



The Honourable David Zirnhelt
Minister of Forests

The Honourable Cathy McGregor
Minister of Environment, Lands and Parks

The Honourable Dan Miller
*Minister of Energy and Mines and
Minister Responsible for Northern Development*

Dear Ministers:

It is with pleasure that I submit to you the Annual Report of the Forest Practices Board for the calendar year 1998, in accordance with section 189(1) of the *Forest Practices Code of British Columbia Act*. This report contains information on the affairs of the Board for the year ending December 31, 1998.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Keith Moore".

Keith Moore
Board Chair
Victoria, British Columbia

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STATEMENT FROM THE CHAIR

I am pleased to present this fourth Annual Report from the Forest Practices Board. It includes the results of the audits, investigations, administrative reviews and appeals, and public consultation undertaken by the Board in 1998. Together with work completed in 1996 and 1997, these results provide the public with an independent assessment of the Forest Practices Code, and the current state of forest practices in the province.

In our work to date, the Board has observed a generally high level of compliance with the Code, and an improvement in forest practices on lands where the Code applies. These results are good news and they warrant public confidence in the management of our forests. Licensees, contractors, government and the public should be pleased with the results produced under the Code so far.

We have also observed significant non-compliance with some important Code requirements. There is a need for better compliance in these areas, and for improvement of public participation in the review of forest development plans. There are also some important Code provisions that still need to be implemented.

On the basis of our work to date, the Board can provide the following report card:

- The Code has led to improvements in forest practices. Most operations are in compliance with most provisions of the Code. The environmental impacts directly associated with forest practices, such as logging and road construction, have been reduced. The Code has achieved positive results on the ground.

- There is room for better compliance with some Code requirements, and for further improvement in forest practices to achieve the intent of the Code. There needs to be a more efficient process for the approval and amendment of plans.

There is also a need for more effective opportunities for public involvement in operational planning, and for clear communication of government decisions about operational plans to the public.

- Several important Code provisions, particularly those which provide protection for wildlife and biodiversity values, have not yet been implemented. These are not new requirements—they are parts of the Code that have still not been implemented. Until these measures are in place, the public cannot be assured that the Code adequately protects wildlife and biological diversity. This is a serious concern. Action is required to implement these parts of the Code if these important objectives are to be met.
- Better forest development plans are needed before there can be any further reduction in the number of required operational plans, or progress toward making the Forest Practices Code less prescriptive and more results-based. Better forest development planning does not require more or bigger plans. It does require clear identification of the management objectives for the forest resources in areas where road construction, logging and other forestry activities are planned. Land-use plans need to be completed, and objectives need to be established in designated landscape units or resource management zones, but in most parts of the province, these are not yet in place. These parts of the Code also need to be implemented.



The Forest Practices Code is a floor—not a ceiling. It sets a minimum standard that all operations must meet, but it also requires sound practices to manage and conserve all forest resources—timber, water, wildlife, fisheries, recreation, botanical forest products, forage and biological diversity. In some cases, Code compliance will therefore necessitate measures that are not required, or that are more than the minimum. The Board is pleased to note that some of our audits are identifying practices and approaches to planning that do provide more protection for forest resources, or offer better opportunities for public participation than the minimum set out in the Code.

The Board recognizes the need for an efficient and effective Code, and understands the importance of reducing the costs associated with it. Further efficiencies and cost reductions are possible and desirable, and the Board can help identify some of those. However, government needs to keep the positive achievements in mind as it considers further changes to streamline the Code and reduce costs. The public needs to be assured that the Code's standards are not reduced, and that the significant improvements it has brought about are not put at risk as changes are made to reduce operating costs in response to current economic pressures.

This report describes the work of the Board in each of its four program areas. I would like to highlight three particularly important activities from 1998.

Special Investigation on Coastal Streams

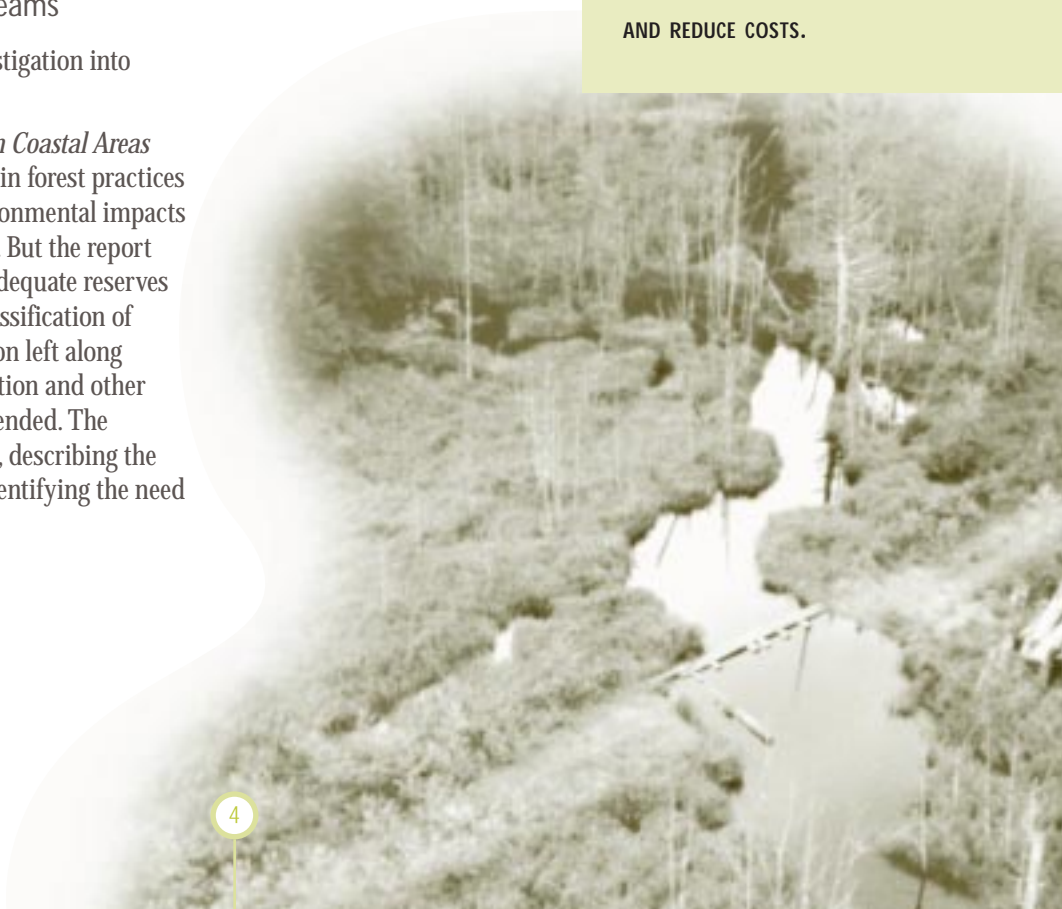
In 1998, the Board completed our major investigation into forest practices near coastal streams.

The report on *Forest Planning and Practices in Coastal Areas with Streams* shows a dramatic improvement in forest practices near coastal streams and a reduction in environmental impacts in those streams, compared to pre-Code days. But the report also points out continuing problems with inadequate reserves and improper practices because of the misclassification of streams. It shows that the amount of vegetation left along streams to meet objectives for wildlife, recreation and other non-timber values is often less than recommended. The report serves as an important reference point, describing the improvements made on past practices and identifying the need for further improvements in the future.

Administrative Reviews of Forest Development Plans

The Board has challenged the approval of three forest development plans. Two of these challenges were concluded in 1998. Both were significant, as they established important interpretations of Code requirements for content of forest development plans, opportunities for public review, and the discretion the Code gives to district forest managers to approve plans. The Board is concerned that the decisions in these cases indicate that the Code sets fairly low standards for the information that must be included in the plans presented to the public and to government. The decisions also confirm that district managers have broad discretion to approve plans. This may be part of the reason why forest development plans and the public review process continue to be the most common subjects of complaints received by the Board. Forest development plans will continue to be a prominent focus of Board work in 1999.

GOVERNMENT NEEDS TO KEEP THE POSITIVE ACHIEVEMENTS OF THE CODE IN MIND AS IT CONSIDERS FURTHER CHANGES TO STREAMLINE THE CODE AND REDUCE COSTS.





Changes to the Forest Practices Code

The government continued to make changes to the Forest Practices Code in 1998. Many of the changes were made to streamline the Code, particularly the planning requirements, and to reduce the costs to industry and government without compromising the standard of environmental protection provided by the Code. The Board was consulted about the proposed changes, and we were able to make many comments and suggestions based on our experience with the Code.

Since its introduction, the Code has been a living document; changes are desirable, to reflect operational experience and to ensure a focus on measurable results in the field. The Board supported many changes, such as the reduction in the number of operational plans, the movement of environmental protection measures from planning requirements into operational requirements, and the reduced planning requirements for woodlots. Many of these changes incorporated suggestions or recommendations made by the Board.

However, the Board also expressed serious concerns to the government about changes to the *Operational Planning Regulation*. Those changes reduced opportunities for the public to review and comment on operational plans, and required that less information be made available to government and the public. The Board advised the government that, while we supported many of the Code changes, we also maintained that these changes to the planning regulations would likely lead to reduced environmental standards and a loss of public confidence in the management of forest resources. The Board expects to begin to assess the net effect of these changes in the field in the 1999 audits, investigations and other programs.

Two other matters will have a bearing on forest practices and the efficient implementation of the Code in the years ahead:

Certification

Certification of forestry operations emerged as a key issue in 1998 and appears to be an important part of the future of forestry in BC. It is a way to demonstrate to the world that the province and individual companies are managing forests in a responsible way. It is also a means for individual companies and the forest industry to secure and maintain access to important global markets. For these reasons and others, certification may become an important public policy issue in the province.

There is an important role for the Forest Practices Board in any of the certification approaches currently being considered. Each includes requirements for compliance with local legislation, and for independent audits to verify that operations are in compliance.

The Board is presently the only independent “certifier” of compliance with forest planning and practices legislation in the province. The Code sets important standards, and the Board has developed the best independent forest practices auditing program in the world to assess compliance with those standards.

We are actively offering to provide our information and experience, and we welcome contact with those national and international organizations that certify and those companies that seek certification. Based on our unique experience here in BC, we can contribute to the implementation of credible certification approaches.

How to Contact the Board

Telephone and Fax
Phone: (250) 387-7964
Fax: (250) 387-7009

Internet: The Forest Practices Board Internet site at www.fpb.gov.bc.ca has current information about the Board and its activities. Visitors can also download copies of Board reports and recommendations.

E-mail: Contact the Board at: fpboard@gems9.gov.bc.ca

Call Toll-free: Toll-free access has been available since 1995, so anyone in British Columbia can contact the Board directly, at no cost. From outside of Greater Victoria, call 1-800-994-5899. From within the Greater Victoria area, call 387-7964.

In Person:
3rd Floor
1675 Douglas Street
Victoria, BC

By Mail:
Forest Practices Board
PO Box 9905, Stn Prov Govt
Victoria, BC V8W 9R1

People Aspects of the Code

There has been much comment about the excessive bureaucracy and time-consuming and costly approval processes that have accompanied the introduction of the Forest Practices Code. The Board has observed that this is partly a “people” problem—or, more precisely, a problem of not enough trained and experienced people in the field with policy direction and a clear mandate to make decisions.

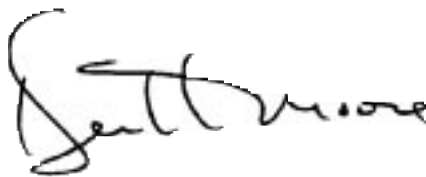
The Code brought new obligations and challenges for people in government and the forest industry. At the same time, staff reductions and high turnover, reduced budgets, changing government policies, and almost constant changes to the “living Code” have all combined to create great stress for those involved. These factors have also contributed significantly to the delays and costs of plan preparation and approval. A period of stability—a stable Act, regulations and supporting policy framework, stable funding and staff complements for the ministries that implement the Code, and stable operational plans—will go a long way to reduce the delays and excessive costs that are often blamed on the Code, but which are essentially “people” issues associated with constant change. Government and industry need to ensure that there are enough people in the right places at the field level to make decisions. They need to create a stable working environment, with ongoing training and clear policy direction so that these people can implement the Code effectively and efficiently.

The Board

At the end of 1998, the Board bid farewell to Vice-Chair Cindy Pearce and member Jack Toovey, who had completed their second two-year terms. Both made tremendous contributions to the Forest Practices Board. They brought a commitment to independence and fair-mindedness, and a vision of a Board that would focus on results, not process; on solutions, not fault; and on the continuing improvement of forest planning and practices in the province.

I also acknowledge the continuing dedication of each member of the Board staff. This year was filled with results. The Board completed and published 21 reports on the findings and conclusions of our work to date. This would not have been possible without the dedication and commitment of our staff. With their continued help and attention to quality, we look forward to building on this substantial body of work in 1999.

Our Internet site at www.fpb.gov.bc.ca was very busy in 1998. I encourage readers to visit the site and find out more about the Board and our work.



Keith Moore
Board Chair

THE BOARD’S AUDITS AND INVESTIGATIONS

SHOW THAT COMPLIANCE WITH THE

CODE IS GENERALLY HIGH. THERE IS

REASON FOR PUBLIC CONFIDENCE THAT

THE RULES ESTABLISHED BY THE CODE ARE

BEING FOLLOWED.

Board members reside in communities across the province. Collectively, they represent a broad range of expertise and experience.

During 1998, the Forest Practices Board undertook a strategic planning exercise to clarify its direction and priorities for the future. Broad strategic direction for the Board, as established in the *Forest Practices Code of British Columbia Act* and the *Forest Practices Board Regulation*, was generally understood and applied by the organization.

After three years of operational experience, the Board decided that the time was right for a review and refinement of the organization's strategic objectives. The Board agreed that clarification of the mission, fundamental purposes, objectives, and values and guiding principles would have a reinforcing and unifying effect on the day-to-day actions and external interactions of Board members and staff. The Board also agreed that its particular niche should be more clearly defined, so that it can better communicate its role to its audiences.

The Board formally articulated its mission and refined its fundamental purposes and values and guiding principles. Its strategic role has been clarified, recognizing its unique voice among all of those concerned with the well-being of forest resources.

The Board also refined its operating procedures in a number of ways:

- It developed a strategy with procedures for coordination, scheduling, and overall project management of audits, investigations and reviews and appeals.
- It clearly defined roles for the chair, vice-chair, Board members, and executive director.
- It established the use of quorums and delegated greater responsibility to the full-time chair.



Keith Moore
Chair

Forester and former consultant in forest land management and environment assessment.



Cindy Pearce
Vice-Chair

Forestry consultant with experience in silviculture, forest resource education, and planning.



Klaus Offermann

Former forestry worker representative with experience in forest policy development, sustainable forestry and land use planning.



Frances Vyse

Geographer, naturalist, and parks planning consultant, with experience in the conservation and forest sectors.



John Cuthbert

Forester with a long, distinguished career with the Ministry of Forests, including nine years as Chief Forester for the province.



Jack Toovey

Forester who has held executive positions in the private sector and forestry associations.

