box 669  
Ucluelet, British Columbia V0R 3A0  
Facsimile (250) 726-7552


**16.0 EXECUTION IN COUNTERPARTS**

16.1 This Agreement may be executed in counterparts and by facsimile. Each signature shall be deemed to be an original signature and all executed documents together shall constitute one and the same document.

THIS AGREEMENT HAS BEEN EXECUTED AND DELIVERED as of the day and year first above written.

EXECUTED in the presence of

) HER MAJESTY THE QUEEN IN  
) RIGHT OF THE PROVINCE OF  
) BRITISH COLUMBIA as represented  
) by the Minister of Forests, Lands and  
) Natural Resource Operations  
)  
)  
)

  
As to the signature of the Minister of  
Forests, Lands and Natural Resource  
Operations

)  
) Stuart Munro  
) Per: Minister of Forests, Lands and Natural  
) Resource Operations  
)  
)

EXECUTED in the presence of:

) UCLUELET FIRST NATION as  
) represented by the Ucluelet First Nation  
) Government  
)  
)  
)  
)  
)  
)

  
As to the authorized signatory for  
Ucluelet First Nation Government

)  
) Charles McCarthy  
) Per: Charles McCarthy, President  
)  
)