

WORKING AGREEMENTS FOR FIRST NATIONS TENURE HOLDERS

By TLA Aboriginal Affairs Committee

The TLA's Aboriginal Affairs committee sought ways to assist TLA members in building and enhancing relationships between the membership and First Nations communities. Through a strategic plan carried out by the Committee, it was identified that there is a gap between what First Nations communities were obtaining in terms of new forest tenure licensees and their capacity to undertake operational activities with the licence, specifically, undertaking harvesting, marketing and management of the licence through an agreement with a third party. There is a juxtaposition between generating the economic opportunity from the tenure and the many potential liabilities that are associated with owning and managing a licence. The following draft working document serves as a source of information for consideration when creating a working agreement to carry out activities associated with First Nations licence. TLA members are invited to provide their comments and input.

When reviewing the below list of topics, ask who is responsible, who is accountable, and who will manage?

Community Engagement

1. Process for sharing information early:
 - Sharing cultural information to inform licence/tenure management and contractor activities.
 - Sharing of forest management activities with First Nations community.
 - A process to protect cultural information on the landscape.
2. Update process for First Nations leadership on business activities of tenure and impacts on the land:
 - Understanding who the leadership is; hereditary versus elected Chiefs, cultural versus government leadership.
3. Process for understanding the community's capacity, and the skills and labour available:
 - Employment opportunities
 - Training and capacity building

Safety

1. Criminal liability for negligence (Bill C22):
 - Criminal liability for a workplace accident can potentially extend to Chief and council if safety management systems are not in place and adhered to.
2. WorkSafeBC regulations:
 - Fines can be levied for violation of various regulations that WorkSafeBC enforces.
 - Vetting WorkSafeBC credentials by obtaining letters of clearance.
 - Determine if a First Nation entity requires a WorkSafeBC account.
3. Planning:
 - Determine if there is a safety plan, who creates it and who implements it.
4. Prime Contractor:
 - It is a WorkSafeBC requirement to have a prime contractor for central safety systems coordination in a harvesting operation. Identify and manage for prime, independent and dependent contractors.
 - Reporting process for documentation management and safety plan compliance auditing.
5. Certification:
 - Determine who should have it.

Forest Management Planning

1. Compliance to various legislation at provincial and federal level:
 - When planning activities, account for regulations associated with the *Forests and Range Practices Act*, *Wildlife Act* and *Fisheries Act*.
 - Requirement to use forest professionals.
2. Prepare legal forest management plans including forest stewardship, site, and harvest plans:
 - Determine who pays for preparation of plans and who is legally responsible for deficiencies.
3. Prepare and submit cutting permits and road building permits:
 - Determine who pays for and prepares permits and who is responsible for delays.
4. Government liaison:
 - Determine who acts as the representative of the licensee.

Forest Management Operations

1. Compliance of legislation at provincial and federal level:
 - When conducting activities, account for regulations associated with the *Forests and Range Practices Act*, *Wildlife Act* and *Fisheries Act*
2. Contract management of harvesting activities:
 - Determine who does the harvesting and who ensures the contractor is following the plan and regulations.
3. Reforestation/silviculture liabilities:
 - Regulation that licensees must meet reforestation obligations post-harvest. Determine who is responsible if deficiencies occur, some of which may not be known for seven years post-harvest.
 - Determine who holds the funds and is liable when managing accrual accounts for silviculture liability.
4. Stumpage and waste:
 - Determine who pays for stumpage.
 - Determine who is responsible for waste residues.
5. Wildfire suppression activities:
 - Determine who is responsible and who pays if a wildfire breaks out during harvesting activities, and if part of the tenure catches fire.
6. Government liaison:
 - Determine who represents the licensee during harvesting and post-harvesting.
7. Cultural artifact discovery during operations resulting in force majeure:
 - Determine who pays the bills during the delay.

Business Management

1. Agreement type:
 - There are many different types of agreements and each depend on the level of responsibility that the First Nations is willing to assign to a third party.
 - Corporate structure will define format for engagement (under Community Engagement).
 - Document expectations and manage the track record of what is achieved.

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friend asked Cole Thorne if he was planning to attend, there was no hesitation. Thorne called his boss who encouraged him to make the trip. "It's costing us to haul logs," says Thorne. "That's not the way it's supposed to work. A guy is supposed to go to work and make money." Thorne prepared for the trip by washing his truck. "You gotta look good—I take a lot of pride in my truck." He started at 6 pm, finished at 10 pm and started the drive south at 2 am."

People in towns along the route lined the streets cheering and holding signs of support, Thorne says. But the enormity of the rally really hit home when the convoy reached Merritt, where about 150 more trucks were waiting. "The RCMP had the town shut down for us to come in and we went into the cardlock, had a little get together and then took off down the Coquihalla to Vancouver. It was absolutely amazing." More supporters with banners were standing on top of every overpass. The truckers were heartened by the outpouring of support. "It was such an emotional day to see all the trucks and all the people at the side of the road from Merritt to Vancouver cheering us on," Christy says.

Overall, McKinnon feels the rally was a success and the loggers got their points across. Outside the Vancouver Convention Centre, the protesters were met by the entire opposition Liberal caucus and Forest Minister Doug Donaldson fielded some questions from the crowd. If there was one disappointment, it was that "Premier Horgan was in the building, but never did once come out," McKinnon notes. Thorne says he hopes the rally will get results. His first child was born just weeks after the rally and his livelihood depends on fair prices for lumber. He loves his job and hopes to remain in it for the long run but fears he won't be able to if things don't improve. He feels he did his bit by participating in the rally, saying, "You know, we had to make a point. We're not going to sit back and just watch our families go."▲

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2. Authority of contracts:
 - Determine who oversees the contracts and has signing authority.
3. Contract management:
 - Determine who locates and manages contractors and if there are obligations to create employment or small business ventures to conduct required work.
4. Insurance:
 - Errors & omissions
 - General liability
 - Professional liability
5. Rates for harvesting and road building:
 - Determine who negotiates and who accepts the market downside risks/upside gains.
 - Understand explicitly costings and profit resolutions.
6. Log sales:
 - Determine who markets the log.
7. Accounting:
 - Determine who pays the bills.
8. Dispute Resolution:
 - Understand how to resolve a dispute in payment, rates, or licensee management.
 - Determine who has the final decision-making authority.▲

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