BRITISH COLUMBIA

Forest Appeals Commission

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APPEAL NO. 96/04(b)

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:	Forest Practices Board	**APPELLANT**
AND:	Government of British Columbia	**RESPONDENT**
AND:	MacMillan Bloedel Limited	**THIRD PARTY**
AND:	Sierra Club of British Columbia	**INTERVENOR**

BEFORE: A Panel of the Forest Appeals Commission
Toby Vigod — Chair
Gerry Burch — Member
Deborah Todd — Member

DATE OF HEARING: April 10, 11, July 28, 29, 1997

PLACE OF HEARING: Victoria, B.C.

APPEARING:
For the Appellant: John Pennington, Counsel
For the Respondent: Angela Westmacott, Counsel
Karen Tannas, Counsel
For the Third Party: Paul Cassidy, Counsel
Allison Taylor, Counsel
For the Intervenor: Tim Howard, Counsel

APPEAL

This is an appeal by the Forest Practices Board from a determination by the District Manager, dated May 31, 1996, approving a five year Forest Development Plan ("FDP") submitted by MacMillan Bloedel Limited ("MB"). The FDP covered a portion of the Brooks Bay Operating Area on the West Coast of Vancouver Island in the Klaskish Watershed for Forest Licence A19244 and Timber Licences TO615 and TO596. The determination was varied by a Review Panel decision dated November 12, 1996. The Review Panel remitted the FDP back to the District Manager with a direction to obtain the signature and seal of a registered professional forester on the amended portions of the plan, and the signature of a person who has authority to sign the plan on behalf of MB.

The Appellant is seeking an order rescinding the approval of the plan.

The appeal was brought before the Forest Appeals Commission (the "Commission") pursuant to section 131 of the *Forest Practices Code of British Columbia Act* (the "*Code*").

BACKGROUND

MB is the holder of Forest Licence A19244 and Timber Licences T0596 and T0615 in the Brooks Bay Operating Area in the vicinity of Klaskish inlet. On December 12, 1995, MB submitted a draft FDP to the Port McNeill Forest District office for approval.

According to the letter of transmittal, the draft FDP covered the "Brooks Bay Operating Area for the West Coast-Klaskish (FLA19244) and Timber Licences TO596, TO615" and included:

(a) one set of 1:20,000 forest cover, development plan maps;
(b) one set of 1:20,000 forest cover, access management plan maps; and
(c) one binder containing:
  (i) 1:5,000 Logging plan maps of each cutblock;
  (ii) 1:5,000 Proposed road construction map of each cutblock;
  (iii) 1:5,000 Proposed road deactivation map of each cutblock:
  (iv) draft copy of the Pre-Harvest Silvicultural Prescription of each cutblock;
  (v) Fuel Management Plan;
  (vi) Area volume summary chart by cutblock by year by map sheet;
  (vii) Cutblock status sheet for each cutblock (with detailed information);
  (viii) Visual impact assessment (DTM's) of areas 2209, 2211, & 2212;
  (ix) photographs of cutblocks, where available;
  (x) copy of terrain stability assessments; and
  (xi) copy of public viewing advertisement.

The transmittal letter also referenced 1:20,000 contour overlays and 1:20,000 stream classifications distributed to the Ministry of Forests ("MOF"), Ministry of Environment, Lands and Parks ("MELP"), and the federal Department of Fisheries and Oceans ("DFO") in December of 1992.

The draft FDP covered a period of five years, commencing January 1, 1996. Five cutblocks were proposed for harvesting during that period: cutblocks 2203, 2209, 2211, 2212 and 3104. Harvesting of the cutblocks was proposed for the first two years of the plan. Cutblocks 2209, 2211, and 2212 were to be harvested by conventional methods; cable logging. Cutblocks 2203 and 3104 were to be helilogged.

Copies of the draft FDP were delivered to the MOF on December 12, 1995, and copies were distributed to the Quatsino First Nations Band, MELP, and the DFO at approximately the same time. The MOF District Manager, Mr. Jack Dryburgh, checked the content of the draft FDP against the checklist contained in the transmittal letter, but did not undertake any further review of the plan prior to the agency referral and public review period.

The draft FDP was subject to a 60-day public review and comment period pursuant to section 39 of the *Code*, commencing on December 7, 1995. Nineteen members of the public signed the sign-in sheet at the open house sessions held during this time period with no adverse comments. Comments on the draft FDP were received from DFO on January 31, 1996, which indicated that it had no objections to the plan.

In February of 1996, the Government of British Columbia announced that the Klaskish watershed, which had been the focus of interest since the 1980s, would be managed in accordance with *Code* standards with the designation of a Low Intensity Area for those areas of significant resource values such as the lower reaches of the Klaskish and East Creeks.

In a letter dated March 13, 1996, Mr. Mac Willing, District Habitat Officer, MELP, indicated that MELP's comments would be deferred on blocks 2209, 2211 and 2212 pending completion of a comprehensive watershed management plan for the Klaskish River/East Creek drainage area. He indicated that blocks 2203 and 3104 were acceptable as proposed.

The Sierra Club of British Columbia ("the Sierra Club") received an extension of time to April 24, 1996, to submit comments on the draft FDP. The District Manager met with representatives of the Sierra Club on April 18, 1996 to discuss the draft FDP and received written submissions on April 24, 1996. In its submissions, Sierra Club objected to the 3 cutblocks (2209, 2211, 2212) proposed for the "undeveloped" Klaskish watershed. It argued that the plan was "unapproveable" because it does not comply with the *Code* and regulatory requirements regarding, among other things, identification of wildlife habitat, riparian classification and protection, and terrain stability.

The draft FDP was revised, in part, as a result of comments received during the 60-day review and comment period. The District Manager requested MB to obtain a windthrow assessment for the cutblocks. The assessment recommended minor changes to the boundaries of three of the cutblocks to reduce the likelihood of blowdown damage. MB amended the draft silviculture prescriptions ("SPs"), and accompanying maps which formed part of the draft FDP, for cutblocks 2209, 2211, and 2212. A small area from the corner of cutblock 3104 was deleted to avoid an overlap with a revised Low Intensity Area boundary.

There were also discrepancies in the stream information and classifications in the original draft SPs, SP maps and draft logging plan ("LP") maps submitted in December, 1995, which were subsequently clarified. Mr. J. MacDonald, the area engineer for MB, directed new stream assessments early in 1996. The discrepancies arose because the SP and LP maps were prepared by different departments at different times. The information was clarified in revised draft SPs, SP maps and LP maps submitted to the District Manager on April 23, 1996.

The District Manager did not require MB to make the revisions available for public review and comment because he felt the amendments were minor, that they were

responsive to public and referral agency comments, and they did not adversely affect the public.

According to section 41(1) of the *Code,* a district manager *must* approve a FDP if:

> (a) the plan … was prepared and submitted in accordance with this Act, the regulations and the standards, *and*
>
> (b) the district manager is satisfied that the plan … will adequately manage and conserve the forest resources of the area to which it applies. [emphasis added]

"Forest resources" is defined in section 1 of the *Code* as "resources and values associated with forests and range including, without limitation, timber, wildlife, fisheries, recreation, botanical forest products, forage and biological diversity."

The FDP was approved on May 31, 1996, during the period of "substantial compliance" with *Code* standards. The District Manager concluded that the FDP met all of the requirements of the *Code* and regulations with the exception of operability, which he concluded "substantially met" the *Code* requirements. The District Manager found that MB had fulfilled the public review and comment requirements of the *Code* and the regulations and concluded that the FDP would adequately manage and conserve the forest resources in the area. In conjunction with the approval, the District Manager issued a rationale responding to the specific concerns raised by the Sierra Club in its written submission.

The Appellant subsequently requested an administrative review to cancel the FDP. The Review Panel, in its decision dated November 12, 1996, remitted the FDP back to the District Manager with a direction to obtain the signature and seal of a registered professional forester and the signature of a person who as the authority to sign the plan on behalf of MB on the "amended" portions of the FDP, in accordance with section 10(e) of the *Code* and section 15(8) of the *Operational Planning Regulation* ("OPR"). This has been done.

The Appellant appealed to the Commission on December 3, 1996, pursuant to section 128(1)(c) of the *Code* and section 2 of the *Administrative Review and Appeal Procedure (Forest Practices) Regulation* on the grounds that the approved plan was not prepared and submitted in accordance with the *Code* and regulations. It argues that the plan does not address a sufficient area and does not meet, or substantially meet, the legislative requirements. It submits that the plan is not a "plan" at all.

The Appellant further argues that changes were made to the plan after the review and comment period, which did not arise from the review and comment, contrary to section 39(1) of the *Code* and section 15(3)(d) of the OPR. The Appellant also submits that the Review Panel incorrectly relied on the exercise of discretion by the District Manager, without addressing the issue of whether there was a "plan" which met the requirements of the *Code* and whether a plan is more than its individual

parts. The Appellant says that approval of the plan should be rescinded or cancelled.

MB was subsequently added as third party to the appeal pursuant to section 131(6) of the *Code*. The Sierra Club was granted intervenor status on February 7, 1997, pursuant to subsections 131(9) and (10) of the *Code*. The Intervenor was granted the right to present evidence, cross-examine and make submissions on the issues raised by the Appellant.

It should be noted that by the end of 1996, cutblocks 2209, 2211, and 2212 had been logged. The two remaining approved cutblocks, 2203 and 3104, were to be helilogged, but had not been logged at the time the hearing concluded on July 29, 1997.