THE BOARD

1998 Forest Practices Board Budget and Expenditures (unaudited)

Table 1

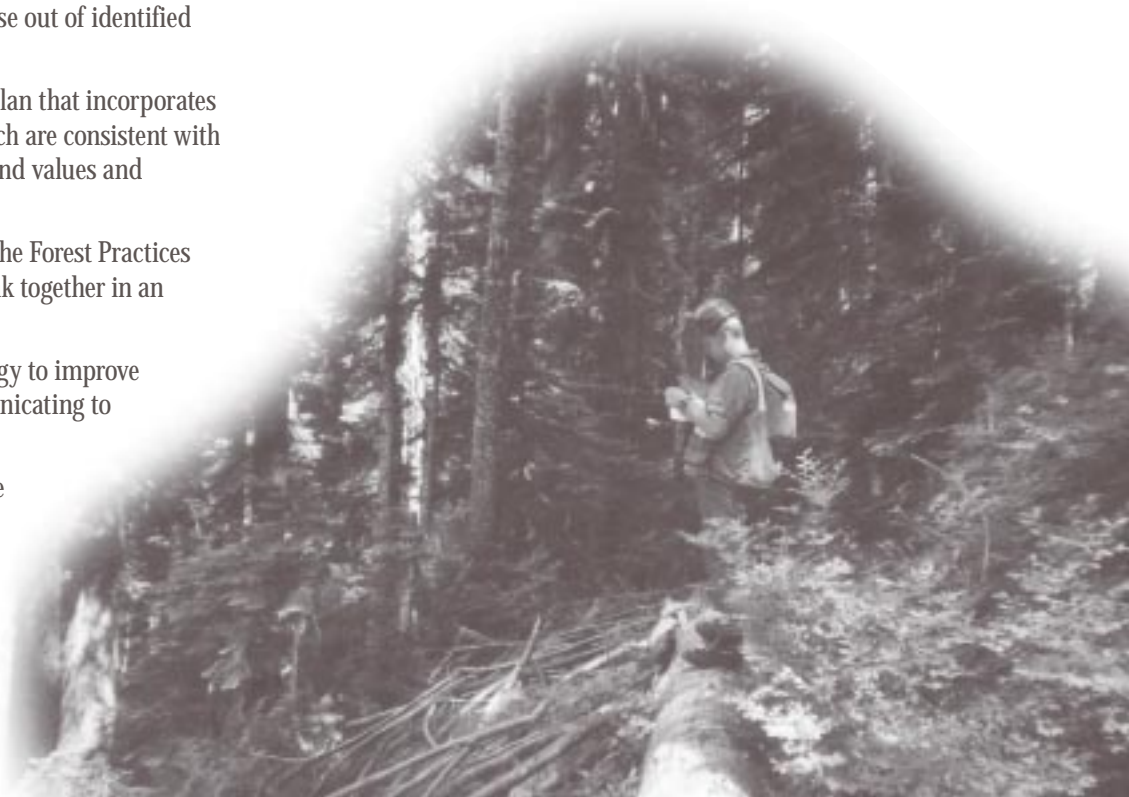
	Operational Expenditures					Total
	Board Members Expenditures	Complaint Investigations	Audits	Reviews and Appeals	Administrative Expenditures	
Salaries and Benefits	\$147,180	\$501,248	\$452,488	\$291,986	\$560,122	\$1,953,024
Operating Costs	304,197	303,319	1,474,281	20,261	694,426	2,796,484
Asset Acquisitions	–	–	609	–	174,771	175,380
Total Expenditures	\$451,377	\$804,567	\$1,927,378	\$312,247	\$1,429,319	\$4,924,888
Budget						\$5,351,331

Notes

1. Expenditures and budget are for the calendar year 1998, not the government fiscal year (April to March).
2. The Board's budget for calendar year 1998 (\$5,351,331) is the sum of the appropriations from fiscal year 1997/98 and 1998/99 of \$1,455,279 and \$3,896,052, respectively, allocated to the 1998 calendar year.
3. Board members expenditures cover strictly those of the chair of the Board and the part-time Board members. Administrative expenditures include those incurred to provide support for the operations of the Board, those associated with the office of the executive director, those of the office of the director, special projects, and those of staff providing direct support to the Board members.

Implementation priorities for 1999 arose out of identified needs for:

- a comprehensive annual business plan that incorporates long-range strategic objectives which are consistent with the mission, purposes, objectives, and values and guiding principles,
- operational work plans for each of the Forest Practices Board's program sections, which link together in an overall plan,
- a corporate communications strategy to improve the Board's effectiveness in communicating to the public, and
- approaches and processes to ensure ongoing monitoring and validation of actions, strategies, and priorities associated with the annual strategic business plan.



MISSION STATEMENT

THE FOREST PRACTICES BOARD

SERVES THE PUBLIC INTEREST AS

THE INDEPENDENT WATCHDOG FOR

SOUND FOREST PRACTICES IN

BRITISH COLUMBIA.

Fundamental Purposes

In fulfilling its mission, the Board encourages:

- sound forest practices that warrant public confidence,
- fair and equitable application of the Forest Practices Code, and
- continuing improvements in forest practices.

Values and Guiding Principles

The Board applies certain guiding principles, reflecting key organizational values, as a guide for its day-to-day practices and operations.

The Board:

- acts on behalf of the public's interest, not those of any single group,
- is straightforward in its approach,
- emphasizes solutions over assigning blame,
- behaves in a non-adversarial, balanced manner,
- treats all people with respect, fairness and sensitivity,
- performs in a measured, unbiased and non-partisan manner,
- carries out its mandate with integrity and efficiency,
- provides clear and concise reports to the public,
- bases actions and decisions on knowledge, experience and common sense, and
- is accessible and accountable.

Strategic Role

The Board has a unique voice among those concerned with the well-being of our forest resources. The Board provides British Columbians with objective and independent assessments of the state of forest planning and practices in the province, compliance with the Code, and the achievement of the Code's intent. The Board makes recommendations that contribute to sound forest practices and stewardship of all forest resources, to support the public's interest.

AUDITING FOREST PRACTICES AND CODE ENFORCEMENT

The Forest Practices Board's independent audits of forest companies and government provide the public with an indication of whether the Forest Practices Code is being followed and enforced. The Board acts somewhat like an auditor general, reporting the results of its audits directly to the public and to the government.

Summary of Accomplishments

A total of 11 compliance audit reports were released this year (see Table 2). The field-work portion of seven of these audits was undertaken in 1997. Nine compliance audits were undertaken this year (see Table 3), with four of these completed and released.

Of the nine new audits undertaken this year, seven were licences held by forest companies, and two were registered under the Ministry of Forests Small Business Forest Enterprise Program (SBFEP). These were randomly selected from 242¹ major licences and 37 SBFEPs across the province. Licences and SBFEPs that were audited in 1996 or 1997 were withdrawn from the selection process so that they would not be chosen again. Three of the audits, including one SBFEP, were classed full scope (i.e., all aspects of forest planning and practices were audited). Six of the audits were limited scope (i.e., selected planning activities and forest practices were audited). The limited-scope audits focused on timber harvesting and the construction, maintenance and deactivation of roads.

In May, the *Compliance Audit Reference Manual* was revised to incorporate the government's recent changes to the Code, and to describe the audit process in greater detail. The release of version 3 of the *Compliance Audit Reference Manual* was followed by a workshop to describe the audit process and to highlight key changes in the manual.

Development of an Enforcement Audit Program was started this year. The intent of the program is to audit and report on what enforcement activities and programs are in place, and how they are carried out by the responsible government agencies. The Board completed the terms of reference for an Enforcement Infrastructure and Process Audit that will begin in early 1999.

This is the first step in developing a framework for the periodic audits that the Board will undertake of the appropriateness of government's enforcement of the Code. This audit will provide essential information for developing the framework for the program.

¹ The number of major licences in 1997 was 181, based on licences with an allowable annual cut (AAC) of greater than 50 000 cubic metres (m³). The audit unit selection process was revised in 1998 to include, in the definition of a major licence, licences with an AAC of greater than 10 000 m³.

Results

The results of the 11 audits released in 1998 are shown in Table 2. Four were “clean” audits and seven were “qualified” audits. A clean opinion provides assurance that all of the timber harvesting and road construction, maintenance and deactivation activities examined in an audit complied, in all significant respects, with Code requirements. A qualified opinion means that significant non-compliance with the Code was identified, but the non-compliance was not frequent enough, or of sufficient magnitude, to warrant an overall negative conclusion.

Level of Code Compliance

To date, the Board has conducted 22 audits (see map on page 16) and published 15 audit reports. Overall, the results show a fairly high level of compliance with the requirements of the Forest Practices Code, and continued improvement in forest practices related to timber harvesting and roads. The four clean audits from 1998 show greater compliance with the Code this year, as compared to 1997 and 1996.

In some of the audits, the Board has seen planning and practices that are of a high quality. These are discussed in the section below. However, the audit results also highlight some common problem areas. The Board’s view is that licensees and government should focus attention on these areas, to ensure compliance with Code requirements and improve forest practices in BC.

Notable Forest Planning and Practices

Several of the audits reported in 1998 identified actions by licensees that were notable because they either exceeded basic Code requirements, or were able to meet Code requirements in difficult operating areas. The Board recognized the sound forest practices of these companies.

Planning

The Board was impressed with planning in one district which made use of Total Resource Plans to help manage forest resources over the long term. Total Resource Plans set out the management objectives for all forest resources in an area (i.e., both timber and non-timber resources, such as wildlife habitat and visual quality). In addition, the level of cooperation and communication between the auditee and the forest district allowed the auditee to appropriately adapt practices to meet field conditions.

Public Review and Comment

In another audit, the Board found that a licensee made a substantial effort to ensure that interested parties had an opportunity to comment on changes to the approved forest development plan before harvesting and road construction began. These minor changes—which allowed the harvest of trees affected by bark beetles and blow-down—are not normally provided for public review under the Code. This high regard for input and consultation on changes to the forest development plan is notable.

Regard for Domestic Water Sources and Stream Protection

The Board noted the high degree of compliance by another licensee in an operating area that includes 11 community watersheds and steep terrain. The sensitivity of operating in areas that provide domestic water, and the difficulties inherent in operating in steep terrain, make this performance notable. In another audit, the Board noted that areas adjacent to small streams and wetlands were afforded more protection than was required by the Code.

Practices in Steep Terrain

In one audit, road construction and deactivation practices carried out in steep terrain were well implemented, with a high level of compliance with the Code. Given the difficulties presented by road activities in steep terrain, and the potential for significant impacts to the environment, this performance is notable.

FORESTRY IN BC IS THE SUBJECT OF DIVERSE AND OFTEN POLARIZED VIEWS. THE FOREST PRACTICES BOARD’S ROLE IS TO PROVIDE INDEPENDENT AND OBJECTIVE INFORMATION ABOUT THE STATE OF FOREST PLANNING AND PRACTICES IN THE PROVINCE, COMPLIANCE WITH AND ENFORCEMENT OF THE CODE, AND THE ACHIEVEMENT OF THE CODE’S INTENT.

Common Areas of Significant Non-Compliance with the Code

The seven 1997 audits all identified some degree of significant non-compliance with Code requirements. In general, that non-compliance related to the protection of streams and riparian areas from forest practices, and to the construction, maintenance and deactivation of roads.

- *Non-compliance occurred in the construction, maintenance and deactivation of roads and almost always involved water management.* Four audits found problems with roads. One audit identified non-compliance involving the construction of a road within the riparian reserve of a fish stream. This audit also identified culverts that made the streams impassable for fish. Another audit found that one end of a bridge over a large fish stream had been built 15 metres away from where it was supposed to be, increasing the risk of sedimentation in the stream. This audit also identified inadequate maintenance and deactivation of roads, infrequent inspections of bridges, sediment deposit and increased risk of sediment deposit into fish streams, plugged culverts, missing and inadequate cross-ditches, and cracks in the road surface. A third audit found inadequate installation and maintenance of drainage structures (e.g., culverts and cross-ditches) and inadequately restored natural drainage patterns on a permanently deactivated road. A fourth audit identified problems during construction of four road sections in steep terrain where excessive material from road excavations was left on the downslope side of the road (i.e., side-cast).
- *Harvesting non-compliance mostly involved practices around streams, wetlands and riparian areas.* Three audits found problems of this type. In some cases, timber was inappropriately harvested from riparian reserves of streams and wetlands. In one situation, this resulted in the removal of almost all of the timber from the riparian reserve protecting a large fish stream.
- *Problems with identification, classification, and mapping of streams, resulting in inadequate reserves and inappropriate streamside practices.* Three audits found problems with stream identification, classification and mapping, which led to some of the inappropriate harvesting described above. Although one of the audits identified misclassified streams, harvesting non-compliance did not result, because the streams were too small to require reserves. However, when misclassification involves small streams, inappropriate practices can occur next to the streams, which may result in damage to the streambanks and to the watercourse itself.

BOARD AUDITS HAVE FOUND THAT

SIGNIFICANT NON-COMPLIANCE WITH THE

CODE USUALLY INVOLVES FOREST PRACTICES

NEAR STREAMS AND RIPARIAN AREAS,

AND CONSTRUCTION, MAINTENANCE AND

DEACTIVATION OF ROADS.

- *Other significant non-compliance issues identified in Board audits included: failing to identify a significant risk to forest resources from mountain pine beetle, and failing to address the risk to forest resources from wind throw.*

In each of the audits with significant non-compliance findings, the Board made a number of recommendations (see Appendix 1). In several cases, the auditee advised the Board that actions to improve its operations had been undertaken even before the Board released the final audit report. This prompt correction of identified problems is an important outcome of many Board audits.

One Small Business Forest Enterprise Program (SBFEP) audit identified a scope limitation.² The auditor was unable to provide an overall opinion on road maintenance and deactivation activities because the forest district did not have an accurate or complete record of the roads within the district for which the SBFEP was responsible. The district was therefore unable to identify the full number of roads for which it was responsible under the program. This prevented the auditor from establishing, with any assurance, a sound sampling plan for examining the condition of road maintenance and deactivation. Some of the road maintenance and deactivation activities that the audit could confirm as being an SBFEP responsibility were examined in the audit. The audit concluded that these roads were not being adequately maintained, and that bridges were not being inspected on a timely basis.

No overall conclusion on compliance could be reached for the district's SBFEP road maintenance and deactivation activities, because of missing information. The Board is concerned that this may be an issue of broad significance for the SBFEP across the province.

² "Scope limitation" is an audit term used to describe a situation in which it is impossible to form an opinion because of lack of information.

