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ABSTRACT

First Nations people have collected life-sustaining materials provided by the forests of British Columbia since time immemorial. In particular, evidence of collection activities from cedar is found in the form of culturally modified trees (CMTs). Today, CMTs are considered archaeological resources because of their value as visible indicators of past forest use. Therefore, under provincial legislation (British Columbia Heritage Conservation Act, and the Forest Practices Code Act), they are managed during forest development planning. The value of CMTs extends beyond their contribution to the archaeological record, however, to include: a) legal evidence of Aboriginal rights and title and b) symbols of cultural practices centered around the respect for, and understanding of, people’s relationship with nature.

This thesis uses a case study to assess the consultation process and CMT management procedures utilized by the Ministry of Forests to identify Aboriginal interests on landscape and avoid unjustifiable infringement of Aboriginal rights. The objectives of the case study are to identify factors that influence the consultation process, determine CMT significance and expected management outcomes and finally, to evaluate CMT management procedures in the case study area. The case study is located in the Fraser Canyon of British Columbia, the traditional territory of the Nlaka’pamux people. Data collection involved interviews, field research that involved participant observation of consultation processes and reviews of technical documents, relevant policy and case law.

The findings of the case study show that limited resources, both financial and social lead to a lack of capacity to determine CMT significance and reduce the effectiveness of the consultation process. The study also showed that the exercise of determining CMT significance was an important educational process for the whole community and revitalized interest in cultural practices and traditions amongst the younger generations. However, CMT management
procedures as they were implemented in the South Ainslie watershed were not effective in maintaining the cultural significance of CMT sites. Local First Nations indicated that CMT sites were considered highly significant to the communities because of their educational and economic values. However, the harvesting prescriptions implemented during CMT management procedures destroyed both the context and integrity of the sites, thus diminishing or eliminating the educational and economic values that had been assigned the sites prior to harvesting.

Therefore, while the consultation process utilized during CMT management procedures provided benefits to the First Nation communities in the form of employment and training opportunities, the forest development planning process still resulted in a landscape that was stripped of cultural context and significance. These results indicate that further investigation into the effectiveness of consultation in the management of resources that have traditionally been governed and utilized by First Nations peoples is needed.
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<td>Archaeological Impact Assessment</td>
</tr>
<tr>
<td>AIM</td>
<td>Archaeological Impact Measures</td>
</tr>
<tr>
<td>AOA</td>
<td>Archeological Overview Assessment</td>
</tr>
<tr>
<td>BCCA</td>
<td>British Columbia Court of Appeal</td>
</tr>
<tr>
<td>BCSC</td>
<td>British Columbia Supreme Court</td>
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<td>CCFM</td>
<td>Canadian Council of Forest Ministers</td>
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<td>CMT</td>
<td>Culturally Modified Tree</td>
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<td>CRM</td>
<td>Cultural Resource Management</td>
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<tr>
<td>FDP</td>
<td>Forest Development Plan</td>
</tr>
<tr>
<td>FNFP</td>
<td>First Nations Forestry Program</td>
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<tr>
<td>FRBC</td>
<td>Forest Renewal British Columbia</td>
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<td>FPC</td>
<td>Forest Practices Code</td>
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<td>HCA</td>
<td>Heritage Conservation Act</td>
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<tr>
<td>IMA</td>
<td>Interim Measures Agreement</td>
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<tr>
<td>LRMP</td>
<td>Land and Resource Management Planning</td>
</tr>
<tr>
<td>MOF</td>
<td>Ministry of Forests</td>
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<tr>
<td>MSBTC</td>
<td>Ministry of Small Business, Tourism and Culture</td>
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INTRODUCTION

"When people, that is, those that have gone, wanted to praise nature and the sun, they picked the most beautiful tree in the valley, and through that tree, hope carried on for another couple of hundred years."

The forests of British Columbia have provided life-sustaining materials for First Nations people since time immemorial, and today these forests bear evidence of this past forest use in the form of culturally modified trees (CMT). The historical use of cedar for building materials, clothing and ceremony is well documented by Stewart (1989) and Turner (1990, 1997, 1998, 1998b), and while the scale of forest use has changed over the last century, the value of cedar and other forest resources to First Nations people still remains inextricably tied to their culture and the landscape.

Forestry-related conflicts in British Columbia have been a common phenomenon since the 1980's. Conflicts between First Nations, environmentalists, government and the forest industry sprang from a long history of isolation, dispossession of land, and unilateral decision making processes that had direct impacts on First Nations peoples’ access to traditional territories (e.g. South Morseby, Mearse Island and the Stein Valley) (Notzke 1994: 96). As Bell and Asch (1997: 1) state: “The subject of Aboriginal people’s relationship with Canada is arising with increasing regularity within public debate. Despite Canadians’ increased scrutiny of the subject, no other subject is as plagued with misunderstanding, creating an environment ripe with misjudgment, injustice, and distortion”.

Since the early 1980’s, with the onset of litigation in pursuit of recognition of Aboriginal rights and title, First Nations of B.C. have demanded a greater role in the management of forests and cultural heritage resources. The implementation of British Columbia’s Forest Practices Code Act (1995) and the amended Provincial Heritage Conservation Act (1996) prompted the Ministry of Forests to create an Aboriginal rights policy that in turn has altered the role and responsibility of First Nations people in the management of forest resources.

1 From Hanna and Henry 1995: 134.
An essential element of the Ministry of Forests Aboriginal Rights Policy (1997) is the Consultation Guidelines (1997). Consultation with First Nations people to address concerns related to forest development on contested lands ensures the rights of Aboriginal people are protected. Determining where aboriginal rights exist on the land has recently become an important objective of First Nations and government. As a result, the management of CMTs, as indicators of potential aboriginal rights, has developed into a critical element of forest management and has led to increased involvement of First Nations in forestry decision-making processes.

1.1 RATIONALE AND SIGNIFICANCE OF RESEARCH

The recognition of culturally modified trees (CMTs) as legitimate cultural heritage resource values to be managed and conserved during forest development has both challenged and advanced the relationship between First Nations, government and forest companies in British Columbia (Klimko et al. 1998). Legislation, ministerial policies and guidelines are continually evolving to incorporate new information regarding the identification, management and study of cultural heritage resources such as CMTs. The issue of managing cultural resources is of particular importance in BC as the question of land ownership and jurisdiction has yet to be settled. A number of different avenues have been used in BC to negotiate and gain access to land and resources by First Nations people: the BC Treaty Process, litigation, forestry joint-venture agreements, Memorandums of Understanding (MOU) and Interim Measures Agreements (IMA’s).²

The dispossession of lands and resources from BC’s First Nations people has provided the incentive for First Nations people to engage in direct action, protesting continued use and exploitation of lands where Aboriginal title had not been extinguished. As a result, government and forest companies have become active participants in dealing with First Nations-forestry related issues. To do otherwise would risk

² IMAs are only available to First Nations participating in the BC Treaty Process
greater economic uncertainty for an industry that sustains all British Columbians (Berkes and Fast 1996; Smith 1998; Treseder and Krogman 1999).

The nature and extent of cultural resource management on forest lands requires the involvement from a broad spectrum of 'experts' in the fields of forest management, archaeology and anthropology, law and First Nations culture. While the literature is riddled with accounts of non-First Nations 'experts' reporting on the life and culture of First Nations people, the courts of Canada have ruled that consultation with appropriate First Nations people to determine the extent and nature of cultural practices is essential in determining the possible existence of Aboriginal rights and title (Smith 1995; House 1998; Strother 1998). However, since the courts have also ruled that Aboriginal rights and title can only be proven through the Courts, determining where "possible Aboriginal interests" lie on land remains a challenge for government, First Nations and forest companies.

Research on CMTs thus far has demonstrated that a) CMTs are widely distributed throughout British Columbia, in coastal and interior regions and b) they are valuable sources of information for the study of Aboriginal and non-Aboriginal forest use (Mobley and Eldridge 1992). Nevertheless, researchers have not explored the relationship between CMTs, the First Nations people who created them and the forest management process. The discovery and subsequent management of CMTs in proposed forest development areas has economic, political and potentially even cultural impacts on local First Nations. The tenuous political and economic climate of British Columbia necessitates the study of this relationship. This is accomplished by way of a case study in the traditional territory of the Nlaka'pamux Nation in the lower Fraser Canyon of British Columbia.

1.2 RESEARCH OBJECTIVES

The goal of this thesis was to use a case study of culturally modified tree (CMT) management in the Fraser Canyon of British Columbia to determine how consultation with First Nations influenced the forest development planning process. The research objectives used to accomplish this goal were to:
1. identify factors that influenced consultation with First Nations during CMT management procedures;
2. determine CMT significance and participants' expectations of the CMT management process; and
3. evaluate results of CMTs management procedures in the forest development planning process.

1.3 ORGANIZATION

This thesis is organized into 5 chapters. Chapter 2 outlines the research methodology used in the study. This chapter presents the justification for using the case study method, along with descriptions of three techniques used in data collection and analysis. The brief description of the case study area within the traditional territory of Nlaka'pamux people introduces the topic of CMT management within the context of Forest Development Planning in the Fraser Canyon. Emphasis is placed on the description of events that led up to the point when field investigations began in August of 1999.

Chapter 3 is divided into four sections. First, an overview of cultural resource management (CRM) theory and practice is presented, along with specific aspects relating to the management of CMTs within the CRM framework. Second, a brief introduction to historical events, international and national agreements and British Columbia forest legislation is provided to establish the context within which First Nations people have justified their involvement in the management of lands and resources. The legal foundation upon which First Nations in British Columbia have argued for increased involvement in decision-making processes in forest management is discussed in the third section, and the final section outlines the process by which the British Columbia Ministry of Forests as addressed its legal obligations to consult with First Nations in forest development areas.

Chapter 4 presents the case study results along with analysis and interpretation. The first three sections address the study objectives relating to expectations of the consultations process, the determination of CMT significance, and finally the results of consultation are examined. The fourth section discusses the findings of the case study within the context of the broad research goal, which was to determine how consultation with First Nation affected the forest development planning process. Chapter 5 presents
conclusions and considerations for forest resources management and suggestions for future research are also provided.
2 RESEARCH METHODOLOGY

"Indigenous methodologies tend to approach cultural protocols, values and behaviours as an integral part of methodology. They are 'factors' to be built in to research explicitly, to be thought about reflexively, to be declared openly as part of the research design, to be discussed as part of the final results of study and to be disseminated back to the people in culturally appropriate way and in a language that can be understood."3

This chapter outlines the justification for using a case study research design to investigate and explain how consultation in culturally modified tree (CMT) management, influences the role of First Nations people in forest management planning processes. A combination of three data collection methods was used to capture the views of study participants. The triangulation of collection methods ensures that data sources are consistent and reliable. Data analysis occurred throughout the case study as interviews were coded and field notes and interview notes were reduced to coherent, coded forms.

2.1 JUSTIFICATION

The multi-disciplinary nature of this study required a mixed methodological approach to examine the interaction between First Nations, government and forest company personnel during consultation processes. This thesis presents data obtained using various sociological and anthropological methods of inquiry, with an emphasis on naturalistic observation methods. Naturalistic observation is the act of gathering data using relevant human faculties, making what the investigator sees just as important as what is heard during an observation. Furthermore, the observer witnesses connections, correlations and causes as they unfold during the flow of everyday life (Adler and Alder 1994). The strengths of naturalistic observation are increased when integrated with other qualitative methods such as interviewing and participant observation (Adler and Adler 1994).

A case study research design was used as a framework to ensure that data collection occurred systematically while retaining the natural context of the phenomena under study (Feagin et al. 1991).

3 L. T. Smith 1999: 15
The definition of ‘case study’ is in some ways highly dependent on the author offering the definition (Platt 1992), so for the purposes of this thesis Yin’s (1994) definition has been adopted:

A case study is an empirical inquiry that investigates a contemporary phenomenon with its real-life context when the boundaries between the phenomenon and the context are not clearly evident, and in which multiple sources of evidence are used (13).

To determine whether a case study research design was appropriate for addressing the research questions in this study Yin’s (1994) test for ideal case study conditions was applied. Case studies “are used to answer “how” or “why” questions posed by the investigator under circumstances where there is little to no control over the events that will transpire, and when the event that is being studied is a contemporary issue set within a real-life context” (Yin 1994: 1). The strength of a qualitative case study is its “emphasis is on a specific case [that is] a focus bounded phenomenon embedded in its context. The influences of the local context are not stripped away, but are taken into account [and] the possibility of understanding latent, underlying, or non-obvious issues is strong” (Miles and Hubberman 1994: 10).

This study utilizes a “how” type research question which deals with a contemporary issue in forest resource management. The events that transpired during the study may have been influenced to some degree by the presence of the investigator, but they were in no way controllable by the research methods. Given these conditions, it was determined that the study was well suited for applying a case study research design. As part of the first step in the development of a case study research project a case study area was selected. The following section provides an overview of the study area and a description of events specific to the management of CMTs that occurred prior to the start of field investigations.

2.2 THE NLAKA’PAMUX TRADITIONAL TERRITORY

The forest resources have played a vital and sustaining role in the lives of the Nlaka’pamux people of the Fraser Canyon. Historically, they were dependent on the abundant fish runs that entered the Fraser River, and the mountain goat and deer that inhabited the lush mountain environment. Plants from the
rich valley bottoms and alpine meadows provided healing medicines, food and materials for household items. The diverse ecology of the Nlaka'pamux people's Traditional Territory has led to a diversified culture that reflects and respects the often contrasting characteristics of the landscape (British Columbia 1966).

It is estimated that as of the early 1900's, approximately one-third of the Nlaka'pamux population was residing in the Fraser Canyon within the Cascade mountain range. The remaining two-thirds resided east of the range, with permanent villages in the valleys of the principal tributary of the Fraser, the Thompson, and a smaller tributary of the Thompson, the Nicola River (Figure 1). The Nlaka'pamux people have been divided into two groups based on "ecological and minor cultural and dialectic differences", the Lower and Upper Thompson (Turner et al. 1990: 10). The center of Nlaka'pamux country is the place where Coyote's son came down to Earth, near the meeting point of the Fraser and Thompson Rivers (Lytton), and the river valleys that extend from this junction give the country its shape, which in turn has shaped the culture of the Nlaka'pamux who have resided in the area since time immemorial.

The Nlaka'pamux people are a part of the Interior Salish language family (Hanna and Henry 1995). This language family is divided up into four major divisions: the Nlaka'pamux, Okanogan, the Stl'atl'imx (Lillooet) and Secwepemc (Shuswap). Although there is a close relation linguistically with other interior Salishan groups, the culture of the Nlaka'pamux is distinct from all others. Diversity within the Nlaka'pamux culture also exists, in part because of the vast area of land and geographic variation within the traditional territory occupied by the Nlaka'pamux people (British Columbia 1966).

---

4 The names used to describe First Nations groups by early anthropologists and explorers such as James Teit and Simon Fraser have recently undergone revisions to reflect more accurately the linguistic characteristics of the group (Turner et al. 1990). Historically, the Nlaka'pamux (as they refer to themselves today) have been known by three different names, the "Couteau" or "Knife" people during early fur trading days, the Nlaka'pamux or Nlikeyapamux by James Teit in the early 1900's and the Thompson, reflecting the name of the major river in their territory. However, the group has returned to their traditional name, the Nlaka'pamux. This is reflected in their political bodies (e.g. Nlaka'pamux Nation Tribal Council) and used by the people to describe their cultural affiliation, therefore, for the purposes of this thesis, the Nlaka'pamux people are referred to as such.
The context of this study is rooted in the traditional territory of the Nlaka'pamux people of the Lower Fraser Canyon. The culture and land boundaries of the traditional territory have been described and recorded by a number of different people since Simon Fraser arrived in the area in 1808 during his journey to the coast (Laforet and York 1988; Hanna and Henry 1995). James Teit, a Scottish ethnographer who lived among the Nlaka'pamux people at Spences Bridge, recorded the following description provided by a head chief of the Nlaka'pamux Nation:

One post up the Fraser at [Fountain] – one down the Fraser at Spuzzum – one up the Thompson River at Ascroft – one up the Nicola River at Quilchena – one down the Similkameen River at Tcutcuilxa [near Headley]. All the country between these posts is my country and the lands of my people. At Lytton is my center-post. It is the middle of my house, and I sit there. All the country to the headwaters of all the streams running into the valleys between these posts is also my territory in which my children gather food. We extend to meet the boundaries of the hunting territories of other tribes. All around over this country I have spoken of, I have jurisdiction. I know no white man's boundaries or posts. If the whites have put up posts and divided up my country, I do not recognize them. They have not consulted me. They have broken my house without my consent. All Indian tribes have the same as posts and recognized boundaries, and the chiefs know them since long before the first whites came to this country (Hanna and Henry 1995: ).
The Gold Rush of 1858 introduced forest extraction to the Fraser Canyon. The construction of the Canadian Pacific Railway between 1880 and 1885 reinvigorated forestry operations in the Lower Canyon (McCombs and Chittenden 1990). The topography of the Canyon however restricted the development of timber stands north of Yale until the 1950's. Therefore, between the mid 1850's and 1950's many First Nation peoples were employed either by the railway company or forest companies clearing the land and milling the timbers for construction. The three Nlaka'pamux communities participating in this case study (Spuzzum, Boston Bar and Boothroyd) were actively involved in forestry then and continue to be so today.

The Nlaka'pamux communities today have an average population of 70 people living on reserve lands (Indian and Northern Affairs Canada 2002). The local lumber mill employs many local First Nations
people and some are independent logging contractors. The location of the communities along the Fraser River and Highway 1 brings many tourists and travelers through their territory. The creation of the Stein Valley Park in 1995 expanded employment opportunities beyond forestry to include tourism related ventures such as park maintenance, merchandise sales.