ISSUES

There was a substantial amount of evidence and argument made during the four days of hearing on the plan's alleged deficiencies. Complicating matters, there was some confusion as to which documents formed the approved plan now under appeal.

The Commission has formulated the issues to be decided in this appeal as follows:

1. What is contained in "the plan" at issue in this appeal?

2. What is the meant by "substantial compliance"?

3. In accordance with section 41(1) of the *Code*, does the FDP:

   (a) meet the requirements of the *Code* and the regulations?

   Under this heading, the following topics will be addressed:

   - "the area under the plan"
   - section 10(b)(ii) – matters required by regulation

     stream identification and classification
     wildlife
     cultural heritage resources
     operability information
     unstable terrain
     watershed information
   - section 10(c)(ii) – measures that will be carried out to protect forest resources
   - section 39 – public review and comment

   (b) adequately manage and conserve the forest resources of the area to which it applies?

An issue was also raised about the appropriate standard of review by the Commission. In particular, whether the Commission ought to show curial deference to the decision of the District Manager.

Under section 138(1) of the *Code*, the Commission has broad decision-making powers, including the power to "make any decision that the person whose decision is appealed could have made". As stated by the Commission in *Tolko Forest Products and Forest Practices Board v. Government of British Columbia* (Forest Appeals Commission, Appeal No. 95/02, November 12, 1996) (unreported), "these are all powers associated with a *de novo* hearing.…" The broad decision-making powers, in conjunction with the expertise of the Commission, its power to admit any relevant evidence (section 137(1)), call and retain expert witnesses (section 137(4)) and to summon and enforce the attendance of witnesses and order the production of documents (section 135), clearly indicates that a new hearing or hearing *de novo* was intended by the Legislature.

This is the first appeal of a FDP to come before the Commission. The appeal involves a number of important questions of law and mixed fact and law. While the Respondent and MB both conceded that questions of law are best addressed by the Commission and no deference is required, they argue that the District Manager's exercise of discretion regarding the adequacy of information for a particular area in question should not be lightly interfered with – some deference is owed.

The Commission is cognizant that the District Manager has technical expertise and "on the ground" experience in the subject area. However, it is the Panel's view that most of the questions raised in this appeal come down to whether the information accepted by the District Manager is sufficient in law. It is our view that we are not constrained by the principle of deference on the questions of law which arise in this case.

Further, this case has been heard anew – there has been a full oral hearing with evidence from various witnesses and cross-examination of the witnesses. We have before us the plan that was the subject of the District Manager's decision, and some evidence and arguments that were not before him.

DISCUSSION AND ANALYSIS

1. What is contained in "the plan" at issue in this appeal?

At the hearing, there was considerable discussion about what physically constituted both the draft plan submitted for public comment and the plan approved by the District Manager on May 31, 1996. The Intervenor claims that the Respondent was unable to identify the precise contents of the document that was approved on May 31, 1996. The Intervenor says that the Respondent could not provide a copy of the approved version and had to rely on MB for a copy.

Mr. Horter, staff lawyer with the Sierra Legal Defence Fund, testified on behalf of the Intervenor, that he reviewed the plan on two occasions. The first was on April 18, 1996, when he reviewed the draft plan; the second was on June 11, 1996,

when he reviewed the approved plan. He testified that he was surprised that the draft plan only contained a one page checklist for each cutblock with attached documents and maps relating to each cutblock. He had not realized at the time that the draft SPs and access management plans were to be considered part of the FDP. In respect to the approved plan, Mr. Horter testified that on June 11, 1996, he did not receive a number of documents which have now been placed before the Commission as part of the approved plan.

The Respondent states that Mr. Horter had not given much advance notice that he would be coming to review the approved plan, and that the plan was being used by different staff in the District Office and was not intact in one place in the office. The District Manager testified that the FDP was a working document which was only kept intact during the public review and comment period.

The approved plan was filed as an exhibit at the hearing. The plan, as submitted to the Commission, consisted of a transmittal letter dated December 12, 1995 (which formed the first page of the approved plan); copies of other correspondence between MB and MOF; comments from the referral agencies; copies of the public notice of the proposed plan as published in the B.C. Gazette and local newspapers; the sign-up sheet from the public sessions; and documentation of consultation with the Quatsino First Nation. Copies of five-year SPs, access management plans and fuel management plans were also included. This initial set of documents preceded tabs dealing with each cutblock.

For each cutblock there was a one page checklist of documents which included a status sheet, air photos, applicable 1:5,000 setting map, copy of terrain stability assessment, copy of Pre-Harvesting Silvicultural Prescriptions (P.H.S.P's)[1]/site degradation worksheets, copy of fish sampling (where applicable), applicable 1:5000 road construction map and applicable 1:5,000 road deactivation map.

The final tab included the windthrow assessment dated April 15, 1996.

In addition to the binder with the information outlined above, the plan contained a set of 1:20,000 forest cover, development plan maps and a set of 1:20,000 forest cover, access management plan maps. The Commission also received copies of the 1:20,000 contour overlays and 1:20,000 stream classification maps referenced in the December 12, 1995 transmittal letter.

There was no index or table of contents outlining the contents of the approved plan. There was also no explanatory text accompanying the documents.

Unfortunately, draft LPs dated March 14, 1996, revised draft LPs dated April 22, 1996, as well as LP maps were also filed with the Commission as part of the approved plan. This led to considerable confusion at the hearing and frustration by the Appellant and Intervenor, especially in regards to discrepancies in information regarding stream identification and classification. MB stated that only the LP maps,

[1] P.H.S.Ps were the precursors of SPs. Draft SPs filed in December 1995 and revised draft SPs dated April 23, 1996, with accompanying maps, were included in each tab for this item.

and not the draft LPs, were submitted in December 1995, and therefore, the draft LPs are not to be considered part of the approved FDP.

The Commission shares the frustration of the Appellant and Intervenor that clarification of what actually constituted the approved plan did not occur until the hearing was underway. However, the Commission accepts the evidence of MB and the Respondent that only the draft SPs and attached maps, and draft LP maps are part of the FDP. Unfortunately, all parties, including counsel for MB and the Respondent, referred to draft LPs as being part of the approved FDP in their final written submissions. This was corrected at the hearing. It should also be noted that the District Manager, in his May 31, 1997 decision, incorrectly refers to the draft LPs as having been submitted on December 12, 1995 and thus forming part of the FDP.

2. What is the meant by "substantial compliance"?

The Brooks Bay plan was submitted during the six month transition period after the *Code* came into force (June 15, 1995), and was approved during a period of, what is referred to by the parties as, "substantial compliance".

Prior to the *Code* coming into force on June 15, 1995, the regulatory framework for forestry operations in the province was significantly different. To allow all parties to adapt to the new ways of doing business, there was a phase-in period. Section 229(3) of the *Code* provided that a FDP *approved* in the 18 month period commencing December 15, 1995, only needed to "comply" with the public review and comment requirements, and "substantially meet" the other requirements of the *Code,* regulations and the standards.

Unfortunately, the term "substantially meet" is not defined in the legislation. The District Manager approached this interpretation question by considering the differences in the three critical time frames for compliance with the *Code*:

(a) the initial six month transition period which commenced June 15, 1995 (when the *Code* came into force) during which five key standards from Cutblock and Road Review Regulation were applied. These standards pertain to cutblock size, green-up, community watersheds, proximity to high value fish-bearing streams, and terrain hazard;

(b) the period of substantial compliance (December 15, 1995 to June 15, 1997); and

(c) the period of full compliance commencing June 15, 1997.

The District Manager concluded that "substantial compliance" fell somewhere between the baseline of five key standards during the six month transition period and 100% compliance. He interpreted substantial compliance to mean compliance with the five key standards and an additional requirement that there not be a material adverse impact on the public.

The Intervenor submits that the definition of substantial compliance adopted by the District Manager in effect blurs the distinction between the "transition phase" of the *Code*, which concluded in December, 1995, and the substantial compliance period of the *Code*. The Intervenor argues that the Legislature intended the level of compliance during the period of substantial compliance to be different from that applicable during the transition phase and urges the Commission to adopt the definition of "substantial compliance" developed by Mr. Bob Brash, the District Manager for the Queen Charlotte Islands Forest District. In a letter dated February 1, 1996 from Mr. Brash to all major licencees in the Queen Charlotte Islands Forest District, Mr. Brash states:

> Simply put, the term 'substantial compliance' means that the objective is to be in full compliance wherever possible. However, the degree of flexibility allowed by this interpretation needs further clarification. Substantial compliance means 'in compliance with the requirements of the *Code* Act and regulations, except for minor omissions or defects that will not effect the intent of the legislation.' Unimportant omissions or defects in FDP submissions may be tolerated if the essential requirements of the *Code* are met. The expectation is that variation from the requirements of the *Code* will be minimal and that in such cases my final decision on the matter will be based on individual circumstances and the context of the *Code* as a whole…

The common meaning of "substantial" as found in Webster's New Collegiate Dictionary is "important or essential or being largely, but not wholly what is specified."

The Commission finds that substantial compliance must be more than just the five considerations under the Cutblock and Road Review Regulation and considering whether the plan will have an adverse impact on the public. The Commission finds that the definition set out by Mr. Brash is closer to what is normally meant by "substantial", and more likely what was intended by the Legislature. The plan will therefore be evaluated according to this standard.

3. In accordance with section 41(1) of the *Code*, does the FDP
   a) meet the requirements of the *Code* and the regulations, and
   b) adequately manage and conserve the forest resources of the area to which it applies?