Summary of Audit Reports Released in 1998

Table 2

<i>Auditee/Allowable Annual Cut</i>	<i>Location</i>	<i>Activities Audited</i>	<i>Opinion</i>	<i>Findings</i>	<i>Report Release Date</i>
Cattermole Timber Ltd. Forest Licence (FL) A19202 155 534 cubic metres (m ³)	Chilliwack Forest District	<ul style="list-style-type: none"> operational planning timber harvesting road construction, maintenance and deactivation silviculture fire protection 	qualified	<p>Planning, harvesting, silviculture and forest protection practices generally complied with the Code.</p> <p>Two areas of significant non-compliance were identified in road practices:</p> <ul style="list-style-type: none"> inadequate installation and maintenance of drainage structures, and inadequate measures to deactivate and stabilize a road and restore natural drainage patterns. 	January 1998
Tolko Industries Ltd. FL A18696 269 000 m ³	Merritt Forest District	<ul style="list-style-type: none"> timber harvesting road construction, maintenance and deactivation <p>(includes related operational planning)</p>	qualified	<p>Timber harvesting and road construction, maintenance and deactivation practices generally complied with the Code.</p> <p>Areas of significant non-compliance were:</p> <ul style="list-style-type: none"> harvesting trees from within riparian reserves, building a road in the riparian reserve of a fish-bearing stream, harvesting trees from across small streams and watercourses that were inaccurately mapped in the approved plans, and installing culverts that blocked fish passage. 	August 1998
Slocan Group (Radium Division) FL A18979 254 496 m ³	Invermere Forest District	<ul style="list-style-type: none"> timber harvesting road construction, maintenance and deactivation <p>(includes related operational planning)</p>	qualified	<p>Timber harvesting and road construction, maintenance and deactivation practices generally complied with the Code.</p> <p>One area of significant non-compliance was identified:</p> <ul style="list-style-type: none"> excessive side-casting occurred on four short sections of two roads built in steep terrain. 	August 1998
West Fraser Mills Ltd. FL A20020 192 450 m ³	Williams Lake and Chilcotin Forest Districts	<ul style="list-style-type: none"> operational planning timber harvesting road construction, maintenance and deactivation silviculture fire protection 	qualified	<p>Forest planning generally complied with Code requirements. Timber harvesting, silviculture, road construction, maintenance and deactivation, and fire protection practices complied with the Code in all significant respects.</p> <p>One area of significant non-compliance was identified:</p> <ul style="list-style-type: none"> the forest development plan did not identify the significant risk presented to forest resources in West Fraser's operating areas by the mountain pine beetle. <p>The Board recognized that West Fraser could not address this problem alone: the Ministry of Forests needs to participate in the development of a landscape-level strategy for the Williams Lake Timber Supply Area to address risk to forest resources from mountain pine beetle.</p>	August 1998
International Forest Products Ltd. TFL #10 170 950 m ³	Sunshine Coast Forest District	<ul style="list-style-type: none"> timber harvesting road construction, maintenance and deactivation <p>(includes related operational planning)</p>	clean	<p>Timber harvesting and road construction, maintenance and deactivation practices complied with the Code in all significant respects.</p> <p>The audit identified:</p> <ul style="list-style-type: none"> the need for improvement in the planning and layout of cutblocks near riparian areas. 	November 1998
Slocan Group (Slocan Division) FL A20192 218 472 m ³	Arrow Forest District	<ul style="list-style-type: none"> timber harvesting road construction, maintenance and deactivation <p>(includes related operational planning)</p>	clean	<p>Timber harvesting and road construction, maintenance and deactivation practices complied with the Code in all significant respects.</p> <p>The Board noted the high degree of compliance in an operating area that includes 11 community watersheds and steep terrain.</p>	November 1998
Plateau Forest Products Ltd. (Slocan Group) FL A18157 619 223 m ³	Vanderhoof Forest District	<ul style="list-style-type: none"> timber harvesting road construction, maintenance and deactivation <p>(includes related operational planning)</p>	qualified	<p>Timber harvesting and road construction, maintenance, and deactivation practices generally complied with the Code.</p> <p>One area of significant non-compliance was identified:</p> <ul style="list-style-type: none"> several small streams were not correctly classified. 	December 1998
Tolko Industries Ltd. (QuestWood Division) FL A20010 288 704 m ³	Quesnel Forest District	<ul style="list-style-type: none"> timber harvesting road construction, maintenance and deactivation <p>(includes related operational planning)</p>	clean	<p>Timber harvesting and road construction, maintenance and deactivation practices complied with the Code in all significant respects.</p> <p>Areas adjacent to small streams and wetlands were given more protection than the Code requires.</p> <p>Substantial effort was made to ensure that interested parties had the opportunity to comment on changes to the approved forest development plan before harvesting and road construction began.</p>	December 1998

Summary of Audit Reports Released in 1998

Table **2**
continued

<i>Auditee/Allowable Annual Cut</i>	<i>Location</i>	<i>Activities Audited</i>	<i>Opinion</i>	<i>Findings</i>	<i>Report Release Date</i>
Riverside Forest Products Ltd. (Armstrong Division) FL A18689 34 133 m ³	Kamloops Forest District	<ul style="list-style-type: none"> timber harvesting road construction, maintenance and deactivation (includes related operational planning)	clean	Timber harvesting and road construction, maintenance and deactivation practices complied with the Code in all significant respects. The audit found no non-compliance in timber harvesting. The Board acknowledged the care and attention taken by Riverside to achieve this high level of compliance.	December 1998
Prettys' Timber Co. Ltd. FL A19207 168 641 m ³	Chilliwack Forest District	<ul style="list-style-type: none"> timber harvesting road construction, maintenance and deactivation (includes related operational planning)	qualified	Timber harvesting and road construction, maintenance and deactivation practices generally complied with the Code. Areas of significant non-compliance involved: <ul style="list-style-type: none"> not meeting requirements to maintain riparian reserves, not identifying and classifying streams, and not addressing the risks from wind-throw in harvesting operations. Most road construction and deactivation practices were carried out in steep terrain. These practices were implemented well, with a high degree of compliance.	December 1998
Small Business Forest Enterprise Program (SBFEP) - South Island Forest District 148 797 m ³	South Island Forest District	<ul style="list-style-type: none"> operational planning timber harvesting road construction, maintenance and deactivation silviculture fire protection 	qualified opinion not possible for road maintenance and deactivation	Operational planning, silviculture and fire protection practices complied with the Code in all significant respects. Timber harvesting practices generally complied with the Code. Significant non-compliance involved: <ul style="list-style-type: none"> inadequate marking of cutblock boundaries, riparian reserve zones, and riparian and management zones on a number of cutblocks, and unauthorized harvesting and tree damage outside of approved block boundaries on four cutblocks. Road construction practices generally complied with the Code. One area of significant non-compliance was identified: <ul style="list-style-type: none"> one bridge, crossing a fish stream, was not built in accordance with the approved plan. Due to scope limitation, a conclusion on compliance with road maintenance and deactivation requirements cannot be provided. SBFEP roads that were examined: <ul style="list-style-type: none"> were not adequately maintained or deactivated, bridges were not inspected on a timely basis, and sediment entering fish streams, plugged culverts, missing and ineffective cross-ditches, and cracks in road surfaces were also noted. 	December 1998



Other Issues Arising from Board Audits

Some of the Board's audits identified issues that were not related to auditee performance under the Code. As these issues were found within the operating area of the licensee or SBFEP, the Board chose to bring them to the attention of the public and government.

Old roads

Four audits identified issues with the maintenance and deactivation of old roads. These problems were not restricted to Coastal operations; they were also identified in the Interior.

In two cases, significant damage to the environment is occurring, or may occur in the future, because no one has been maintaining or deactivating the roads. In these cases, the roads were part of

Summary of Audits Undertaken in 1998

Table 3

<i>Auditee/Allowable Annual Cut</i>	<i>Location</i>	<i>Status</i>	<i>Activities Audited</i>
Small Business Forest Enterprise Program - Port McNeill Forest District 352 000 m ³	Port McNeill Forest District	ongoing	Operational planning, timber harvesting and road construction, maintenance and deactivation, silviculture and fire protection
Doman-Western Lumber Ltd. TFL #19 887 726 m ³	Campbell River Forest District	ongoing	Timber harvesting and road construction, maintenance and deactivation and related operational planning
West Fraser Mills Ltd. (Skeena Sawmills Division) TFL #41 378 500 m ³	Kalum Forest District	ongoing	Operational planning, timber harvesting and road construction, maintenance and deactivation, silviculture and fire protection
Canadian Forest Products Ltd. Fort St. James Operations, FL A40873 815 000 m ³	Fort St. James Forest District	ongoing	Operational planning, timber harvesting and road construction, maintenance and deactivation, silviculture and fire protection
Small Business Forest Enterprise Program - Arrow Forest District 158 000 m ³	Arrow Forest District	ongoing	Timber harvesting and road construction, maintenance and deactivation and related operational planning
International Forest Products Ltd. TFL #10 170 950 m ³	Sunshine Coast Forest District	report released	Timber harvesting and road construction, maintenance and deactivation and related operational planning—findings described in Table 1
Tolko Industries Ltd. (Questwood Division) FL A20010 288 704 m ³	Quesnel Forest District	report released	Timber harvesting and road construction, maintenance and deactivation and related operational planning—findings described in Table 1
Slocan Group (Slocan Division) FL A20192 218 472 m ³	Arrow Forest District	report released	Timber harvesting and road construction, maintenance and deactivation and related operational planning—findings described in Table 1
Riverside Forest Products Ltd. (Armstrong Division) FL A18689 34 133 m ³	Kamloops Forest District	report released	Timber harvesting and road construction, maintenance and deactivation and related operational planning—findings described in Table 1

road permits held by licensees. These roads had not been used since the introduction of the Code. In another case, the roads were not covered by road permits held by the licensee. The Board found that, under section 63 of the Act, a licensee who has not used a road since the introduction of the Code is not responsible for its maintenance or deactivation.

In a fourth case, the roads are not causing significant damage to the environment. However, the financial investment in the extensive road infrastructure is in danger of being lost because the road system has not been maintained or deactivated. In this case, the licensee could not carry out maintenance and deactivation activities because it did not have an access agreement to use a road through a First Nations reserve which accesses the road system in question. The Board's view is that such environmental and economic problems are a serious concern and need to be addressed by government.

Road Permits

One audit identified construction and maintenance deficiencies on several forest service roads, including unstable fill-slopes, inadequate drainage structures that did not comply with the Code, and structural problems. The licensee had applied for a road-use permit, but the Ministry of Forests had decided not to

issue one until it determined which roads needed to be included on the permit. Without a permit, the licensee was doing routine maintenance on these roads, but had not taken actions to address the structural deficiencies.

A second audit identified concerns with road maintenance on two forest service roads being used by a licensee under road-use permits issued by the Ministry of Forests.

A lack of clarity in maintenance responsibilities between the licensee and the ministry resulted in inadequate inspection and maintenance of the roads. This contributed to slope erosion and sedimentation of fish streams, as well as a safety hazard in one location.

THE CODE GIVES THE PUBLIC THE LEGAL RIGHT TO REVIEW AND COMMENT ON FOREST DEVELOPMENT PLANS. IT IS ESSENTIAL THAT THE PUBLIC BE GIVEN ADEQUATE NOTICE AND OPPORTUNITY TO PROVIDE COMMENT. THE COMMENTS MUST ALSO BE RESPECTED AND ADDRESSED IF THE PUBLIC IS TO HAVE CONFIDENCE IN THE PLANNING PROCESS ESTABLISHED BY THE CODE.

Forest Practices Board Audit Locations

1996 Audits

- 1 Finlay Forest Industries Inc.
Forest Licence (FL) A15385
- 2 International Forest Products Limited
Tree Farm Licence (TFL) #45
- 3 West Fraser Mills Ltd.
FL A20021
- 4 Lakes Forest District
Small Business Forest Enterprise
Program (SBFEP)

1997 Audits

- 5 Tolko Industries Ltd.
FL A18696
- 6 Cattermole Timber Ltd.
FL A19202
- 7 Northwood Pulp and Timber Ltd.
FL A16828
- 8 South Island Forest District
SBFEP
- 9 Plateau Forest Products (Slocan Group)
FL A18157
- 10 Slocan Group (Radium Division)
FL A18979

- 11 Boundary Forest District
SBFEP
- 12 West Fraser Mills Ltd.
FL A20020
- 13 Prettys' Timber Co. Ltd.
FL A19207

1998 Audits

- 14 Port McNeill Forest District
SBFEP
- 15 Doman-Western Lumber Ltd.
TFL #19
- 16 West Fraser Mills Ltd.
(Skeena Sawmill Division)
TFL #41
- 17 Canadian Forest Products Ltd.
(Fort St. James Operations)
FL A40873
- 18 Arrow Forest District
SBFEP
- 19 International Forest Products Ltd.
TFL #10
- 20 Tolko Industries Ltd.
(QuestWood Division)
FL A20010
- 21 Slocan Group (Slocan Division)
FL A20192
- 22 Riverside Forest Products Ltd.
(Armstrong Division)
FL A18689



Forest Health

In another audit, the Board identified a need for the Ministry of Forests to participate in the development of a landscape-level strategy for a timber supply area (TSA) to address risk to forest resources from mountain pine beetle. The company being audited did not include a forest health strategy in the forest development plan for its licence. But because the company has a volume-based licence (i.e., it has approval to harvest a certain volume of trees from an area in which other operators are also harvesting trees), it is unable to address the problem outside of the individual cutblocks that it harvests. The ministry has overall responsibility for the TSA and must coordinate the efforts of all companies that operate in the TSA, to effectively manage mountain pine beetle. Recently, the ministry provided the Board with a TSA strategy, which the Board will review for adequacy.

Plans for 1999

Master Audit Plan

The Board is currently developing a master audit plan, which will provide a long-term framework for the audit program and link the audit activities with the Board's strategic plan.

Enforcement Audits

In 1998, the Board continued development of a framework for audits of the "appropriateness of government enforcement" under the Code, as required under section 176(b) of the Act.

Enforcement audits will evaluate the performance and appropriateness of government's enforcement of the Code, as conducted by the three regulatory agencies that have enforcement responsibilities: the ministries of Forests; Energy and Mines; and Environment, Lands and Parks.

During 1999, the Board will complete the Enforcement Infrastructure and Process Audit, and develop and implement a framework for undertaking periodic enforcement audits. Also in 1999, the Board plans to begin two pilot audits of the appropriateness of government enforcement of the Code.

Effectiveness Audits

Effectiveness audits evaluate forest practices on the ground to determine if they are achieving the broad objectives described in the Preamble to the Code. These audits will examine compliance with the Code and evaluate effectiveness—regardless of whether or not the forest practices meet specific Code requirements. Rather than focusing on a single party, effectiveness audits may cover a specific section of the Act, a selected geographic area, or the entire province.

The lack of standards and criteria for measuring effectiveness has slowed the development of a program for these audits. Two factors have added to the challenge of developing a program: there is no similar program elsewhere to serve as a model, and effectiveness means different things to various interested parties. The Board is, therefore, carefully considering its definition of effectiveness as it develops a framework for these audits.

Comprehensive Audits

Comprehensive audits are an extension of compliance and effectiveness audits. They will identify planning and practices implemented in the field that achieve the Code's objectives, but are not required by the Code. The framework for these audits will be developed once the framework for effectiveness audits has been established.

Certification

Certification of forest practices is an issue of growing interest to the public and to industry. Certification can be a means to demonstrate to the world that government and individual companies in BC are managing our forest resources in a responsible way.

Compliance with local legislation, such as the Forest Practices Code, is a key element of every certification approach. However, certification audits will deal with a much broader and more complex set of issues. While the Board has no immediate plans to carry out certification, the Board's audit program does provide information about compliance with local legislation, and it may contribute to the certification process. The Board will continue to review its involvement with certification audits and has offered to provide advice and information to any companies or organizations interested in certification.



One of the Forest Practices Board's principal roles is to investigate public complaints about forest planning and practices under the Forest Practices Code. Similar to the Ombudsman, the Board will, where appropriate, recommend improvements. The Board reports its findings to the public and to government.

Summary of Accomplishments

During 1998, the Board received 33 calls from the public about forest planning, practices, or Code infractions. In these situations, Board staff discuss the matter with the concerned party to try to help resolve the issue at the local level. The Board may refer callers to their local Ministry of Forests, or Ministry of Environment, Lands and Parks office, or to the licensee involved. If the concern is not directly related to the Code, other options—such as contacting the Office of the Ombudsman—may be suggested.

Calls are recorded as concerns, unless a formal complaint is subsequently filed. In 1998, 15 concerns were not pursued further by the callers. The balance of 18 concerns were pursued and filed as formal complaints with the Board.