2.2.2 The Canyon Landscape

The main tributaries along which the Nlaka’pamux people reside are the Fraser and Thompson Rivers. The landscape and its resources vary extensively between the southern and northwestern regions of the territory. Cool summers and mild winters support the lush coastal environment characteristic of the southern portion of the territory. The forest that dominates this region is made up of Western red cedar (Thuja plicata), Douglas fir (Pseudotsuga menziesii), and Western hemlock (Tsuga heterophylla). Plants and animals that were once abundant in the region include huckleberry, sword and lady fern, salmonberry, mule deer, mountain goat, and black bear (Golder Associates 1999).

Figure 2: Photo of Western red cedar stand in the Lower Fraser Canyon, Nlaka’pamux Traditional Territory (Photo by Pamela Perreault Oct. 1999)

The northwestern region of the territory is characterized by dry, hot summers and cold winters. Precipitation within this region is governed by the rainshadow effect of the Coast, Cascade and Columbia Mountain ranges. The reduced precipitation and the greater elevation produce a noticeable change in
vegetation. The dominant tree species found in this area are Ponderosa pine (*Pinus ponderosa*), Lodgepole pine (*Pinus contorta*), and spruce (*Picea engelmannii*) (Golder Associates 1998). Sage-brush and other dry-soil plants cover the open landscape.

The Nlaka'pamux people fished the Fraser River from the steep canyon walls during the spring and late summer. Many First Nations people from the coast traveled into the canyon during the summer months to fish the waters and dry their catch in constant, dry winds that are unique to the canyon environment. Fish was not the only means of subsistence however, the fertile environment along the canyon also provided roots, berries, and medicinal plants. During the months when fish was not available, deer and bear was hunted in the surrounding mountains.

2.2.3 Nlaka'pamux Involvement in CMT Management: A Case Study

As a result of court cases clarifying aboriginal rights and title issues and consultation requirements flowing from fiduciary obligation, the role of the Ministry of Forests Aboriginal Liaison Officer expanded to include the implementation of the *Ministry Aboriginal Rights Policy* (1997) and associated *Consultation Guidelines* (1997). Forest planning reflected the constantly evolving jurisprudence surrounding Aboriginal law. The opportunity to observe the results of consultation policies relating to forestry-First Nations issues was presented in August 1999.

Forest Development Plans (FDPs) and associated Silviculture Prescriptions (SPs) for the 1996-2000 planning period guided the harvesting activities around the CMTs investigated during this case study. In preparation for making a decision on cutting permits, the Chilliwack Forest District contracted an archaeology firm to conduct an archeological overview assessment (AOA) of 1341 proposed timber harvesting blocks and associated access road corridors ( Millennia Research 1996). At the time the AOA report was written in 1996, thirteen CMTs had been recorded. The model developed by the archaeology firm was applied to the Chilliwack Forest District.

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5 The *Ministry of Forests Aboriginal Rights Policy and Consultation Guidelines* were originally developed in 1996.
Several First Nation traditional territories were identified within the assessment area and consultation was initiated at the onset of the AOA. “The NNTC and their member bands did not agree with the AOA assessment process and refused to participate in the project” (Millennia Research 1996: 6).

The following concerns were note in the AOA report:

- AOAs are conducted in too short a time and on too superficial a basis. The First Nations consulted during this project consider traditional use sites, archeological sites and ceremonial/sacred sites as inseparable. Consequently, traditional use studies should be conducted in conjunction with archeological assessments.
- Archaeological overviews are too cursory and should be substituted with strict inventories.
- “Meaningful consultation” requires more definition, and subsequently more time and effort on the part of the archaeologist and the Ministry.
- Archaeological overviews should have fieldwork build in the process for model testing. At least one individual from the relevant First Nation(s) should be hired for the fieldwork (Millennia Research 1996: 6)

Based on the application of the AOA model developed by Millennia Research (consulting archaeology firm), archaeological investigations, reconnaissance surveys and archaeological impact assessments (AIAs) were recommended for approximately 36% of the proposed cut blocks and associated road access corridors. In July of 1998, Golder Associates was sub-contracted by the NNTC, to carry out AIAs in fifteen cut blocks, three road access corridors and one landing. At the time of the AOA, 13 CMT sites had been identified, four of which are used as field sites for this case study.

Overall site significance was determined using three criteria: scientific significance, public/economic significance and cultural significance. Table 1 below summarizes the reasons for assigning an overall moderate-high significance rating to the CMT sites.

Table 1: Significance rating scheme applied during 1998 AIA (Adapted from Golder Associates 1998).

<table>
<thead>
<tr>
<th>Scientific Significance</th>
<th>Public/Economic Significance</th>
<th>Cultural Significance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Evidence of past pattern of travel and forest use</td>
<td>Potential for interpretive activities</td>
<td>Validates ethnohistoric references</td>
</tr>
<tr>
<td>Potentially Datable</td>
<td>Potential educational source</td>
<td>Community concerns regarding continued logging in watershed</td>
</tr>
<tr>
<td>Potential to study distribution patterns over the landscape</td>
<td>Possible training grounds</td>
<td></td>
</tr>
</tbody>
</table>

13
In 1998, Golder Associates was contracted to conduct AIs on 19 proposed cut blocks, one of which was used as a field site in this case study. Thirteen CMTs were identified and assigned a moderate-high overall significance. Scientific and Public/Economic significance ratings were justified for the same reasons posted above in Table 1 (with the exception of reduced economic significance). The cultural significance rating was assumed to be high, but had not been assessed at the time of the report.

2.3 DATA COLLECTION

Data collection began during the development of the case study protocol in June 1999 and ended in June 2000. The protocol development marks the beginning of the research process (Yin 1994) and as such, all associated procedures influenced the data collection process. Figure 3 is a pictorial representation of the data collection process within the case study. Data was collected via field research, unstructured interviews and existing technical document reviews. This process allowed for multiple interpretations to be captured, therefore clarifying the meaning of an observation and subsequent researcher interpretation. By acknowledging that no interpretations or observations are perfectly repeatable, this process serves also to "clarify meaning by identifying different ways the phenomenon is being seen." (Stake 1994:241).

![Diagram showing methods triangulation and dominant data sources used in each method.]

Methods triangulation was used to increase the validity of the case study. The dashed line in the framework presented above (Figure 3) represents a diminished focus on document reviews to establish
themes or categories during data analysis. Interviews and field research were the dominant research methods used to collect data, and document reviews were conducted to lend support to themes emerging from those methods. The following sections describe how each method was used within the context of the case study.

2.3.1 Interviews

The interview guide approach and focus group sessions were used to interview study participants depending on availability and interviewee preference. The interview guide approach or unstructured interview was the dominant method used to elicit information from participants in all groups. This was the preferred method because it allowed the investigator to pre-determine topics and issues to be covered during the interview process without specifying the particular order in which the questions were to be administered. Also, the unstructured nature of the interview allowed for conversation to develop and expand the interview beyond the pre-determined topics (Henderson 1991; Babbie 1995).

Focus group interviews were conducted with members of the First Nation communities participating in the study. Each focus group interview was comprised of a small group of individuals who were well informed about the research project and had experience with or knowledge of local CMTs. Each focus group session began with a slide presentation of pictures showing CMTs, post-harvest cut blocks, and local community members participating in the consultation process. The slide presentation was used to geographically orientate the group both as well as to introduce terminology and concepts that may not have been common knowledge to all focus group participants.

The focus group sessions were informal, whereby participants were given the opportunity to share stories, technical information or simply sit and listen to the group's conversation. Each focus group session was recorded using a portable tape recorder. Flip charts were also used to display focus questions and record salient points in the group discussions. To facilitate conversation and discussion, the following questions were used to guide the focus group sessions:
1. Does the consultation process between the government, industry and the local Nlaka’pamux communities meet the Crown’s obligation to avoid unjustifiable infringement on Aboriginal rights?

2. Are archaeological overview assessments (AOA) and archaeological impact assessments (AIA) conducted by professional consulting archaeologists adequate for advising the Province and forest industry as to what is culturally significant to your community in proposed forest development areas?

3. Did the outcome of the forest management plan for the South Ainslie watershed reflect the cultural value of the area?

4. What improvements could be made in the processes of consultation and forest management to better incorporate your concept of cultural heritage?

### Table 2: Categorization of study participants and number of people interviewed in each category.

<table>
<thead>
<tr>
<th>Respondent Category</th>
<th>Number of Respondents Interviewed per Category</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ministry of Forests – Chilliwack Forest District</td>
<td>2</td>
</tr>
<tr>
<td>[Respondent code GP1 GP2]</td>
<td></td>
</tr>
<tr>
<td>Members of the Nlaka’pamux First Nation</td>
<td>16</td>
</tr>
<tr>
<td>[Respondent codes FN1-FN16]</td>
<td></td>
</tr>
<tr>
<td>Forest company representatives</td>
<td>3</td>
</tr>
<tr>
<td>[Respondent codes C1 – C3]</td>
<td></td>
</tr>
<tr>
<td>Archaeologists</td>
<td>3</td>
</tr>
<tr>
<td>[Respondent code A1-A3]</td>
<td></td>
</tr>
<tr>
<td>Other people working outside of the case study area, but who have working knowledge of CMT management procedures and/or policy</td>
<td>3</td>
</tr>
<tr>
<td>[Respondent code O1-O3]</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>27</td>
</tr>
</tbody>
</table>

### 2.3.2 Field Research

The second component of the case study was the collection of field data from within the case study area. Field research involved observing and analyzing the real-life situations of CMT management,
consultation and forest management planning processes as they occurred during a four-month period in the fall of 1999 (Table 3). Utilizing participant-observer techniques, the actions and activities of study participants were recorded in various formats. Note taking and photography were the dominant modes of data collection, as these techniques were easily used under various weather conditions.

Table 3: Cut blocks used as field sites to examine CMT management efforts in 1999.

<table>
<thead>
<tr>
<th>Cut Blocks</th>
<th>A</th>
<th>B</th>
<th>C</th>
</tr>
</thead>
<tbody>
<tr>
<td>Harvest Status</td>
<td>Harvested</td>
<td>Harvested</td>
<td>Proposed</td>
</tr>
<tr>
<td>Year of AIA Assessment</td>
<td>1997</td>
<td>1997-1998</td>
<td>1999</td>
</tr>
<tr>
<td># of CMTs identified</td>
<td>152</td>
<td>249</td>
<td>13</td>
</tr>
<tr>
<td># of CMTs harvested</td>
<td>46</td>
<td>18</td>
<td>N/A</td>
</tr>
</tbody>
</table>

Direct observation of the impact of forest management on culturally modified trees as well as the processes which lead to the CMT management plan are very important to understanding the impacts of forest management on cultural resource as well as the role of local First Nations in the planning process. The data collected during field research included observations, photographs and documents. Field site visits represented a "captive sample" in which observation opportunities were based on availability, accessibility, and relevance to the local First Nation communities. A site visit was typically comprised of representatives from interest groups involved in management planning and decision-making processes, such as local First Nation community representatives, forest company representatives, and District MOF staff involved in mitigating the consultation process.

A reflective journal was used to record personal thoughts at the end of the day while collecting field data. Burgess (1982: 2) notes, "field research also involves the activities of the researcher, the influence of the researcher on the researched, [and] the practices and procedures of doing research". The journal

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6 Captive sampling or convenience sampling is sampling done on the basis of availability and ease of access (Yin 1994:76)
functioned as a record of iterative processes used to collect data, refine interview questions, and explore causal linkages. This record of empirical observations, as well as the interpretation of the observations provided another dimension of data capture during the field research process (Babbie 1995).

To gain access to field sites and community consultation proceedings a ‘key informant’ or primary contact person was identified. By definition, a ‘key informant’ is someone who is used primarily as a source of information on a variety of topics (Tremblay 1982). In this case, a consultant working for one of the Bands participating in the study area was used as the primary contact. The established role of the primary contact person was to introduce the investigator to political members of the communities as well as to community members with knowledge of CMTs. Administrative support and direction was also provided by the primary contact.

2.3.3 Document Review

A comprehensive review of secondary documents specific to the case study area was possible due to the following factors: a) the specific scope of the research problem (i.e. defined by a case study) narrowed the scope of secondary documents to those pertaining to the lower Fraser Canyon, b) CMT management is a relatively new undertaking in British Columbia, particularly in the Fraser Canyon, and as a result there was limited number of technical documents available to substantiate field observations and interview data. Therefore, the document review process was only used to corroborate data collected using other methods. Table 4 below describes the types of documents used for this purpose.
Table 4: Sample of secondary documents used to corroborate data collected in interviews and during fieldwork.

<table>
<thead>
<tr>
<th>Assessments/Reports</th>
<th>Legislation/Regulations</th>
<th>Operational Plans</th>
<th>Others</th>
</tr>
</thead>
<tbody>
<tr>
<td>• AIA(^1)</td>
<td>• <em>Heritage Conservation Act, 1982</em></td>
<td>• FDP(^5)</td>
<td>• Internal company memos</td>
</tr>
<tr>
<td>• AOA(^2)</td>
<td>• Ministry of Forests and Archaeology Branch Protocol Agreement</td>
<td>• SP</td>
<td>• First Nation documentation</td>
</tr>
<tr>
<td>• TUS(^3)</td>
<td>• Archaeology Branch Operational Procedures</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• AIM(^4)</td>
<td>• Protocol Agreement on CHR Management</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Ministry of Forests Consultation Guidelines</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• B.C. Consultation Guidelines</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• <em>Forest Practices Code Act, 1995 and Regulations</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Crown Land Activities and Aboriginal Rights Framework</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Ministry of Forests Aboriginal Rights Policy, 1996 and 1999</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

\(^1\) Archaeological Impact Assessment  
\(^2\) Archeological Overview Assessment  
\(^3\) Traditional Use Study  
\(^4\) Archaeological Impact Measures  
\(^5\) Forest Development Plan

2.4 DATA ANALYSIS

The constant comparison method was used to analyze qualitative data collected in the case study (Lincoln and Guba 1985). This process involved preparing for analysis by converting raw data (e.g. field notes, documents, audio tapes and journal) in partially process data (e.g. write-ups, transcripts and memo’s), which were then coded and subjected to the analysis scheme proposed by Lincoln and Guba (1985). The key characteristic of this analytic scheme is the focus on emerging categories, rather than on categories set a priori. The constant comparison method uses inductive logic to develop emerging categories from a mass of qualitative data using two general processes: a) unitizing, or simplifying text into units of information that will serve as the basis for defining categories, and b) categorizing the units (Tashakokori and Teddlie 1998).
The categorization process involves three essential tasks:

1) All units are brought together into provisional categories that apparently relate to the same content;
2) Rules are devised that describe category properties to justify the inclusion of each unit as well as to provide a basis for a later test of replicability; and
3) To render the category set internally consistent (Lincoln and Guba 1985: 345)

Categories that emerge can be either descriptive or explanatory. The process of constant comparison allows the investigator to compare across categories while integrating the categories with their properties (rules). The credibility of the conclusions will be assessed by making sure that they are credible to those individuals whose realities are reconstructed or described within the context of the research question answered by the study (Lincoln and Guba 1984; Tashakkori and Teddlie 1998). This will be done by presenting the case study in thesis format to all participating communities, followed by an oral presentation to the Nlaka'pamux Nation Tribal Council (NNTC) upon their request.

This case study is set up in a way that encourages naturalistic study, that is, the researcher "seeks out the natural occurrences in natural settings, thereby identifying expressions of value" (Stake 1994: 242). However, it is important to note that data analysis was not separated from data collection, rather data analysis began at the onset of the case study protocol development which was grounded in a context provided by initial field visits and interviews with study participants.

To achieve a significant level of understanding of a phenomenon, the case selected must in some way represent a population of cases (Stake 1994, Tashakkori and Teddlie 1998). Furthermore, the phenomenon of interest in the case must represent the phenomena generally. That is, "in the beginning the phenomena are given [and] the cases are the opportunities to study the phenomena." (Stake 1994:243). With these conditions in mind this research was carried out with members of the Nlaka'pamux Nation in the lower Fraser Canyon on British Columbia, and as
such reflects the geographical and cultural characteristics unique to this group within the Nlaka'pamux Nation.

The case study area was defined using a combination of geographic, cultural, and political boundaries (see Figure 1). The political boundaries (Reserve land boundaries) of three Nlaka'pamux communities were initially used to define the context of 'community'. Geographically, the case study area is located in the lower portion of the Fraser Canyon, a diverse transition zone between coastal and interior biogeoclimatic zones.

The phenomena, or issue of interest, in this case study was the management of CMTs, in particular the participation of First Nations and their impact on management outcomes. While there were many other areas within the province undertaking CMT management, this area was chosen because of the following factors: its proximity to Vancouver, making it accessible with minimal funds, the First Nation communities were not engaged in Treaty negotiations or litigation, therefore it was assumed that legal and political agendas would have minimal effect on access to and reporting of information, and circumstances surrounding CMT management in the area provided a unique opportunity to learn and participate in consultation processes pre- and post-harvest.

2.5 ETHICAL CONSIDERATIONS

Ethical considerations regarding research methodology were addressed using two established protocols. First, the research design (project objectives, methods and results dissemination) was submitted to University of British’s Ethical Review Board. As part of the Ethical Review, written consent from each First Nation community was obtained.

The second protocol used was that of the First Nation communities. This involved three important aspects: 1) a primary contact person, 2) purposive sampling upon the suggestion of community members, 3) the option to review written work prior to submission, and 4) the option to have study results presented orally to the Nlaka'pamux Nation Tribal Council. To avoid
burdening members of all three communities, a primary contact person for the duration of the project was agreed upon. This person functioned as both a project participant, that is he was formally interviewed and recorded during field observations, but he also provided technical help such as transportation to and from field sites and provided regular updates on forestry activities in the case study area.

Community members guided purposive sampling to ensure the people that they felt held the greatest knowledge regarding CMTs and their management would be included in interview and focus group sessions. The fourth aspect of the research protocol is one that was not captured by the university Ethical Review Process. The First Nation communities expressed an interest in the opportunity to participate in the interpretation of the data, as well as the oral communication of study results at the Nation level. However, it was suggested that an oral presentation of the thesis, in draft or final form would receive better response than a written copy submitted on its own. Therefore, once the contact person was informed that the thesis was in draft form, the option remained open for the NNTC or member Bands to request an opportunity to review the thesis by way of an oral presentation.