The Appellant stated in its written submissions that one of the reasons it brought this appeal to the Commission was because it believes that it is important to clarify what a FDP is. The Appellant was particularly concerned with how understandable a plan is to the public who are given an opportunity by statute to comment on FDPs. It stated that FDPs are the highest level of operational plan required under the *Code* and urged the Commission to focus on the purpose or intent of the plan in order to determine what a plan should achieve and what it will cover.

Both the Appellant and Respondent agree that the purposes of a FDP are threefold: it is to specify measures that will be carried out to protect forest resources; provide the public and resource agencies with a right to review and comment; and to guide

in the preparation and approval of lower level plans (e.g., SPs, LPs, cutting permits, and road permits). The Commission agrees.

The main points of dispute between the parties are in relation to a FDPs format and the breadth or scope of its contents. Regarding the former, the Commission notes that there are no statutory requirements prescribing the format of a FDP under the *Code* or the regulations. The regulatory structure deals with the substance or content of a plan rather than its form. The content requirements are spelled out in general terms by section 10 of the *Code,* and more specifically by the provisions in the OPR. Public review and comment requirements are set out in section 39 of the *Code* and sections 2-7 of the OPR. It is the responsibility of a district manager, in accordance with section 41(1) of the *Code*, to determine whether the proposed FDP meets the prescribed content requirements.

a. Does the FDP meet the requirements of the Code and the regulations?

Dealing first with the *Code* content requirements, section 10 states:

> 10. A forest development plan must
> (a) cover a period of at least 5 years unless otherwise prescribed;
> (b) include, *for the area under the plan*,
> (i) maps and schedules describing
> (A) the size, shape and location of cutblocks proposed for harvesting during the period referred to in paragraph (a) and the location of existing and proposed roads that will provide access to the cutblocks, and
> (B) the timing of proposed timber harvesting and related forest practices, including road construction, modification, maintenance and deactivation, and
> (ii) matters required by regulation;
> (c) specify
> (i) silvicultural systems and harvesting methods that will be carried out within the cutblocks, and
> (ii) measures that will be carried out to protect forest resources;
> (d) be consistent with any higher level plan in effect when the forest development plan is approved or given effect under Division 5 of this part;
> (e) be signed and sealed by a professional forester.

"the area under the plan"

A key phrase in this section is "the area under the plan". No definition of the phrase is provided in the *Code* yet understanding what it means is crucial to assessing the plan in this case - the phrase sets the parameters for the information required to be contained in the plan.

When MB submitted the proposed FDP on December 12, 1995, its letter of transmittal described the plan as the:

> Forest Development Plan covering Brooks Bay Operating Area for the West Coast - Klaskish (FLA 19244) and Timber Licences TO596, TO615, and … our Brooks Bay operating area (West Coast) of Port McNeill Division.

In its public advertisement dated November 29, 1995 (which had to be in a form acceptable to the District Manager pursuant to section 2 of the OPR), MB described the area of the plan as follows:

> This plan will cover the following geographic areas: (a) the northwest side of the Klaskish Basin (River), (b) Kinney Creek Klaskino Anchorage, and (c) north side of Restless Mountain.

The Appellant argues that these are the "areas to which" the plan applies.

Area under the plan is generally described in section 13 of the OPR. It states:

> 13. (1) A person must ensure that a forest development plan addresses *an area sufficient in size to include all areas affected by the timber harvesting and road construction or modification operations proposed under the plan.* [emphasis added]
>
> (2) If the district manager determines that the area under a proposed forest development plan does not meet the requirements of subsection (1), the district manager may, in a notice given to the person, specify the area that the plan must address.

MB submits that the meaning of "the area under the plan" differs depending on the particular FDP at issue and further, that it refers to different geographic areas for a particular FDP, depending upon the specific provision of the *Code* or the OPR at issue, and the actual or potential impact of the proposed forest management activity on the particular resource feature or value dealt with by the particular provision of the *Code* or the OPR.

It also states that the "area under the plan" is best determined by the licencee who has the technical and in the field expertise necessary to develop the plan. It is then for the district manager reviewing the plan to exercise his or her discretion under section 13(2) of the OPR to determine whether the area under the plan has been properly defined in the context of a particular statutory requirement and the plan under consideration.

The Respondent takes a similar position. It argues that the "area under the plan" is a fluid concept. It argues that FDPs are not designed to provide strategies for the overall forest management of all resources in the area, e.g., the Klaskish. On a plain reading of section 13(1), the Respondent says that "area under the plan" is not the *entire* area encompassed by the FDP but rather "an area sufficiently large in size to include all resources which may be affected by the proposed operations". Thus, it submits that the size of the area will necessarily depend on the nature of the resource and the nature and extent of the proposed activities. In some cases, the Respondent says that the nature of the resource may be such that it mandates

information for the entire area of the plan, while in other cases information for a small area in the vicinity of the proposed cutblock or road may be adequate.

The Respondent submits that, although FDPs are the highest level of operational plan, they are not designed to provide strategies for the overall forest management of all resources in the area. They are prepared by licencees to address harvesting issues on the ground by describing the location, timing and description of forest practices which will be used. The District Manager must, on the basis of his knowledge of the area and other information available to him, determine whether a plan provides sufficient information for the area to be affected by harvesting.

The Commission has some difficulty with the arguments made by the Respondent and MB. The Commission does not accept that "the area under the plan" is a fluid concept varying with each forest resource being considered. In our view, the plan and *the* area under the plan are one and the same thing. This makes sense from a planning perspective. A FDP is the highest level of operational plan. At this level, a plan should identify the larger area that is being considered for development (road building, harvesting, etc.) over a five year period.

The Commission agrees with MB that this larger area is initially identified or defined by the licencee. However, once defined, the area under the plan does not change. The resources in this larger area must be identified in accordance with the legislation. Then the most appropriate locations for harvesting and road building may be determined, in keeping with principles of good forest management and conservation of the resources in the area. Thus, the Commission rejects the arguments of MB and the Respondent and finds that the area under the plan is the entire area encompassed by the FDP.

In this case, MB has defined the area of the plan it its transmittal letter of December 12, 1995, and in the public notice of November 29, 1995. Section 13(1) states that the area has to be large enough to include *all* the areas *affected* by the proposed timber harvesting and road construction or modification operations. The area under MB's plan appears to meet this requirement - it includes all areas that will be affected by MB's proposed operations.

Having said that, the Respondent and MB are correct that the content requirements do not always apply to the entire area of the plan. One must look to the specific legislative requirements to see whether information is required for the entire area under the plan; for *an area* under the plan; or for just the cutblocks themselves. For example, section 10(b) of the OPR provides that for "the area under the plan", certain maps and schedules be provided and that matters required by regulation be addressed. On the other hand, section 10(c)(i) provides that the FDP specify silvicultural systems and harvesting methods that will be carried out *within the cutblocks*.

There is no question that the Brooks Bay plan contains information on cutblocks, roads, and the timing of timber harvesting and silvicultural systems within the cutblocks. The Appellant argues that the plan's failings are in relation to sections 10(b)(ii) and 10(c)(ii). It states that the plan does *not* include "for the area under

the plan, matters required by regulation", and does not specify "measures that will be carried out to protect forest resources". The Appellant and Intervenor further argue that the public review and comment requirements of the *Code* and OPR were not met.

Section 10(b)(ii) of the *Code* – matters required by regulation.

The relevant regulation in this case is the OPR. Section 15 of the OPR sets out the most detailed content requirements of a FDP. It states:

Content of forest development plans

15.(1) A person must ensure that a forest development plan includes maps, schedules and other information for *the area under the plan*, sufficient to permit adequate assessment by the district manager and resource agencies of

(a) the topography and natural features of the area under the plan, and
(b) the proposed timber harvesting and road construction or modification operations to be carried out under the plan.

(2) A person must ensure that a forest development plan identifies and describes, for *the area under the plan*, the *known* locations of

(a) cultural heritage resources,
(b) protected areas and deferred areas,
(c) wilderness areas,
(d) sensitive areas
(e) resource features other than
  (i) wildlife habitat features, and
  (ii) domestic water supply intakes outside a community watershed and any related water supply infrastructure,
(f) wildlife habitat areas,
(g) forest ecosystem networks,
(h) scenic areas
(i) community watersheds, and community water supply intakes and related water supply infrastructures,
(j) private property, and
(k)…

(3) A person must ensure that a forest development plan describes for *the area under the plan*

(a) the forest cover, and whether the harvest areas adjacent to the proposed cutblocks are greened-up,
(b) the location and nature of areas with unstable or potentially unstable terrain
(c) …
(d) the location of all forest areas identified as operable for timber harvesting, and
(e) …

(4) A person must ensure that the forest development plan describes the location of cutblocks and scheduling *for each area under the plan proposed for harvesting,* including a description of,

(a) if the area proposed to be harvested is subject to a silviculture prescription prepared or approved by the district manager, the proposed silvicultural system and harvesting method, and
(b) …

(5) (deals with roads)

(6) A person must ensure that a forest development plan, sets out, for *the area under the plan*, the results of any

(a) archaeological impact assessment that is required to be carried out under section 26,
(b) visual impact assessment that is required to be carried out under section 27,
(c) assessment of streams, wetlands and lakes that is required to be carried out under section 28,
(d) classification of lakes provided by the district manager,
(e) evaluation of forest health factors that is required to be carried out under section 29,
(f) terrain stability assessment that is required to be carried out under section 30, and
(g) watershed assessment that is required to be carried out under section 32.

