



# Forest Appeals Commission

Fourth Floor 747 Fort Street  
Victoria British Columbia  
**Telephone:** (250) 387-3464  
**Facsimile:** (250) 356-9923

Mailing Address:  
PO Box 9425 Stn Prov Govt  
Victoria BC V8W 9V1

## **APPEAL NO. 2002-FOR-002**

In the matter of an appeal under section 131 of the *Forest Practices Code of British Columbia Act*, R.S.B.C. 1996, c.159.

**BETWEEN:** International Forest Products Limited **APPELLANT**

**AND:** Government of British Columbia **RESPONDENT**

**AND:** Forest Practices Board **THIRD PARTY**

**BEFORE:** A Panel of the Forest Appeals Commission  
Alan Andison, Chair

**DATE OF HEARING:** Conducted by way of written submissions  
concluding on February 15, 2002

**APPEARING:** For the Appellant: Jeffrey B. Waatainen, Counsel  
For the Respondent: Bruce Filan, Counsel  
For the Third Party: Ben van Drimmelen, Counsel

### **PRELIMINARY ISSUE OF JURISDICTION - STANDING**

This is an application by the Forest Practices Board (the "Board") to dismiss the appeal of International Forest Products Limited ("Interfor"). The appeal was filed against the August 1, 2001 determination of a district manager as varied by a December 19, 2001 administrative review decision pursuant to the *Forest Practices Code of British Columbia Act* (the "Code"). At issue was Interfor's Forest Development Plan 2001-2005 for Forest Licence A19220 ("FDP"). The Board argues that Interfor lacks standing to bring the appeal.

The application was conducted by way of written submissions.

### **BACKGROUND**

On August 1, 2001, the District Manager for the Sunshine Coast Forest District approved the FDP submitted by Interfor. The Board subsequently requested an administrative review of the decision, arguing that a proposed cutblock in the FDP did not specify measures that are required to protect a recognized forest resource. Specifically, the Board submitted that the FDP did not protect Marbled Murrelet nesting habitat.

On December 19, 2001, the Review Panel concluded that there was a flaw in the preparation of the FDP and, therefore, quashed the approval of the FDP with respect to the proposed block. On January 9, 2002, Interfor appealed the Review Panel's decision.

The relief sought by Interfor is an order rescinding the review decision.

On January 28, 2002, the Board raised a preliminary objection to Interfor's appeal. It submitted that Interfor, as a licensee, does not have the right to appeal to the Forest Appeals Commission (the "Commission") where the review decision concerns the approval of a forest development plan.

### **RELEVANT LEGISLATION**

The following sections of the *Code* are relevant to this appeal:

#### **Approval of plans by district manager or designated environment official**

- 41** (1) The district manager must approve an operational plan or amendment submitted under this Part if
- (a) the plan or amendment was prepared and submitted in accordance with this Act, the regulations and the standards, and
  - (b) the district manager is satisfied that the plan or amendment will adequately manage and conserve the forest resources of the area to which it applies.

#### **Person subject to a determination may have it reviewed**

- 127** (1) A person who is the subject of a determination under section 82, 95 (2), 99 (2), 101 (2), 102 (3), 106 (1), 117 to 120 or 123 (1) may deliver, to the review official named in the notice of determination, a written request for a review of the determination.
- (2) The person must ensure that the request for review complies with the content requirements of the regulations.
  - (3) The person must deliver the request for review to the review official not later than 3 weeks after the date the notice of determination was given to the person.
  - (4) Before or after the time limit in subsection (3) expires, the review official may extend it.
  - (5) A person who does not deliver the request for review within the time specified loses the right to a review.

**Forest Practices Board may have determination reviewed**

**128** (1) The board may request a review of

...

- (c) if the regulations provide and in accordance with the regulations, a determination under Division 5 of Part 3 with respect to approval of a forest development plan, range use plan or amendment to either of those plans.

**Review**

**129** (5) The reviewer may make a decision

- (a) confirming, varying or rescinding the determination under review,
- (b) referring a determination or failure to make a determination back to the person who made it or failed to make it with or without directions, or
- (c) making a determination, if the review concerns the failure to make a determination.