2.6 SCOPE AND LIMITATIONS

The scope of the study was directed by a) the geographical boundaries of the case study area, b) the number of participants available within the study area, and c) the planning timeframe captured by the case study. As a result of narrowing the geographical boundaries of the study area to cut blocks already harvested or proposed for harvesting within a two year timeframe, the species and types of CMTs discussed was greatly reduced.

The participants of the study were chosen in relation to their function within the CMT management process. That is, the relationships under investigation were those that actively participated in consultation relating to the management of CMTs. And finally, the scope of the study was shaped by the timeframe allotted for data collection. Fieldwork was conducted during
the fall of 1999 and ceased when access cut blocks was diminished due to weather conditions.
Because it was determined that consultation efforts relating to CMT management specifically was
the focus of the study, only consultation processes that occurred during fieldwork were discussed
during interviews as they were the only ones observed by the author.

The interpretation of data and inferences made by the author are limited by the context of the
study area and the research design. There was no comparative analysis within or between the
three First Nation communities or three forest companies involved in the study. Between group
comparisons were conducted, with emphasis on First Nations and non-First Nations perceptions
of CMT management and associated consultation processes. The single case research design
also limits the theoretical propositions flowing from the study. While the case study was in-depth
and comprehensive, there was no opportunity for cross-case comparisons. Therefore,
conclusions regarding CMT management and the effectiveness of consultation in achieving
management objectives will be generalizable to principles or considerations for consultation
processes.
3 DISCOVERING THE ROOTS OF CULTURALLY MODIFIED TREE (CMT) MANAGEMENT IN BRITISH COLUMBIA

"Great cedar trees, with clear, true grain, are becoming difficult to find as more of them succumb to the loggers saw, yet there is no other tree that can provide so generously, so totally and so beautifully"*

The basis for CMT management in British Columbia is embedded in a complex cultural, social and political context. This chapter examines the rationale for CMT management in British Columbia, the role of Aboriginal rights and title claims, policy development reflecting the international and national agreements for achieving sustainable forest management, and finally the duty of the Crown to consult with Aboriginal peoples when an action on contested land may infringe upon claims of aboriginal rights or title. Issues such as archaeological resource assessment and management, roles and responsibilities of Ministries in the development and implementation of CMT management procedures, and the provincial response to consultation obligations are addressed.

3.1 CULTURALLY MODIFIED TREES (CMTS): A NEW CULTURAL RESOURCE

Cultural resource management is as much a social and political activity as it is a scientific investigation (Thompson 1981). Fitting (1982) points out that the concept of cultural resource management extends beyond the boundaries of physical archaeology, to include history, historic sites, and ethnohistory. This has been illustrated during the last decade of forest policy development where there has been an effort to integrate cultural heritage resources into forest management planning. While scientific investigation has informed past practices of salvage archaeology in the face of natural resource development, today's efforts by archaeologists and First Nations to delineate First Nations resource use activities has focused on incorporating in situ cultural resource values into forest management regimes. The following sections will focus on the development and implementation of cultural heritage resource management procedures

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7 Stewart 1984: 19.
8 The practice of removing artifacts from their point of origin and preserving them in museums for later study.
and policy relating to CMT management, and their impact on forest development activity in British Columbia.

3.1.1 Cultural Resource Management (CRM) in British Columbia

The definition of cultural heritage resources used in the Forest Act is adopted for the purposes of this thesis. It is described as an "object, site or the location of a traditional societal practice that is of historical, cultural or archaeological significance to the province, a community or an aboriginal people" (Part 1 Sect. 1). The Project Pride Task Force (1987:29) provides the following rationale for heritage management in British Columbia:

Heritage has high personal value relating to the close ties between natural and cultural environments and the individual. It provides us with a feeling of identity, place, and well being by identifying where we came from and how we became what we are today. Heritage prepares us for the future and for adapting in a rapidly changing world.

The practice of cultural heritage resource management has undergone philosophical and procedural changes that have conversely influenced its role in forest management. While the early practice of archaeology in B.C. focused on documenting cultural changes over time, First Nations peoples' needs or concerns were overlooked, therefore limiting the connection between archaeological data and living First Nations people (Trigger 1980; De Paoli 1999). This has caused First Nations to question the objectives and validity of anthropological and archaeological work (Biolsi and Zimmerman 1997).

3.1.1.1 Cultural Resource Management Policy

Archaeologists and First Nations people have developed protocols, and in some cases operational procedures to meet both the legal requirements and cultural protocol for the protection of forest-based cultural heritage resources such as burial sites and culturally modified trees. A Protocol Agreement\(^9\) for the management of cultural heritage resources on forest lands planned for development was established between the Ministry of Small Business, Tourism and Culture (MSBTC) and the Ministry of Forests (MOF) in 1994 to facilitate the working relationship between the two ministries. It was amended in 1996.

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This agreement establishes the roles and responsibilities of the Ministries. The Archeology Branch of the MSBTC is responsible for the developing policy regarding heritage resource management, as well as reviewing and issuing alteration permits for archaeological sites. The MOF ensures that forest planning documents have been incorporated into Archaeology Branch guidelines for the management of heritage resources (MSBTC 1996).

In 1995, British Columbia passed the *Forest Practices Code Act* (1995), which made provisions for cultural heritage resources found in forested landscapes. Section 17 of the *Code* states that any holder of an agreement under the *Forest Act* (forest licensee) must assess proposed development areas for cultural heritage resources (FPC 1995). Operational guidelines for forest road construction and silviculture prescriptions specifically state that if heritage resources, known or unknown, are uncovered during planning or harvesting operations, an assessment of the heritage resources must be conducted (*Operational Planning Regulations* 1995). A forest licensee is required under Section 17(2)(c) and 51 of the *Forest Practices Code Act* and *Operational Planning Regulation* (s. 26 and 63) to assess cultural heritage resources in the preparation of operational plans, such as silviculture prescriptions.

Thus, the relationship between archaeology and forestry intensified during the early 1990's due to a number of factors: amendments made to the *Heritage Conservation Act* (*HCA*), protocol agreements between the Provincial Archaeology Branch and the Ministry of Forests, the implementation of the *Forest Practices Code* of British Columbia, the establishment of the British Columbia Treaty Process, and the acceptance of culturally modified tress as legitimate heritage resources by professional archeologists (Klimko *et al.* 1998). Thus, the recognition of CMTs as a cultural resource and the extended mandate of cultural heritage protection in forest development areas triggered the development of management procedures specific to CMTs.
3.1.2 Culturally Modified Trees (CMT) and their Management

The integral role of trees, such as cedar, in providing essential materials for daily life for First Nations people is well documented in anthropological and archeological studies (Stewart 1984, Turner 1990). Household items, food gathering materials, canoes and shelter wood were all crafted from wood and fibrous materials from various species of trees (Turner 1990, Laforet and York 1998). Traditional harvesting practices of wood and bark materials from live, often standing trees resulted in an accumulation of visible, dateable, and forest-based cultural heritage resources now known as culturally modified trees or CMTs.

Culturally modified trees, also known as culturally altered trees (Hicks 1984), peeled trees, basket trees, stripped cedar, bark-stripped trees (Mack 1985) have been recognized by archaeologists since the 1950’s, but it was not until the mid-1980’s that CMTs made an appearance in academic literature (Eldridge and Stryd 1993). The B.C. Ministry of Forests (1997:1) defines CMTs for the purposes of management as “a tree that has been altered by native people as part of their traditional use of the forest”.

In 1997, the Ministry of Forests published a CMT identification and recording handbook for foresters, First Nations and archaeologists. This field manual was produced by archaeologists and represented an accumulation of experience in both forestry-based archaeology and academia. In 1998, a second edition of the handbook was released with updated provincial policy information, as well as more information on interior CMTs. A third edition, with substantially more information on interior CMTs is due out in 2001.\footnote{The CMT Handbook Version 2.0 was published again in March 2001 during the writing of this thesis and is available via the Web at http://www.for.gov.bc.ca/RIC/Pubs/Culture/CMT/CMTHandbook.pdf.}

Literature on CMTs has been largely restricted to the fields of archaeology and dendrochronology; the impact of CMTs on forest resource management has not been debated in printed literature. Perhaps this is due to the complex issues of Aboriginal rights and title associated with the presence of CMTs in forests (Bernick 1985). Regardless of the reasons for this lack of debate in literature, legislation requires
forest licensees to conduct assessments identify, record and provide management options to mitigate the impact of logging operations on CMTs. Because CMTs are themselves a part of the resource that developers are after, their management is complicated. As Bernick (1984:10) points out "trees are a different kind of heritage site than what resource managers usually deal with...with trees it is the actual heritage resource that [forest licensees] are after".

Much of the recent archaeological research has been in the form of required 'impact assessments' studies contracted by mining, logging and road construction companies. Though archaeological work proceeds, many sites have already been damaged and some completely destroyed through encroachment by roads, railways, logging, agriculture and building construction (Turner et al. 1990:7).

Hicks (1985) wrote the first journal article on CMTs in British Columbia as a follow-up to his 1976 graduate work on culturally modified trees in the Bella Bella district of the Pacific Northwest coast. A comprehensive look at CMT studies in British Columbia was undertaken by Stryd and Eldridge (1993) after an intensive CMT study on Meares Island in 1985. These articles focused on the problems of sampling CMTs to determine age and distribution.

Early articles on CMTs in British Columbia appeared as discussion topics or editorial notes in The Midden (Bernick 1984; Stewart 1984, Bernick 1985; Hicks 1985, Tirrul-Jones 1985). The struggle to identify CMTs as legitimate cultural heritage resources was the dominant thread in these early discussions. Research by Margne and Matson (1984) briefly mentions the discovery of cambium-stripped Lodgepole pine (Pinus contorta) in the vicinity of their study area. Data collection was limited to scar measurement and increment bore sampling for age determination, including a brief discussion on the difficulty of determining age with this method.
3.1.2.1 CMT Management Procedures in the Vancouver Forest Region

- **Step 1: Determining potential for CMTs**
  - Consultation and Protocol
    - AOA
    - FDP review
    - AIS

- **Step 2: Conducting Assessments**
  - AIA
  - CMT inventory study

- **Step 3: Determining Significance**
  - Cultural
  - Scientific

- **Step 4: Management Prescriptions**
  - Protection
  - Mitigation

Figure 4 CMT management procedures used in the Vancouver Forest Region (Adopted from Moon 1997)

CMT management is most commonly accomplished with the aid of archaeological impact assessments (AIAs) and traditional use studies (TUS). AIAs are conducted under the supervision of professional consulting archaeologists hired by forest licensees responsible for managing all forest resources in areas proposed for development. AIAs are conducted to determine if a development project will have an adverse impact on archaeological sites (e.g. forestry, mining, urban expansion). The Protocol Agreement between the Ministry of Forests and the Archaeology Branch states that "archaeological impact assessments (AIAs) and Traditional Use Studies (TUS) should be undertaken for Forest Development Plans. AIAs determine impacts to archaeological sites as well as site significance, and assist forest licensees in designing, planning and implementing proposed forest activities while minimizing impacts to archaeological resources" (MSBTC 1997b).
Once archaeological sites are identified and recorded, archaeologists must then determine their scientific and cultural significance, usually through ethnographic and historical investigation (MSTBC 1998). An important operational component of the AIA are the management recommendation, or Archaeological Impact Measures (AIM) posed by the archaeologist to mitigate the impact of development activities on archaeological sites. Archaeological impact management measures are implemented for operations authorized through pre-harvest silviculture prescriptions, cutting permits, logging plans, and road construction permits. "These measures are intended to prevent, avoid or reduce adverse effects of forest management activities on archaeological resources and include mitigation, compensation, surveillance, monitoring and emergency impact management" (MSBTC 1997b).

The identification and distribution of CMTs is a field of study in and of itself, most often carried out by archaeologists and dendrochronologists and is not the focus of this thesis. However, since CMTs are used as a vehicle for examining First Nation involvement in forest management, a brief discussion in the technical aspects of studying CMTs is warranted.

The identifying features of a CMT are the scars resulting from tool use and fiber removal. The CMT classification system proposed by the MOF (1998) is based on the type of modification present on the tree. Three main groups of CMTs were identified: bark-stripped trees (the most common), aboriginally logged trees, and other modified trees (such as sap or pitch collection trees) (MOF 1998). Scars left from human alteration are often indiscernible from natural scars; therefore the presence of tool marks usually provides the convincing evidence that the tree is in fact a CMT. For example, a tapered bark-stripped scar on a cedar tree also resembles a type of scar that could be made when one tree falls against a cedar, tearing off a strip of bark as it slides down the trunk of the tree. To positively identify the tree as a CMT, an archaeologist look for: a) other scared trees in the vicinity, b) tool marks at the base of the scar, and c) site characteristics that may lend the archaeologist to believe that traditional harvesting may have taken place in the area (a close proximity to water is one possible indicator) (MOF 1998).
Dendrochronology, forest pathology and archaeology provide technical methods for aging and identifying human interference patterns (Eldridge 1996). Ethnography and historical research are used to determine historical land use patterns of First Nation societies. Since the inception of the BC Treaty Process, and various other land claim processes, the information gleaned from CMTs on historical land use and occupation has become invaluable (Stryd and Feddema 1998).

The temporal and spatial distribution of CMTs across the landscape varies, depending on cultural, ecosystem and historical influences. In British Columbia, CMTs have been used to estimate forest use and historical population changes of First Nation peoples (Stryd and Eldridge 1993). By aging CMTs, archaeologists and dendrochronologists have been able to establish a long tradition of continuous use of the forest (Mobley and Eldridge 1992). The temporal distribution of wood use provided further insight into population changes in First Nation societies since the arrival of Europeans.

CMTs are found in many areas of British Columbia, Oregon, Washington, Alaska, Idaho and Montana (Bernick 1984; Magne and Matson 1984; Stewart 1984; Bernick 1985; Hicks 1985; Mack 1985; Tirrul-Jones 1985). The types of cultural modifications found, and the species of tree used, vary according to the culture, ecosystem, and resistance of the CMT to natural decay processes. The most immediate threat to CMTs however is human impact, namely forest development activities.

Growing demands on forest resources have resulted in conflict between environmentalists, First Nations and the forest industry. In British Columbia, cultural resource management has been a reactive process, most often in response to forest development activities that threaten to destroy cultural sites. Archaeological studies that were conducted on Meares Island in 1985 (Stryd and Eldridge 1993) and Clayoquot Sound (Cayoquot Sound Scientific Panel 1995) were initiated by government in response to public protest and they mark the appearance of a new strategy by First Nation representatives and others, to define traditional cultural resources as “archaeological” sites in the belief that legislation (Heritage Conservation Act) would provide protection (Apland 1993) and guard against forest development activity.
Determining CMT Significance

Culturally modified trees represent a time when the People depended on the resources of the forests for more than jobs and paper money. The livelihood of many families revolved around household supplies produced from trees, including clothing, matting, shelter, and baskets for berry picking. In the early 1800’s, baskets also became a major trading commodity that produced an income for many First Nations families (Laforet and York 1998). The term “culturally modified tree” can be used to describe a wide variety of trees that have been altered in some way by First Nations people; from trees stripped of their bark for basket making materials, to plank removal trees and burial sites. This interconnectedness between the First Nations of the Pacific Northwest and cedar may date back as far as 3000 years (Hebda and Mathewes 1984).

The extensive use of Western red cedar and yellow cedar by Pacific Northwest coast First Nations people as depicted by Stewart (1984b) explains the vast number of CMTs being found on forested lands. Studies in ethnobotany have uncovered many uses of trees by First Nations people, including medicinal, ceremonial, technical, and economic uses (Turner 1990, 1997, 1998). More recently, a book dedicated solely to the study of CMTs of Hanson Island, off the west coast of Vancouver Island has caused some controversy, especially over the distinction between naturally and culturally scared trees (Garrick 1998).

Archeologists are continually refining their sampling strategies as more information about CMT distribution surfaces from archaeological impact assessments, CMT inventories and Traditional Use Studies (TUS). The problems associated with dating CMTs has inspired new dendrochronology research, aided by the latest in tree dating technology. Unfortunately for forest managers and First Nations located on forested lands scheduled for development, there has been very little work done that directly addresses the management of CMTs.

The significance of CMTs to scientific fields of study such as archaeology and dendrochronology rests in their unique feature as being both a cultural artifact and a living component of the forest ecosystem.
CMTs can provide dates and information relating directly to traditional subsistence activities of local Aboriginal peoples (Mack 1985, Bergland 1992, Ref). However, like all other living things, CMTs are subject to the natural processes of decay and mortality. This natural pressure, along with human pressures of forest development, has awakened the need to conserve this invaluable, nonrenewable, cultural heritage resource (Mack 1985).

The significance of CMTs has been articulated by First Nations in a number of different ways. Below is an passage from the Namgis Newsletter (July 2001:np).

> The significance of identifying CMTs in the traditional territory should not be understated. By formally identifying CMTs in the traditional territory we are able to make a link between present-day practices and the historical use of the territory. This helps us to meet the test set out by the Supreme Court of Canada in its 1997 decision in the case known as Delgamuukw.

Archeologists and cultural resource managers recognize the need to develop mutually beneficial relationships between managers of the forests and managers of the province's cultural heritage. The significance of archaeological resources, such as CMTs, has changed over time and reflects both the philosophical changes the field of archaeological resource management and external pressures felt by First Nations to provide evidence of their distinct cultural identity in their attempts to prove Aboriginal rights and title (Layton 1988, De Paoli 1999).

