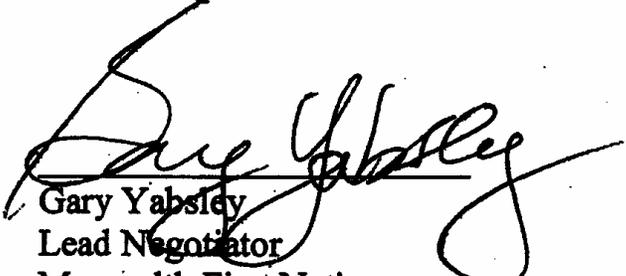


**TOQUAHT NATION  
MONUMENTAL CEDAR AND CYPRESS HARVEST AGREEMENT**

Initialed in Victoria, British Columbia, this 9<sup>th</sup> day of December, 2006, by the Chief Negotiator for British Columbia and the Lead Negotiator for the Maa-nulth First Nations to signify their intent to recommend the Toquaht Nation Monumental Cedar and Cypress Harvest Agreement for ratification.

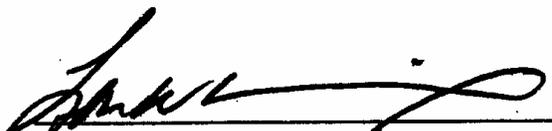
**FOR TOQUAHT NATION:**

  
\_\_\_\_\_  
Gary Yabsley  
Lead Negotiator  
Maa-nulth First Nations

  
\_\_\_\_\_  
Witnessed by:  
Bert Mack  
Hereditary Chief  
Toquaht Nation

**FOR HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA:**

  
\_\_\_\_\_  
Mark Lofthouse  
Chief Provincial Negotiator

  
\_\_\_\_\_  
Witnessed by:  
Len Mannix  
Negotiator

After this document is initialled and before signing by the Parties, this document may be subject to minor amendments by agreement of the Chief Negotiators on behalf of the Parties.

**TOQUAHT NATION  
MONUMENTAL CEDAR AND CYPRESS HARVEST AGREEMENT**

THIS AGREEMENT (the “Agreement”) made the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**BETWEEN:**

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

(“British Columbia”)

**AND:**

**TOQUAHT NATION,  
as represented by the Toquaht Nation Government**

(“Toquaht 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 Toquaht Nation will enter into an Agreement that will provide the Toquaht 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:

“**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 Toquaht 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.

**“Effective Date”** means the date upon which this Agreement and 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 signed on behalf of the Maa-nulth First Nations, Her Majesty in Right of British Columbia and Her Majesty in Right of Canada on \_\_\_\_\_, and includes any amendments made to the Maa-nulth First Nations Final Agreement from time to time in accordance with its provisions.

**“Maa-nulth First Nation Area”** means the area of land described in Appendix A-3 of the Final Agreement in respect of the Toquaht Nation.

**“Maa-nulth First Nation Lands”** means the lands of the Toquaht Nation described in Appendix B-3 of the Final Agreement.

**“Maa-nulth-aht”** means an individual who has been enrolled pursuant to the Chapter 26 Eligibility and Enrolment of the Final Agreement.

**“Minister”** means the Minister responsible for the *Forest Act*, R.S.B.C. 1996, c. 157, 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
- b. at least 100 centimeters 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. This 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.

## **2.0 ALLOCATION**

- 2.1. Each calendar year, Toquaht Nation will have an Allocation of Monumental Cedar and Cypress to harvest for Cultural Purposes up to 250 m<sup>3</sup> within the Maa-nulth First Nation Area. This Allocation will be 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 set out in 2.1 is not harvested in any given calendar year, that unharvested portion of an Allocation cannot be added to the Allocation for subsequent years.
- 2.3. The Allocation of Monumental Cedar and Cypress will be harvested within the Maa-nulth First Nation Area, including the Maa-nulth First Nation Lands, Provincial Crown Land, and any other sources available to the Toquaht Nation.
- 2.4. Toquaht 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. Further to 2.4, in each year that the Toquaht Nation harvest Monumental Cedar and Cypress for Cultural Purposes from Maa-nulth First Nation Lands, and any other sources, including tenures, available to the Toquaht Nation, that Monumental Cedar and Cypress will be contributed to the Allocation of the Toquaht Nation.
- 2.6. Toquaht Nation agrees that it will only seek to harvest Monumental Cedar and Cypress for Cultural Purposes pursuant to this Agreement, the Cedar Harvest Plan, and the Final Agreement.
- 2.7. For greater certainty, nothing in this Agreement prevents the Toquaht Nation from making an application to British Columbia under existing Provincial Law for the harvest of monumental trees other than Monumental Cedar and Cypress for Cultural Purposes.

## **3.0 CEDAR HARVEST PLAN**

- 3.1. Prior to the Effective Date, the Toquaht Nation and British Columbia will make reasonable efforts to identify suitable locations for the harvest by the Toquaht Nation of Monumental Cedar and Cypress for Cultural Purposes and will develop a Cedar Harvest Plan for such harvest consistent with this Agreement.