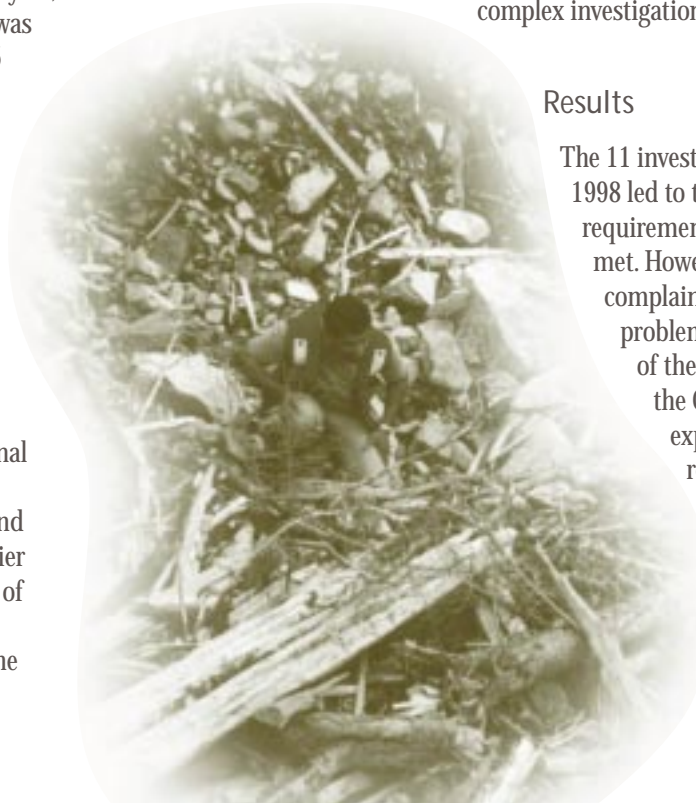
Of the 18 formal complaints received this year, two were still being assessed at year end, and one was abandoned by the complainant. Of the 15 remaining, the Board decided not to investigate two complaints. Therefore, of 33 concerns, 13 became new complaint investigations. During 1998, both the number of concerns (33) and new complaints (18) decreased from the previous year (47 and 26, respectively). For details on complaints received, refer to Table 4.

In addition to starting 13 new complaint investigations, the Board released nine final reports covering 11 investigations. Three involved investigations started in 1998, and six involved investigations started in earlier years. Those reports identified a number of issues and made recommendations for improvements to the administration of the Code (see Appendix 1).

The Board completed a draft Complaint Investigation Reference Manual and circulated it to a reference group for review and comment. The manual will be finalized for release in 1999 and made available to parties involved in investigations and to the public. The manual has two main purposes:

- to inform parties, affected persons and the interested public of the general workings of an investigation, so that they understand the entire process, including the Board's legal mandate and guiding investigative principles, and
- to help complaint analysts exercise delegated responsibilities in a consistent, fair and reasonable manner.

During 1998, changes to the complaint investigation process successfully reduced the amount of time the Board takes to conclude a complaint investigation. The Board's goal is to complete simple investigations in four months, and complex investigations in 18 months.



Results

The 11 investigations completed in 1998 led to the conclusion that Code requirements are generally being met. However, a number of these complaint reports identified problems with implementation of the Code and with failure by the Code to meet public expectations. Some concerns related to the exercise of the broad discretion the Code gives to district managers, and the direction provided to them by government.

INVESTIGATING FOREST PRACTICES AND CODE COMPLIANCE

General Issues Identified in Complaint Investigations

Expectations for Public Review and Comment Process

The Board encourages an effective, efficient public involvement process that meets the objectives of the Code and builds public confidence in the management of BC's forest resources. However, public involvement in forest development planning continues to be an area of concern. Public expectations for involvement in planning and decision making are often greater than provided for in the Code. The Board has seen room for improvement in the public review and comment process, and has made a number of recommendations for improvement in two complaint reports (see Appendix 1).

Documenting Controversial Decisions

The Board found that district managers sometimes failed to document the reasoning behind potentially controversial decisions. These include discretionary decisions such as the approval of forest development plans and plan amendments, and the granting of various exemptions under the Code. Documenting the rationale for potentially contentious decisions provides the public with an opportunity to understand why the decision was made. The Board noted in some of its reports that clear rationales are particularly important in light of the public interest, input and expectations in forest development planning.

Protecting Non-Timber Forest Resources

Eight of the new complaints received in 1998 included concerns that forest development plans were not addressing non-timber resources, such as wildlife habitat and biodiversity, or were not consistent with higher-level plans. The Code set public expectations in these areas, but since parts of the Code have yet to be clarified or implemented, public expectations may not be met. The Board has concluded that there are still gaps in the Code when it comes to protecting forest resources other than timber.

Issues Identified in Specific Complaints

Restricting Recreational Access

In one complaint, the Board identified a lack of direction to support district managers' decision making as it related to conflicting recreational users (e.g., between skiers and snowmobile operators). Section 105 of the Code allows district managers to issue orders to manage public recreation use on Crown land, but there is no indication in the Code, the Regulations, or ministry policy of the objectives of that authority. The Board recommended that the Ministry of Forests provide policy direction for district staff on appropriate use of such orders, including the intent of the law, appropriate circumstances for orders, and criteria to be applied in deciding whether to make such orders.

Designating Community Watersheds

Maintaining water quality and quantity is extremely important, which is why water user groups put considerable effort into monitoring land-use activities in their source watersheds. Formal designation as a "community watershed" under the Code brings special protection—for both the quality and quantity of water—

which is not mandatory in other watersheds. Designation is at the discretion of district managers. In one case investigated by the Board in 1998, complainants

could not understand why district managers could authorize forest practices that the complainants felt might seriously affect their water supplies, without first having made a decision in response to their request to have that supply area designated as a community watershed. The Board concluded that the approved activities would not differ if community watershed status was granted. They also recognized the district manager's intent to delay a decision until a fair process was established for evaluating such requests. However, the Board has recommended that the Ministry of Forests and the Ministry of Environment, Lands and Parks make special efforts to inform water users about operational planning in watersheds that supply drinking water but have not been designated as community watersheds.

**THE MOST COMMON COMPLAINTS
FROM THE PUBLIC INVOLVE FOREST
DEVELOPMENT PLANNING.**

Complaints Received in 1998

Table 4

<i>Forest Practices Board File Number & Name</i>	<i>Date Received</i>	<i>Location</i>	<i>Assertion of Complaint</i>	<i>Board Decision¹</i>	<i>Year-end Status</i>
980141 – East Prince George	Jan. 13, 1998	Prince George	<ul style="list-style-type: none"> forest development plan was approved despite asserted deficiencies in cutblock size, green-up and stream identification adequacy of opportunity for public review and comment in question 	Investigate	Open – Under investigation
980142 – Homesite Creek (logging plans)	Jan. 22, 1998	Sechelt	<ul style="list-style-type: none"> environmental damage was caused by forest practices approved logging plans were deficient government monitoring and enforcement was inadequate 	Investigate	Open – Draft report completed
980146 – Catface Mt.	Mar. 12, 1998	Clayoquot Sound, Vancouver Is.	<ul style="list-style-type: none"> road switchback that encroached a riparian area should not have been approved 	Investigate	Open – Under investigation
980147 – Babine Mt.	Mar. 27, 1998	Smithers	<ul style="list-style-type: none"> recreational access improperly managed by district manager 	Investigate	Closed – Report released
980148 – Trout Lake	Apr. 14, 1998	New Denver	<ul style="list-style-type: none"> forest development plans did not address requirements for biodiversity, mountain caribou habitat, and watershed assessment 	Do not Investigate	Closed – Converted to review and appeal
980149 – Hasty/Aylwin	May 7, 1998	Silverton	<ul style="list-style-type: none"> government failure to designate Hasty/Aylwin watershed as a community watershed 	Investigate	Closed – Report released
980150 – Deadman Creek	May 8, 1998	Kamloops	<ul style="list-style-type: none"> forest development plan did not adequately conserve critical winter range for moose 	Do not investigate	Closed
970110 – Sewell Inlet Timber Sale	May 11, 1998	Queen Charlotte Is.	<ul style="list-style-type: none"> cutblock improperly laid out; would cause site degradation as approved skyline logging not appropriate; helicopter logging required 	Investigate	Closed – Report released
980151 – Neskonlith Ponds	May 11, 1998	Chase	<ul style="list-style-type: none"> forest practices caused flooding on private land 	Investigate	Closed – Report released
980152 – Carbon Creek	June 23, 1998	Williston Lake	<ul style="list-style-type: none"> forest development plan did not meet appropriate visual quality objectives for forest practices 	Investigate	Open – Under investigation
980154 – Blackpool	June 25, 1998	Clearwater	<ul style="list-style-type: none"> forest practices in a community watershed inadequately protected water quality and quantity 	Investigate	Open – Under investigation
980155 – Bonaparte Lake	June 26, 1998	North of Kamloops	<ul style="list-style-type: none"> forest development plans inadequately conserved wildlife habitat, with consideration to a commercial guide-outfitting operation 	None – abandoned	Closed
980158 – Thutade Lake	June 26, 1998	Northwest of Prince George	<ul style="list-style-type: none"> forest practices to clear a power line did not adequately protect water quality 	Investigate	Open – Under investigation
980160 – Homesite Creek (Fire tools)	Aug. 12, 1998	Sechelt	<ul style="list-style-type: none"> adequacy of fire abatement equipment on site during logging 	Investigate	Open – Under investigation
980161 – Blunt Mt.	Aug. 13, 1998	Smithers	<ul style="list-style-type: none"> forest development plan inadequately protected an historic trail 	Investigate	Open – Under investigation
980163 – Government Creek	Oct. 21, 1998	Queen Charlotte Is.	<ul style="list-style-type: none"> inadequate public opportunity to review and comment on proposed cutblocks 	None	Under assessment
980164 – Pattison Creek	Oct. 25, 1998	Mission	<ul style="list-style-type: none"> forest development plan inadequately protected against landslides and flooding, given terrain instability 	Investigate	Open – Under investigation
980172 – Garnet Valley	Dec. 16, 1998	Summerland	<ul style="list-style-type: none"> Ministry of Forests inadequately prevented spread of insects from infested Crown land to adjacent private land 	None	Under assessment

¹ If a complaint is within the Board's jurisdiction, it must be investigated. The reasons the Board may refuse to investigate a complaint are set out in section 177(2) of the Forest Practices Code.

Terrain Stability Information

In another case, residents were concerned because information related to terrain stability of proposed roads and cutblocks was not shown in a forest development plan, so was not available for public review. The Board found that the plan met the requirements of the Code, but not the expectations of the complainant. However, the Board did find a problem with the Code itself: terrain stability information for cutblocks has to be shown in forest development plans, but terrain stability information for roads does not.

Summary of Complaint Issues

Complaints filed in 1998 related primarily to concerns about operational planning and forest practices. Forest protection and government enforcement were raised in few complaints. The 13 investigations that were started in 1998 involve issues which fall into five main categories:

Category	Number of Investigations
<i>Appropriateness of Enforcement</i>	1
<i>Reasonableness of Operational Plan Approvals</i>	6
<i>Community Watersheds</i>	2
<i>Environmental Damage and Forest Protection</i>	6
<i>Damage to Scenic or Recreational Values</i>	2

Chart **A** Geographic location of complaints received (June 1995 - December 1998)

- Cariboo Forest Region
- Kamloops Forest Region
- Nelson Forest Region
- Prince George Forest Region
- Prince Rupert Forest Region
- Vancouver Forest Region

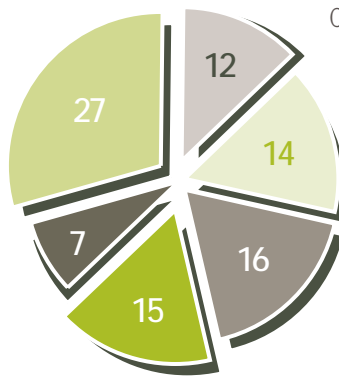
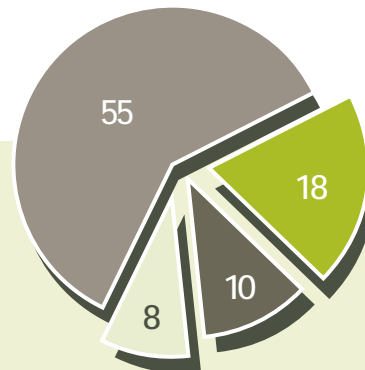


Chart **B** Subject matter of complaints received (June 1995 - December 1998)

- Operational Planning
- Forest Practices
- Protection of Forest Resources
- Compliance and Enforcement



Examples of Complaint Investigations

Communicating Plans for Forest Development

A person living in a rural residential area was upset to learn that the Ministry of Forests was planning to approve a 27-hectare cutblock near to her house. She had believed for years that the forest around her home was parkland, and she had been looking forward to a future free from intrusive development. The Ministry of Forests told her that, whatever promises might or might not have been made in the past by provincial and municipal officials, the land was officially designated "provincial forest." This meant that it was open to logging under timber sale. Indeed, such a sale had been identified for at least two years on forest development plans under the government's Small Business Forest Enterprise Program.

Many other local residents also expressed concern that logging the area would have a damaging effect on scenic, recreational and biological values. Alongside the cutblock was a trail to a waterfall that was a favourite destination for hikers. After reviewing the residents' concerns and authorizing some changes, the district manager approved the silviculture prescription for the timber sale. Residents continued to object that they had not had meaningful input into the process.

Shortly before the silviculture prescription was approved, the woman raised several specific concerns in a complaint to the Board. She said that, in the silviculture prescription: the biogeoclimatic subzone had been wrongly identified as Coastal Western Hemlock instead of the relatively rare Coastal Douglas-fir; streams and wetlands had not been properly mapped; and forest cover types had been misclassified. She also claimed that it was wrong to approve the sale when provincial government and local officials had promised that the area was a park.

The Board concluded that the silviculture prescription complied with Code requirements, and for that reason, found the complaint not to be substantiated. While the Board found that the process leading to the approval of the prescription was generally fair, it expressed concern about an evident lack of public

confidence in forestry planning processes in the area. Confusion about the difference between forestry planning and land-use planning had also hampered communication. Some of this confusion stemmed from the fact that the regional district's official community plan showed an intent—which had not been carried out—to purchase and protect the land along the waterfall trail.

Public distrust of forest management practices and planning processes was one of the most important factors leading to the development of the Code. The Code's objectives—including forest sustainability, a balance of diverse forest values, and conservation of all forest resources—provide an important assurance that all interests will be considered and respected. If the Code is to be effective, public confidence that these

objectives are being met is essential.

It is not enough for forest managers to simply follow the letter of the law by complying with the strict requirements of the Code. They must ensure not only that the law is followed, but that the public trusts the process by which it is followed. This means ensuring clear and open communication about forestry planning, and satisfying members of the public that their concerns are heard and addressed thoroughly and without bias.

THE CODE PROVIDES MINISTRY OF FORESTS DISTRICT MANAGERS WITH A GREAT DEAL OF DISCRETION TO MAKE DECISIONS. THE BOARD IS INCREASINGLY CONVINCED THAT DISTRICT MANAGERS MUST DOCUMENT THEIR REASONS FOR SIGNIFICANT OR CONTROVERSIAL DECISIONS. THIS IS THE ONLY WAY THE PUBLIC CAN HAVE CONFIDENCE THAT DISCRETION IS BEING EXERCISED IN A MANNER THAT MEETS THE OBJECTIVES OF THE CODE.

In this case, the Board emphasized the need for forest district managers to proactively inform local governments and interest groups of forthcoming plans in rural residential areas, to be aware of and sensitive to local planning initiatives, to encourage a clear public understanding of decisions resulting from land-use planning processes, and to encourage community participation in operational planning. The Board emphasized the need for government to provide clear policy direction to forest districts on these points.