(7) A person must ensure that a forest development plan describes, for *the area under the plan*,

(a) the actions required to achieve the known landscape level objectives, including any biological diversity objectives,
(b) the objectives respecting coarse woody debris and wildlife trees,
(c) the objectives for the management of identified wildlife, and
(d) the objectives for fuel management.

(8) If a forest development plan is for a major licence or woodlot licence, the forest development plan must contain the signature of the holder or a person who has authority to sign the plan on behalf of the holder. [emphasis added]

It is noted that subsection 15(2)(e) refers to “resource features”. Section 1(1) of the OPR refers the reader to the definition of “resource feature” found in section 51(1) of the *Code* which includes the following:

(a) a cultural heritage resource;
(b) a recreation feature;
(c) a range development that is a structure or excavation;
(d) any other feature designated in the regulations.

The Appellant argues generally that the Brooks Bay plan is deficient in its content such that it should not have been approved. Specific examples of the content deficiencies are in relation to stream identification and classification, wildlife,

cultural heritage resources, operability information, objectives for wildlife trees, unstable terrain and watershed information.

Stream Identification and Classification

Stream identification and classification received considerable attention at the hearing. As noted above, section 15(6)(c) of the OPR provides:

> **15**. (6) A person must ensure that a forest development plan sets out, *for the area under the plan*, the results of any
>
> (c) assessment of streams, wetlands, and lakes that is required to be carried out under section 28. [emphasis added]

Section 28 of the OPR provides:

> **28**. …a person proposing to carry out timber harvesting or road construction or modification operations in *an area* under a forest development plan, must in accordance with Part 10, determine the riparian class for each stream, wetland and lake *in the area.* [emphasis added]

Part 10 of the OPR provides for the riparian classes of streams.

The Appellant submits that the stream classifications found in the draft SPs provided as part of the plan are not adequate at the FDP level. It refers to the evidence of Ms. Lynne Broekhuizen, an expert on stream classification, who was called on behalf of the Respondent. Ms. Broekhuizen stated that, in order to determine the appropriate prescription for a cutblock, it is necessary to know what is downstream. Without information about what is downstream, the Appellant claims that the public and agencies are deprived of information they need to assess the cutblocks and roads proposed in the plan.

The Appellant provides an example of where important downstream information appears to have been omitted. It refers to Exhibit 13 (a photocopy of a 1;20,000 overlay map with a 1:20,000 accompanying map), which illustrates a fish-bearing stream tributary to the Klaskish River. The upper reach of the stream, which is not fish-bearing, is immediately adjacent to cutblock 2212. This can only be shown by placing the overlay map on the 1:20,000 map. The SP map shows the non-fish-bearing reach, but stops at the point where the fish-bearing reach would begin.

The Intervenor's concerns regarding stream classification relate to the method used to determine the presence of fish. It submits that the *Code* provides for two separate methods for determining the presence or absence of fish. A licencee may conduct a fish inventory which the Intervenor defines as a field survey conducted by qualified personnel who, through minnow trapping or electro-shocking, examine each stream to determine if fish are present. The Intervenor submits that no qualified personnel ever did any testing to determine the presence or absence of fish in any of the streams in any of the cutblocks.

The Intervenor says that the second method applies where, as in this case, the licencee has done no fish inventory. That method involves the application of the default provisions found in the definition of "fish stream" in section 1 of the OPR and involves classifying streams which have not been tested for fish based on, *inter alia*, their gradient and bank width.

The Intervenor argues that there is no third method for determining the presence or absence of fish. It submits that the *Code* does not provide for a stream assessment performed by engineering personnel who are not qualified to determine fish presence or absence.

The Intervenor refers to the evidence of Mr. Horter, staff lawyer with the Sierra Legal Defence Fund, that the stream running right through the middle of cutblock 3104 is, by application of the default provisions, a fish bearing stream that should properly be classified as an S3, because it has an average gradient of 11%, runs directly into the Pacific Ocean and is greater than 3 metres in width. It is not classified or identified on the 1:20,000 maps that form part of the FDP, and it is classified as an S6 stream in the SP and LP.

Regarding the other cutblocks, the Intervenor made the following points. In respect to cutblock 2209, the Intervenor states that the draft LP and draft SP for cutblock 2212 contain conflicting stream classifications. No one map attached to either the draft SP (Dec 1995), the revised draft SP (April 1996) or the revised draft LP (April 1996) identifies all the streams in and around the cutblock. The revised SP map classifies all streams as S6, while the revised draft LP has a table that shows four S5 streams. The Intervenor also points out that if the draft SP and LP form part of the approved FDP, yet have stream information that differs from the approved LP and SP, the provisions of the *Code* requiring that the SP and LP be consistent with the FDP are immediately breached upon approval of the SP and LP.

In regard to cutblock 2211, the Intervenor submits that the stream information in the revised SP fails to include a stream identified on the draft SP. The revised LP shows only three streams but four on the attached map. The table of the revised LP does not match the table of the draft LP which lists a total of five streams. In conclusion, the Intervenor says that the documents are contradictory, inconsistent and internally inconsistent. It submits that the information cannot be said to substantially comply with the requirements for an FDP.

The Respondent submits that section 15(6)(c) of the OPR does not require information regarding the methodology of the assessment. Part 10 of the OPR outlines the method of classifying streams. Both "streams" and "fish streams" are defined terms. Streams, or portions of streams located in community watersheds, and fish streams are classified in the S1 to S4 range depending on the stream width. Streams, or portions of streams, located outside community watersheds that are not fish streams, are classified S5 or S6, again depending on the stream width (OPR sections 72(1) and (2)). The Respondent submits that all the streams classified around the cutblocks in the FDP were either S5 or S6 non fish-bearing streams.

The Respondent argues further that section 28 of the OPR only requires stream assessments "in *an* area under a forest development plan". The Respondent submits that a plain reading of section 28 indicates that "area" does not refer to the entire geographic area covered by the plan, but rather is limited in scope to the specific area affected by proposed harvesting. It submits that it is not conceivable that an area under the plan would encompass the entire area leading to the point of fish-bearing water since virtually every stream in the Province eventually leads to fish bearing water. The Respondent says that it is not necessary to have information on ultimate destination in order to classify a stream.

In this case, the Respondent says that stream assessment information was provided for each stream located within and adjacent to the proposed cutblocks in the 1:5,000 scale SP and LP maps. Additional information is found in the 1:20,000 overlay which classified streams outside the areas to be affected by the proposed harvesting. The 1:20,000 overlay confirmed that no other fish resources would be impacted downstream of the cutblocks. Although the overlay used the old stream classification under the Fisheries/Forestry Guidelines, it maintains that all of the streams within a substantial distance of the cutblocks were Class "C", non fish-bearing streams.

The Respondent says that the inventory was based on field surveys. The Respondent argues that the District Manager accepted the stream classifications based on the available inventory information, the landscape (steep slopes below and above the cutblocks and the absence of lakes and ponds) and his knowledge of the area which included site visits. He was satisfied that there were no fish present in any of the identified streams.

MB points out that there is nothing in the *Code* that requires a FDP to contain anything more than the results of a stream assessment and, in particular, the stream classification. MB disagrees with the Intervenor's submission that the FDP did not contain sufficient information relating to stream classification to permit a member of the public to determine whether streams within and adjacent to the cutblocks have been correctly classified. MB argues that, as it had undertaken stream assessments acceptable to the District Manager, the default stream classification criteria set out in section 1(1) of the OPR did not apply.

Mr. Foster, a divisional engineer with MB, Port McNeill division, testified that MB did undertake stream assessments. He indicated that stream assessments had been done by MB's Land Use Planning Advisory Team (LUPAT) in 1980. This was a group of scientists based in Nanaimo, consisting of wildlife and fisheries biologists, soils experts and hydrologists. MB also undertook building a comprehensive atlas of maps to be used as overlays in 1987 and 1988, following the publication of the Fisheries/Forestry guidelines. MB incorporated LUPAT information and local knowledge and provided these maps to the agencies. These were the maps referenced in the December 1995 transmittal letter. Mr. Foster testified that, while these maps might still not tell them the details of valley bottoms, in this case they knew the cutblocks were up one side of a hill. They agreed that there were no fish in the streams and that is why MB did not retain a consultant to do electro-shocking, which it has done in other cases. Mr. Foster also testified that they had

additional information from site surveys done while reengineering the cutblocks in 1995. This information was carried forward on the LP maps.

The Commission finds that, as the draft LPs are not part of the draft or approved FDP, part of the Intervenor's submissions regarding discrepancies between the draft LPs and approved LPs does not apply. The revised draft SPs and approved SPs were sufficiently similar that this problem does not occur. Further, in regard to the Appellant's submissions that there is inadequate information about streams downstream from the cutblocks, this was, in part, based on its assumption that that the 1:20,000 contour overlays and stream classification maps were not part of the FDP. It has been clarified that this information was, in fact, part of the FDP.

Stream assessments were provided for each stream located within and adjacent to the proposed cutblocks in the 1:5,000 scale SPs and LP maps. Additional information was provided in the 1:20,000 overlay which classified streams outside the area to be affected by the proposed harvesting. The overlay confirmed that no other fish resources would be impacted downstream of the cutblocks. Although this was based on the classification system under the Fisheries/Forestry Guidelines, all the streams within a substantial distance of the cutblocks were non fish-bearing streams.

According to the definition of "fish stream" in section 1 of the OPR, the default provisions only apply if there has not been "a fish inventory acceptable to the district manager." Fish inventory is not defined in the *Code.* In this case, the assessments were based on field surveys. The District Manager testified that the fish inventories done by MB were acceptable to him.