### 3.1.3 Culturally Modified Trees and Aboriginal Rights

As the definition of 'Aboriginal right' is debated in the court of law the Ministry of Forests, the forest industry, and First Nations have had to deal with the immediate reality that First Nations people have been burdened with the responsibility of proving the existence of Aboriginal rights and title, and government the burden of infringement justification. Herein lies the confluence of archaeology and forestry, as the rules of evidence for proving aboriginal rights and title favours the presentation of material evidence to corroborate oral evidence presented in court (Elias 1993, Cruikshank 1998).

The inclusion of CMTs as cultural heritage resources in B.C. has influenced the relationship between forest managers, archeologists, and First Nations like no other cultural heritage resource in British
Columbia. The acceptance of Aboriginal and treaty rights by the Federal and Provincial government, the onset of British Columbia’s modern-day treaty making process, and legislative changes affecting the practice of forestry in the Province have all contributed to the increased recognition of Aboriginal peoples role in forest management. Cultural heritage resources, such as CMTs, exemplify the very nature and scope of historical Aboriginal forest use.

For forest managers, the value of CMTs lies in their capacity to indicate the existence of Aboriginal rights. As an indicator of possible existing aboriginal rights, it is important to be able to constantly identify CMTs and pre-determine their location for modeling purposes. Hence the majority of research on CMTs is now directed at determining the distribution of CMTs over a landscape.

First Nations, as claimants of Aboriginal rights must be prepared to carry the burden of proof, and archaeological sites have the potential for providing such proof. The threat of forest development in areas claimed as traditional territory has increased the pressure on First Nations to protect evidence of land use and occupancy. “There is no longer a serious question as to the source of aboriginal rights [but] there are still abundant opportunities to challenge any claim of aboriginal rights” (Elias 1993:235).

3.2 ABORIGINAL PARTICIPATION IN THE MANAGEMENT OF LANDS AND RESOURCES

3.2.1 Historical Context

There are a number of important historical documents that link the right to govern land and resources with the claim of Aboriginal and treaty rights: the Royal Proclamation of 1763, the Oregon Treaty of 1846, the Constitution Act, 1867, and the Constitution Act, 1982. The Royal Proclamation exposes two very important views of the time, first that the Indians did practice some form of land ownership and self-government, and second that because of this land title a process for extinguishing title would be required. Further to this, the Royal Proclamation of 1763 established the Crowns fiduciary obligation to Aboriginal people by assuming the role of protector of Indian interests, and the sole benefactor of the extinguishments of Indian land title (RCAP 1995; Isaac 1999)
The boundary dividing the territories of the United States and British Colonies was extended westward over the Rocky Mountains in 1846 with the signing of the *Oregon Treaty*, therefore marking the assertion of British sovereignty over the land now known as British Columbia. The right for the province of British Columbia to claim title to land and manage associated resources is expressed in s. 109 of the *British North American Act* (now the *Constitution Act*) of 1867. Responsibility for all lands and resources within the boundaries of the province was given to the Government of British Columbia when it entered into Confederation in 1871 (B.C. Terms of Union 1871). The *Terms of Union* also indicate that the continuing role of the Federal Government in governing the lives of Indians and lands reserved for Indians (s. 13).

Throughout the history of Canada, Aboriginal peoples have asserted their distinct rights to lands and resources. For the better part of the last century, federal and provincial governments, as well as the judicial system, did not support the assertion of these rights (Isaac 1999). To quash these assertions, the government of Canada amended the *Indian Act* in the early 1920's to include provisions that prevented Indians from obtaining legal counsel in pursuit of rights or land claims. This provision remained in effect until 1941. The effects of this provision were particularly harsh in British Columbia where treaty making to extinguish Indian land title came to an end shortly after fourteen small treaties on Vancouver Island were signed.

However, the *Constitution Act*, 1982 changed this by recognizing and affirming existing aboriginal and treaty rights in s. 35(1). As Isaac (1999:1) states “aboriginal rights are the legal embodiment of Aboriginal people’s claim to their traditional lands and to the activities, customs, and traditions flowing therefrom”. The ongoing development of Aboriginal law is reviewed briefly in the next section, however the intention of the review is to provide a brief description of the development of Aboriginal rights and title definitions through case law within the context of forest development in British Columbia.

### 3.2.2 Indigenous Peoples in Forest Management: International Context

The World Commission on Environment and Development produced a report titled *Our Common Future* (1987) that explored, in part, the state of Indigenous peoples around the world. The report encouraged the international community to address issues such as Indigenous rights, culture and traditional
knowledge. However, the most notable initiative to occur within the international arena was the "Earth Summit" conference sponsored by the United Nations in 1992. The international agreements that resulted from this meeting included the *Convention on Biological Diversity*, *Agenda 21*, and *Guiding Principles on Forests* (World Commission on Environment and Development 1992, Clayoquot Sound Scientific Panel 1995; P. Smith 1995). They recognized the importance of addressing indigenous rights, culture and traditional knowledge in resource use and conservation initiatives. The inequities between indigenous and non-indigenous peoples that were highlighted in these international documents during the early 1990's brought attention to the need for greater Aboriginal involvement in forest management. As a result, Canada began to explore the role Aboriginal people played in the reaching sustainable forest management goals.

### 3.2.3 Aboriginal Peoples and Agenda Setting in Forest Management: National Context

The formation of the Canadian Council of Forest Ministers (CCFM) in the mid 1980's marked the beginning of a national strategy towards achieving sustainable forest management in Canada. Through a series of public forums, the state of Canada's forests and the future of the forest sector were examined, resulting in a *National Forest Sector Strategy* in 1987 (CCFM 1998). However, this strategy reflected a primary concern with sustaining timber yields, and little to increase or alter the role of Canadian citizens in general in forming new forestry directions. It was not until the Brundtland Commission (the United Nations World Commission on Environment and Development) in 1992 that Canada's changing attitudes and values were expressed and considered by the CCFM.

A new national forest strategy was released in 1992, *Sustainable Forests: A Canadian Commitment* and in it new forestry directions desired by Canadians were identified, and the result was a mandate that would expand forest management beyond economic values to include social and cultural values (Canada 1998). Once forest management objectives were determined, the next phase involved determining how to implement, measure and monitor sustainable forest practices.

In 1995 the Steering Committee on Criteria and Indicators of Sustainable Management of Canada's Forests published *Defining Sustainable Forest Management: A Canadian Approach to Criteria and*
Indicators (CCFM 1997). This document listed six criteria that represented forest values, each with indicators that to be used to measure the criteria (or value) and track sustainable forest management progress in Canada. Included within the six criteria was ‘Society's Responsibility’ (Criteria #6), which encompassed the social aspects of forest management activities. This criterion included indicators such as the recognition of Aboriginal and treaty rights and Aboriginal participation of forest economic development initiatives (CCFM 1997:105).

In 1998, the CCFM released Canada’s Forest Strategy for 1998 to 2003. This “renewed plan of action” was meant to guide efforts for achieving sustainable forest management by “dealing in a forthright manner with the connectedness among ecological, economic, social and cultural aspects of forest use and conservation” (CCFM 1998:1). Nine strategic priorities were identified to guide policies and actions of government, industry, non-government organizations, and communities. As with Canada's criteria and indicators framework, Aboriginal issues were addressed. Strategic direction number seven titled “Aboriginal Peoples: Issues of Relationship” acknowledged the long history of Aboriginal forest use in Canada, constitutionally entrenched Aboriginal and treaty rights, and the potential impacts of land claims on forest management. A focus was place on developing partnerships between Aboriginal communities, government and industry.

To make the scientific commitments of the National Forest Strategy tangible, the forest science and technology communities came together under the sponsorship of the CCFM to develop a course of action for implementing the directives of the National Forest Strategy. Within the seven thematic areas of study identified in the National Forest Science and Technology Course of Action (1998) Aboriginal issues are addressed, reinforcing the important role of Aboriginal people in achieving sustainable forest resource management.

The majority of Canada's Aboriginal people live within productive forests. Aboriginal communities (Indian reserves) are more often than not natural resource dependent communities. Upon recognizing the significant impact that land claims settlements would have on resource access and management
jurisdiction, the governments established the First Nations Forestry Program (FNFP), a division of the Canadian Forest Service. The FNFP was “designed to improve the economic conditions of status Indian communities with full consideration of the principles of sustainable forest management” (FNFP 1998:5). The objectives of this program focus on enhancing capacity within First Nation communities and partnership development between First Nation communities and forest-based businesses and government and industry. This program, along with others, has provided funds to First Nation communities to develop capacity in areas that have enabled consultation on forestry-related issues, such as CMT management.

3.2.4 First Nations and Forest Management in British Columbia

In the late 1980’s and early 1990’s, a number of historical events took place within British Columbia that propelled the First Nations-forestry issues to the forefront of policy-making agenda’s: Environmental protest, the launch of the British Columbia’s modern-day tri-partite treaty process, new legislation governing forestry practices in the province, and legal decisions regarding claims of Aboriginal rights and title (discussed in Section 3.3) are examples of such events. A brief discussion of critical events provides context for the formal consultation process utilized in forest planning and the management of culturally modified trees in British Columbia.

In 1985, environmentalists and First Nations protested MacMillan-Bloedel’s proposed harvesting plan of Meares Island off the west coast of Clayoquot Sound on Vancouver Island. The Nuu-chah-nulth First Nation sought an injunction, claiming aboriginal title to Meares Island. The injunction was granted in 198511 and forest development was halted, and remains so still today. In 1993, First Nations (Nuu-chah-nulth Nation) and environmentalist blockaded logging operations in Clayoquot Sound and the fight to save B.C. temperate rainforest became the focus media worldwide. The motives for direct action differed between environmentalists and First Nations, but the Nuu-chah-nulth Nation claims to traditional lands did not go unheard. Forestry operations had been inextricably tied to Aboriginal rights claims.

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3.3 ABORIGINAL RIGHTS AND FOREST MANAGEMENT IN BRITISH COLUMBIA

3.3.1 Aboriginal Rights and their Impact on Forest Policy Development in British Columbia

Since the entrenchment of aboriginal and treaty rights in the Constitution Act, 1982, there has been a steady flow of case law developed around defining the nature and scope of aboriginal rights and title. In many cases, this law has been developed around natural resource extraction activities. Of particular interest to this thesis is the development of forest policy around the management of cultural heritage resources (specifically culturally modified trees) as a result of the legal decisions that placed the burden of proving the existence of aboriginal rights on First Nations, and the burden of justifying infringement on such rights on the Crown in acknowledgement of their fiduciary obligation to consult regarding the potential existence of these rights. Table 5 below shows the chronological development of case law pertaining to Aboriginal rights and title since 1973. The evolution of BC legislation governing the management of lands and resources is also presented for the same timeframe.

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12 For example: logging was addressed in Meares Island, fishing rights in Sparrow, Van der Peet, and mining and consultation was addressed in Halfway.
Table 5: Event listing of court decisions regarding Aboriginal rights and the development of British Columbia forest policy

<table>
<thead>
<tr>
<th>CASE LAW</th>
<th>LEGISLATION, REGULATION AND POLICY</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Calder</strong>: Aboriginal title exists under common law</td>
<td><strong>Constitution Act s.(35)(1):</strong> &quot;existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed&quot;</td>
</tr>
<tr>
<td><strong>Guerin</strong>: fiduciary obligation of the Crown is &quot;trust like&quot;</td>
<td></td>
</tr>
<tr>
<td><strong>Meares Island</strong>: Injunction granted to halt logging on Meares Island. Significant evidence (CMTs) of prior use and occupancy by First Nations studied and documented.</td>
<td>1985</td>
</tr>
<tr>
<td><strong>Sparrow</strong>: Established that the &quot;trust like&quot; relationship between the Crown and aboriginal peoples required the Crown to consult with aboriginal peoples</td>
<td>1990</td>
</tr>
<tr>
<td><strong>Van der Peet</strong>: Aboriginal rights defined as an activity that is an element, custom or tradition integral to the distinctive culture of the aboriginal group claiming the right.</td>
<td>1991</td>
</tr>
<tr>
<td><strong>Delgamuukw</strong>: Aboriginal rights are affirmed and the Sparrow test is reiterated. Aboriginal title is defined as &quot;exclusive use and occupation of land&quot;</td>
<td>1993</td>
</tr>
<tr>
<td><strong>Siska</strong>: Injunction sought by Nlaka'pamux Nation to protect traditional use areas in the Siska Valley. Injunction denied.</td>
<td>1994</td>
</tr>
<tr>
<td><strong>Kitkatla</strong>: CMT located in valley scheduled for forest development, injunction sought by First Nation (denied)</td>
<td>1997</td>
</tr>
</tbody>
</table>

1996
- MOF Protection of Aboriginal Rights Policy;
- MOF Consultation Guidelines;
- Revision of the MOF and Archaeology Branch Protocol Agreement;
- Operational Planning Regulations amended; *Heritage Conservation Act* amended

1997
- Crown Land Activities and Aboriginal Rights Policy Framework (revised)
- MOF CMT Handbook, Vancouver Forest Region

1998
- British Columbia Consultation Guidelines;
- Revision of MOF CMT Handbook

1999
- Revision of MOF Aboriginal Rights and Title policy;
- Revision of MOF Consultation Guidelines;
- Revision of MOF CMT Management Procedures (Vancouver Forest Region)
The 1973 *Calder* decision\(^{13}\) established that Aboriginal title existed in common law, and was rooted in "long-term occupation, possession and use" of traditional territories (qtd. in Kulchyski 1994: 62). The impact of the *Calder* decision on Canadian law is perhaps best described by Asch (1997) when he wrote that "such is the power of law that this decision set in motion a course that, ultimately, led governments to move from a position where Aboriginal rights were deemed to exist to a place where both Aboriginal and treaty rights were recognized and affirmed in the 1982 *Canadian Constitution Act.*" \(^{(iv)}\)

More than a decade later, the Supreme Court of Canada interpreted Section 35 (1) of the *Constitution Act, 1982*, for the first time in the *Guerin* decision\(^{14}\). The Supreme Court ruled that the Musqueam Band had legal rights to their reserve lands, and that these rights were based on *pre-contact control and possession of land* (Morse 1991; Sanders 1996). The Court also further interpreted Section 35 (1) to mean the Crown had a fiduciary obligation (or trust-like relationship) to Canada's Aboriginal peoples, and as such the Crown ought to act in the best interest of Aboriginal people when dealing with issues on land not surrendered to the Crown through a treaty process. Since the majority of land in B.C. was not surrendered to the Crown via treaty this decision had far reaching implications that affect all British Columbian's.

Although Aboriginal rights were affirmed in the *Constitution Act, 1982*, the substantive content of Aboriginal rights remained unclear. The 1990 *Sparrow* case, although not dealing with the breadth of Aboriginal rights\(^{15}\), introduced a test that would be used by the Courts and government agencies to define the nature and scope of Aboriginal rights.

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\(^{15}\) The *Sparrow* case dealt with fishing rights only.
According to the Sparrow test, the first task in determining whether or not an Aboriginal right has been infringed upon (unjustifiably or not) is to establish if in fact an Aboriginal right exists. However, the burden of proof rests with the Aboriginal group claiming such rights. At this time an aboriginal right was loosely defined as an activity that was “integral to the distinctive culture of an aboriginal society.”(Emphasis added: Ministry of Aboriginal Affairs 1997). In Delgamuukw (1993) the British Columbia Court of Appeal held that extinguishments of Aboriginal rights did not occur prior to 1871 (BC joined Confederation), and therefore continue to exist in British Columbia today.

Further refinement of what constituted an aboriginal right occurred with the 1996 Van der Peet decision in which the Supreme Court of Canada ruled that to constitute an Aboriginal right, an aboriginal practice or custom must a) be integral to the distinctive aboriginal society and b) has continuity with traditions, customs or practices of the society prior to European contact (Hanna et al. 1999: 12). Because European contact with First Nations people occurred at different times throughout BC and Canada, the existence of Aboriginal rights could not be generalized to all Aboriginal peoples, and would therefore have to be determined on a case-by-case basis (Van der Peet)

The second step of the Sparrow test addresses the question of infringement. Once an existing Aboriginal right is determined, the Crown must decide if the proposed activity, such as forest development, infringes upon that right. If infringement occurs as a result of the proposed activity, the Crown must prove justifiable infringement based on the legal standards of evidence. It is in this final stage that consultation with effected First Nations is mentioned as probable justification for infringement.

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Following the landmark court cases discussed above, the Province of British Columbia implemented *Consultation Guidelines* (1996) that describe a) the need to consult with First Nations on aboriginal rights and b) a detailed process for considering the potential of Aboriginal title in the decision making process.

Following the *Delgamuukw* (1997) decision, the guidelines were amended to include a detailed method to consider the potential for aboriginal title in decision-making processes. These guidelines, along with the *Crown Land Activities and Aboriginal Rights Policy Framework* (1997), guide government agencies in consultation processes with First Nation groups.

The *Ministry of Forests Aboriginal Rights Policy* was implemented in 1995, revised in 1997 and again in 1999 to reflect the changing role of Aboriginal people in resource management decisions. The *Crown Land Activities and Aboriginal Rights Policy Framework* was established in 1994 and revised in 1997. This policy is in effect at all times, and applies generally to all provincial ministries and officers of the Crown overseeing activities and decisions on Crown lands. This policy describes when and how the Provincial government will avoid unjustifiable infringement of known aboriginal rights.

### 3.3.2 Managing “Public” Forest Lands in British Columbia

Conflict over natural resource use is inevitable when the resource in question is publicly owned. A public resource has many "stakeholders" or interest groups with conflicting values or objectives that must compete for the allocation and use of that resource. When the guiding principle of the dominant management regime is sustainable timber harvesting, as is the case of forest management in British Columbia, the primary objective, expressed through timber allocation, must be reconciled with many other values held by multiple interest groups (Smith and McDonough 2001). When the desired resource, such as timber, becomes scarce or inaccessible, competition increases, and it is at this point that public policy processes are implemented in an attempt to alleviate tension and conflict (L.G Smith *et al.* 1997). One such process is the public participation process in forest management.