For more information about the Homesite Creek investigation, see Complaint Investigation Summary #9, or the full report, entitled *Approval of Silviculture Prescription for Timber Sale A48267 near Homesite Creek, Halfmoon Bay*.



Providing Adequate Opportunities for Public Review of Forest Development Plans

Two environmental advocacy groups in the Kootenays asked a Ministry of Forests district manager for 54-day extension to the 69-day period for review and comment on four forest development plans in the district. The groups said that they needed more time because of the number and complexity of the plans that were being made available for review simultaneously. Compounding the problem, additional plans were available for public review in the neighbouring forest district at the same time. The groups argued that they couldn't possibly review and comment on all of these plans in the allotted period.

At the time of this investigation, the *Operational Planning Regulation* required a minimum 60-day period for public review and comment on forest development plans. District managers had discretion to extend that period, based on the "nature and extent of that person's interest in the area under the plan."

The district manager did not grant the request for extension, but agreed to accept comments for an additional 10 days. The district manager based the decision on his interpretation that the groups did not have sufficient "interest" in the area to warrant a time extension. The organizations complained to the Board that the decision was unreasonable and that the district manager should have provided reasons for his decision to deny the request for an extension.

The Board reached a number of important conclusions in this case, including:

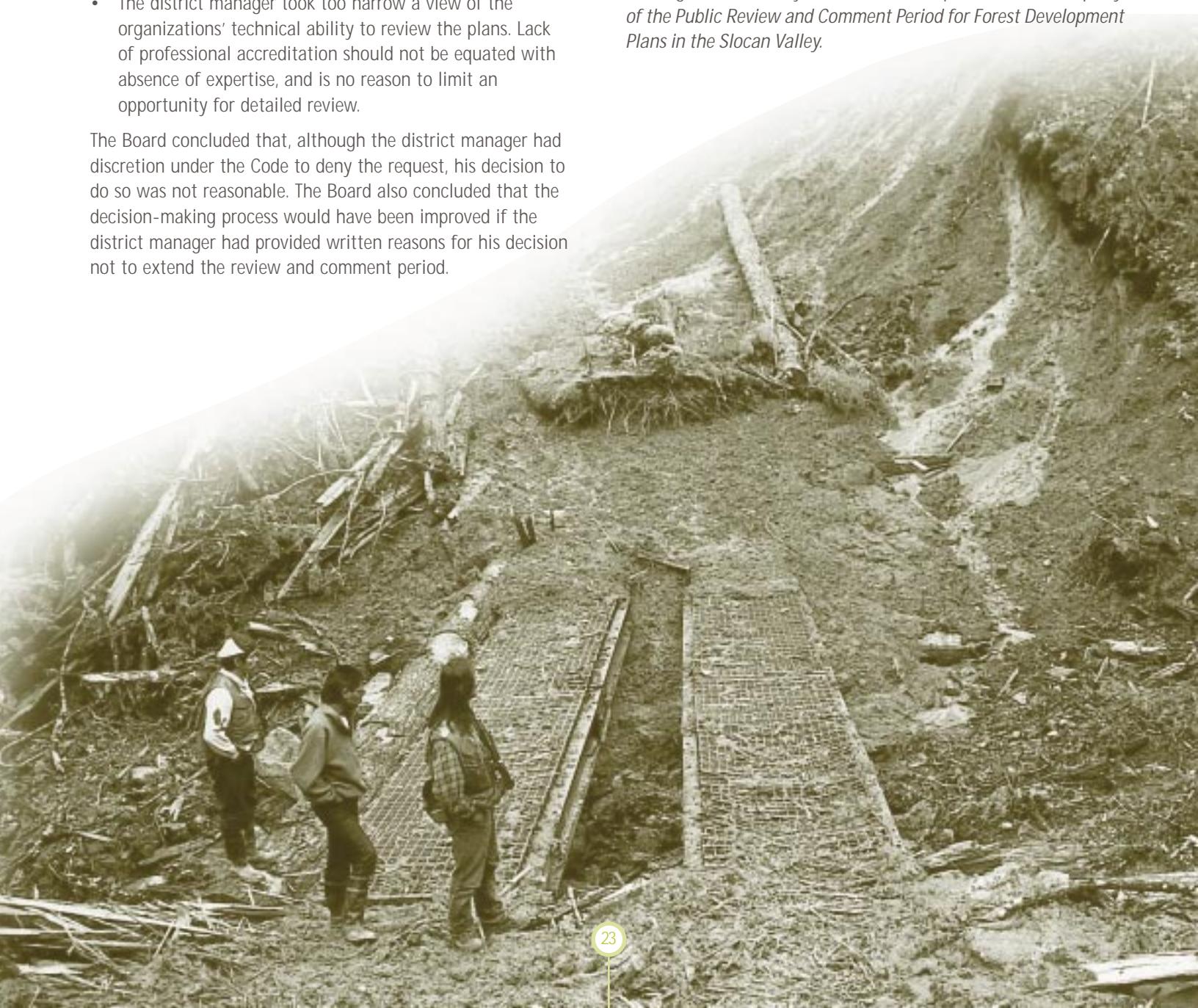
- Public review and comment on forest development plans, as provided by the *Operational Planning Regulation*, is the only legislated and the most important avenue for public review of proposed roads and cutblocks. The opportunity must, therefore, be adequate and meaningful.
- The 60-day review period is a minimum: extension, on a reasonable request, should be the normal practice, unless 60 days is clearly adequate.
- In the context of public review of forest development plans, a person's interest should be interpreted in its broader, plain meaning of "public concern or interest in the land, resources or amenities on the area of a forest development plan."
- The district manager took too narrow a view of the organizations' technical ability to review the plans. Lack of professional accreditation should not be equated with absence of expertise, and is no reason to limit an opportunity for detailed review.

The Board concluded that, although the district manager had discretion under the Code to deny the request, his decision to do so was not reasonable. The Board also concluded that the decision-making process would have been improved if the district manager had provided written reasons for his decision not to extend the review and comment period.

The Board made a number of recommendations to government addressing issues such as the interpretation of a person's "interest," when the public review and comment period should be extended, and when district managers should provide reasons for discretionary decisions. The Board also made recommendations to improve the efficiency and lower the cost of public review, including the use of "sign-out" centres—to allow members of the public to borrow plan documents beyond normal working hours—and increased use of computer-based information exchange (e.g., via the Internet).

Following the investigation, the government amended the *Operational Planning Regulation* to establish 60 days for public review as a fixed period rather than a minimum requirement.

For more information about this investigation, see Complaint Investigation Summary #11, or the full report, entitled *Adequacy of the Public Review and Comment Period for Forest Development Plans in the Slocan Valley*.



Notifying the Public of Opportunities to Review Forest Development Plans

In order to be able to review and comment on forest development plans, the public needs to be aware that the plans are available for review. Another complaint that the Board investigated in 1998 had to do with the adequacy of public notice. A forest company (i.e., licensee) on Vancouver Island placed a notice in the local newspaper, advertising the availability of 10 forest development plans for public review and comment. The notice identified the general area to which the plans applied, and included dates and locations for viewing the plans. It did not, however, provide a contact name and telephone number or include information about alternative times and places for viewing the plans.

Acting on behalf of an individual, an organization contacted the district manager about the notice. This organization maintained that the information which had not been included in the notice was vital to those members of the public who might want to comment on the plans, but who could not attend at the designated location to view the plans at the specified times. The organization asked the district manager to instruct the licensee to re-advertise the plans for a further 60-day period of public review and comment. The district manager decided not to do so, but did not advise the organization of that decision until four months later. The organization then complained to the Board that the public notice had been inadequate.

GOOD COMMUNICATION BETWEEN THE PUBLIC AND THE GOVERNMENT AGENCIES THAT IMPLEMENT THE CODE IS ESSENTIAL TO BUILD PUBLIC CONFIDENCE IN THE MANAGEMENT OF BC'S FORESTS. THE BOARD HAS SEEN SEVERAL CASES WHERE POOR COMMUNICATION HAS LED TO MISTRUST AND A LACK OF CONFIDENCE IN GOVERNMENT'S ABILITY TO ADEQUATELY MANAGE FOREST RESOURCES.

The Board concluded that the district manager complied with the Code when he decided to accept the notice. However, the Board agreed with the complainant that the notice should have included a contact name and number and should have provided a more precise description of the area covered by the plans. In addition, in view of the remote location of the plan areas, the licensee should have considered advertising the plans more widely—for example, by a radio announcement, or by letter to potentially interested individuals or groups. Such additional information and wider advertising would

have been consistent with the suggestions provided in the Ministry of Forests' *Public Consultation Guidebook*.

The Board concluded that, in this circumstance, the deficiencies in the notice were not likely to have prevented the public from having adequate opportunity for review and comment. However, the Board recommended that the district expand its methods of public notification, and that the Ministry of Forests revise the *Guidebook* to include suggestions about alternative viewing times.

Following the Board's involvement, the district manager ensured that licensees were notified of the *Public Consultation Guidebook* provisions.

For more information about this investigation, see Complaint Investigation Summary #10, or the full report, entitled *Adequacy of the Notice of Public Review and Comment for Ten Forest Development Plans on Northern Vancouver Island*.

SPECIAL INVESTIGATIONS

In addition to conducting audits and responding to public complaints, the Board initiates investigations on its own from time to time. The Forest Practices Code allows the Board to undertake special investigations related to compliance with, and government enforcement of, the Code. The Board chair can also make special reports to the ministers on matters related to the exercise of the Board's duties, or to a specific audit or investigation.

Summary of Accomplishments

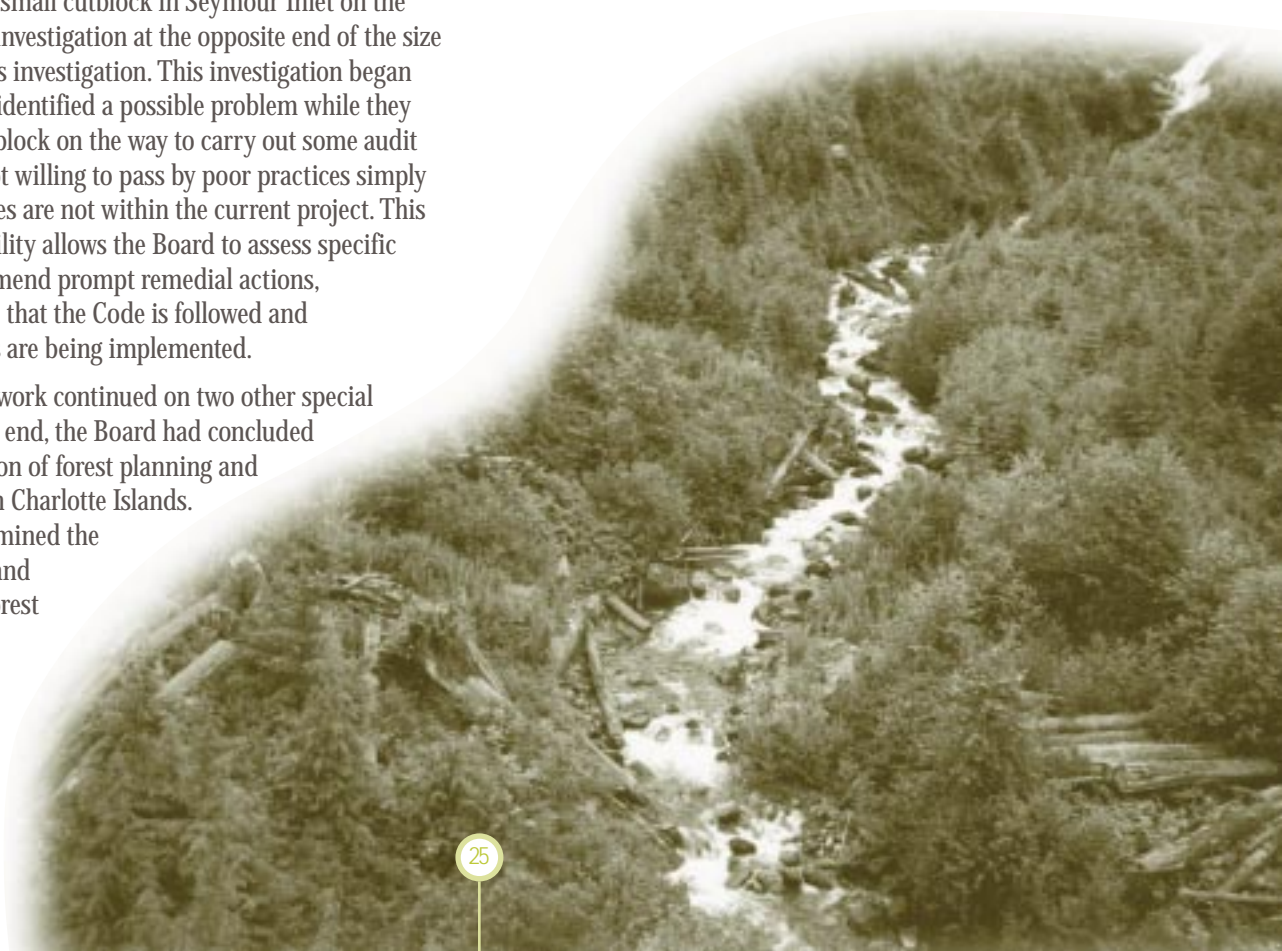
This year, the Board concluded an extensive special investigation into forest planning and practices around streams in coastal British Columbia. The issue of logging practices around streams was the subject of public controversy, so, in its role as public watchdog for effective forest management, the Board decided to undertake this investigation. This was one of the largest and most detailed studies of coastal forest practices ever undertaken. It involved field review of 355 streams in more than 90 cutblocks in six forest districts on the BC coast. The study examined the practices of 33 different licensees and under the government's Small Business Forest Enterprise Program (SBFEP) in several districts.

This year the Board also undertook a special investigation of logging practices in a small cutblock in Seymour Inlet on the mainland coast—an investigation at the opposite end of the size scale from the streams investigation. This investigation began when Board auditors identified a possible problem while they were flying over a cutblock on the way to carry out some audit work. The Board is not willing to pass by poor practices simply because those practices are not within the current project. This quick response capability allows the Board to assess specific situations and recommend prompt remedial actions, if necessary, to ensure that the Code is followed and sound forest practices are being implemented.

Throughout the year, work continued on two other special investigations. At year end, the Board had concluded the special investigation of forest planning and practices in the Queen Charlotte Islands. The investigation examined the process for planning and amending all of the forest development plans involving four

licensees and the SBFEP between June 1995 and February 1996. The investigation also dealt with a complaint from the Haida Forestry Branch of the Council of the Haida Nation, that the Haida did not have an adequate opportunity to review and comment on proposed forestry operations. The report was being finalized for release in early 1999.

Field work was also completed for the special investigation of forest planning and practices in the Fort St. James Forest District. The investigation examined possible damage to fish streams, and a number of possible deficiencies and irregularities in operational planning. In addition, enforcement concerns were raised in the complaints, centring on enforcement of a stop-work and a remediation order related to forest road construction north of the Sustut River. That investigation should wrap up in 1999.



Results

Forest Planning and Practices in Coastal Areas with Streams

One of the objectives of the Code is to ensure that planning and practices around streams and riparian areas provide protection to fish and wildlife and their habitats, in addition to protecting the stream and riparian areas themselves. This is achieved by identifying streams in and adjacent to cutblock areas for which logging has been proposed. The Code also requires

classification of streams in and adjacent to cutblock areas, and classification of streams based on width and the presence or absence of fish. Under the Code, a riparian management area must be established next to all streams to protect the stream ecosystem and the diversity of wildlife habitat and vegetation. This area consists of a riparian management zone and, for larger fish streams, a riparian reserve zone. Restrictions on forest practices apply within these zones, particularly in the riparian reserve zone.