The Commission agrees with the Respondent that the words in section 28 of the OPR, "an area", narrows the scope of the classification from the entire area under the plan to the areas in and around proposed timber harvesting and road construction or modification. The Commission is satisfied that, while some of the information in the plan was based on the old classification system and minnow trapping and electro-shocking were not done, and while the information was difficult to piece together, the documents included in the FDP meet, or substantially meet, the content requirements of the OPR in relation to stream classification.

Wildlife

The Appellant also claims that the Brooks Bay plan does not address wildlife for the area under the plan. Specific concerns were raised in relation to the lack of information on marbled murrelet, roosevelt elk, and trumpeter swans. The Appellant and the Intervenor submit that there was no mention of any of these species even though they are found in the area under the plan and their habitats should be preserved.

Will Horter, staff lawyer with Sierra Legal Defence Fund, testified that the only information in the plan on wildlife was located in the sections on "biodiversity" found in the draft SPs, and that information was identical or "boilerplate" for each cutblock.

The Respondent and MB argue that there is no requirement for murrelet, elk or swan habitat to be addressed under the provisions of the OPR. The relevant wildlife sections in the OPR are 15(2)(f) and 15(7). Section 15(2)(f) provides that a person must ensure that a FDP identifies and describes for the area under the plan the known locations of:

> (e) wildlife habitat areas

The word "known" is defined in section 1(3) of the OPR as follows:

> A feature, objective or other thing referred to in this regulation as a "known" feature, objective or thing means a feature, objective or thing that is
>
> (a) contained in a higher level plan, or
>
> (b) otherwise made available by the government at least 4 months before the operational plan is submitted.

"Wildlife habitat area" is also defined in section 1(1) of the OPR. It is:

> a mapped area of land that the Deputy Minister of Environment, Lands and Parks, or a person authorized by that deputy minister, and the chief forester, have determined is necessary to meet the habitat requirements of one or more species of *identified wildlife*.

"Identified wildlife" is defined as:

> … those species at risk that the Deputy Minister of Environment, Lands and Parks or a person authorized by that deputy minister and the chief forester, agree will be managed through a higher level plan, wildlife habitat area or general wildlife measure.

Under cross-examination, Will Horter agreed that neither the roosevelt elk nor the trumpeter swans have been designated as "identified wildlife". He also testified that, although the marbled murrelet have been placed in draft documents indicating that they will be designated as "identified wildlife", at the time the Brooks Bay plan was submitted, this had not been done. In fact, at the time the plan was approved Mr. Horter stated that no wildlife had received this designation. Based on this evidence, the Commission finds there is no statutory requirement for these species to be dealt with under the plan.

Although the information was not required, the District Manager testified that he made additional inquiries regarding the marbled murrelet as a result of concerns raised by the Sierra Club. He stated that he was aware that marbled murrelet rely on old growth coastal watersheds like the Klaskish for habitat, and that Ms. Vicki Husband, of the Sierra Club, had raised concerns about the preservation of murrelet habitat in the Klaskish in the meeting of April 18, 1996. During that meeting, Ms. Husband informed the District Manager of a 1991 federal report from the Canadian Wildlife Service on marbled murrelet.

The District Manager obtained a copy of the report which gave indications of approximate numbers but it failed to identify site specific nesting sites. He also obtained interim copies of mapping produced for the Klaskish Operational Planning Committee which provided information identifying predominantly spruce-leading stands as high priority marbled murrelet habitat. He compared that mapping with the three cutblocks in the vicinity of the Klaskish and concluded that they were not touching potential habitat area.

The Intervenor and Appellant argued that this additional information obtained by the District Manager should have been included in the plan – not simply kept "in his head".

Although it may have been helpful to have such information in the plan, as indicated above, the Commission finds that there was no requirement to do so.

The Commission also notes that, even if these species had been "identified wildlife" and their habitat areas mapped, the mapping had to be "known" - information about wildlife habitat areas would have to be found in a higher level plan, or otherwise *made available* by the government at least 4 months *before* the operational plan was *submitted*. Mr. Horter testified that, at the time the plan was approved, there were no higher level plans declared for the area covered by the Brooks Bay plan. Further, the evidence indicates that the meeting with Ms. Husband (April 1996) and any information obtained by the District Manager was collected significantly *after* the plan was submitted.

The other provision in the OPR which refers to wildlife is section 15(7)(c) which provides that a person must ensure that a FDP describes, *for the area under the plan,*

> (c) the objectives for the management of identified wildlife.

As noted above, the marbled murrelet and the other species of concern to the Appellant and Intervenor were not "identified wildlife". Therefore, this section has not been contravened.

Cultural Heritage Resources

The Appellant submits that the plan makes no reference to cultural heritage resources; consequently, one cannot ascertain from the plan whether there are no heritage resources in the area, or whether there has been no assessment of this resource. Both the Appellant and the Intervenor argue that the plan is seriously deficient in this regard and that this lack of information prevents the District Manager and the public from properly assessing and commenting on the plan.

"Cultural heritage resource" is defined in section 1 of the *Forest Act* as:

> … an object, a site or the location of a traditional societal practice that is of historical, cultural or archaeological significance to British Columbia, a community or an aboriginal people.

Section 15(2)(a) of the OPR states that a FDP must identify and describe *for the area under the plan* the *known* locations of:

> (a) cultural heritage resources

As above, the word "known" has a specific meaning in this regulation. It means "contained in a higher level plan or otherwise made available by the government at least 4 months before the operational plan is submitted". The Respondent and MB submits that there are no cultural heritage resources identified in the plan because there were no "known" resources identified in the area.

As there was no higher level plan for the Klaskish at the time this plan was approved, and there is no evidence that there was information on cultural heritage resources in the area made available by the government at least 4 months before the plan was submitted, the Commission is satisfied that this requirement has not been contravened. While it would have been helpful if the plan indicated that no such resources have been identified, failure to do so does not render the plan deficient. The OPR requires a plan to "identify and describe the known locations of" – there is no requirement to particularise investigations or identify what is not there. The Respondent submitted that if there is nothing in the plan, one is entitled to assume that it does not exist in the area under the plan. If there is evidence to the contrary, it should be brought to the attention of the District Manager or the licensee and included in the plan. The Commission agrees.

There was also some discussion as to whether the District Manager should have required MB to perform an archaeological impact assessment. Such assessments can be ordered at the discretion of a district manager under section 26(1) of the OPR which states:

> … a person proposing to carry out timber harvesting or road construction or modification operations *in an area* under a forest development plan must carry out an archaeological impact assessment that meets the requirements of the minister responsible for the *Heritage Conservation Act* if the district manager is satisfied that the assessment is necessary to adequately manage and conserve archaeological sites in the area. [emphasis added]

The District Manager testified that he did not require MB to carry out an archaeological impact assessment under section 26 of the OPR because his district had carried out an archaeological overview assessment ("AOA") in 1995, which classified all areas in the Port McNeill Forest District as having either high, medium, or low probability for cultural heritage features. He testified that he reviewed this AOA and found that all five of the proposed cutblocks were in areas classified as having a low probability of cultural heritage features.

He noted further that MB was addressing First Nations issues though the Klaskish/East Creek Planning Committee and that, during aboriginal consultations with the Quatsino Indian Band, no archaeological or cultural resource issues for the five cutblocks were disclosed. Further, the draft SPs indicated that no cultural modified trees were found within the proposed harvest area.

Given the information available to the District Manager, the Commission finds that he did not err in failing to require an archaeological impact assessment for the area in and around the proposed operations pursuant to section 26 of the OPR.

Operability Information

Section15(3)(d) of the OPR requires that a FDP describe "the location of all forest areas identified as operable for timber harvesting" for the area under the plan.

"Operability" is one of the few terms not defined in the legislation. According to the District Manager, it is a concept whereby forest areas are classified as to their economic and physical operability. The District Manager noted that section 15(3)(d) of the OPR does not require "operability lines" or mapping of operable areas - just a description of the location of operable areas. In his view, the purpose of this section is to ensure that proposed harvesting reflects a proper balance, proper continuity, and a sustainable operation - a licencee should not be able to cut all the best timber stands and leave the poor value stands, which may not be operable on their own.

To assess whether the Brooks Bay FDP plan contained the appropriate operability information, the District Manager checked the operability maps submitted by MB in 1993 (updated in 1996), and the forest cover maps which identified, among other things, areas that are "inaccessible". The maps showed that the three conventional cutblocks were located adjacent to an existing road which, the District Manager says indicated that the cutblocks were operable to current harvesting systems. The other two cutblocks were proposed for helicopter logging, an alternate system.

The District Manager found that MB's proposal to harvest three cutblocks by standard methods (cable logging) and two cutblocks by helicopter reached an appropriate balance for this particular area – they were logging the "profile" of the area. While acknowledging that the plan did not contain *all* the operability information required by section 15(3) of the OPR, he concluded that the plan "substantially met" the requirements of the section. He found that the lack of operability information for the area *outside* the proposed cutblocks was not critical during this period of substantial compliance and that "operability, whether it was provided or not, would have little impact on my decision to approve or not approve in this situation." He testified that the lack of information for the area outside the cutblocks would not impair biodiversity options, as this was the first proposed harvesting in the watershed, and it affected an extremely minor percentage of the total area. The District Manager also added that no overriding concerns were raised by the public on this issue.

