

Information for Woodlot Licensees regarding the Tsilhqot'in land claim decision by the Supreme Court of Canada

Background Information

- The Supreme Court of Canada's (SCC) decision declaring Aboriginal Title was with respect to a specific piece of land claimed by the Tsilhqot'in First Nation. Private land was not considered within the decision and there were no area-based tenures within the claim area.
- The SCC decision declared Aboriginal title lands for one of the 6 bands that make up the Tsilhqot'in Nation and outlines the criteria to be used to determine where Aboriginal Title lands may exist. In the future, the Province's preference is to negotiate, not litigate, such claims and assertions.
- The decision has implications for the following aspects of consultation required for land and resource applications:
 - How the strength of claims to Aboriginal title (SOC) are to be assessed;
 - The depth of consultation and accommodation in areas of strong title claims; and
 - Consultation will continue to be carried out in accordance with the Haida decision.
- Aboriginal title includes the right to exclusive use and occupation of the land, as well as the ability to determine the uses to which the land will be put.
- The SCC decision has clarified certain features of the Aboriginal title test. The most substantial change is a shift away from the idea and past practice of the Province that Aboriginal title is restricted to only site-specific locations.
- The Province has established and trained eight (8) regional, multi-agency committees (RSOC) to carry out 'strength of claim' assessments. The Province is developing operational tools to assist consultation staff and decision makers to make timely and durable decisions.
- If an application for an authorization falls into an area with a low impact on an Aboriginal title claim, then the current requirements to consult with First Nations will be carried out.
- If an application for an authorization falls within an area of moderate to strong impact on the strength of claim for title, the authorization or application will be referred to the RSOC for further assessment. The RSOC will provide the results of its assessment to the statutory decision maker (SDM) who would then consider the information as part of the decision making process.

General Advice for Woodlot Licensees

- Start early engagement with First Nations when applying for an authorization; i.e. Woodlot Licence Plan (WLP) approval, road permit or cutting permit (including 1 CP).
- It's recommended that each woodlot licensee build a positive relationship with all First Nations that have overlapping traditional territory with their licence area. Local district offices can provide a list of overlapping First Nations. As noted above, if all or part of the area covered by the authorization is subject to a moderate or strong SOC, it will be referred to a RSOC and the time required to get an authorization may be longer than usual. It's impossible to say how much longer because every situation is different.
- While engaging with First Nations consider tailoring the application for an authorization to only include areas that are not subject to an assertion of land title or where the strength of claim is low. Doing so may remove the need for the application to be referred to the RSOC

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and may reduce the processing time. This may be particularly important where time is an important factor such as harvesting volume to meet cut control requirements, seasonal limitations, salvage or trying to control insects or diseases.

- Build stronger relationships with First Nations. The stronger the relationship the more informed a woodlot licensee will be about assertions to Aboriginal title as well as their spiritual, cultural (including archaeology) and traditional uses of the land within or near to the woodlot licence area. Plans and authorizations that respect and accommodate First Nations' uses of the land and aboriginal rights will be much easier and faster to approve. Submit this information including any support from First Nations for your application to the statutory decision maker.
- It is recommended that woodlot licensees share Management Plan and WLP information with First Nations including a review of the spatial information; i.e. where future harvesting and road construction will occur, won't occur or may occur with constraints. Finding out and responding to Aboriginal interests (including title and rights) will help reduce uncertainty and decrease the chance of issues arising when applying for an authorization.

More information regarding the implications of the Tsilhqot'in land claim decision to woodlot licences will be distributed as it becomes available. Questions specific to a woodlot licence should be directed to the local district manager and/or woodlot forester. More general questions, such as those involving policies and legislation, should be forwarded to Neil.Edwards@gov.bc.ca and Emma.Neill@gov.bc.ca with a copy to Brian McNaughton (gen_manager@woodlot.bc.ca).