STREAMS REQUIRE ADEQUATE RESERVES AND MANAGEMENT AREAS, AS WELL AS APPROPRIATE FOREST PRACTICES, TO ENSURE PROTECTION OF THE STREAM AND THE WILDLIFE HABITAT AND BIODIVERSITY PROVIDED BY THE VEGETATION NEXT TO THE STREAM. THE BOARD HAS NOTED PROBLEMS WITH INCORRECT STREAM CLASSIFICATION, INADEQUATE MAPPING OF SMALL STREAMS, AND RETENTION OF LESS VEGETATION THAN RECOMMENDED. THESE LEAD TO INADEQUATE PROTECTION OF STREAMS, HABITAT AND VEGETATION THAT ARE IMPORTANT TO WILDLIFE AND BIODIVERSITY.

The objective of the Board's investigation was to determine whether or not forest planning and practices in coastal areas comply with the Code and protect streams and associated riparian areas. However, the Board was also able to compare its results to those obtained between 1988 and 1992, when the Ministry of Forests commissioned several independent reports to assess forest practices around streams, under the guidelines that were in place before the Code was created. That comparison led to the most significant findings of this investigation: the level of disturbance to streams is now significantly lower than it was in the pre-Code period, and the nature of the disturbances is much less damaging. The Code is one of the major factors that led to this significant improvement in forest practices near streams. This study shows that the forest practices required by the Code are effective in minimizing impacts on streams and riparian areas.

The investigation found generally high levels of compliance with the planning and practices requirements of the Code. However, two areas were identified as requiring improvement. The area with the most room for improvement was the classification of streams: the investigation found that 25 percent of streams were not classified correctly. Most of these were small fish-bearing streams. Incorrect stream classification can lead to inadequate reserves and inappropriate forest practices near streams. The other area of non-compliance was failure to carry out stream cleaning and falling and yarding practices according to plans, mainly for non-fish-bearing streams. In some cases, non-compliance was caused by inadequate plans.

The investigation also looked at compliance with the best management practices set out in guidebooks. Many specific forestry practices next to streams and riparian areas are not prescribed by regulation, but are set out as recommended practices in the *Riparian Management Area Guidebook*. The investigation found that use of stream cleaning and falling and yarding recommendations was fairly high. Retention of

streamside vegetation was fairly high on larger fish-bearing streams, but was very low on small non-fish-bearing streams. Given that the guidebook only recommends retaining 5 percent of streamside vegetation on these small non-fish-bearing streams, the result was that many of these streams had little or no vegetation left to protect the stream or provide wildlife habitat.

Finally, the investigation found that specific measures to protect non-timber values in riparian areas were lacking, making it impossible to assess the wildlife habitat affected by logging.

The Board has made recommendations to government and the forest industry, related to:

- improving stream classification to ensure the appropriate protection of streams and riparian areas,
- objectives for wildlife habitat and biodiversity to provide appropriate protection,
- improving forest practices near small streams to prevent impacts to stream banks and channels, and
- long-term assessments to monitor the effects of forest practices to understand whether the initial interpretations are confirmed over time.

The Board presented a detailed list of recommendations to government and the forest industry as a result of this study (see Appendix 1).

Special Investigation of a Cutblock at Schwartzberg Lagoon

In addition to major investigations of the state of forest practices, the Board can also carry out quick investigations, which can be much smaller in scope, to address questions or concerns about the soundness of forest practices. In 1998, the Board undertook such an investigation, looking at forest practices and Code enforcement in a cutblock near Schwartzberg Lagoon, located in Seymour Inlet on the mainland coast. A Board audit team working in the area first noticed the cutblock, which did not appear to have been properly treated following harvesting. The Board decided to investigate the block to determine whether or not the licensee had complied with Code requirements and if the Ministry of Forests had effectively enforced the Code.

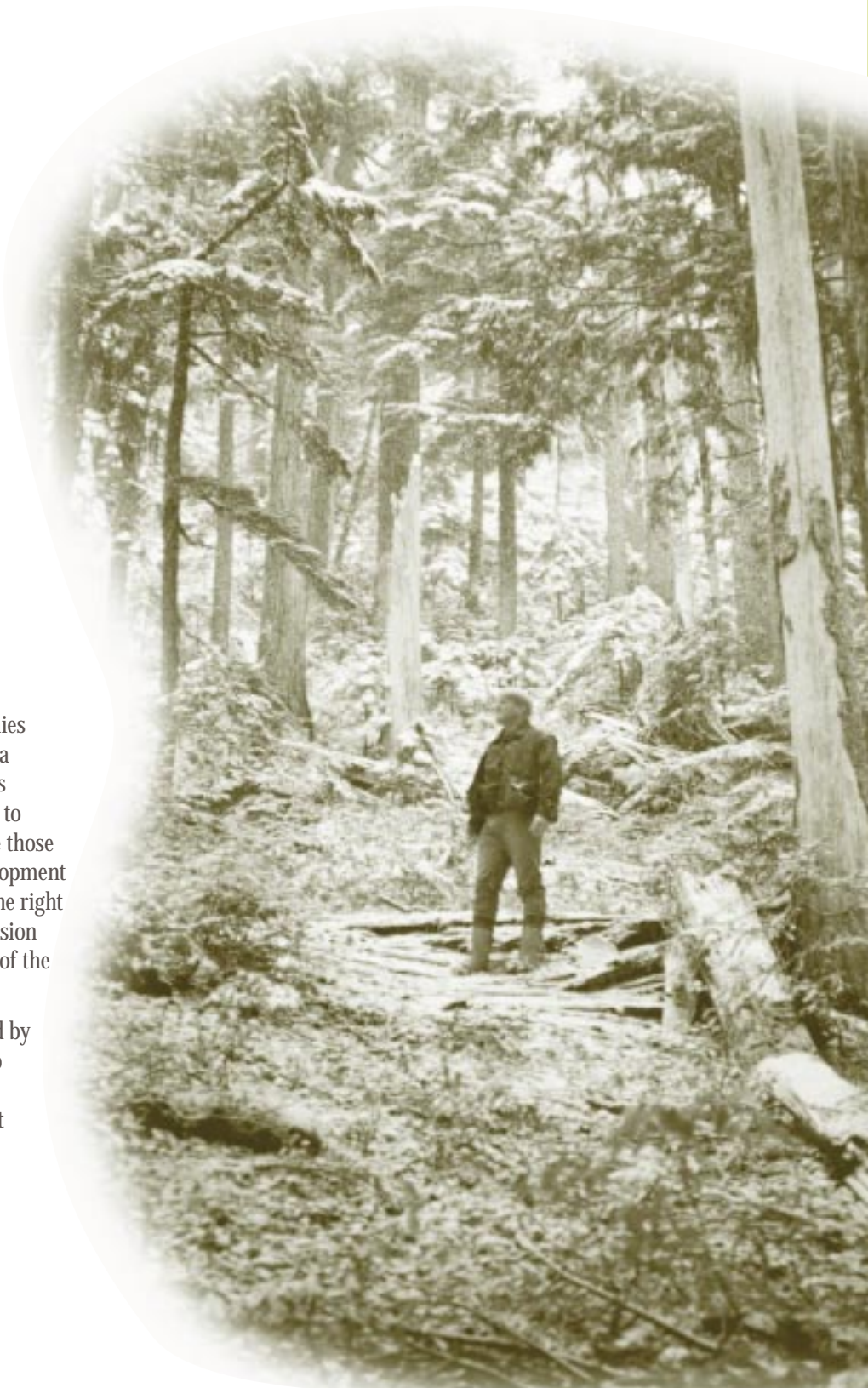
The Board concluded that the licensee had not met its obligations under the Code, and that rehabilitation of some slides on the site was needed to prevent further sedimentation of a stream. Ministry enforcement efforts at that point had not been effective in achieving action by the licensee. Several recommendations were made to the licensee and the Ministry of Forests. In November 1998, the district manager advised the Board that actions had been taken in response to the recommendations. The ministry is evaluating the results and will monitor and carry out a field assessment to ensure that Code requirements are met.



The Board's role in reviews and appeals is quite different from the impartial role it plays in audits and complaint investigations. In reviews and appeals, the Board acts as an advocate, asking the Forest Appeals Commission to make decisions that will foster a fair, effective and efficient Code. The Board is independent; sometimes it supports industry, sometimes it supports government, and often, the Board takes its own positions on behalf of the public.

The Code provides the right to appeal key government decisions. For example, companies can appeal fines and government orders. As a representative of the public interest, the Board has been given a unique right to appeal: (a) decisions to enforce Code requirements, (b) failures to enforce those requirements, and (c) the approval of forest development and range-use plans. In addition, the Board has the right to become a “party” to all Forest Appeals Commission proceedings, where it promotes an interpretation of the Code that will best serve the public interest.

The first level of appeal is a review, which is heard by civil servants. From there, appeals can be taken to the independent Forest Appeals Commission. Appeals on points of law—but not disputes about the facts of the case—can then proceed to the Supreme Court of British Columbia.



REVIEWS AND APPEALS

SOME IMPORTANT PIECES OF THE CODE HAVE NOT BEEN IMPLEMENTED—WILDLIFE AND BIODIVERSITY ARE TWO EXAMPLES. THE CODE HAS CREATED PUBLIC EXPECTATIONS THAT NON-TIMBER RESOURCES SUCH AS WILDLIFE HABITAT, BIODIVERSITY AND VISUAL QUALITY ARE PROTECTED. THE CODE ENABLES PROTECTION OF THESE RESOURCES, BUT IMPORTANT MEASURES ARE NOT IN PLACE TO DEFINE AND IDENTIFY THE RESOURCES SO THEY CAN BE ADDRESSED IN FOREST DEVELOPMENT PLANS.

Summary of Accomplishments

In 1998, the Board:

- considered 31 reviews and appeals of determinations made under the Code,
- initiated two reviews of the approval of forest development plans,
- joined, as a party, seven appeals of review panel decisions filed by others to the Forest Appeals Commission, and
- considered six requests from the public for reviews of forest development plan approvals.

- whether or not the fact that a person has previously contravened other statutes can be a specific reason to increase a Code penalty,
- if double penalties can be levied for the same contravention,
- what kind of credit should be given when a licensee voluntarily leaves forest habitat to compensate for illegally harvested areas, and
- when the courts should be allowed to overturn Forest Appeals Commission decisions.

The Board's views on some of these issues are summarized on the following pages.

The Board's written submissions are available from the Forest Practices Board office, on request. They may also be obtained via the Internet at: www.fpb.gov.bc.ca Copies of Forest Appeals Commission decisions are available from the Commission at (250) 387-3464, and summaries are also available on the Internet at: www.fac.gov.bc.ca

Forest Development Plan Reviews

Forest development plans are of primary importance in the implementation of the Code. As the highest level of operational planning, forest development plans set the direction for all future development. They also offer the public its only legislated right to review and comment on operational plans.

The Forest Practices Board is the only body that has the right to initiate a review of a district manager's decision to approve a forest development plan, and, if necessary, to appeal the review panel's decision to the Forest Appeals Commission. In 1998, the Board was involved in three such reviews/appeals: Brooks Bay on northern Vancouver Island, Trout Lake in the Kootenays, and Government Creek on the Queen Charlotte Islands.

Required Content of a Forest Development Plan

In 1998, the Forest Appeals Commission decided the first appeal of a forest development plan under the Code. The Forest Practices Board had appealed the approval of a plan covering activities on the west coast of Vancouver Island.

The Commission's decision, which upheld the plan, is important information for anyone interested in forest development plans under the Code.

The Board participated in five hearings before the Forest Appeals Commission and received 12 Commission decisions—including decisions from previous hearings. In addition, it participated in one hearing before the BC Supreme Court. Another Supreme Court appeal was resolved before hearing.

This level of activity was lower than in previous years, reflecting the general reduction in the number of reviews and appeals being pursued by licensees.

Issues Pursued by the Board

In 1998, the Board participated in appeals involving issues such as:

- whether or not an urgently needed remediation order can be issued without a hearing,
- whether or not the public has been given "adequate opportunity" to provide comments on a proposed forest development plan,
- the effect of a regional land-use plan, and implementation of its transition provisions,
- whether or not the Board has the authority to request a review of a forest development plan approval on the basis that the plan does not adequately conserve caribou habitat,
- whether or not government must prove that a Code contravention has taken place "beyond a reasonable doubt,"

One key ruling concerns measures to protect forest resources, including timber, water, wildlife, fisheries, recreation, botanical forest products, forage, and biological diversity. The *Operational Planning Regulation* specifies which forest resources must be described in forest development plans. The Commission said that the plans only have to describe—and only have to specify measures to protect—those specific resources, not any other resources.

In the case of some resources, this means that the *Operational Planning Regulation* requirements are fairly minimal. Consider one important forest resource—wildlife. Under the *Operational Planning Regulation*, forest development plans must describe wildlife habitat areas, but this only applies if government has designated “identified wildlife” and “wildlife habitat areas.” As of the end of 1998, government had not designated any such areas. As a result, there was no general requirement for forest development plans to describe wildlife or measures to protect wildlife.

At the time of the decision, the *Operational Planning Regulation* also required forest development plans to describe “known” cultural heritage resources for the area of the plan. “Known,” at the time, meant identified in a higher-level plan or otherwise made known by government. As there was no higher-level plan and no evidence that government had made known any cultural heritage resources, there was no requirement to describe such resources. However, an archaeological overview assessment of the entire district had been undertaken, and the proposed cutblocks were in an area identified as having low probability for cultural heritage features.

The *Operational Planning Regulation* no longer requires forest development plans to describe cultural heritage resources.

The requirement to describe specific known forest resources applies to the “area under the plan.” The Commission clarified that the “area under the plan” should be the larger area that is being considered for development, not just the area included in silviculture prescriptions. It said, “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.”

On another topic, the Commission pointed out that there are no format requirements for forest development plans, although there is direction in Code guidebooks. Although the Commission said that the Brooks Bay plan was a “very difficult plan to review and to provide thoughtful input on,” the plan did meet the Code’s public review and comment provisions.

Meaning and Effectiveness of Regional Plans

A regional land-use plan in the Kootenays includes guidelines to protect the dwindling herds of mountain caribou that inhabit and migrate through the region. Caribou have been depleted in 43 percent of their historic range in BC and are now classified as a “vulnerable” species.

A district manager in the area approved a forest development plan that did not follow the caribou guidelines set out in the regional plan. When concerned citizens asked why, he told them that the cutblocks had been approved in a forest development plan before the guidelines were in effect. While he had applied the caribou guidelines to newly proposed cutblocks and refused to approve cutblocks that breached the guidelines, he did not apply them to cutblocks that had been approved in previous plans. Unhappy with this development, the citizens asked the Board to request a review of the approval of the forest development plan.





The Board took the matter to the review panel and argued that even though the cutblocks had been in previous plans, they should not simply be rubber-stamped, but considered in the context of the regional plan and its guidelines. Members of the review panel did not disagree, but concluded that, although the decision was not “totally clear,” the regional plan had been appropriately considered. The panel held that the regional plan’s transition provisions allowed a lower standard to be applied to previously approved cutblocks, especially since the licensee had made substantial investments, pursuant to government directions.

The panel upheld the approval of the forest development plan in these circumstances. However, in a decision that will be important to future cases, the panel rejected the company’s argument that the

Board did not have the statutory right to request reviews of forest development plan approvals on the general question of whether the plan adequately conserves wildlife.