The Appellant claims the plan provides inadequate operability information. Will Horter testified that this is not a minor defect. He submits that operability information is important because MB can apply to amend the plan to add blocks later. He testified that it is important to be able to determine from a plan, where proposed operations are for the five year period, and where a licensee is likely to propose operations in the future.

The Commission has reviewed the 1:20,000 forest cover maps and other maps included in the plan. These maps show the location of existing roads in the area under the plan and, as noted by the District Manager, the inaccessible areas. The Commission accepts that a map can fulfil the requirement in section 15(3)(d) of the OPR to "describe". The question for us to decide is whether the "description" contained in these maps is sufficient to substantially meet the OPR requirements. In this case, we find that it is.

In spite of the lack of information regarding operable areas beyond the cutblocks themselves, the Commission finds that these omissions are *relatively* minor in the circumstances. The inaccessible areas have been identified, the roads to be used for harvesting already exist, and MB is only proposing a minor amount of harvest. There is some information contained in the plan, albeit minimal, which allowed the District Manager, and the public, to assess whether MB's proposed operations are in areas operable for timber harvesting. Assuming that one of the objectives of this section is to ensure that the proposed harvesting is in an operable area of the forest, then the contents of the plan go some distance to substantially meeting that objective.

Other examples of alleged deficiencies in the plan that were raised at the hearing are in relation to unstable terrain and watershed information. These examples were provided by the Intervenor. The Respondent and MB argue that these matters should not be addressed by the Commission as they were not specifically raised by the Appellant. Although not specifically raised by the Appellant, the Commission finds they are encapsulated under the Appellant's general claim that the plan does not comply with the regulatory requirements. The Commission will therefore consider them in this case.

Unstable terrain

The Intervenor contends that the FDP fails to provide adequate information regarding terrain stability for the area under the plan. Will Horter testified that there was some information on terrain stability as a result of an assessment done for the cutblocks and areas just outside the cutblocks, but that the assessment didn't cover the surrounding area. The District Manager agreed that the plan did not provide information on terrain stability for "the entire area" – just the cutblocks and areas affected by the cutblocks - but that he considered the information to be sufficient to meet the legislative requirements.

There are various sections of the OPR dealing with terrain stability. First, section 15(3)(b) requires a FDP to describe "for the area under the plan … the location and nature of areas with unstable or potentially unstable terrain". "Unstable or potentially unstable terrain" is defined in section 1(1) of the OPR as "an area where there is a moderate to high likelihood of landslides."

We note that section 15(3)(b) requires information to be provided for the "area under the plan." As stated above, the area under the plan is not simply the cutblocks and affected areas; it is the entire area identified by MB as the area of the plan. Showing the locations of unstable terrain in this larger area is important,

particularly when it comes to assessing or evaluating the location of the proposed cutblocks.

As the Brooks Bay plan does not have information on terrain stability outside of the proposed cutblocks, it may be in contravention of this section. However, without evidence that there are areas outside of the cutblocks which meet the definition of "unstable or potentially unstable terrain," the Commission is unable to make a finding on this. Suffice it to say that, to the extent that there are such areas that have not been identified, the plan is deficient.

The other sections dealing with terrain stability are sections 30(1) and 15(6)(f) of the OPR. Section 30(1) only requires a person proposing to carry out harvesting operations "in an area" to conduct a terrain stability field assessment to the satisfaction of the district manager. This has been done with respect to the five proposed cutblocks. Section 15(6)(f) requires that the results of any terrain stability assessment be included in the plan. This has also been done. Thus, the Commission finds that these two requirements have been met.

Watershed information

The Intervenor contends that the FDP did not contain watershed level information which MELP had wanted. The Respondent and MB submit that this information is not required pursuant to section 32 of the OPR. According to section 32(1), a watershed assessment must be performed by

> … a person proposing to carry out timber harvesting or road construction or modification operations under a FDP in the following areas …
>
> (a) a community watershed;
>
> (b) a watershed that has significant downstream fisheries or watershed sensitivity as determined by the district manager and a designated environment officer; or
>
> (c) a watershed for which the district manager determines that an assessment is necessary.

The District Manager concluded that section 32(a) and (b) did not apply because the Klaskish is not a designated community watershed or watershed with significant values as determined by the district manager and an environment official. He also concluded that an assessment was not required under section 32(c) because it was not one of the watersheds identified as a priority in the joint consultation process with MELP officials. He further determined after consulting a hydrologist and Ministry staff that a watershed assessment, in an unlogged watershed, with a development plan proposing harvesting in less than 1% of the watershed, would have no value.

Mr. Mac Willing of MELP confirmed that an assessment wasn't required. He testified that, while MELP would have liked a watershed level plan or a watershed study completed prior to the harvesting of timber in the area, undertaking a

comprehensive watershed management plan wasn't required under the *Code* in this case.

The Commission finds that according to the provisions of section 32 of the OPR, a watershed assessment was not required in the FDP.

The individual subjects addressed above are said to be specific examples of deficiencies in the plan. The Appellant maintains that the list is not exhaustive - there are many other resources or values that were not addressed in the plan. It states, for instance, there is no mention of wilderness areas, sensitive areas, resource features, forest ecosystem networks, or scenic areas, which are all listed under section 15(2) of the OPR.

The Respondent and MB argue that the District Manager conducted an exhaustive analysis of the FDP, undertaking his own investigations when appropriate. They submit that the District Manager concluded that the FDP met all of the content requirements under the regulations except in relation to operability information. With respect to operability information, he concluded that the information provided substantially met the requirements. Both parties argue that, in the event that the Commission accedes to any of the arguments advanced by the Appellant or the Intervenor, it should find for the Respondent on the basis of "substantial compliance".

In regards to section 15(2), the Commission notes that it only requires MB to identify and describe the "known" locations of the various items. If none exist, the legislation does not require the person to go the further step and say so – even though this would be the preferable route for the purposes of review. Although there may be sections of the OPR that were not met because the information only related to cutblocks, not "the area under the plan", this evidence was not specifically before us.

Section 10(c)(ii) – measures that will be carried out to protect forest resources

The other provision of the *Code*, which the Appellant argues was not met, is section 10(c)(ii), which requires a FDP to specify "measures that will be carried out to protect forest resources." The Appellant argues that no measures are specified in the Brooks Bay FDP to protect the forest resources *outside* the specific cutblocks, i.e., for the "area under the plan". This is because, it submits, the plan is essentially comprised of a collection of SPs and logging plans.

As noted earlier in this decision, "forest resources" is defined in section 1(1) of the *Code* as "resources and values associated with forests and range including, without limitation, timber, water, wildlife, fisheries, recreation, botanical forest products, forage and biological diversity."

The Appellant appears to take the position that "forest resources" in the context of section 10(c)(ii) is something more than those resources identified and described in accordance with the provisions in the OPR. In its submissions, the Appellant goes

through each individual resource or value set out in the definition (e.g., timber, water, wildlife, fisheries etc.) and says, because there is no mention of these in the plan, it is impossible to know whether there are any of these resources in the area, whether the licensee proposes no measures to protect forest resources, or whether no measures are required.

The Intervenor's witness, Mr. Horter, seemed to take the same view. He asserted that the District Manager should turn his mind beyond whether the minimal requirements have been met and look at whether the forest values in the area are managed and protected – e.g., the marbled murrelet.

As we have stated previously, the OPR provides a detailed account of the specific resources or values that are to be identified and described in a plan. There is no express requirement for the licensee to go beyond those specified resources and values when preparing its plan. In fact, section 17 of the *Code* sets out a guide for the preparation of a plan and only identifies those things required by regulation as matters to be included in the plan. Section 17 states:

> General planning requirements
>
> 17 (1) Before the holder of an agreement under the Forest Act or Range Act prepares an operational plan or amendment for submission to the district manager, the holder must carry out the assessments and collect and analyze the data *required by the regulations* to formulate operational plans, and make the assessments, data and analyses available to the district manager.
>
> (2) Without limiting subsection (1*), if* required by the regulations *and in accordance with the regulations*, the holder must do the following:
>
> (a) identify and classify the following:
> (i) streams, wetlands and lakes;
> (ii) wildlife habitat areas;
> (iii) scenic areas;
> (iv) recreation features;
> (v) areas that are required by the regulations to be identified and classified;
> (b) assess watersheds *that meet the prescribed requirements* to determine the impact of proposed timber harvesting and related forest practices;
> (c) assess cultural heritage resources.
>
> (3) Without limiting subsection (1), *if* required by the *regulations and in accordance with the regulations*, the holder must collect and analyze data respecting the following:
>
> (a) site and soil conditions;
> (b) terrain, terrain stability and hazards associated with instability;
> (c) forest health including pests and other forest health hazards;
> (d) any prescribed matters.
>
> [emphasis added]

The Commission finds that the forest resources which are to be covered in the plan are those set out in the various sections of the OPR. Once the resources have been identified, described or assessed in accordance with the OPR, section 10(c)(ii) requires the licencee to show how *those* resources will be protected – i.e., specify the "measures" that will be employed to protect them. It is only after both steps are taken that the District Manager is then in a position to determine whether the plan will "adequately manage and conserve the forest resources of the area to which it applies" in accordance with section 41(1) of the *Code*. We note that this interpretation is consistent with the *Forest Development Plan Guidebook* developed by MOF and made publicly available after MB submitted its draft FDP in December 1995.

The Commission finds that the Brooks Bay FPD specifies the measures that will be carried out to protect resources identified within the cutblocks, roads and adjacent areas. However, as the plan does not identify resources or values outside of those areas, no measures have obviously been specified.