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There are many forms of public or citizen participation processes; however, forest management has historically used the consultative public input model. In this approach, or typology, the manager asks the people to think about a plan that they are preparing to implement, provide feedback as to their concerns and consideration of these concerns is offered in return (Germain 2001). This top-down approach to forest management is derived from the Forest Practices Code Act, which structures how the Ministry of Forests conducts public involvement. According to Section 39 of the Code (1995), the holder of forest license and the Ministry of Forests must make an operational plan (e.g. FDP) or an amendment to a plan available to the public for review and comment.

The importance of consultation in forest management has increased over the last decade as a result of increased public awareness of forestry practices and legal decisions regarding Aboriginal rights and title, an issue that is of particular importance in British Columbia. However, what has not been adequately addressed by the courts or forest policy makers is how consultation activity is related to the decision-making process it is meant to serve, in this case CMT management.

The District Forest Manager, as the statutory decision-maker, forest companies as the planners, archeologists as managers of cultural resources and First Nations whose interests or rights are infringed upon, need to know whether or not the consultation process is helping them make better decisions. Therefore, a method for investigating the relationship between consultation and decision-making is necessary.

3.3.2.1 The Decision-Making Process in Forest Management

The objective of the decision-making process is to end up with decisions that generally satisfy three criteria: a) they are sound, b) successfully implemented and c) meet a desirable impact (Patterson et al. 1992). As Figure 5 shows, decisions are usually made in response to a stimulus. Complex decisions require extensive analysis involving research, reflection and priority setting and in some cases criteria development. A sound decision is of little value if it is not implemented. Therefore, successful implementation of the decision is also required. However, to determine whether a decision is a "good"
decision the resulting impact is examined and evaluated as to whether or not the implementation of the
decision lead to the desirable impact (Patterson et al. 1992).

Figure 5: The decision-making process (Adopted from Patterson et al. 1984)

Regardless of when decision-makers become involved in the decision-making process, it is important
that the process be planned out strategically. Patterson et al. (1992) identify two important aspects of
strategic planning that decision-makers should keep in mind: first, decision-makers must be cognizant of
the whole process, and second, the planning process should begin with determining what the desired
impact of the decision is and work backwards through the phases of decision-making process.

3.3.2.2 Consultation in Decision-Making

As the public becomes more informed about decisions made in forest management and more importantly
the impact of those decisions on the environment, the demand for public involvement in the decision-
making process grows (McCool and Guthrie 2001). This trend has been widely studied in natural
McCool and Guthrie (2001) argue this trend is occurring as a result of changing public expectations of
the goods and services ecosystems produce.

Forest management in British Columbia has undergone a paradigm shift from sustained yield
management to sustainable forest management (Treseder and Krogman 1999) which has broadened the
scope management objectives to included non-timber forest values such as recreation opportunities,
aesthetics, cultural heritage values and Aboriginal rights (Lui 1994). As a result, government decisions have been utilizing public participation processes and institutional arrangements to inform decision-makers of individual and group interests. Other factors influencing the decision-making process include legal obligations flowing from judicial requirements, administrative obligations resulting from legislated mandates and strategic higher-level plans, such as Land and Resource Management Plans (LRMP).

There are a number of models in the literature used to describe the levels of decision-making authority or power relationships that evolve from certain kinds of public participation processes. The classic model used to investigated public participation in natural resource management planning is Arnstien’s ladder of citizen participation (Arnstein 1969). This model, replicated below (Figure 7), uses eight broad categories of citizen participation with each category, or rung on the ladder, representing the extent of citizen’s power in determining the end product of a participation process (Arnstein 1969).

![Figure 6: Arnstein's ladder of citizen participation (Arnstein 1969: 217)](image)

Arnstein’s ladder of participation characterizes participation as the redistributions of power between the power holders and the powerless (Arnstein 1969). In forest management, the level of citizen participation in decision-making processes has evolved from non-participation to degrees of tokenism.
Until very recently, the only form of citizen participation offered in forest decision-making processes was public consultation. Arnstein (1969) describes consultation as a process of involvement where people's opinion is sought, possibly influencing the perspective of the decision-maker, but in no way does the consultation process guarantee direct input into the decision-making process (Matakala 1995; Buchy and Hoverman 2000). In British Columbia, a parallel public consultation process is used to address Aboriginal interests on lands scheduled for development. The Ministry of Forests' Aboriginal Rights Policy is implemented with Consultation Guidelines (1997, revised in 1999) for addressing both the legal and fiduciary obligations of the Crown regarding First Nations interests and rights to land and resources.

As the demand for increasing citizen power occurs, there are a number of factors to consider when those that hold the decision-making power become involved in a consultation process with groups that have traditionally not held power to influence the decision making process and its outcomes. An important factor influencing the weight of consultation on the outcome of the decision-making process is timing (Buchy and Hoverman 2000). That is, if consultation occurs after the decision is made, the process is seen as merely an administrative practice with little to no influence at all on the decision. Figure 8 below illustrates the forest planning process in British Columbia with mandatory and discretionary consultation procedures indicated.

Figure 7: Forest planning process utilized during 1995-2000 planning period in British Columbia.
Another factor to consider in the consultation process is representation of group interests. Meaningful consultation involves face-to-face meetings with appropriate group representatives, if not the decision makers themselves. This form of direct communication is preferred to letters or phone calls and allows representatives an opportunity to "air one's views" and have them considered (Sewell and Philips 1979). In their research, Sewell and Philips (1979) found that the opportunity to express one's views on an issue is often regarded as highly as the satisfaction gained from having a decision made in their favour. Arnstein (1969) however does not classify consultation as a form of citizen participation unless the process includes monitoring and follow-up. That is, if the consultation is not evaluated for its effectiveness in achieving the 'consulted' group's goals and objectives, or evidence is not presented to demonstrate how and where the 'consulted' group's concerns were addressed in the management outcome, distrust for the process is likely to develop.

3.3.3 First Nations Participation through Consultation

The focus of this thesis was on the evolving consultation process with First Nations that parallels the public participation process used by the MOF in the forestry planning to inform the public of forest development activities. The MOF's Aboriginal Rights Policy (1999) provides a framework for carrying out consultative activities with First Nations on forestry related activities that may have a potential impact on existing Aboriginal rights and title. While the policy explicitly states that Ministry officials can neither confirm nor deny the existence of Aboriginal rights, the legal obligations of government warrant a more substantive investigation into First Nations interests on lands scheduled for development, hence the development of the MOF Consultation Guidelines (1999).

First Nation participation in forest resources management has been strongly influenced by policy guiding the information gathering process for forest development planning and decision-making in British Columbia. The duty to consult with First Nations has two sources: jurisprudence and the ideology of sustainable resource management that calls for the incorporation of Indigenous knowledge in forest management. In British Columbia, emphasis has been placed on the legal rationalization for First Nation participation in forest management and this is reflected in the evolution of the Ministry of Forests Consultation Guidelines (1999).
3.3.3.1 The Duty to Consult

The 1997 *Delgamuukw* decision provides a detailed interpretation of Aboriginal rights and title and the responsibility of the Crown to avoid infringement upon those rights. The Court began by distinguishing between Aboriginal rights and Aboriginal title. In doing so, the Court introduced the concept of an "aboriginal rights spectrum" based on the "degree of connection to land" (Davis and Company 1998). That is, Aboriginal rights differ from group to group, depending on the circumstances and history of the claimant. Figure 4 below shows an example of an Aboriginal rights spectrum that might be encountered during forest development activities.

| Degree of connection to land | Right to speak an Aboriginal language | Right to hunt on a specific tract of land | A right to the land itself (Aboriginal Title) |

Figure 8: Example of an Aboriginal rights spectrum as described in *Delgamuukw*, 1997.

In addressing the Crown's duty to consult with First Nation, the Court determined that when infringement on Aboriginal title is in question there is always a duty to consult.

There is always a duty of consultation. Whether the aboriginal group has been consulted is relevant to determining whether the infringement of aboriginal title is justified...the nature and scope of the duty of consultation will vary with the circumstances. In occasional cases, when the breach is less serious or relatively minor, it will be no more than a duty to discuss important decisions that will be taken with respect to lands held pursuant to aboriginal title. Of course, even in these rare cases when the minimum acceptable standard is consultation, this consultation must be in good faith, and with the intention of substantially addressing the concerns of the aboriginal peoples whose lands are at issue. In most cases it will be significantly deeper than mere consultation. Some cases may even require the full consent of an aboriginal nation, particularly when provinces enact hunting and fishing regulation in relation to aboriginal lands. (Emphasis added, *Delgamuukw* v. R. Para 168)

Therefore, like the spectrum of Aboriginal rights, the degree of consultation between the Crown and First Nations also lies along a spectrum that is circumstance dependent (Figure 9)
The court did little to address the substantive content of consultation in the *Delgamuukw* decision, but stated, "in most cases [consultation] will be significantly deeper than mere consultation" (Para 168). The purpose of consultation is to ensure the protection of aboriginal rights and title, and to provide a legal mechanism to ensure that government has adequate information for taking these rights seriously in all decision-making processes (Eagle 1999: 5). Therefore, the courts have held that "meaningful consultation" with affected aboriginal groups will most likely be the most common form of consultation. Defining what was meaningful consultation is has been left up to the proponents of the consultation process.\(^\text{18}\)

### 3.4 SUMMARY

As a result of the government’s recognition of Aboriginal rights and title, and the Crown’s fiduciary obligation to Canada's aboriginal people, a number of policies were developed in the forest management sector to ensure government staff “addressed aboriginal interests in operational planning processes” which required “reasonable steps to identify potentially affected aboriginal groups...provide relevant information of proposed forest management activity, and request information from them [to] assist in the identification of aboriginal interests” (MOF 1999:np).

This, along with the establishment of formal consultation guidelines in British Columbia (Province of BC 1998; Ministry of Forests 1999) has led to an increase in First Nations participation in forestry decision-making processes in British Columbia. The neglect of governments to consider aboriginal interests in

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\(^{18}\) The National Aboriginal Forestry Association (NAFA) in partnership with the Forest Stewardship Council of Canada conducted a nation-wide survey of Aboriginal people, government representatives, NGO’s and forest industry representatives to developed a draft protocol for meaningful consultation with First Nations in forest development projects (Smith *et al.* 2000).
past forest development activities (RCAP 1996) has been mitigated, in part by the legislated requirements for First Nation participation in forest management (Smith 1998).
4 CASE STUDY RESULTS AND ANALYSIS

"If we cut down the tree [CMT] then no one will know about it. No one will ever know that we were here and what we did... If its all cut down, no one will know how to strip the trees properly, or they won't know the stories about the past."18

The primary goal of this thesis was to determine how the consultation process used by the Ministry of Forests in the Fraser Canyon effected forest development planning in the attempt to manage for CMTs, and whether the management outcome met the expectations of consultation participants. In this chapter case study results are presented along with detailed discussion and interpretation. Excerpts from transcribed interviews, and interview and field notes are used to present points made by participants and identify various perspectives on the role and expectation of consultation in CMT management. The initial focus of the case study was on the consultation process leading up to the forest management decisions, however, early into the case study it became obvious that CMT management outcomes were an important factor that shaped participants' view of consultation and was therefore also explored.

4.1 CONCEPTUAL FRAMEWORK

A number of themes and sub-themes emerged from interview and focus group data. Specific criteria were not set a priori as indicators of effective consultation; rather the methodological objective of the study was to allow the participant's point of view on consultation in CMT management to drive the research process and analysis. Cultural resource management issues, legal definitions of Aboriginal rights and title and the implementation of consultation guidelines defined the conceptual framework of the case study and the implementation of the research design.

The result of the case study indicate that the consultation process was affected by factors both internal and external to the First Nation communities that were engaged in the process. Internal factors such as limited resources, a lack of capacity and consultation objectives made the consultation process in CMT management procedures ineffective in meeting First Nation concerns regarding the maintenance of CMT

significance. The results from the CMT management procedures in the South Ainslie watershed reflected this finding.

There were also a number of 'historical events' that occurred that influenced the consultation process during the case study period. These are shown in Table 6 (highlighted by text boxes), along with the interview and field study dates to provide a context for data collection and analysis, and consequently the interpretation of results.

Table 6: Historical events effecting consultation during case study between Aug – Nov 1999.

<table>
<thead>
<tr>
<th>Month</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jun 1999</td>
<td>MOF Aboriginal Rights and Title Policy and Consultation Guidelines released</td>
</tr>
<tr>
<td>Jul 1999</td>
<td>Interview with MOF Aboriginal Liaison Officer (Chilliwack B.C.)</td>
</tr>
<tr>
<td>Aug 1999</td>
<td>Interview Archaeologists</td>
</tr>
<tr>
<td>Sept 1999</td>
<td>Blockade: Interfor is stopped from logging Elaho Valley</td>
</tr>
<tr>
<td>Sept 1999</td>
<td>Interviews at First Nation C Band office</td>
</tr>
<tr>
<td>Sept 1999</td>
<td>Site Tour #2 (South Ainslie Watershed)</td>
</tr>
<tr>
<td>Sept 1999</td>
<td>Westbank logs Crown land for the second time</td>
</tr>
<tr>
<td>Sept 1999</td>
<td>Westbank First Nation begins logging Crown lands</td>
</tr>
<tr>
<td>Oct 1999</td>
<td>Interviews at First Nation B Band office</td>
</tr>
<tr>
<td>Oct 1999</td>
<td>Interview forest company representatives</td>
</tr>
<tr>
<td>Oct 1999</td>
<td>Site Tour #3 (Mohawkam Main line)</td>
</tr>
<tr>
<td>Oct 1999</td>
<td>Interview Archaeologists</td>
</tr>
<tr>
<td>Nov 1999</td>
<td>Blockade: Siska stop logging activity in watershed containing CMTs</td>
</tr>
<tr>
<td>Nov 1999</td>
<td>Site Tour #4 (Tsileuh Watershed)</td>
</tr>
<tr>
<td>Nov 1999</td>
<td>Interior Alliance push for Boycott of BC forest products in international campaign</td>
</tr>
</tbody>
</table>

Note: Each month within the timeline is divided into thirds, thus the separation of events into three columns.

The potential effects of these events will be discussed throughout the chapter and the final analysis will be conducted within the context of the case study and the external events noted above.
4.2 CONSULTATION IN CMT MANAGEMENT

The role of consultation in forest management has been described by Arnstein (1969), Matakala (1996) and Smith (1997) as an “opinion gathering” or “information sharing” process that functions to inform the forest manager, but it does not guarantee the incorporation of such information into a management plan. The current consultation process used by the MOF to address First Nation-forestry related issues, particularly the potential existence of aboriginal rights, is a complex tripartite process involving government, forest licensees, and First Nation communities.

4.2.1 Consultation within CMT Management Procedures

Resource Action Negotiations (RAN) funding provided by Indian and Northern Affairs Canada (INAC) helped the three First Nation communities in this study employ local on-reserve First Nations people to participate in most stages of the CMT management process (Figure 10). They were members of the assessment field crews where they received training in CMT identification and survey techniques, and they were also asked to determine the cultural significance of CMT sites. After management prescriptions were proposed in AIAs, First Nation representatives also attended a post-harvest CMT site (Site Tour #1). At this point fieldwork for the case study began.
Step 1: Determining potential for CMTs

NNTC did not participate in AOA but cut-blocks were recommended for reconnaissance or AIA.

Step 2: Conducting Assessments

RAN group members and community members participated on archaeology field crews during cut block assessments.

Step 3: Determining Significance

RAN group members, community representatives and resident archaeologist in the NNTC were asked to rate cultural significance of CMTs.

Step 4: Management Prescriptions

Field investigations began for the case study. RAN group members, archaeologist, forest company representatives and MOF personal attend post-harvest CMT site.

Monitoring

Note: Monitoring is not identified in the procedures proposed by Moon (1998), however the guidelines for the Management of Archaeological Resources in British Columbia state the need to monitor assessment recommendations. In the case of Site Tour #1 in South Ainslie, the fieldwork related to aspects of monitoring and compliance.

Figure 10: First Nation participation during CMT management procedures for cut-blocks observed in the case study.

In the past, the Ministry of Forests or the proponent of forest development awarded archaeological assessment contracts to consulting archaeologists. During the 1998 forest planning period, post-Delgamuukw, the NNCT and the Chilliwack Forest District reached an agreement on AOA and AIA inventory work that would have the Forest District award archaeological contracts directly to the NNCT who would then subcontract out the work to professional consulting archaeologists. The Ministry of Forest believed that this would increase First Nations involvement in forest development planning. First
Nations representatives found that this arrangement allowed them greater control over how archaeological work was conducted in their traditional territory as well as contribute directly to the interpretation of the archaeological record. The following section presents observations made during site tours used as consultation processes during CMT management in the Fraser Canyon.

4.2.2 Site Tours as a Consultation Process

Site tours were attended by all or a combination of the following groups: First Nations representatives that included members of the Resource Access Negotiation (RAN) team and a hired consultant working on behalf of a local Band (non-First Nation ancestry); Forest company representatives included forest engineers and company Aboriginal Liaison officers; Ministry of Forests District Aboriginal Liaison Officer representing government, and a consulting archaeologists from the firm that conducted the AIAAs. A total of four site tours were attended between August and November of 1999.

4.2.2.1 South Ainslie CMTs

The purpose of the first site tour (Site Tour #1) in August of 1999 was to investigate post-harvest conditions of several CMT sites identified during a 1998 AIA in the South Ainslie watershed. This site was of particular importance to all groups because it represented the culmination of many meetings and correspondence that took place over the 1995-2000 forest planning period. CMTs within easy walking distance along the border of the cut blocks and within the cut block boundaries (identified with flagging tape) were visited by participants. Much of the site tour was dominated by technical dialogue between government and forest company representatives relating to harvest techniques used in the site (cable vs. ground based harvest systems), CMT sampling strategies, and problems associated with block layout and the cost of re-engineering (discussed in the next section). Discussions on the age, condition (snag vs. live standing tree), and potential survival of the CMTs in the post-harvest environment also occurred. Figure 11 is a photo taken during the site tour that depicts how consultation in the field took shape.