In another positive outcome, the review process encouraged the logging company and concerned citizens to negotiate ways in which future development could be planned to reduce impacts on caribou.

For a number of reasons, the Board decided not to appeal the review panel decision. However, in light of the decision, the Board has concerns about the meaning and effectiveness of higher-level planning for the area. There are also concerns that guidelines are not being met, which is putting caribou at risk.

**THE CODE IS RESULTS-ORIENTED
IN PRACTICES. BOARD WORK HAS
DEMONSTRATED THAT THE CODE
HAS HAD POSITIVE RESULTS IN
IMPROVED PRACTICES AND
REDUCED IMPACTS ON THE
ENVIRONMENT.**

Public Opportunity to Review Plans

This year, the Board challenged a forest development plan approval of two cutblocks in the Queen Charlotte Islands. The cutblocks are located in an unlogged watershed that has cultural, traditional, biodiversity and recreation values, as well as timber values. Logging in the area has been contentious for some time. The Board acted because it was concerned that the public had not been given a proper opportunity to provide comments on the two cutblocks. The Board did not challenge the other 104 cutblocks in the plan.

The proposed plan that went out for public review stated that development of the two blocks would be “deferred.” One section of the plan said that development would be “deferred until a local planning process recommenced.” Consequently, some people decided not to comment on the proposed cutblocks; they assumed that final approval was not being sought for these cutblocks.

However, in the end, the Ministry of Forests gave final forest development plan approval for the cutblocks, with no provision for deferral. A conservation group asked the Board to seek review of this approval, and the Board decided that it was in the public interest to do so.

The Board argued that the public had not been given adequate opportunity to review the forest development plan, since the version that was given to the public was substantially different than the one that was actually approved.

At year end, a decision had not yet been released by the review panel.

Examples of Issues Pursued by the Board in 1998

Licensee Demands Right to be Heard

A logging company that built a bridge over a river in north-eastern BC was called to account by the district manager, because eroding gravel had deposited sediment into the river. The district manager decided that the company had contravened the Forest Practices Code, and issued a remediation order to deal with the problem. All this was done without first giving the licensee an opportunity to be heard.



Government policy requires that before a remediation order is made, the party to which it applies should be given an opportunity to be heard at an informal hearing. This case raised the question of whether an emergency remediation order can be issued without a hearing.

The Board took the position that an opportunity to be heard is normally required prior to making a remediation order. However, when there are urgent concerns about protection of the environment, it should be possible to conduct a quick “hearing” through other means, such as by telephone. In a true emergency, it should be possible to issue such an order without a hearing. Any breach of the rules of fairness can later be remedied through a full hearing at the review or appeal stage.

The Forest Appeals Commission agreed that a remediation order can be issued before a hearing, in emergencies. However, on the facts of this particular case, the Commission held that the erosion of the bridge deck did not amount to an “emergency,” and the licensee should have been given an opportunity to be heard. The determination of contravention and the remediation order were overturned because of insufficient evidence.

Logging Company is Hit Hard for Old Contraventions and Cries Foul

A small logging company illegally logged Crown timber in the Interior of BC. A substantial penalty was assessed against the licensee.

The Board joined the case because the review panel, ignoring a previous Commission decision, had considered previous contraventions under the *Forest Act* when setting the penalty. The Board argued that it is very important for review panels to try to be consistent with previous Commission decisions, so that people in the industry have clear understanding of the rules. The Board also took the position that the previous Commission

decision had been a correct interpretation of the statute, and that non-Code contraventions cannot be taken into account.

The Forest Appeals Commission agreed that in assessing a penalty, only contraventions of the Code are relevant; other contraventions under different legislation should not be considered. In the result, however, the original penalty was upheld because of other circumstances.

On another point, the Board successfully argued that when the district manager gathered evidence

after the opportunity to be heard, and did not share it with the licensee, he had breached the principle of fairness. The Board urged the Commission to admonish the Ministry of Forests to avoid such mistakes in the future. However, the problem in this case was resolved by the fact that the licensee had had two subsequent hearings, for which it did have access to the evidence beforehand. The Commission’s decision basically agreed.

Licensee Fights Decision on Landslide

A landslide occurred in the Okanagan Valley because of improper drainage on a logging road and back-spar trail. Among other things, the licensee was found to have contravened section 45 of the Code. This section creates a penalty for carrying out a forest practice that causes damage to the environment. However, the section provides a defence if the forest practice was “in accordance with” a permit or logging plan.

The licensee argued that it could not be held liable for “damage to the environment” if it had not breached a condition of a permit or plan. The Board argued that simply complying with a limited number of conditions in a permit or plan does not give carte blanche immunity for any and all environmental damage. Complying with a plan or permit gives a good defence for reasonable implementation of the plan or permit—not for all possible environmental damage under section 45.

In addition, the licensee argued that because the landslide had occurred several months after its logging operation had ceased, section 45 could not apply. The Board argued that for this section to apply, the damage need not happen at the same time as the activity, as long as the damage was clearly traceable to the licensee’s forest practices.

This case had not been decided at the end of 1998.

Administrative Penalty System

The Board has taken the position that the administrative penalty system under the Forest Practices Code should not be confused with prosecutions of offenders in the criminal courts. The administrative system does not involve prosecutions, convictions, or any possibility of imprisonment. If concepts from the criminal courts were to apply, cases would become lengthy and more complex; fewer could be pursued, and the Code's effectiveness in protecting public forests would be seriously reduced. Therefore, the Board has opposed importing concepts such as due diligence and the criminal standard of proof.

Due Diligence

Again in 1998, the Board dealt with a number of cases that raised the issue of whether the defence of due diligence should be available for administrative penalties. Due diligence is a defence in regulatory offence prosecutions. It allows a person who commits a prohibited act to avoid liability if they can demonstrate that they took reasonable care to avoid committing the act.

The Board takes the position that due diligence should not be available in the case of administrative remedies. Rather, due diligence should be available only when a licensee is being charged with an offence under the Code.

In 1998, the Forest Appeals Commission ruled a number of times that due diligence is not a defence to administrative penalties, although it can be taken into account when assessing the size of the penalty.

In 1997, the government enacted legislation that would amend the *Forest Practices Code of British Columbia Act* to provide for two types of administrative penalties:

- no-fault penalties, meaning that the due diligence defence is not applicable, and
- fault penalties, meaning that the fine can take into account more factors and be larger—and due diligence can be a defence.

These changes had not been implemented at the end of 1998.

Criminal Law Standards Not Appropriate

Criminal rules are based on the premise that "It is better that 12 guilty persons go free than one innocent be convicted." As a result, criminal law requires that a person be proven guilty "beyond a reasonable doubt." However, the Board opposes using this criminal law standard of proof for administrative penalty proceedings. The non-criminal (i.e., civil) standard demands only that proof be established "on the balance of probabilities" (i.e., "more likely than not").

The criminal law standard may not be appropriate in a situation that involves administrative monetary penalties (i.e., rather than



jail), and when the Crown is primarily regulating persons who have been given the opportunity to do business on public land.

In a significant case that originated in the Kootenays, an individual was found liable for the unauthorized harvest of Crown timber. An administrative penalty was imposed, and the individual appealed the determination on the grounds that the government had not proved its case “beyond a reasonable doubt.”

The Forest Appeals Commission agreed with the Board and dismissed the appeal on the grounds that the appropriate standard of proof was civil, not criminal. The individual was found to have illegally cut Crown timber, and the administrative penalty was upheld.

Redundant Penalties

The Board continued to be concerned about the possibility of persons being subjected to unfair and redundant penalties under the Code. In a 1998 decision, the Forest Appeals Commission once again addressed this issue.

In a Vancouver Island case, the Commission found that the Code intended that redundant contraventions can be found for the same action and same legal prohibition. However, the Commission acknowledged the Board’s concern about possible unfairness, and stated that the penalty amount should reflect the fact that there was really just a single act and a single legal prohibition.

Role of the Courts in Reviewing Appeals

In a coastal BC case, a portion of a road liquefied, allowing mud and sediment to slide into a stream. The district manager found the licensee to be in contravention of its road maintenance responsibilities, and a review panel upheld this determination. On appeal, the Forest Appeals Commission upheld the finding that there had been a contravention of the *Forest Road Regulation* (see the *Forest Practices Board 1997 Annual Report*).

In 1998, the licensee appealed to the BC Supreme Court, arguing that the Commission had failed to specifically cite the correct legal test in its decision. As a matter of general principle, the Board joined other parties in responding that the courts should not lightly interfere with Commission decisions.

The Board argued that a court should not interfere with a Commission decision because of “uncrossed t’s and undotted i’s,” but only for errors that are clearly legal in nature. It is sufficient, in the Board’s view, if the Commission has *implicitly* applied the correct legal tests. The Commission has a special expertise in forestry, and often sees witnesses who are not seen by the courts. Courts should not interfere with a Commission decision unless that decision is unreasonable or clearly wrong.

The Court agreed with these positions and did not allow the appeal.

Leaving Compensatory Habitat

In a 1997 hearing, a company did not dispute that it had improperly cut a wildlife tree patch, but it did argue that there should have been no penalty, because it had voluntarily left other forest habitat as compensation.

The Board argued that the following principles should apply:

- Reduction of the penalty should be contingent upon the company establishing that the cutting of the original reserve was an innocent and unintentional mistake.
- While credit should be given for voluntary, compensatory tree retention, care must be taken to keep the penalty high enough to remove all economic benefit, to discipline the transgression, and to deter reserve violations.
- Among other things, the penalty should take into account all ecological values that have been compromised by changing the reserve area, and it should reflect all other losses to the Crown.
- Credit for establishing compensatory reserves should be greater if they are pre-approved by government officials (preferably including biologists). This would discourage the location of such reserves in areas that are simply convenient and beneficial for the contravenor.

In a 1998 decision, while the Commission did not explicitly adopt these principles, a number of them were implicit in its decision to impose a penalty. In an interesting twist, after the hearing was completed, but before the decision was released, the licensee attempted to unilaterally withdraw from the appeal. However, the Board successfully argued that such unilateral termination would be a waste of the resources that all of the parties had devoted to the appeal, and unfair to the other parties.

PUBLIC CONTACT

Why did BC need a Forest Practices Code in 1995?
Three important reasons were:

- Social values were changing, and evidence from a number of areas showed that there were problems with forest practices in the province. The public wanted assurance that all operations would have to meet and adhere to a basic standard.
- The system at that time did not provide for effective enforcement of even basic standards. So, even if there had been a minimum standard set by the guidelines of the day, there were no means to ensure effective enforcement.
- International scrutiny and criticism of BC's forest practices were both increasing.

These circumstances led the Forest Resources Commission to recommend the development of a Forest Practices Code.

Public uncertainty about how meaningful the Code would be—and distrust about whether or not it would actually be adhered to by industry and enforced by government—was expressed in a series of public meetings during the development of the Code. Therefore, the Forest Practices Board was included as a key element of the Code. The Board was established as an independent watchdog to provide British Columbians with timely, objective and independent assessments of the state of forest planning and practices in the province, of compliance with the Code, and of the achievement of the Code's intent.

The Board was created to help foster public confidence in the Code.

Contact with the public is a critical element of the Board's fundamental work and purpose. This is accomplished primarily through reporting its findings, conclusions and recommendations to the public. It also involves hearing from the public about issues, concerns and expectations.

Information exchange with representatives from interested groups and the public in communities throughout the province provides the Board with a broad perspective on the work and activities being undertaken in the forests of BC. In visits to communities, Board members meet directly with agreement holders, government staff, interested organizations, and members of the local public who may be interested in the Forest Practices Code. Public meetings are another forum for open and candid exchange of information. Discussions with individuals at public meetings provide the Board with the opportunity to explain its role and mandate and to listen to interested and concerned parties. These sessions also help Board members identify Code-related issues that may be of concern to people in the different regions of the province.

These meetings provide a valuable opportunity for the Board to explain the findings, conclusions and recommendations arising from its work. This public contact supplements the regular distribution of reports and news releases after the Board completes an audit, investigation, or other important piece of work.

BC'S FOREST PRODUCTS MUST COMPETE IN THE GLOBAL MARKET, WHERE CUSTOMERS ARE STARTING TO DEMAND THAT PRODUCTS COME FROM SUSTAINABLY MANAGED FORESTS. INCREASINGLY, IT IS NOT JUST BC RESIDENTS WHO NEED TO BE CONFIDENT ABOUT THE SOUND MANAGEMENT OF BC FORESTS—IT'S OUR INTERNATIONAL MARKETS AS WELL. CERTIFICATION IS ONE OF THE TOOLS THAT CAN FOSTER THAT CONFIDENCE. THE CODE, IN ASSOCIATION WITH OTHER FACTORS, PROVIDES AN IMPORTANT BENCHMARK.

Activities in 1998

In 1998, Board members visited the communities of Penticton, Kelowna, Terrace, Castlegar, Prince George, Chilliwack and Sechelt. During these visits, Board members met with representatives from government ministries, forest companies and industry associations, environmental groups, and other organizations interested in the management of BC's forests. Board members also made themselves accessible to local-area media.

At public meetings held in Kelowna, Prince George, Chilliwack and Sechelt, the Board heard from many people who work in the forest who have seen improvements in forest practices since the Code was enacted. From these workers, and others, came suggestions for ways to streamline the planning process and help make operations more efficient.

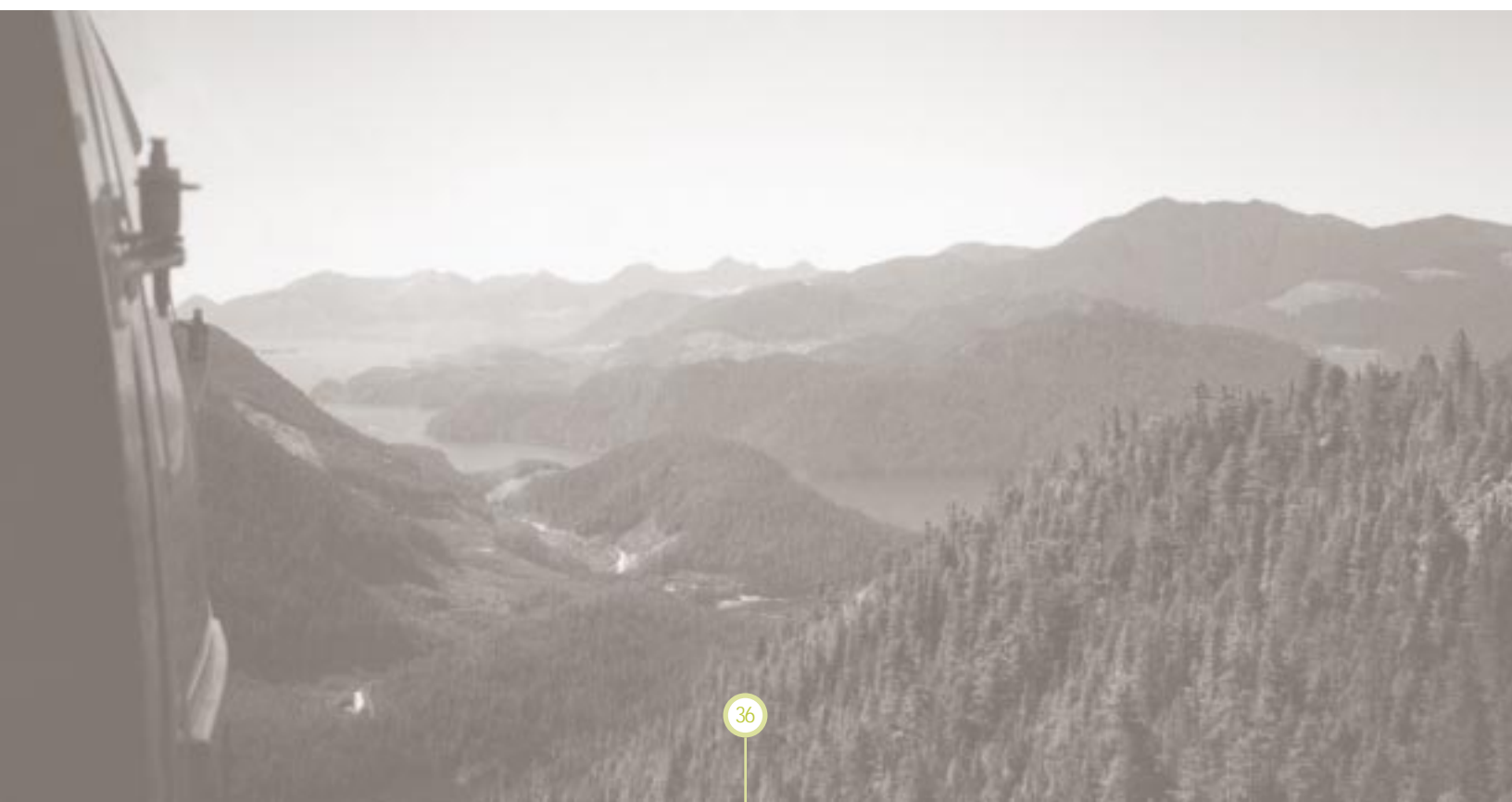
Members of the public also expressed concerns about the current state of the industry, and the need for it to remain competitive. At the same time, however, the public wants to maintain the environmental protection afforded by the Code. The Board also heard about a variety of specific issues, such as deactivation of roads and the associated loss of public access, concerns that biodiversity is still not being addressed in forest development plans, and so on.