To the extent that there are forest resources outside of the areas affected by the proposed operations which were not identified and no protective measure specified, the plan is deficient. However, without specific evidence of the plans failings in this regard, the Commission is not in a position to make decision on specific items.

Section 39 - public review and comment

The Appellant and Intervenor submit that the public review and comment requirements of the *Code* and OPR were not met.

Section 39 of the *Code* provides that the public has a right to review proposed FDPs and to comment on them. Section 39(1) of the *Code* states:

> Subject to sections 42 [emergency] and 43 [minor amendments], before a holder of a major licence or woodlot licence submits an operational plan or amendment for approval, the holder must, if required by the regulations and in accordance with the regulations, make the plan or amendment available for review and comment.

Sections 2-7 of the OPR set out various requirements for review and comment. They can be summarized as follows:

- publish notice in Gazette and newspaper
- submit the plan to the District Manager in the form that will be made available for review and comment
- provide adequate opportunity for review and comment
- review all comments received during the period for public comments and make any revisions to the proposed plan that the person required to publish the notice considers appropriate
- submit copies of comment and a summary of changes made to the proposed plan

- the District Manager may not approve the plan until the review and comment requirements have been met

In this case, the draft FDP was advertised on November 29, 1995 in the North Island Gazette, and on November 30, 1995 in the B.C. Gazette. The plan was made available for public review and comment for a period in excess of 60 days.

The Appellant and the Intervenor submit that these requirements were not met on two main grounds:

(1) the information provided in the plan is not organized and presented in a way that can be understood by the public. The Appellant points out that there is no explanatory text or table of contents and no explanation of where information can be found in the plan.

(2) the public was not given the opportunity to review and comment on all the contents of the plan.

On the question of organization, MB submits that there are no express statutory requirements prescribing the format of a FDP, and that the Brooks Bay plan was organized and presented in a manner which was understood by the public. It submits that the Appellant has not adduced any evidence to suggest that the public had difficulty understanding or assessing this plan. Both MB and the Respondent say that, apart from the submissions of the Intervenor, there were no comments concerning the format or substance of the plan from the 19 members of the public who attended the public meetings. Reference was also made to the written comment by Mr. Mac Willing of MELP who stated that "in general, this FDP is well presented with the material arranged logically by blocks for convenient review".

The Respondent also contends that there is no room for a district manager to refuse to approve a FDP which meets *Code* requirements on the basis that it is poorly organized or presented unless it precludes meaningful public review and comment, which is not the case here. The Respondent says there can be cases where a plan is not understandable—but that this isn't one of them.

The Commission agrees with the Appellant that the plan is poorly presented and contains no summaries or overviews that would assist the reader to understand the contents of the plan. Consequently, the Commission appreciates that it is a very difficult plan to review and to provide thoughtful input on – which are the very purposes of the section.

However, there are no format requirements under the legislation. Guidance has been provided in the relevant guidebooks, but these were not available at the time the Brooks Bay plan was being prepared. While there is no question that the plan could have been better organized and presented, and, in fact, later plans have been prepared in accordance with the suggested format in the guidebooks, the Commission finds that the poor presentation does not contravene the review and comment provisions.

On the question of sufficiency of the draft plan, the Appellant contends that the plan itself must be available for public review and comment, rather than a rough draft. It argues that the approved FDP consists largely of draft SPs signed by the licencee on or after April 24, 1996, which were not available for review and comment. The Appellant says that if it is acceptable that a collection of SPs can constitute a FDP, then the approved SPs should be recognizable as the same ones submitted for review and comment. In this case, the Appellant says they were not.

In addition to the changes to the SPs, the Appellant and Intervenor both argue that there were other changes to the plan that did not arise from the public review and comment and should also have been subject to this process.

The Respondent submits that licencees can submit information in any format which they chose and that, in fact, they are encouraged to submit information in the form of "draft" SPs because these provide more detailed site-specific information. The Respondent also submits that the approved FDP was substantially the same plan that was made available for public review and comment with the exception of minor amendments which arose out of that process and clarification of discrepancies concerning stream classification. The Respondent submits that the OPR expressly contemplates that revisions will be made to draft FDPs as a result of input received during the public review and comment process.

Section 4(5) provides:

> A person required to publish a notice under section 2 must review all comments received during the period for public comment set out in the notice and make any revisions to the proposed plan or amendment that the person considers appropriate.

Section 43(1) of the *Code* is also relevant. It states:

> … a district manager … may approve or give effect to an amendment to an operational plan where the amendment has not been made available for review and comment if the district manager or person authorized determines that the amendment
>
> (a) otherwise meets the requirements of this Act, the regulations and the standards,
>
> (b) will adequately provide for managing and conserving the forest resources of British Columbia for the area to which it applies, and
>
> (c) does not affect the public in a material way.

MB and the Respondent submit that the amendments were minor in nature and responsive to comments. The first change was the minor amendment to cutblock boundaries to reflect the recommendations made in the windthrow assessment. The second change involved the deletion of a minor portion of the corner of Block 3104 because of the overlap with a revised Low Intensity Area boundary. These changes resulted in revisions to the SPs and 1:20,000 forest cover maps. The

District Manager testified that the net changes were an additional 3.8 hectares out of, in excess of 140 hectares, and that they did not substantially change the cutblocks.

The Respondent submits that the District Manager exercised his discretion and did not require MB to make these amendments available for a further period of public review and comment because: (a) the amendments were responsive to his concern regarding windthrow and the public concern regarding windthrow; (b) the changes to the boundaries were minor in nature and (c) the public would not be adversely affected by the changes. The Respondent notes that there were also minor changes resulting from the new stream classifications carried out in the spring of 1996.

The Respondent refers to *Fountain* v. *Parsons*, (July 8, 1992 (B.C.S.C.)) (unreported)(affirmed April 21, 1994 (C.A.) (unreported)), in which the British Columbia Supreme Court found a new public review and comment period was not necessary for revisions to pre-harvest silviculture prescriptions (PHSPs) which do not significantly change the draft documents. This case involved changes to PHSPs under section 3(1) of the Silviculture Regulation in force at the time.

> While I agree that s. 3(1) of the Silviculture Regulation requires a licencee to advertise a new PHSP or a significant amendment of a PHSP where that PHSP was approved on or after April 1, 1989, I agree ... that the Regulation does not require the re-advertising of the PHSP which undergoes revisions or amendments specifically as a result of the public review and inter-agency referral process, where those amendments are made prior to the approval of the PHSP and where the amendments are not so substantial as to convert the PHSP, as originally proposed, into a new PHSP. In my view, s. 3(1) of the Regulation actually contemplates that some changes will be suggested and adopted during the approval process itself. Surely, the very nature of the public review process is such that the District Manager will receive suggestions, will consider them and then act on them. If each such amendment required readvertising, the process would be an unending one.

The Commission finds that the review and comment provisions of the *Code* and OPR were met. Like the Silviculture regulation referred to by the Court in the *Fountain* case, the OPR clearly contemplates that some changes will be made to the *draft* FDP submitted for public comment. Otherwise, as stated by the Court, it would be an unending process. Further, section 43(1) of the *Code* gives discretion to a district manager to approve an amendment to an operational plan (or presumably a draft of the plan) where it meets the legislative requirements, will adequately manage and conserve the forest, and it does not materially affect the public.

The Commission finds that the amendments to the cutblock boundaries to reflect the recommendations made in the windthrow assessment, and the deletion of a minor portion of the corner of Block 3104 because of the overlap with a revised LIA boundary, were minor in nature and responsive to public comments. MB's revisions to the draft SPs and SP maps and logging plan maps regarding the identification and classification of streams can not be said to have converted the FDP, as

originally proposed, into a new plan requiring additional public review. As noted above, the changes in stream classification still resulted in them being classified as S5 or S6, non fish-bearing streams.

Finally, we note that the Appellant also argued that, prior to the *Code* being proclaimed, the public had the right to review and comment on PHSPs which contained a great deal of detail at the cutblock level and that the public's right to review and comment on FDPs was to be a shift toward more public input at the overview level. The Appellant says that it is this overview that is missing from the FDP. It submits that, while there is detailed information provided for each cutblock in the plan, there is almost no information for the surrounding forest. It also maintains that, while the District Manager or individuals involved on behalf of the licensee may have had a plan for the forest, it was not set out in the plan thus the public could not see and evaluate that plan.

The Commission agrees that the review and comments provision in the *Code* and OPR constituted a shift toward more input at the planning stage. However, the Appellant's other comments go to the adequacy of the contents of the plan which have already been addressed in this decision.

b. In accordance with section 41(1) of the Code, does the FDP adequately manage and conserve the forest resources of the area to which it applies?

As stated earlier in this decision, under section 41(1) a district manager must approve a FDP if two key requirements are met:

> (a) the plan … was prepared and submitted in accordance with this Act, the regulations and the standards, *and*
>
> (b) the district manager is satisfied that the plan … will adequately manage and conserve the forest resources of the area to which it applies. [emphasis added]

Based on the evidence before us, as discussed above, the Commission has found that the plan was prepared and submitted in accordance with the *Code* and the regulations.

Regarding 41(1)(b), the District Manager testified that he was satisfied that the plan would adequately manage and conserve the forest resources of the area. To determine whether the plan "adequately managed and conserved", the District Manager said that he took some guidance from the preamble of the *Code*, as these words are not otherwise defined in the legislation. He testified that the preamble sets out the various goals of the *Code* which require balancing – for example, present and future values, and social, economic and environmental values. Based on the contents of the plan and his own knowledge of the area, the District Manager found that the plan struck the appropriate balance.