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20 AIA documented in Golder Associates 1999.
A number of concerns were raised by the First Nation during and after the first site tour. First, there was a feeling that the NNTC' request to "not remove the CMTs" was taken literally to optimize the amount of wood taken from the block, without considering why the CMTs were of significance to the First Nation. The forest company adopted a "log around" approach when harvesting around CMTs within the cut-block boundaries. No buffers were left around the CMTs to protect them from the natural elements or retain the cultural context (which was not determined in the AIA) as well as the ecological context of the site. Evidence of wind-throw was already present in two of the CMT sites within the cut-block. Second, the amount of downed wood, particularly cedar, left behind in the block alarmed the First Nation participants. The local First Nation had purchased a shingle-shake mill a couple of years prior, but the mill was not running because the First Nation could not access cedar to supply the mill. There was also some concern regarding potential CMTs that may be found outside the block boundaries.
The consulting archaeologist expressed similar concerns to those of the First Nations. The nature and scope of AIAs restrict archaeologists to cut-block boundaries, and any further investigation beyond the boundary must be approved by the proponent of the assessment. A number of downed cedar trees were inspected closely by the archaeologist and First Nation representatives, as there was some question as to whether they were CMTs. Because the boundary of the cut-block had been redesigned to avoid most of the CMTs, there was a large number of CMTs just outside the cut-block perimeter. Most of these CMTs still remained standing, with context in tact, however there was also some evidence of wind-throw. A number of CMTs left within the leave areas or outside the block boundaries were in excellent condition and considered very significant both for scientific and culture reasons (example Figure 11).

The forest companies approached the block from a very different perspective. As the proponent of the AIA and forest development, their concern was whether or not they had met the recommendations of the AIA and the legal obligations of the Crown. They explained the harvesting techniques used to get around the CMTs and the “in house” training undertaken for CMT identification during fieldwork. The estimated cost for CMT management for one year’s worth of cut-blocks in the Chart area was $25,000. This figure was largely a result of professional consulting archeologist fees.

Another issue that was brought out during the field tour that was of a particular concern to forest engineers, was the conflicting regulations of the Workers Compensation Board (WCB) that required the removal of danger trees before harvesting and the HCA legislation that required permits for altering or removing CMTs. The South Ainslie site had an unusually high number of dead standing girdled CMTs (scientific or cultural interpretations were not reported during the AIA), therefore, the operational procedures used to deal with these trees were mutually exclusive. Under WCB regulations, the CMTs had to be removed before harvesting could take place in the block, however, according to the Heritage Conservation Act, a permit for site alteration was required. Therefore, regardless of whether or not the CMTs were going to be harvested in the cut-block, the forest companies were required to call in an archaeologist to assess those CMTs that would have to be removed according to WCB standards,
thereby increasing the cost of harvesting, or retain a no-work-zone around each danger tree. This would result in a substantial reduction of volume removed from the area.

4.2.2.2 Salvaging Opportunities

The purpose of the second site tour (Site Tour #2) was to investigate opportunities for salvage operations within one forest company's cut-blocks. The amount of downed wood left behind in the cut-blocks and along access roads was a concern expressed by First Nation representatives during Site Tour #1. The forest company and First Nation agreed to try and create a salvage arrangement that would allow the local Nation to access a certain portion of downed wood. At this time, approximately two weeks after first inspection, it was noted that more CMTs had fallen over, presumably due to wind combined with natural decay that weakened the CMT. Some further investigation beyond cut-block boundaries was undertaken, but no CMTs were found.

4.2.2.3 A Cultural Tour of the Nlaka'pamux Forest

The third site tour (Site Tour #3) resulted from discussions held during Site Tour #1. The purpose of the tour was framed by the local First Nation as a Ministry of Forests staff orientation tour to increase the cultural awareness of government officials, forest company representatives and archaeologists regarding the forest values held by the local First Nations. The tour included visits to post-harvest CMT sites in the South Ainslie watershed and a demonstration of potential root collecting areas. During the root harvesting demonstration, some participants wandered around the area and discovered several CMTs. There was no prior knowledge of the CMTs, however since they were not contained within a proposed development area, there was no requirement to record them. This discovery, however, supported the First Nations request to the Ministry of Forests and forest companies for funds to conduct a broad, landscape level CMT and archaeological inventory of the South Ainslie flats. The tour was concluded in the Tsileuh Creek watershed, where there had been many discussions regarding the impact of logging on deer winter range. Considerable alterations had been made to the cut-block layout to accommodate

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22 Cedar roots were collected to weave baskets. Turner et al. (1990) explains many uses the Nlaka'pamux had for the cedar tree.
the concerns, however the local First Nations were not satisfied with the alterations, therefore the block was still not approved for cutting.

A number of issues influenced the consultation process regarding this particular watershed and the forest company. First, this block was being planned under the new *Ministry of Forests Aboriginal Rights and Title Policy and Consultation Guidelines* (1999). The question of Aboriginal title was now a concern for the Ministry to address with First Nations and a more stringent consultation process was being advocated by the Aboriginal Liaison Officer. Secondly, the Siska Band, just north of the case study area set up a blockade in the Siska watershed to protect cultural areas, including CMTs and filed for an injunction against logging in the watershed. The forest companies within the case study area were confident the same would not happen to their operations, however there was an awareness created about CMT significance and the importance of identifying cultural landscapes.

Another factor influencing the consultation efforts of the forest company seeking access to the wood in the Tsileuh Creek watershed was the threat of a logging moratorium on the mid coast, referred to as the Great Bear Rainforest. The forest company felt pressure to gain access to the cedar contained in the watershed, however thirteen CMTs had been discovered along the proposed road access, therefore efforts to an reach agreement on a CMT management strategy with the local First Nation were increased. This resulted in the fourth and final site tour attended during this case study.

### 4.2.2.4 Tsileuh Creek Access Tour

The fourth and final site tour (Site Tour #4) took place in the Tsileuh Creek watershed. The block visited had not yet been approved for cutting and the purpose of the tour was to conduct additional subsurface tests (shovel tests) to further inform the AIA and assign cultural significance to the area. During this tour an additional three CMTs were identified and a trap was found attached to a tree in line with the CMTs discovered during a previous survey. The shovel tests revealed no further archaeological remains.
4.2.3 Summary

There were a number of issues that were identified during the site tours that have had an effect on CMT management procedures and options. First, the cost of professional consulting archaeologists discourages forest companies from eliciting their services to prepare a more comprehensive survey of the area. The cost of CMT management also rises when other regulations become paramount, such as the Workers Compensation Board. Second, there was a lack of understanding during initial consultation between First Nations and forest companies. The First Nation felt as if they were not made fully aware of what the “log-around” concept meant to the forest company. Therefore, their acceptance of the silviculture plan was not fully informed. Third, events such as road blockades in the Elaho Valley and Siska watershed had a tremendous effect on the demands that forest companies will place on First Nations. Because many of the local companies work in many areas of the province, when there is a restriction in logging in one area, the company tries to pick up the loss in another. These indirect pressures may go unnoticed by many First Nations.

4.3 FACTORS INFLUENCING THE CONSULTATION PROCESS

The consultation processes that occurred prior to August 31 1999 were not observed in the case study. Interviews with forest company representatives, archaeologists, First Nations and government officials, as well as technical documents provided the data to address pre-harvest consultations for the South Ainslie watershed. The consultation processes that were observed occurred after mitigation measures had been implemented as part of the Districts CMT management plan. Site Tour #1 was part of a strategy being developed by the Aboriginal Liaison Officer to create a more comprehensive cultural heritage management policy for the Forest District, in which CMT management issues would be addressed. However, consultations observed on Tsileuh Creek initiatives were part of a proposed silviculture plan for the watershed, and therefore provided a contrast for a number of important factors that have been identified as influencing the consultation process in CMT management.

4.3.1 Identifying the Intended Purpose of Consultation

The specific role and objectives of consultation regarding forestry-First Nation issues have been developed by government to ensure they meet their “legal responsibility” to First Nations people. British
Columbia has framed the involvement of First Nations in forest management planning vis-à-vis legal decisions on Aboriginal rights made since 1973. The following quotes from *Ministry of Forests Protection of Aboriginal Rights Policy* (1997:1) illustrate this point.

"It is the policy of the Ministry of Forests to prevent or justify the infringement of rights by proposed forest management activities while maintaining a timely approval process for forest activities."

This policy went into effect February of 1997, and in December of that same year, the Supreme Court of Canada delivered the *Delgamuukw* decision that further explained the nature and scope of Aboriginal title, as well as related the Crown's duty to consult with First Nations to the nature and circumstance of the claimed Aboriginal rights. The fiduciary obligation of the Crown was extended beyond mere consultation, to something more "meaningful" (ibid). This resulted in a revision of the policy. In 1999, the Ministry of Forests implemented the *Aboriginal Rights and Title Policy*, along with expanded Consultation Guidelines (MOF 1999).  

The fiduciary obligation of the Crown flowing from section 35(1) of the *Constitution Act* was interpreted by the courts to mean the Crown must justify infringement on Aboriginal rights, therefore putting the onus on the Crown to engage in consultation regarding expected impacts of development activities on such rights. Representatives from forest companies shared this view on consultation.

*If someone told me something [regarding CMTs in the cut block] then I would have to tell the District Manager. It is not the licensee's responsibility to consult. The MOF must be there - it's a tricky job."*  

"There needs to be a greater understanding of language. The MOF is the group in charge of the consultation. They have to facilitate the consultation in a meaningful way so that there is an understanding about what each party wants."  

The 1997 Ministry of Forests policy was used for planning purposes when CMTs were identified in the case study area, and it was during this time that the MOF was taking a very literal interpretation of the

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23 The 1997 Protection of Aboriginal Rights Policy is used for this thesis because it was the policy in place during forest development planning for the cut-blocks used as field sites for the case study. The 1999 Policy is used when dealing with issues relating to Tsileuh Creek consultations because it was used to plan for the cut-block, and not the 1997 policy.

24 Ibid

legal decisions, particularly the *Sparrow* test, which contained the justification for Infringement requirements (ibid). Therefore, as long as forestry activities did not directly infringe upon the exercise of identified Aboriginal rights, accommodations for First Nation interests were met.

However, after the *Delgamuukw* decision, the Ministry of Forests and forest companies began to engage in consultation with First Nations in order to assess impacts of forest operations on a number of forest values that were considered indicators of potential Aboriginal rights and title. While the *Delgamuukw* decision made Ministry of Forests more aware of their legal and fiduciary obligations, the forest companies were also addressing First Nation interests in their operational plans, specifically silviculture plans (SP).

The silviculture plan represents a culmination of assessments, inventories, and "office reviews" conducted by the forest company to acquire a cutting permit for specific cut-blocks identified in previously approved Forest Development Plan. Archaeological assessments are an integral part of the SP, however the District Manager, as the statutory decision maker determines whether or not an AIA is needed. Should the District Manager determine that an AIA is not needed, and issues a cutting permit for a cut-block that is then found to contain CMTs, the forest company would carry the cost delayed operations. As a result, some forest companies have opted to engage in direct consultation with First Nations in an attempt to pre-determine archaeological sites such as CMTs.

"The MOF is responsible for consultation, not the licensee. But, the licensee is responsible for the plan therefore they must be apart of the consultation process to do effective planning."  

First Nation representatives within the study area also recognized the influence of recent court decisions and legislative changes on the government’s consultation process with First Nations.

"When the Forest Practices Code came in, it opened the door for consultation."  

"When Delgamuukw came down there were so many interpretations of it. It pushed the forest companies to deal with the Bands."

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26 Forest company representative. Participant code 05.
28 Ibid.
The intent of consultation, as First Nations described it, did not have a rights-based focus. The consultation process was viewed by the First Nation participants as an opportunity to learn about, and become involved in, the forest management process. A long history of logging in the Fraser Canyon as well as a high dependence by First Nations on local forestry operations (mill work and harvesting) has most likely destroyed the vast majority of CMTs that would have been created in the Canyon. The First Nation participants were mindful of their dependence on forestry operations, however their interest in revitalizing cultural practices created a dichotomous relationship between the First Nation communities and the forest companies; one that was necessary for economic survival, yet also viewed as counter intuitive to the greater cause of Aboriginal self-determination.

4.3.2 Representing First Nations Interests

There was a perceived notion among the forest company representatives that were engaging in direct consultation with First Nations, as was the case in the Tsileuh Creek watershed, that the First Nation representatives on field-crews were able to make immediate decisions on behalf of the Band. One First Nations representative acknowledged that she had a lack of decision-making authority in the community, and that perhaps a more effective representation of the community would be achieved by having Chiefs and Councilors directly involved in the field investigation process.

"It should be the Band councilors and Chiefs involved in the fieldwork...sometimes it's just too hard to explain to them what we saw" 29

Another aspect of First Nations representation relates to the political structure and decision-making authority within the Nlaka'pamux Nation Tribal Council (NNTC). This notion was not investigated extensively due to funding and time constraints, but some participants (First Nations and non-First Nations) indicated that there was a lingering dispute over decision-making authority within the NNTC and member Bands. This was perceived as a contributing factor in communication breakdown between all

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groups during the consultation process. A forest company representative provided an example of miscommunication between the NNTC, its tribal members and the forest company.

The Nation [NNTC] did not really have a problem with the plans [silviculture prescriptions] but the Band did not want any of them [CMTs] cut down. But the Band never gave the companies any direction. The direction was from the NNTC.

The same participant also noted a change in philosophy within the NNTC that impacted the implementation of CMT management recommendations.

The Band archaeologist and the hired archeology firm worked out a management plan for the CMTs but by the time they got to the CMTs located in our block there was a change of philosophy among the Nlaka’pamux, at least I think so. The NNTC wrote a letter stating that they did not want any CMTs cut down.

These quotes were supported during subsequent discussions with First Nation representatives. They indicated that time was needed to interpret the Delgamuukw decision and formulate a mandate regarding the strategy to be used for protecting Aboriginal rights. The change in CMT management philosophy is evidence of the aggressive stance that the NNTC decided to adopt.

The perceived role and responsibility of archaeologists in the consultation process remained consistent among the participant groups. For example, when asked about how consultation occurs around CMT management, one First Nation respondent replied:

Usually the archaeologists take care of it [consultation] they write the [AIA] report.

A forest company representative commented:

Once we hand things over to the archaeologists, it [consultation] is out of our hands.

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32 Ibid.
However, while the archaeologist was viewed as the one responsible for consultation in CMT management, in effect representing First Nations interests, the values systems by which CMT significance were being judged were viewed as different from the local First Nation.

"Our values are different, and it's not that person's fault. But it's just that they haven't grown up here. They come from other areas. That has always been one thing I noticed, that values are different between natives and non-natives."

Archaeologists who conducted the AIAs indicated that they had attempted to limit their role in CMT Management to the identification recording and reporting of CMTs found during AIAs or other reconnaissance surveys, therefore limiting the impact of their own cultural or social values on the rating of CMT cultural significance. This was attempted by making management recommendations and cultural significance ratings in conjunction with members of the AIA team that included proponent representatives and First Nation representatives from the RAN group. While the consulting archaeologists were considered experts capable of consultation, First Nation representatives challenged the notion of outside experts assessing the value of CMTs, or other local resources. This lead to the final factor identified as having a direct influence on the consultation process, capacity.

4.3.3 Coping with Limited Resources

The resources of First Nations have become increasing taxed as government policy has developed to include First Nation concerns in Crown land development decision-making processes. The resources (human and financial) made available to address resource management issues were spread thin over many referrals from the various Ministries and forest companies. While a major factor affecting the consultation process during AIAs was the financial limitations imposed on archaeologists and First Nations by proponents, the participants expressed more concern regarding their limited "in house" capacity to address operational issues such as the identification of CMTs and FDP review and assessment.


37 There were five forest companies operating within the case study area. This meant that some Band offices were dealing with up to five Forest Development Plan referrals per year.
There was a noted dependence of the Bands on outside help for managing forestry related issues. When asked to identify factors that participants felt would ultimately determine the effectiveness of consultation in CMT management, First Nations representatives consistently responded that the capacity within the communities to deal with forestry related issues was a major limiting factor.

"We need professional people to analyze the chart areas in this area. We need a native person from our area to be training in those things"38

After the discovery of approximately 230 CMTs in the South Ainslie watershed, the First Nation communities attempted to secure funding from Provincial Government to conduct a Traditional Use Study (TUS) in the South Ainslie watershed, but the proposal was turned down. They then approached each forest company proposing to harvest in the watershed with a proposal to extend the CMT investigation beyond the boarders of the cut-block. This proposal was turned down, as it was not seen to be in the best interest of the forest companies to invest in a study to locate more CMTs outside of the cut blocks.

Capacity issues within the First Nation communities was not the only concern expressed by First Nation representatives. During a focus group session, a lengthy discussion ensued regarding knowledge transfer through co-op or intern programs offered by the Ministry of Forests. While acknowledging the importance of such opportunities for First Nation people there was an indication that the reciprocal action in the knowledge exchange process would be for government and forest company representatives to spend time working within the First Nation communities.

"The MOF and forest companies need to be culturally sensitized. But not by putting a First Nations person into their offices. That is all wrong. They have to come out here and see what areas we are talking about."39

It was proposed by the focus group that this would lead to a greater cultural awareness within government and forest companies regarding factors affecting the community's capacity to engage in

39 Ibid
consultation, as well as provide a foundation for understanding the cultural values that may impact forest operations.

In addition to the lack of cultural awareness, archaeologists admitted that there was a considerable amount of unknown factors in CMT management that hinder the decision making process. Because there were very few CMTs identified and recorded prior to the discovery of the South Ainslie CMTs, there was little inference to be made by archaeologists regarding CMT distribution over the landscape. Also, because many CMTs are living and sometimes thriving in their relatively undisturbed environments, knowledge regarding tree growth and associated ecosystem conditions that would factor into CMT survival in post-harvest conditions would contribute to creating a management plan that ensured greater CMT survival.