- 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 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;
  - d. limits that may be imposed on harvesting of Monumental Cedar and Monumental 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 pursuant to 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 Toquaht Nation consider appropriate in these circumstances.
- 3.3. Pursuant to 2.4, where the Cedar Harvest Plan indicates harvesting of the Allocation in locations that do not include the Maa-nulth First Nation Lands, the Toquaht Nation will be prepared to provide written reasons to British Columbia why Monumental Cedar and Cypress are not suitable and adequate for harvest in such lands.
- 3.4. 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, will be submitted by the Toquaht Nation and British Columbia to the Minister.
- 3.5. In considering the proposed use, species, volume and location of Monumental Cedar and Cypress to be harvested from Provincial Crown Land, the Minister 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 time;
  - d. the suitability and adequacy of Monumental Cedar and Cypress on Maa-nulth First Nation Lands;
  - e. Toquaht Nation's reasons pursuant to 3.3, if any;
  - f. harvest of Monumental Cedar and Cypress by non-Maa-nulth-aht;
  - 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 Minister 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 pursuant to 4.0.
- 3.7. The Minister will provide written reasons to the Toquaht 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 Toquaht Nation or British Columbia and the other Party will not unreasonably withhold consent to the review.

#### **4.0 HARVEST OF MONUMENTAL CEDAR AND CYPRESS**

- 4.1. Toquaht 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;
  - c. free use permits pursuant to section 48 of the *Forest Act*, R.S.B.C. 1996, c. 157;
  - d. other applicable Provincial Laws;
  - e. any applicable permits; and
  - f. any provincial land use designations, management plans or objectives.

- 4.2. Prior to harvesting a Monumental Cedar and Cypress for Cultural Purposes on Provincial Crown Land, the Toquaht Nation must apply to the district manager or authorized forest officer for a permit.
- 4.3. An application to harvest Monumental Cedar and Cypress will include the following information:
- a. proof of endorsement by the Toquaht Nation;
  - b. a description of the intended purpose of sufficient detail to justify the volume of Monumental Cedar and Cypress to be used;
  - c. the species and volume of Monumental Cedar and Cypress required and how the volume was estimated;
  - d. 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 trees are to be used for the construction of a longhouse, community hall or other similar structure;
  - e. a description of the proposed harvesting area, if appropriate; and
  - f. 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 to harvest Monumental Cedar and Cypress by the Toquaht Nation, the following criteria:
- a. consistency with the Cedar Harvest Plan;
  - b. consistency with the approved use, species, volume and location to be harvested from Provincial Crown Land pursuant to 3.6;
  - c. application is endorsed by the Toquaht Nation;
  - d. if the volume requested exceeds 50 m<sup>3</sup>, but does not exceed 250 m<sup>3</sup> of Monumental Cedar and Cypress, any demonstration that the trees are to be used for the construction of a longhouse, community hall, or other similar structure; and
  - e. the volume of Monumental Cedar and Cypress requested should be only the minimum necessary to complete the structure.
- 4.5. If the criteria set out in 4.4 is 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;

- b. the Toquaht Nation may harvest the Monumental Cedar and Cypress for the purpose specified;
  - c. the Toquaht 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 and slash, riparian areas, waste and silviculture.
- 4.6. Toquaht Nation will not pay stumpage to British Columbia for any Monumental Cedar and Cypress harvested under this Agreement.
- 4.7. For greater certainty, in accordance with Provincial Law, nothing in this Agreement requires the Toquaht Nation to pay stumpage for harvesting of monumental trees for Cultural Purposes.

**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 will not incur any financial obligation(s) with respect to the harvest of Monumental Cedar and Cypress from Provincial Crown Land by the Toquaht Nation.
- 5.3. Each Party is responsible for their own costs in participating in this Agreement.
- 5.4. British Columbia will not be responsible for the reforestation of any Provincial Crown Land after Monumental Cedar and Cypress have been harvested under this Agreement beyond what may be provided for in 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 Provincial Crown Land beyond any obligation that may be provided for in Provincial Law.
- 5.6. Toquaht 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 Toquaht Nation or its agents pursuant to this Agreement.

- 5.7. British Columbia is not liable to the Toquaht Nation for injuries, losses, expenses or costs incurred or suffered by the Toquaht Nation as a result, directly or indirectly, of an act or omission of a person who is not a party to this Agreement.
- 5.8. Nothing in this Agreement affects the ability of the Toquaht 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 TERMS OF THIS AGREEMENT**

- 6.1. This Agreement will take effect on the Effective Date, which is the date the Final Agreement takes effect.

**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 of condition of this Agreement, of performance by a Party of a covenant under this Agreement, or of 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 may 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 Laws and Federal Laws.

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 Toquaht Nation regarding the interpretation of a provision of this Agreement, the Parties or their duly appointed representatives will meet as soon as is practicable to attempt to resolve the dispute.

12.2. If the Parties 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 the Toquaht 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, made, or delivered, and received:

- 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 and Range  
P.O. Box 9525 STN PROV GOVT  
Victoria, British Columbia V8W 9C3  
Facsimile (250) 953-3687

**Toquaht Nation**  
Chief Councillor  
Box 759  
1316 Pine Street  
Ucluelet, British Columbia V0R 3A0  
Facsimile (250) 726-4403

**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 and Range  
)  
)  
)  
)  
)  
) \_\_\_\_\_

\_\_\_\_\_  
As to the signature of the  
Minister of Forests and Range

Minister of Forests and Range

EXECUTED in the presence of

) TOQUAHT NATION

) as represented by

)

)

)

)

)

)

\_\_\_\_\_  
As to the signature of

) \_\_\_\_\_