**Determinations that may be appealed**

**130** (1) Subject to subsection (3), a person who is the subject of a determination referred to in

- (a) section 127, or
- (b) section 129 (5) (c)

may appeal the determination to the commission.

(2) Subject to subsection (3), the board may appeal to the commission

- (a) a determination referred to in section 128 (1) (a),
- (b) a failure to make a determination referred to in section 128 (1) (b),
- [c] if the regulations provide and in accordance with the regulations, a determination under Division 5 of Part 3 with respect to approval of a forest development plan, range use plan or amendments to either of those plans, and
- (d) any determination for which a review decision has been given under section 129 (6).

The following section of the *Administrative Review and Appeal Procedure Regulation*, B.C. Reg. 114/99 (the "*Regulation*") is relevant to this appeal:

## Review requests by board

- 2 (1) The board may request a review of a determination under the *Forest Practices Code of British Columbia Act* with respect to approval of a forest development plan, range use plan or amendment to either plan if the board believes that, in relation to the preparation of the plan or amendment, there has been a contravention of that Act or the regulations made under that Act.
- (2) The board may request a review of giving effect under section 40 of the *Forest Practices Code of British Columbia Act* to
  - (a) a forest development plan,

## ISSUE

Whether Interfor has the right to appeal a review decision concerning the approval of a forest development plan, and, therefore, has standing to bring the appeal.

## DISCUSSION AND ANALYSIS

The Board argues that a licensee does not have the right of appeal to the Commission where the review decision concerns the approval of a forest development plan. The Board submits:

[T]he right to appeal to the Forest Appeals Commission is set out in section 130 of the...*Code*. Section 130(1) empowers a person who is the subject of a determination referred to in sections 127 or 129(5)(c) to appeal to the Commission. However, the determination under appeal is not a determination referred to in either of these. It is not a fresh determination by the review panel under section 129(5)(c); neither is it a penalty or order referred to in section 127. The review request in this case was filed by the Forest Practices Board under section 128(1)(c) of the Code Act. The determination under review was a determination under section 41 of the Code Act with respect to the approval of a forest development plan. Determinations under section 41 are appealable by the Board under section 130(2), but they are not appealable by a licensee under section 130(1).

In the matter under appeal, the review panel quashed the approval with respect to cutblock N1. The Panel directed the district manager to reconsider his approval consistent with the Panel's findings. Unlike a determination under section 117 of the Code Act that levies a penalty or the other determinations listed in section 127(1), there is no right of review or appeal of a district manager's refusal to approve an operational plan under section 41. This "omission" of the licensee's right to appeal is logical because the licensee has other options to redress a non-approval, such as submitting a revised plan.

Interfor takes no position with respect to the Board's challenge of its right to appeal the review decision.

The Government submits that it would appear from the legislation that Interfor has no standing to appeal this matter.

The Commission agrees with the Board that a licensee does not have the right of appeal to the Commission where the determination as varied by the review decision concerns the approval of a forest development plan. Under section 130(1) of the *Code*, a licensee may appeal a determination referred to in either section 127 or 129(5)(c) of the *Code*.

However, the determination under appeal does not fall under either of these sections as it is neither a penalty or order referred to in section 127, nor is it a fresh determination under section 129(5)(c). Rather, it was a determination under section 41 of the *Code* with respect to the approval of a forest development plan. Such determinations are only appealable by the Board under section 130(2) of the *Code* and section 2(2) of the *Regulation*. They are not appealable by a licensee under section 130(1) of the *Code*.

Accordingly, the Commission finds that Interfor has no statutory right of appeal to the Commission with respect to a determination and subsequent review decision concerning the approval of a forest development plan.

## **DECISION**

In making this decision, the Commission has considered all of the evidence before it, whether or not specifically reiterated herein.

The Commission finds that Interfor does not have standing to appeal the August 1, 2001 determination of a district manager as varied by the December 19, 2001 review decision. The Board's application to dismiss Interfor's appeal is therefore granted.

The appeal is dismissed.

Alan Andison, Chair  
Forest Appeals Commission

February 20, 2002