4.3.4 Summary Analysis

The Sparrow case set out the justification test for infringement on Aboriginal rights, in which consultation with First Nations was addressed. The 1997 Delgamuukw decision further elaborated on the circumstantial requirements of consultation, and added the notion of an Aboriginal rights spectrum. Therefore, although Aboriginal rights may exist in an area, the degree to which the Crown is expected to consult is directly related with the nature and extent of infringement resulting from the proposed activity. The Ministry of Forests Aboriginal Rights Policy (1997, amended in 1999) in conjunction with the Consultation Guidelines (1997, amended 1999) are frameworks for assessing both the potential existence of Aboriginal rights and justifying infringement on such rights. CMTs, as both indicators of potential Aboriginal rights and cultural heritage resources embody the characteristics that warrant extensive consultation for their management on the landscape.

The intent of consultation as an opportunity to contribute to the decision-making process has not yet been realized by the local First Nations for a number of reasons. Capacity and uncertainty in decision-making authority contributed to the confusion of the complex management scheme already in place. These results show that there was a lack of consultation objectives for CMT management and the objectives that were in place were non-transparent for all groups. The focus had been placed on the
identification and recording of CMTs and not long-term management strategies, a necessary component for the development of CMT management procedures and consultation protocol.

The procedures of CMT management require extensive resources, both from the proponent and the First Nation. However, because CMT management was undertaken as part of an AIA the proponent of the AIA determined both the extent and intensity of archaeological investigation through the control of funds. First Nations, without their own resources or capacity to conduct the AIA, were restricted from exploring alternative management options.

4.4 CMT SIGNIFICANCE AND EXPECTATIONS FOR MANAGEMENT

The significance of archaeological resources has typically related to their contributions to scientific research. However, archaeologists have begun to expand their conceptions of archaeological value beyond the archaeological record to the political and legal landscape as well (Fowler 1982; Wylie 1993). This was reflected in the AIA report submitted during operational planning activities undertaken by forest licensees within the case study area.

Archaeological information can be used to complement oral histories, providing a more complete picture of aboriginal heritage. In addition, archaeology sites are becoming increasingly important as legal evidence, as illustrated by the recent Supreme Court of Canada ruling on the Delgamuukw case.40

Archaeological sites are rare and non-renewable sources of information about human history, and much of the information contained in these sites cannot be derived from another source. Since residential and commercial developments have severely impacted the archaeological record, the remaining sites represent a rapidly diminishing information source.41

The determination of cultural significance in addition to scientific significance for archaeological sites and artifacts in management procedures is evidence of an evolving relationship between archaeologists, First

40 Golder Associates Ltd. August 1999: 1
41 Ibid 2
Nations and the management of cultural resources in British Columbia. The following results articulate values associated with CMTs as expressed by study participants.

4.4.1 Managing an Educational Resource

First Nation participants stressed the educational value of CMTs when addressing questions related to cultural significance.

They [CMTs] have education value for our children and I think especially when they are closer to home and when they know that this is what their ancestors did.42

The scope of education however was broad and not restricted to First Nations people. One First Nation participant stressed the role of CMTs in educating people outside of the community, particularly those that work in industries that involve First Nations people such as forestry.

"Education and communication are really important, and that's between ourselves [Band members] and them [Ministry, forest companies and archaeologists]. Communication is needed because our lines are always getting crossed."43

Furthermore, First Nations participants expressed a desire for continuing the tradition of cedar stripping as part of the cultural revival initiatives happening within the communities.

"If we don't make CMTs now, what are the people in the future, say 50-70 years going to say? All the CMTs that are old now will be dead and gone in 50-70 years. All that knowledge will be gone. If we cut down the CMTs, and don't make new ones, or save the younger ones, that there will be nothing. How will the people in the future know what to do?"44

"There are trees up there that were stripped 75 years ago, and those are just as important as the ones dated back to 1850, or the ones [we] did 2 years ago."45

This highlights the value of experiential learning held by First Nation participants. One of the foundational characteristics of First Nations educational processes is the "recognition that we learn by watching and doing, reflecting on what we are doing, then doing again." (Cajete 1994: 30). Thus, while

43 Ibid
the recording of CMTs in database and map format ensures that information about the CMT features will be preserved indefinitely, the value of the information is diminished without the opportunity to experience the activity of bark stripping and the cultural philosophies that guide the interaction between humans and the environment. As one First Nations participant stated:

“Yes they [CMTs] are important. They are a part of our history and one-day I would like to show my kids the trees and tell them all about it. I don’t want to show them pictures of the trees, I want to show them the trees.”

Experiential learning is also a concept utilized in eco-tourism. There was some discussion among First Nation representatives about the potential for eco-tourism opportunities in areas with CMTs. One First Nation community had already started planning for an interpretive center to highlight archaeological sites found close to the reserve community.

There was also an indication that CMTs, and the requirements for consultation in forestry has increased the opportunities for archaeologists to work directly with First Nations people. This allowed for an exchange of information. The archaeology firm hired by the First Nation to conduct the AIA also conducted technical skills workshops within the community, such as geographic information systems (GIS) use and CMT identification and recording. While these workshops did not result in certification, exposure to the technology increased community awareness, particularly among the youth. Therefore, as awareness about CMTs increases, so to does their significance.

While all participants indicated that learning and understanding the historical use of cedar by the Nlaka’pamux people was important in determining CMT significance, it is also an important result of determination of CMT significance. For the first time, First Nations are being asked to value the resources from which they have been dispossessed over the last 150 years. The lack of knowledge and experience necessary for an in-depth examination of the cultural significance of archaeological resources

has resulted in community consultations with Elders and traditional knowledge holders, many of whom
do not live in the communities year round.
This has had an impact on the community’s ability to meet referral and review deadlines.

The effect of residential school on cultural practices and knowledge transmission within the First Nations
groups participating in the case study was also discussed during focus group sessions. When asked to
comment on the significance of CMTs to past, present and future generations, the following comments
were noted:

“[CMTs] have education value for [First Nations people] because when you went to
residential school you didn’t see much of the culture...There are two generations of
people here that went to residential school. The knowledge wasn’t passed down our
mothers and our mothers couldn’t pass it down to us.”

“I didn’t even know what a culturally modified tree was until 3 or 4 years ago”

When residential schooling became an obvious factor affecting the First Nations community’s ability to
assign cultural significance to an archaeological site, a random survey was conducted during focus
groups to determine how many people attended residential schools. While it was not expected that all
participants would reveal their past associations with residential schooling, a significant number of First
Nation representatives indicated that they had attended a residential school at some point in their lives,
many of whom were members of the decision-making authority within the communities (i.e. Band
Council).

4.4.1.1 Providing Context for Significance Rating

In lieu of automatic protection granted under the HCA, significance ratings often determine the fate of
archaeological sites. The significance rating scheme however involves value judgments for the purposes
of administration, and it is not an inherent property of an archaeological resource (Raab and Klinger
1977). CMTs were not created with the intention of informing future generations about First Nations

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forest technology and resource use, but out of necessity. Cedar bark was procured to create the essentials of that supported everyday life.

Significance is not a static concept, but one that is continuously changing, and expanding and perhaps best expressed in terms of scale because it is relative and not absolute. Thompson (1982) suggests that the best description of the term is 'relative importance'. Given this concept of relativity, the context must then be defined from which the scale of comparison for determining the significance of CMTs is to be drawn.

Archaeologists establish context for comparing the relative importance of CMTs through defining both political (delineated by Forest Districts) and ecological boundaries (biogeoclimatic zones). The political boundaries establish the governing authority, and the ecological boundaries establish probable limitations for finding certain species of trees in a given area; and valuable information for developing an archaeological predictive model (Moon 1993).

A First Nations representative suggested that rarity be considered when assigning cultural significance to a site.51

"The importance of cedar is related to the rarity of cedar in the area. Cedar grows in lower, moister areas and there are few areas like this in the Lytton area. Spuzzum would have more because they are in a different Biogeoclimatic zone"62

This quote expands the notion of rarity beyond the physical boundaries and feature types (used to assign a rarity value in scientific significance determination) of the Forest District to include the cultural boundaries as well. In other words, certain CMTs may be considered common within a Forest District, but the range of CMTs found may cover only certain First Nations traditional territories. The Siska Band blockade in the Siska watershed (near Lytton B.C.) highlights this

51 Cultural setting is identified by place naming. The Lytton reference pertains to the boundary between Lower and Upper Nlaka’pamux groups. The Spuzzum reference indicates the most southerly boundary of the Nlaka’pamux traditional territory. See Figure 1 for boundary details.

point. In areas where cedar is rare, the CMTs will most likely be of higher value. This is an important factor for the Chilliwack Forest District to consider when assigning significance ratings since there are ten different First Nation groups claiming traditional territories within the administrative boundaries. Rarity may also be judged according to the relative number of CMTs found within the traditional territory of the First Nation being asked to assign cultural significance.

4.4.2 Providing Evidence of Land Use and Occupancy

The identification of First Nation interests in forest development areas was accomplished using AOAs, communication with the MOF Aboriginal Liaison Officer, and First Nation claims to land and resources. CMTs were considered significant to all study participants because of their potential use as indicators of land use and occupancy in Aboriginal rights claims. The fact that CMTs are datable make them an invaluable resource for establishing timelines for resource use that would otherwise be impossible to date due to natural processes of decay associated with forest based archeological sites.

Most non-First Nation participants identified CMT significance with their potential use as evidence of Aboriginal rights. An industry representative made the following statement:

*Groups [First Nations] in treaty - they don't care a lot about the CMTs in general - but they are mostly concerned about the evidence. It is an emotional argument - that it's sacred ground [where the CMTs are located].*

Another stated:

*CMTs are just tool for them [First Nations] to lay a claim to it all*

Another industry representative made a distinction between site significance based on the rules of evidence for litigation and those based on values inherent to the site, such as context.

*The Bands have to be very clear on why they want to preserve the CMTs. If it is just for evidence of use and occupation then recording the CMT should cover it. If the site itself has significance then it's a different story.*

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This quote implies, that the preservation of information, and not the CMT itself, will satisfy the requirement for proving land use and occupation. There is also an implication here that a forest company would approach the management of CMTs differently provided direction was given by the Bands on how to proceed with harvesting. This however is not the purpose of the AIA, and is a matter to be dealt with in strategic management planning for CMTs.

The result of CMT site evaluations (AIA) before harvesting occurred resulted in three options depending on the proposed harvesting plan of the proponent: avoidance and partial cut with stem samples, and complete harvest of all CMTs. However, to remove a CMT a Section 12 permit under the HCA would have to be obtained by the forest company.

Below (Figure 12) is an example of the forest company's interpretation of "partial cut". The prescription implemented by the forest companies left islands of CMTs within cut blocks in accordance with their evaluation as potential indicators of aboriginal rights and protected archaeological resources. However, all First Nation participants who observed the cut blocks, or were shown pictures of the area, questioned the value of the CMTs after harvesting.
Responses from the First Nation participants were unanimous. The significance of the site was not retained. That is, the educational opportunities were destroyed along with the ecological and cultural context of the site during harvesting operations. First Nations participants reacted strongly to the conditions found in the cut blocks after CMT management measures were implemented.

"Why did they leave the tree in the middle of the cut-block like that? You leave any tree in the middle of a cut block and it's going to fall over. You don't have to be a scientist to figure that out"\textsuperscript{56}

"Those ones [CMTs] just left standing on their own...that's just awful"\textsuperscript{57}

When asked whether cultural significance of the CMT sites were taken into consideration before approving the proposed cutting permits for the cut-block shown above (Figure 12), the response from the

\textsuperscript{56} Nlaka'pamux representative. Participant code 09. June 2000.

\textsuperscript{57} Nlaka'pamux representative. Participant code 08. June 2000
forest licensees was that they had done what they were told to do by the First Nations. That is, they followed the instructions given by the First Nations via a letter sent late in August of 1998—no CMTs were to be cut down. The following is an excerpt from the letter addressing this issue:

"the process that was presented to the Nlaka'pamux Nation on Feb. 5...that focused on harvesting a minority of CMTs but preserving a majority is not acceptable. Any former correspondence or letters that may be taken approval for removal of CMTs are revoked."

Further to that, the District policy at the time was if the licensee did not propose to cut the CMTs down, then they did not have to deal with the cultural significance rating scheme and scientific significance becomes the sole determinant of CMT management prescriptions for cut blocks containing. As a result, one forest company representative was under the impression that provided CMTs were not cut down or damaged, consultation was not necessary because they were not in violation of the Heritage Conservation Act.

_The law is quite clear regarding CMTs dated post-1846 – we do not have to consult._

This statement implies that this forest company representative interprets the infringement of Aboriginal rights to be restricted to the removal or damage of the CMTs themselves, and not the destruction of the surrounding environment or context of the archaeological site.

### 4.4.3 Group Expectations from the Consultation Process

#### 4.4.3.1 Job Creation and Training

Federal funding was secured for the establishment of a Resource Access Negotiation (RAN) team that had representatives for the three Bands within the case study area. All members of the RAN team received training related to specific aspects of resource management. For those that participated in archeological assessments, training was provided in forest navigation, forest survey techniques and CMT identification and recording. Since the 1999 Archaeological Overview Assessment (AOA) for the

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2000-2005 forest development plan areas involved the use of computer mapping technology, RAN members received some introductory Geographic Information System (GIS) training provided by the consulting archaeologists.\(^{61}\)

Another function of the RAN team was to investigate potential opportunities for future work in areas that had been harvested, such as silviculture and bio-engineering opportunities. Both proponents of AIAAs and the government as a result of rare CMT discoveries discussed opportunities for research and inventory projects in some detail. Interest in future research from both the consulting archaeologists and the First Nations was expressed for one proposed cut block that was not included in this case study. The CMT site, located on a steep rocky slope) contained approximately 186 CMTs ranging in age from 59 to 215 years of age. The AIA strongly recommended that a management strategy be developed for the site involving the proponent, the Band and the NNTC (Golder Associates 1999).

4.4.3.2 Increasing Cultural Awareness

A significant amount of archaeological investigation had occurred within the vicinity of all three First Nation communities in the case study prior to the discovery of CMTs in 1997. One First Nation community was in the process of developing an interpretive centre for a major habitation site (pit houses depressions)\(^{62}\) located just below the community on the bank of the Fraser River. The discovery of CMTs added to the mandate of the proposed interpretive centre to include accessible forested areas within the reasonable distance to the community. The purpose of the interpretative centre was to increase cultural awareness among community members and provide information for tourists. The location of the community along Highway 1 increased their potential for eco-tourism and cultural re-discovery programs.

The consultation process between government, forest companies and First Nations undoubtedly increased the awareness of all participant's political agendas and financial and resource limitations. The


\(^{62}\) Pit houses are the traditional winter housing structures of the Nlaka'pamux people.
cross-cultural exchange of ideas and information was perceived to be a two way process, between consulting archaeologists and First Nation representatives. Past experiences with researchers, archaeologists and anthropologists in particular, had created a barrier between the First Nation communities and outside "experts". However, most RAN team members, particularly AIA field crew members, were impressed by the knowledge of consulting archaeologists.

4.4.3.3 Increasing Inventory for Planning Purposes

An important responsibility of the forest planner and manager of public lands and resources is to inform themselves about public concerns regarding the management and use of resources. Consultation processes with First Nations used to guide CMT management within the case study area provided information to be used at the discretion of the District Manager in decisions regarding forest plan approvals. Although this information may or may not be considered in the decision-making process, the "role of the planner and manager is to better understand the distributive aspects of the consequences of a proposed action" (McCool and Guthrie 2001: 311).

4.4.4 Summary Analysis

The expectations for consultation differed between the groups participating in the process. First Nation communities were interested in identifying potential employment and training opportunities that would lead to greater involvement in forest management on traditional lands. Government and archaeologists expected to increase the archaeological site inventory for the Forest District, making the predictive model more accurate. CMT inventories were expected to contribute to a separate CMT predictive model that was being developed for the Chilliwack Forest District (Golder Associates 1999).

Determining the significance of CMT sites provided little guidance on devising a meaningful approach to CMT management that would result in outcomes that met the needs and concerns of the First Nation communities. That is, the economic and cultural opportunities that were identified as significant for the CMT sites in pre-harvest conditions were destroyed as a result of harvesting operations guided by the CMT management procedures. As well, the significance ratings assigned during AIA were an indication of their value to the Provincial Heritage Register, not the value to local First Nations. The fact that CMTs
are themselves the resource that proponents of forest development are after makes the development of clearly articulated management plans crucial to the survival of the resources as both sources of scientific investigation as well as cultural interpretation.

Although some archaeological resources, like CMTs, are fragile and endangered just as natural resources (e.g. old growth forests), “they represent a finite, nonrenewable, and unique aspect of cultural heritage” that can not be replaced on the landscape, regardless of the amount of time that passes (Kerber 1994:). The CMTs offer insight into forest use activities at a particular point in time, perhaps 200 years ago. The environmental and cultural conditions can never be replicated.

First Nations acknowledged that CMTs held potential as indicators of Aboriginal rights, however more concern was expressed regarding their potential as educational and economic resources for the local First Nation communities. Because site context is very important to maintaining educational and economic value of CMT site, long term planning and management strategies were needed to advise the CMT management procedures employed by the forest companies.

Forest companies were aware that CMTs had the potential of being considered archeological resources if they are dated pre-1846, therefore damaging the CMT could result in penalties under the HCA. Archaeologists recognize the potential of CMTs as archaeological resources capable of providing valuable information that would contribute to a greater understanding of travel routes and resources use, but they also acknowledge their potential for providing valuable evidence of continuous use and occupancy, an element of the test for proving Aboriginal title.63 Opportunities for cross-cultural extension and information exchange were embraced during AIA procedures.

