



File: 19500-01
19720-01
10355-03

July 3, 2002

Major Licensees
Woodlot Licensees
Small Business Forest Enterprise Program
Lakes Forest District

Dear Licensee:

It has become evident that the existence of marked or scarred trees within blocks and the possibility that they be culturally modified trees (CMTs) is having an impact on harvesting activities for all tenures within the Lakes Timber Supply Area. Provincial policy is currently being formulated and expected to be available by April 1998. The following provides interim direction for CMTs until superseded by policy.



Background:

The preamble to the *Forest Practices Code of British Columbia Act* ("Act") establishes that sustainable use of the forest resource includes "balancing economic, productive, spiritual, ecological and recreational values of the forest to meet the economic, social and cultural needs of peoples and communities, including First Nations". The Act requires that tenure holders assess cultural heritage resources in operational planning (*Section 17 (2) (c)*) and that forest development plans identify and describe the known locations of cultural heritage values (*Operational Planning Regulation Section 15 (2) (a)*).

The Act (*Section 51*) also requires that where a person finds an unidentified resource feature (which includes a cultural heritage resource) when carrying out a forest practice, he or she must modify or stop the forest practice in the immediate vicinity (*Act, Section 51 (2) (a)*) and promptly advise the district manager of its existence and location (*Act, Section 52 (2) (b)*).

It is clear that cultural heritage resources must be adequately managed during forest practices.

In managing for cultural heritage resource features, tenure holders have recently struggled with the identification and conservation of culturally modified trees, both in the operational planning stages and during active harvest. Management strategies have largely comprised of tree and/or patch retention around CMTs, however, some development has been delayed pending further

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direction. The following interim direction serves to provide some assistance in properly managing this resource feature.

Culturally Modified Trees Definition

It is my opinion that trees which have been modified by aboriginal groups are culturally important and may be historically significant. Measures, which must be taken to preserve the history of CMT occurrences, may be accomplished through tree retention, partial tree retention or record-keeping.

Trees which were marked prior to 1846 are protected by law under the *Heritage Conservation Act*. These trees cannot be destroyed or altered without a permit issued by Archaeology Branch. The information and records of such trees will be assured through conditions of the permit and will be the responsibility of Archaeology Branch, Ministry of Small Business, Tourism and Culture.

No legislation exists for management measures of trees which were modified after 1846 and contain markings typical of aboriginal groups in this area. However, common law and legal precedents guide the District Manager's discretion for the CMTs after 1846. Some preliminary research undertaken by District staff seems to indicate that settlement by non-aboriginals in the area of the Lakes Timber Supply Area occurred after 1913. It is presumed that this is the date after which non-aboriginal settlement impacted aboriginal and First Nations culture, and for the purposes of this direction, the cultural modification of trees. For the purposes of forest practices, trees modified before 1913 shall be deemed as CMTs.

Management of Culturally Modified Trees post 1846

It is my expectation that tenure holders demonstrate **due diligence** when confronted with potential CMTs on planned or active blocks. Due diligence may be demonstrated by adequately training staff and licensee representatives to recognize markings on possible CMTs and by ascertaining when a tree was marked in relation to the 1846 date, as follows:

- Once the Archaeology Branch issues a permit, the aging of a CMT can be determined by directly boring the tree with an increment borer, if the conditions of the permit allows it.
- An alternative method would be to bore representative surrounding trees and conclude from those samples the age of the scarring or marking. This will determine if the date of the modification is between the dates 1846 and 1913.

It is my opinion that the cultural needs of the aboriginal sector in terms of CMTs and the historical significance for archaeological purposes would be adequately served by identifying, recording, and documenting the information about the locations of the CMTs at Lakes Forest District office. Ministry of Forests is responsible for providing the information about the CMTs to the First Nation in whose traditional territory the CMTs are located.

Quantity of CMTs

Single

My expectation is that confirmed CMTs occurring singly should be accurately located on the map of tenure (i.e. Silviculture Prescription map, Logging Plan map, Road Permit map or Special Use Permit map), should have information recorded on the “Level 1 CMT Recording Form” (attached) and should have the modification photographed. Once the information is properly recorded, you may proceed with harvesting, where it is determined that the modification(s) occurred between 1846 and 1913, and the particulars of the modifications are recorded in the Lakes Forest District office.

Clusters of 50 or more per hectare

Where CMTs occur in clusters of 50 or more per hectare, I expect that the location of the cluster be located on the map of tenure, a “Level 1 CMT Recording Form” be completed and photographs of modifications representative of the cluster be taken. You should also recognize that other cultural resource features (cache pits, burial sites) may be associated with clusters of CMTs and these would require protective measures.

More than 400 CMTs

In some cases the number of CMTs may be so large (greater than 400/average-sized block) that further archaeological research is warranted. These should be protected from harvest until an archaeological impact assessment is completed. Upon completion of an archaeological impact assessment, the District Manager may consider the procedures as stated above where CMTs are in clusters of 50 or more per hectare.

Mountain Pine Beetle Infestation

In such areas where CMTs are subject to mountain pine beetle infestation, you should then follow the process outlined for a single CMT.

Where CMTs are found during active harvest operations, please notify Lakes Forest District Compliance and Enforcement Officers, prior to harvest of the CMT, about the findings, location and record as outlined previously. The completed documentation must then be submitted to the District Manager, Lakes Forest District, for his consideration.

Where CMTs are found prior to operational plan approval, the information outlined above should be submitted as part of the permit application.

The above direction is formulated to derive a balance between the cultural needs of the aboriginal people and the documentation of historical values and the development or operational costs borne by tenure holders. This direction is consistent with the Ministry of Forests Policy on Protection of Aboriginal Rights in which the underlying concepts are:

- Identify probable Aboriginal Rights
- Avoid infringement of Aboriginal Rights where possible
- Ensure that any unavoidable infringement is justifiable
- Consider economic implications by incurring minimum delays in forest management

I fully expect that further provincial direction will be forthcoming following the Supreme Court of Canada decision in Delgamuukw and that the interim direction provided in this letter may change accordingly.

Please contact me at 692-2200 if you have any questions or concerns.

Yours truly,

R. A. Murray
District Manager
Lakes Forest District

cc: First Nations

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