The Commission agrees that the preamble is helpful in ascertaining the intended meaning of "adequately manage and conserve". The preamble cites the desire of British Columbians for sustainable use of the forests that are held in trust for future generations. "Sustainable use" is said to include

(a) managing forests to meet present needs without compromising the needs of future generations,

(b) providing stewardship of forests based on an ethic of respect for the land,

(c) balancing productive, spiritual, ecological and recreational values of forests to meet the economic and cultural needs of peoples and communities, including first nations,

(d) conserving biological diversity, soil, water, fish, wildlife, scenic diversity and other forest resources, and

(e) restoring damaged ecologies.

To be satisfied that the plan adequately manages and conserves the forest resources of the area to which the plan applies [the area under the plan], all relevant information for the area must be in the plan. Whether the plan "adequately manages and conserves the forest resources" will largely depend on what resources have been identified and described in the plan and the adequacy of the measures specified to protect them with a view to achieving "sustainable use".

The Appellant and Intervenor argue that the District Manager could not reasonably have been satisfied with the plan in this case as there was not sufficient information in the plan on areas beyond the proposed cutblocks. Further, they argue that the District Manager must base his assessment on the contents of the plan, not the information in his head. In this case, the District Manager testified that he obtained additional information in relation to wildlife and wildlife habitat. He did so because there was an absence of site specific material from MELP and to address concerns raised by the Sierra Club.

The Appellant and Intervenor both argued throughout the appeal that this is unacceptable. They argued that it the plan itself must provide the required information. The Appellant states:

> The district manager thought about some of these issues, but they are not addressed in the plan. It is the *plan* which must specify measures. It is the *plan* which must adequately manage and conserve forest resources to which the plan applies. Not the district manager.

Clearly, when making a decision on a plan a district manager must base his or her decision on the contents of the plan. Where additional information is required, a district manager may require the information to be provided under section 41(2) of the *Code* prior to approval of a plan, or the plan may be approved subject to a condition under section 41(5). However, it is also clear that his or her personal knowledge of the area and expertise will come into play when evaluating the plan.

This is to be expected. The question is whether any information which is substantive and which is a significant factor in the decision to approve the plan, is not included in the plan.

On the wildlife issues, the District Manager ultimately determined that the information he looked at or found did not have to be a component of the plan. The Commission agrees. There is no evidence that anything the District Manager researched or considered should have been in the plan and was not. Based on his own observations of the area, he asked for a windfall assessment. This was included in the plan. There is no evidence to suggest that the additional information considered by the District Manager was required in the plan.

On the question of whether the District Manager could have been satisfied that the plan adequately managed and conserved the forest resources in the area to which the plan applies, the answer is less clear. Given that both the District Manager and MB interpreted the "area under the plan" as, essentially, areas affected by proposed operations, the District Manager did not require the contents of the plan to cover the entire area of under the plan. Although the Commission has no evidence that there were resources that should have been identified and described outside of those areas, with the exception of operability, it is reasonable to believe that there were some such resources, e.g. unstable terrain (15(3)), operability and forest health factors (15(6))(OPR).

While MB and the District Manager may have considered these matters when planning the location of the individual cutblocks, this information is not in the plan. Therefore, one can't assess how the resources identified fit into the bigger picture for assessment purposes.

However, based on what *was* in the plan, the Commission finds that the District Manager reasonably could have been satisfied that the plan adequately managed and conserved the forest resources identified in the plan. The Commission is simply unable to decide otherwise without specific evidence on the nature and extent of the resources in the larger area under the plan.

DECISION

In its written submissions, the Appellant states that it brought this appeal to the Commission because it believes it is important to clarify "what" a FDP is and what its "functions are under the *Code*."

The Appellant submits that FDPs are of central importance to the statutory scheme of the *Code*. The scheme of the *Code* is based on planning. The Appellant notes that rather than prescribing province-wide or region-wide rules, which must be followed on the ground, the *Code* requires adherence to approved plans. The Appellant states that the FDP occupies a very unique position in the hierarchy of forest management planning. It is the highest level of operational planning and guides the preparation and approval of lower level plans and permits. In addition, the FDP is the only document that is required by legislation to be made available for public review and comment. While the *Code* allows for the preparation of higher

level plans, in this case, there were no higher level forest planning documents that apply to the geographic area in question.

It was evident during the hearing that the biggest complaint the Appellant and Intervenor had with the plan was that it is not a plan for the forest at all. The Appellant says that according to the ordinary meaning of the words, a FDP is a way of developing a forest that has been worked out ahead of time, or a way of developing a forest to meet predefined goals, objectives, and policies. It says that the draft SPs submitted as part of the FDP meet these definitions of a plan, but that the FDP is a plan for the cutblock and not for the *forest*.

On the other hand, MB submits that the title given to documents contained in the FDP is irrelevant. For example, the draft SPs were included because they contained information which satisfied the content requirements and because the District Manager encouraged MB to do so. MB submits that what is relevant is whether the FDP satisfies the content requirements of the *Code* and the regulations.

Unfortunately, the *Code* does not define a FDP and the provisions of the *Code* sections and the OPR are so convoluted, and there is so much overlap and so many definitions that it makes any coherent analysis of the legislation and the relationship between the statute and the regulation very difficult indeed. However, when pressed there are a few basic principles that emerge.

As the highest level of operational plan, it is implicit that a FDP should contain sufficient information about the "area under the plan" from which lower level planning regarding cutblocks can be developed. From the plan, one should also be able to assess where various resources are located in the larger area, to ensure that the proposed harvesting and road construction locations are appropriate, having regard to protecting those forest resources. As stated by the Appellant, it should be a plan for the development of the forest, "a forest development plan"; not a lower level operational plan for an individual cutblock although some of that information will of necessity be contained in the larger plan.

As it is also a document which the public is entitled to comment on, a FDP should ideally be developed in a format that is understandable to the public. While the evidence of the District Manager suggests there were no complaints about the organization or format, given the confusion experienced by the relatively sophisticated parties before the Commission, it is evident that the organization and format of this plan were poor.

The Commission shares many of the concerns of the Appellant and Intervenor. The Brooks Bay plan is clearly borderline in terms of what it covered - barely more than the individual cutblocks. The Commission agrees that it is essentially a bunch of lower level operational planning documents and maps put together. As noted by the Intervenor, one of the problems with this approach is that the *Code* says, with a few exceptions, that SPs and LPs must be consistent with a FDP (sections 12(b) and 11(c) of the *Code*). If draft SPs and LPs form the content of the plan, there may be serious problems created later. If a revised SP or LP is approved that contains

information inconsistent with that found in the draft SP or LP that forms part of the FDP, the *Code* will be contravened.

In this case, first of all, logging plans were not part of the FDP, so the potential problem does not arise in respect to LPs. Further, while the approved SPs may have been different than the draft SP's submitted as part of the draft FDP in December, 1995, the evidence is that the approved SPs are consistent with the revised SPs which were submitted in April, 1996, and formed part of the FDP which was approved on May 31, 1996. The Commission therefore finds that, on the facts, this potential inconsistency did not arise. The Commission agrees however, that this does point up a concern with making draft SPs part of the FDP, rather than submitting them at the same time as separate documentation.

The Commission recognizes that it was a new process and there is a learning curve for all involved. We note again that this plan was prepared during the transition period and approved during the period of substantial compliance. Clearly both MB and the MOF have a better grasp of the legislation and the planning process as is evident by a FDP submitted by MB for a different area only one year later. It contained an index, written descriptions of the various forest resources for "the area under the plan" (not simply the cutblocks), a table of contents, etc.

This has been a very difficult case for the Commission. There are clearly gaps in the information provided in the plan – which is partly because the plan consists mainly of lower level plans for cutblocks and because MB and the Respondent interpreted "the area under the plan" to be a fluid concept.

There have also been gaps in the submissions by the parties. All parties missed certain definitions and analysis of the legislation and in many cases, their arguments were like ships passing in the night.

The Board asks the Commission to cancel the Brooks Bay FDP. At this time, three of the cutblocks have already been logged. The remaining two blocks were to be helilogged, but had not been logged at the time of the hearing. The Commission does not know whether these blocks have been logged since that time.

At the end of the day, all the Commission can say with certainty is that there *may* be deficiencies in the plan in that resources that should have been identified in the area under the plan, and addressed, may not have been. The Commission is unable to give the Appellant the remedy its seeks on such a tentative basis.

The appeal is dismissed.

COMMENTS

The Commission does not find it acceptable that a complete copy of the approved plan was not available in the District Office for public viewing. The Commission recommends that one copy of any approved FDP be kept in the District Office. If the FDP is to be treated as a working document, then an index should be publicly

available with a “sign-out” procedure so it is possible to trace any individual part of the FDP to the person who is using it.

In sensitive watersheds where there are a number of operations, including logging by more than one forestry company, mining, and other activities, the Commission commends the creation of a watershed plan by government agencies with the involvement of all relevant stakeholders. Such a plan can address the cumulative impacts of all harvesting and other operations at a watershed level and deal with the identification and protection of resources that may not be covered by an individual forest company’s FDP. In this case, the Klaskish Operational Planning Committee had been created, but its work had only just begun at the time MB’s plan was undergoing review and approval. The Commission urges the creation of such planning committees and the development of watershed plans, where possible, prior to the submission of individual FDPs or the commencement of other activities in a sensitive watershed.

Toby Vigod, Chair
Forest Appeals Commission

June 11, 1998