The impacts of residential schooling have had a direct impact on the ability of First Nations to respond to questions entrenched in cultural knowledge that is only recently being rekindled through cultural revival

63 Delgamuukw v. British Columbia [1997]
initiatives. Research and archaeological assessments resulting from consultation requirements and changes to the cultural resource management legislation that resulted in the protection of in situ forest-base archaeological resource, has contributed to the increasing awareness about cultural activities such as the creation of CMTs within First Nation communities. In turn, this awareness has led to an increase in CTM significance to the First Nation communities, thus the assertion by the NNTC to protect all CMTs within their traditional territory.

4.5 CONSULTATION WITH FIRST NATIONS: A PARTICIPATORY PROCESS OR TOKEN PERFORMANCE?

The third and final objective of the case study was to evaluate the results of CMT management in the forest development planning process. Participant’s expectations from consultation are compared with the actual process and outcomes of decisions made during the forest planning process. It is not the goal of this evaluation to determine whether or not the consultation process was successful in managing for CMTs, rather it is proposed that by articulating limiting factors in the consultation process First Nations, forest companies, government and consulting archaeologists will better understand their role in designing effective, more meaningful consultation programs. This is needed to ensure that forest management prescriptions satisfy the self-determined needs of First Nations people.

4.5.1 The Role of Consultation in Forest Management

Consultation with First Nations on matters relating to CMT management occurred during two distinct processes in the forest management planning process: archaeological investigation (assessments) and forest development planning (Figure 13).
Physical archaeological remains (features and artifacts) can help First Nations people to maintain, reform, distinguish and revitalize their culture in the face of industrial development and external pressures that demand clear evidence of land use and direction for mitigative efforts. The management of archaeological resources in the face of forest development in British Columbia focuses on one objective: “to assist the Provincial government and forest industry in making decisions that will ensure effective management of archaeological resources as well as optimal land use” (Ministry of Small Business Tourism and Culture 1996: np). Consultation with First Nations is one means by which “effective management” is defined and operationalized in harvest prescriptions.

Buchy and Hoverman (2000) propose that public participation models could be assessed based on the participant’s interpretation of participation as either an approach to forest management or as a management tool. Stated another way, consultation can either be viewed as an “end” in itself or a “means” to an end. The point of view of case study participants, as interpreted through the above analysis, is further categorized according to criteria suggested by Buchy and Hoverman (2000) in the remaining sections.
4.5.1.1 Consultation as an "End" in the Management Process

Five indicators are used to determine if participants interpret a consultation process as an "end" or an approach to forest management. They are: the view of democracy held by the participant, the role of power amongst participants, timing of consultation within the planning process, empowerment of participants, and an indication of a changing relationship pattern among participants (Buchy and Hoverman 2000). Not all indicators will be addressed, as case study data was not available to make a direct relation.

**Power:** The role of power, or control over decision-making, was a central concern to the First Nations participants. They viewed the opportunity to participate in AIA as an opportunity to increase their involvement in the planning process overall. The level of participation in a planning process directly influences the amount of control one can exert in the decision-making process (Arnstien 1969). First Nations participants viewed their involvement in CMT management as "increasing", relative to past experiences with archaeologists and forest companies.⁶⁴

Forest companies, archaeologists and government officials on the other hand did not express an interest in increasing power or control over the consultation process, nor was it assumed that more control was needed. However, one government representative did state that a delegation of some control to First Nations over the management of their own cultural heritage was needed to ensure ongoing communication.⁶⁵ Hence, the direct awarding of archaeological assessment contracts to the NNTC.

**Timing:** There was little reference made to the timing of consultation within the CMT management process. However, it was noted in the 1996 AOA report (Millenia Research 1996) that the NNTC and member bands did not participate in the assessment due to a lack of confidence in the assessment methodology. This changed by 1998, when the NNTC demanded more involvement in forestry decisions

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regarding activities that would impact on Aboriginal rights, as was laid out in the Delgamuukw decision. Participation in consultation within the archaeological process was extensive.

Changing Relationship: There was a definite expectation by all groups for the development of a new relationship between First Nations and government. First Nation representatives expected legal decisions and legislation requirements to force government and forest companies to deal with First Nations. As a result government representatives recognized the need to develop policy that would lead to a change in the relationship pattern.

The consulting archaeologists (different from those who conducted the 1996 AOA) established a working relationship with the First Nations that reflected expectations of the First Nations cited in the 1996 AOA report. The working relationship between forest companies and First Nation communities were highly dependent on interpersonal relationships. Two of the three forest companies that participated in the case study took a more proactive role in managing for CMTs and developed their own inventory and mapping database for CMTs that were discovered in their cut blocks. The remaining forest company depended solely on the consultation efforts of consulting archaeologists and government representatives.

4.5.1.2 Consultation as a “Means” for Management

When viewing consultation as a management tool, or a “means” to an end, participants focus their attention on the following: the growth of participation, benefits and costs of the process, implementation of the decisions arising from the process, and principles of good practice (Buchy and Hoverman 2000). Again, not all criteria were addressed by participants in the study.

Participation: The government of British Columbia acknowledged its role in negotiating treaties with First Nations people of the province since 1991, and decided to engage in public participation processes that

66 Ibid
67 Ibid
differ from past management philosophies. Rising conflicts over the use of public lands and resources and commitment to sustainable forest management led to a complex provincial forest planning system. The establishment of a separate but parallel consultation process for First Nation communities supports the "special interest" of Aboriginal people in forest lands and resources. Forest companies and archaeologists both expected consultation to lead to more First Nations participation in the planning process, in part due to the realization that good forest management planning would require input from local people, but also because legislation and evolving Aboriginal case law warranted such participation.

Cost/Benefit: Consultation processes require a substantial amount of resources on the part of all parties involved. Forest companies and government participants repeatedly mentioned the financial burden of CMT management and associated consultation activities. Archaeologists were also mindful of the cost of CMT management. First Nations representatives on the other hand focused their conversations around acquiring financial assistance to ensure consultation occurred on a regular basis and to the satisfaction of the communities.

Intensive archaeological surveys usually cover small areas of land, however in the case of Archaeological Impact Assessments for forestry planning purposes, surveys are often conducted over a large area of land. Although AIA's are conducted on a block-by-block basis, one AIA could cover as many as 15 cut blocks, as was the case in the 1998 AIA. Therefore, with each block averaging 40 ha in size, one AIA required archeological field crews to cover 600 ha of forested land. Pressure to conclude assessments within budget restrictions imposed by proponents limit the intensity of the survey, the amount of consultation time outside of field surveys with First Nations representatives, therefore severely limiting the time available for site interpretation.68

Implementation: The types of consultation process typically implemented by the Ministry of Forests ranged from telephone conversations to community meetings. Prior to legislative changes in the

Heritage Conservation Act, and the implementation of the Forest Practices Code in 1995, First Nations were treated as another "stakeholder" in the public consultation process. With greater clarity given to the nature and extent of Aboriginal rights (expressed in case law), the Ministry of Forests developed an Aboriginal Rights Policy (1997, amended in 1999) and along within Consultation Guidelines (1997, amended in 1999) that provided a framework for establishing Government-First Nations relationships on forestry related issues. First Nations communities within the study area did not attempt to establish a consultation protocol of their own until 2000.\(^{69}\) The protocol was meant to clarify the working relationship between forest companies and First Nation communities, and did not address the Crown's role in the consultation process.

First Nations clearly valued consultation as an end in the management process. The approach to management was important to defining whether or not the participant was satisfied with the consultation process. Forest companies representatives view consultation as a means to CMT management. The AIA is the tool by which CMT significance is determined, therefore direct consultation with First Nations is perceived to be the job of archaeologists.

4.5.2 CMT Management in Forest Development Planning

The AIA process involved First Nations people in both a consultative and fieldwork capacity where they were given the opportunity to provide recommendations for management to mitigate the impact of forest development on CMT sites. The result of the management prescription, as planned by the forest company and approved by the District Manager, did not reflect the expectations of the First Nations participants. Therefore, while there was an increase in consultative activities between groups, and First Nations realized some of the benefits of controlling the contract for AIA work, the results of the CMT management process did not meet the desired outcomes of the First Nations. To explore why a seemingly extensive and meaningful consultation process led to results that were not satisfactory to all participant groups expectations were examined.

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\(^{69}\) NNTC and ABC Lumber Co. 2000. Protocol Agreement.
According to the Ministry of Forests Protection of Aboriginal Rights Policy (1997:1) the intent of government was to “prevent or justify infringement on Aboriginal rights”. The Implementation guidelines (later called the Consultation Guidelines (1999) for the policy state that the MOF is responsible for ensuring that forest management activities do not unjustifiably infringe upon Aboriginal rights, and that meeting this fiduciary responsibility is best achieved using a consultation process. This implies that when consultation with First Nations occurs, it is the intent of government to infringe upon Aboriginal rights and it becomes a question to what extent the government can infringe.

Consultation can be used to communicate a decision, to gain support for a decision, or to motivate those affected by the decision to take a specific action (Patterson et al. 1984). In this case study consultation was used as part of the AIA process to determine the significance of CMTs, but not the desired outcomes of the management prescription. In fact, the AIA was used to determine the extent of infringement that would be supported by First Nations. However, the MOF policy does not require that First Nations support or consent to the proposed activity that will result in infringement. The mere fact that an effort to consult on the part of government is considered to be grounds for justifiable infringement\(^7\), and any accommodation made on the part of the forest company to meet the concerns of First Nations is discretionary.

\(^7\) The infringement justification test described in Sparrow requires government to prove that consultation efforts fulfilled the Crowns fiduciary obligation.
The unexpected discovery of CMTs in the Fraser TSA, particularly in such high numbers, provided the “stimulus” for the Chilliwack Forest District to address issues regarding First Nations involvement in forest development planning processes. Figure 14 is a schematic representation of the role consultation in the forest management decision-making processes.

The consultation process as it is used by the MOF is an information gathering process that does not require forest companies to accommodate the desired outcomes of management that are reflected by the characterization of CMT significance by First Nations people. The desired outcomes of the forest activity take precedence over the desired outcomes for CMT management.

The AIA recommends mitigation measures, and it is the responsibility of the District Manager to ensure that the measures are followed in the silviculture prescription. The 1998 AIA (Golder Associates Ltd 1998) reported the CMTs to be of moderate to high scientific and cultural significance. Three options to mitigate the impacts of harvesting were recommended: 1) avoidance with 25 meter buffers around clusters, 2) partial cut with stem samples, 25 m buffers suggested, and 3) full harvest with samples. An interim AIA was provided to proponents, the Ministry of Forests and First Nations for review and
comment. The NNTC indicated that they did not agree with the Option 3 as it was proposed in the AIA, and requested more involvement in decisions affecting harvesting around the CMTs.

According to data acquired through interviews and technical reports, consultation with First Nations ended with the AIA assessment. An opportunity to review silviculture prescriptions was provided; however detailed explanations of how the landscape would look in post-harvest conditions was not effectively communicated to the First Nation participants. The First Nation representatives indicated that they were told during consultation meetings that the forest companies were going to "log around" the CMTs. The First Nation communities interpreted this to mean that site context would be retained. This was not the case (Figure 12). The recommendations of the AIA were implemented in a silviculture prescription, approved by the District Manager, and harvesting occurred. Given this involvement of First Nations in the AIA, and their continued assertion for greater involvement and access to funds to conduct larger inventories: why did the harvesting results not meet the expectations of the First Nations?

First Nations expected that consultation during AIA's would lead to prescriptions that reflect their desired outcomes. Therefore, since they had assigned education and economic significance to the CMT sites they thought the value of the sites would be retained. This was not the case. Mitigation efforts limited the impact of harvesting activities on CMTs directly but it did not change the harvest prescription for cut blocks. Prescriptions are determined by the forest companies and approved by the District Manager. Because the prescription did not address or accommodate the retention of CMT significance in a post-harvest environment, the expectation for site significance retention created through the consultation process was not achieved. Therefore, the effectiveness of consultation was reduced when consultation was isolated to significance determination in the AIA, and not extended to the design of management prescriptions.

4.5.3 Summary Analysis

First Nations participants clearly viewed consultation as an "end" or an approach to forest management. The belief that consultation in CMT management procedures would lead to an increased influence over
decisions made in forest development planning was shared by the First Nation participants. However, the dependence of First Nations communities on outside experts (external resources) to gain a better understanding of forest operations and their potential impact on community interests also fostered the view that consultation was an opportunity to learn, rather than an opportunity to evoke a specific management outcome that reflected cultural significance.

Government and forest companies viewed the consultation process as a "means" or tool for CMT management. When managing a public resource, there is a responsibility put on the manager to ensure the publics are informed about the activity they propose. In the case of CMT management, the government, as statutory decision-maker, sought the acceptance for the harvesting plan from the First Nation, however, acceptance was not a prerequisite for implementation of a forest development plan and the efforts made to consult on First Nations-forestry related issues become the primary focus for determining justifiable infringement.

The results of the CMT management plan demonstrate that while First Nations were awarded contracts to carry out archaeological assessments in their traditional territory their participation was marginalized to one specific aspect of the FDP process, the AIA. The First Nation and forest managers had competing expectations for the consultation process, that in the end resulted in decisions that did not satisfy the concerns or needs of the First Nation community. The educational and economic value of the CMT sites was stripped away. In fact, their involvement in the consultation during AIAIs had little effect on the final harvest outcomes.

While the intent of the consultation process was not met in full evidence such as the development of a protocol agreement and discussions regarding salvage opportunities demonstrate that the consultation process did affect the working relationship between all groups involved in the process.
5 CONCLUSIONS AND CONSIDERATIONS

"What is more important than what alternatives indigenous peoples offer the world is what alternatives indigenous peoples offer each other."71

The Nlaka'pamux people have occupied the banks of the Fraser River, utilized the resources of the surrounding mountains and waters since time immemorial, and continue to do so today. After more than a century of being excluded for resource use decisions, the Supreme Court of Canada determined that proponents of development activities on Crown land must be informed of Aboriginal rights, and make every effort to avoid unjustifiable infringement on such rights. The Ministry of Forests, as representatives of the Crown is responsible for determining where such interests may be on the landscape. The purpose of this thesis was to examine the effectiveness of the consultation process used to inform CMT management procedures in the Fraser Canyon.

While there is an attempt on the part of government to identify aboriginal interests, the goals and objectives for inquiry are shaped by policy and regulation and did not reflect the needs, nor all the concerns of the First Nation communities. Factors such as the cost of archaeological investigations, misunderstandings and non-communication during the consultation process, off-loading of responsibility and the lack of incentive to develop long term CMT management strategies have skewed the consultation process to focus on immediate issues such employment opportunities and job training.

The significance attributed to CMTs through the archaeological assessment process reflected their value as evidence of Aboriginal rights and interests in the land; however, First Nations extend CMT significance to their role as educational and economic resources for the present and future generations of their communities. Job creation and specialized training in archaeological survey and GIS technology directly benefited the communities and as the awareness of CMTs increases in the communities, so too did their significance. Their value however does not end with the understanding of present generations.

As educational resources, CMT are useful in reconstructing the past forest use record; educating future generations of Nlaka’pamux forest users; and they are also, useful reminders of the knowledge that has long gone. First Nations people are reconnecting to their lands, their culture and their identity. The Nlaka’pamux people are no exception.

The legally defined mandate of the consultation process resulted in harvest prescriptions that stripped the CMT site of it originally defined significance. The tree, as an indicator of an Aboriginal right, may itself have been spared from harvesting, but the essence of what is contained in the aboriginal right is removed. Without the consideration for the substantive content of an Aboriginal right, management goals will be ineffective. The landscape will end up covered with islands of artifacts, valuable as markers for site-specific rights, but completely denuded of the greater context in which the Aboriginal right was, and continues to be, practiced.

Site context and ecological integrity were factors considered intrinsically valuable to sites that were going to be preserved for educational and economic reasons. This had an impact on how CMT management procedures were viewed in the forest development process. The evidence from the case study, in particular the post-harvest sites located in South Ainslie, indicate that the protection of evidence of Aboriginal rights does not necessarily equate to the protection of Aboriginal interests. Interests reflect the needs of contemporary First Nation communities, and as such go beyond the legal definition of an Aboriginal right.

5.1.1 Considerations for CMT Management in Forest Development Activities

Forest planning deals with space and time dimensions of proposed development action. In forest management planning, where proposed actions may have legal, political and cultural ramifications, the interests of participating groups in the planning process and the landscape values expressed by these groups will reflect widely different definitions and meanings of landscapes (McCool and Guthrie 2001). The issue for the forest planner is not so much
acquiring the knowledge of how the meaning of culture is created or negotiated, but in knowing what meanings the individuals, groups or cultures assign to what pieces of the landscape.

Therefore, by involving First Nation communities in forest development planning beyond the AIAs, the opportunity to become "a part of" the forest planning process, rather than "reacting to" a plan will benefit all groups. Meaningful involvement will lead to a) an increased capacity to deal with technical issues arising from cultural heritage resource management and b) an expanded scope of investigation beyond the cut-block boundary. By incorporating local information that may otherwise not be captured in AIAs, government, forest companies and First Nations may create new opportunities for research and further develop management tools.

Continuous involvement of First Nation representatives will also enable training opportunities in CMT identification and recording and forest management. Forest company representatives will benefit from the establishment of effective working-relationships that go beyond the sporadic "consultation" driven encounters that occur when relying on government intervention.

5.1.2 Recommendations for Future Research

A results-based code will require clear definition of desired outcomes that will be dependent on the significance of the CMT. There is a need for research on methodologies and strategies that can be used by First Nations committees to articulate management goals that will inform their communities and interest groups operating within their traditional territories. Forest companies and government must expand their definition of Aboriginal interests beyond the legal aspects of Aboriginal rights and title claims, and investigate ways of incorporating rich data sets into forest development plans.

CMTs have legal, cultural and economic values that depend on the retention of context and ecological integrity of the environment in which they were created. They are an effective visual representation of past forest use that will contribute to the knowledge of present and future generations.
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