Board members also met with staff from the Ministry of Forests and the Ministry of Environment, Lands and Parks, both at headquarters and in the field. There were other meetings with forest industry associations, environmental groups, and others

interested in forestry issues in BC. The Board chair had the opportunity to meet with international delegates and representatives from Holland, Germany, and England during the year. Visiting BC to find out about our forest practices, these delegates wanted to get the independent watchdog's views on how well the Code is working.

In addition, Board members participated in 15 conferences, conventions, and annual general meetings, where they were able to meet with people from diverse backgrounds and interests. These events were held by such organizations as the Coast Silviculture Committee, the Northern Forest Products Association, the Interior Loggers Association, the BC Wildlife Federation, the BC Environmental Network, and the BC Cattlemen's Association. This year, the Board chair also gave presentations at events such as the Price Waterhouse Forest Management Auditing Seminar.

In January 1998, the Board launched its Internet site. Over the course of the year, it continued to build the site to make important and interesting information available to as many people as possible. As a result, visitors can obtain copies of reports and news releases, information about the reviews and appeals with which the Board is involved, information about ongoing investigations and audits, and biographies of the Board members. The Board has received tremendous positive feedback about the site, and it will continue to make improvements to better meet the needs of visitors. The Forest Practices Board welcomes your comments and suggestions at: www.fpb.gov.bc.ca



Publications Released in 1998

SPECIAL INVESTIGATION REPORTS

1. Forest Planning and Practices in Coastal Areas with Streams
2. Forest Practices and Code Enforcement in a Cutblock near Schwartzberg Lagoon in the Port McNeill Forest District

AUDIT REPORTS

1. Audit of Operational Planning and Practices – Forest Licence A19202 – Cattermole Timber Ltd.
2. Audit of Timber Harvesting and Road Construction, Maintenance and Deactivation – Forest Licence A18979 – Slocan Group (Radium Division)
3. Audit of Timber Harvesting and Road Construction, Maintenance and Deactivation – Forest Licence A18696 – Tolko Industries Ltd.
4. Audit of Forest Planning and Practices – Forest Licence A20020 – West Fraser Mills Ltd.
5. Audit of Timber Harvesting and Road Construction, Maintenance and Deactivation – Tree Farm Licence #10 – International Forest Products Limited
6. Audit of Timber Harvesting and Road Construction, Maintenance and Deactivation – Forest Licence A20192 – Slocan Group (Slocan Division)
7. Audit of Road and Timber Harvesting Practices – Forest Licence A18157 – Plateau Forest Products Ltd. (Slocan Group)
8. Audit of Timber Harvesting and Road Construction, Maintenance and Deactivation – Forest Licence A18689 – Riverside Forest Products Ltd. (Armstrong Division)

9. Audit of Timber Harvesting and Road Construction, Maintenance and Deactivation – Forest Licence A20010 – Tolko Industries Ltd. (QuestWood Division)
10. Audit of Forest Planning and Practices – Small Business Forest Enterprise Program – South Island Forest District
11. Audit of Timber Harvesting and Road Construction, Maintenance and Deactivation – Forest Licence A19207 – Prettys' Timber Co. Ltd.

COMPLAINT INVESTIGATION REPORTS

1. Complaint 950096: Approval of Silviculture Prescription for Timber Sale A48267 near Homesite Creek, Halfmoon Bay
2. Complaint 950082: Adequacy of the Notice of Public Review and Comment for Ten Forest Development Plans on Northern Vancouver Island
3. Complaint 950067/69: Adequacy of the Public Review and Comment Period for Forest Development Plans in the Slocan Valley
4. Complaint 980149: Hasty/Aylwin Watersheds: A Request for Community Watershed Status under the Code
5. Complaint 970110: Sewell Inlet Timber Sale: Appropriateness of the Silviculture Prescription
6. Complaint 980151: Flooding of Ponds on Neskonlith Indian Reserve
7. Complaint 950076: Planning for the Harvest of Beetle-Damaged Timber in Corn Creek
8. Complaint 970126 and 980147: Restrictions on Motorized Vehicle Recreation in the Harold Price and Blunt Creek Areas

COMPLAINT INVESTIGATION SUMMARIES

1. Complaint Investigation Summary #8 – Construction of a Water Pipeline Right-of-way on Crown Land near Mt. Currie in 1996
2. Complaint Investigation Summary #9 – Approval of Silviculture Prescription for Timber Sale A48267 near Homesite Creek, Halfmoon Bay
3. Complaint Investigation Summary #10 – Adequacy of the Notice of Public Review and Comment for Ten Forest Development Plans on Northern Vancouver Island
4. Complaint Investigation Summary #11 – Adequacy of the Public Review and Comment Period for Forest Development Plans in the Slocan Valley
5. Complaint Investigation Summary #12 – Hasty/Aylwin Watersheds: A Request for Community Watershed Status under the Code
6. Complaint Investigation Summary #13 – Sewell Inlet Timber Sale: Appropriateness of the Silviculture Prescription
7. Complaint Investigation Summary #14 – Flooding of Ponds on Neskonlith Indian Reserve
8. Complaint Investigation Summary #15 – Planning for the Harvest of Beetle-Damaged Timber in Corn Creek
9. Complaint Investigation Summary #16 – Restrictions on Motorized Vehicle Recreation in the Harold Price and Blunt Creek Areas

Recommendations Made by the Forest Practices Board

RECOMMENDATIONS MADE IN 1998 BY THE FOREST PRACTICES BOARD AND RESPONSES RECEIVED

AUDIT PROGRAM

97003 – Cattermole Timber Ltd.
January 1998

- With regard to drainage structures, Cattermole Timber should:
 - correct the lack of adequate and functioning culverts, ditches and ditchblocks on its active roads, and
 - when the Anderson mainline road reopens in the spring, eliminate the moderate safety hazard created by the inadequate drainage.
- To stabilize the road, restore natural drainage patterns, and address existing and potential erosion of the road and hillside along the north fork of Siwash Creek, Cattermole Timber should:
 - prepare a revised road deactivation prescription that meets Code requirements,
 - secure approval for the prescription from the Ministry of Forests, and
 - complete adequate deactivation according to the approved prescription.
- Cattermole Timber should seek Ministry of Forests approval that work undertaken to address recommendations 1(a) and 2, above, meets Code requirements.

Response: The Board received a letter in February 1998 stating that the ministry has requested an action plan from Cattermole Timber to address the "two problem areas relating to roads and drainage structures in some areas which were built prior to the Forest Practices Code coming into effect."

- The Board requests that Cattermole Timber advise the Board, by March 12, 1998, of the actions taken, or proposed to be taken, to address the Board's recommendations.

Response: Cattermole Timber has advised the Board that they will implement the recommendations and complete the necessary activities during the 1998 operating season.

Cattermole Timber sent a letter to the Ministry of Forests in March 1998 detailing the plan to address drainage structures and deactivation of a road system along the north fork of Siwash Creek.

97002 – Tolko Industries Ltd.
August 1998

- Tolko Industries should:
 - review and revise existing operating procedures for planning and operations, to ensure that practices in riparian areas comply with Code requirements, and
 - remove the barriers to fish passage that were created on the small fish-bearing streams.
- The Board requests that Tolko Industries advise the Ministry of Forests, the Ministry of Environment, Lands and Parks, and the Board by November 30, 1998, of the actions taken to implement these recommendations.

Response: Tolko Industries has advised the Board that surveying and mapping procedures have been revised to ensure that streams are accurately located relative to block boundaries on plan maps, and that plans are underway to replace the culverts identified during the audit.

- The Ministry of Forests and the Ministry of Environment, Lands and Parks should continue to work cooperatively to develop procedures for approving plans that involve harvesting or road construction in riparian areas, to ensure that plans comply with the Code.

Response: The district manager advised the Board that field meetings were held with forest company representatives to discuss forest road management practices in the Merritt Forest District. The companies have been directed to carry out a detailed road evaluation, including a risk assessment, on each road held under road permit and on all forest service roads on which they are designated the primary user. These inspections are to be completed during the summer of 1998 and the results submitted to the district, along with an action plan to address structural deficiencies identified in the inspections.

- The Board recommends that the Ministry of Forests ensure that road inspections on the forest service roads used by Tolko Industries are completed, and that remedial actions to correct the structural deficiencies are considered by November 1, 1998. The Board requests that the ministry notify the Board of the actions taken on these matters by November 30, 1998.

Response: Tolko Industries (Nicola Valley Division) sent a letter in November 1998 to the Ministry of Forests outlining the actions initiated by Tolko. The ministry also sent a letter to the Board in November 1998, summarizing the cooperative efforts of Tolko and the ministry on road inspections and remedial actions to correct structural deficiencies.

98007 – West Fraser Mills Ltd.
August 1998

- The Ministry of Forests should continue developing a comprehensive strategy for the Williams Lake Timber Supply Area (TSA) to deal with the significant risk to forest resources presented by the mountain pine beetle.
- West Fraser should develop a strategy to deal with the mountain pine beetle, and include that strategy in its 1998 forest development plan. This strategy should be compatible with the comprehensive TSA strategy and consider the guidance given in the *Forest Development Plan Guidebook* and the *Bark Beetle Management Guidebook*.
- The Board requests that West Fraser and the Ministry of Forests advise the Board by November 30, 1998 of the actions taken to implement these recommendations.

Response: Ministry of Forests sent a letter in December 1998 to the Board stating that the strategic bark beetle management plan for the Williams Lake TSA should be finished by December 9, 1998.

97004 – South Island Forest District Small Business Forest Enterprise Program (SBFEP)
December 1998

- The district should:
 - establish procedures to ensure there is no harvesting outside of cutblock boundaries or within riparian reserve and management zones,
 - develop and implement operating procedures to ensure that structures, such as bridges, are properly installed,
 - complete a comprehensive road and bridge registry to ensure that all the roads and structures in the SBFEP are accounted for, inspected and maintained,
 - take appropriate actions to ensure that adequate inspection and maintenance of roads and bridges is done to prevent problems such as plugged culverts and erosion, and
 - ensure that proper road deactivation work, including effective placement of cross-ditches, is done to prevent problems such as plugged culverts and cracks in the road surface.
- The Board requests:
 - to be advised on how the SBFEP is monitoring cutblock and riparian boundaries to ensure that logging only occurs where it is approved, and

- that the South Island Forest District advise the Board by March 31, 1999 of the actions taken to implement these recommendations.

Response: *A response is not expected until 1999.*

97010 – Prettys' Timber Co. Ltd.
December 1998

1. The Board sent a letter in December 1998 to the ministers, advising them of the significant harm to the environment associated with old roads in the Chilliwack Forest District, and requested to be informed by the government about the actions proposed to address this problem.

Response: *A response is not expected until 1999.*

INVESTIGATIONS PROGRAM

950082 - Ten Plans on Northern Vancouver Island
April 1998

1. The district manager should expand the requirements for public notification by including additional methods, such as radio announcements and direct correspondence, as outlined in the *Public Consultation Guidebook*, particularly for those forest development plans in remote areas.
2. The Ministry of Forests should revise the *Public Consultation Guidebook* and the *Forest Development Plan Guidebook* to include suggestions on how interested persons may view operational plans if scheduled times or locations are inconvenient.

950067 and 950069 – Adequacy of the Public Review and Comment Period for Forest Development Plans in the Slokan Valley
July 1998

1. District managers should provide a period of longer than 60 days for public review and comment on a forest development plan, on reasonable request, unless a 60-day period is clearly adequate.
2. The Ministry of Forests should provide guidance to district managers regarding:
 - factors to consider in deciding the adequacy of a public review and comment period, and
 - the nature and extent of a person's "interest" in a forest development plan. "Interest" should be interpreted as public concern for or interest in the land, resources or amenities in or on the area of a forest development plan.

3. Persons requesting an extension of the public review and comment period should describe the nature and extent of their interest in the plan area(s), the suggested date of conclusion of public review and comment period, and reasons for the choice of that date. District managers should advise them of the factors they will consider in making a decision.

4. If the public review and comment period is extended beyond the 60-day minimum, the district manager should allow for that period to overlap with the early stage of the interagency technical review process, unless such an overlap creates a serious delay in plan approval, or is unacceptable to the public. This is already the practice in some districts in the province. In such cases, the parties should be made aware of the overlap.

5. A district manager who decides on a request for an extended public review and comment period should provide the requesting person and affected agreement holders with reasons for that decision.

6. When there are recognized seasonal constraints to field review, or complex interagency review requirements, plans should be made available for public review early enough to allow the review and comment period to be extended, if required.

7. District managers should ensure that all general and technical information needed for effective public review of a forest development plan is made readily available to the public, prior to the commencement of the public review and comment period.

8. The Ministry of Forests and agreement holders should continue to explore ways to make proposed forest development plans and maps more readily available to the public. These could include placing plans in a local library or resource centre, or on the Internet.

980149 – Hasty/Aylwin Watersheds:
A Request for Community Watershed Status under the Code
November 1998

1. Now that the evaluation criteria have been distributed, the government should make extra efforts to ensure that applicants for community watershed status are kept well informed of the status of their applications within the adjudication process.

Response: *The Ministry of Forests sent an e-mail in December 1998 stating that the ministry has sent letters to the applicants in response to the recommendations.*

970126 and 980147 – Restrictions on Motorized Vehicle Recreation in the Harold Price and Blunt Creek Areas
December 1998

1. The Ministry of Forests should provide guidance and assistance to district managers on the administration of recreational users on forest lands, by use of Code section 105 orders.

Response: *A response is not expected until 1999.*

SPECIAL INVESTIGATIONS

Special Investigation Report: Forest Practices and Code Enforcement in a Cutblock near Schwartzberg Lagoon in the Port McNeill Forest District

1. Lone Tree Logging Ltd. should:
 - a) complete all outstanding Code obligations with respect to Timber Licence T0127 as soon as reasonably possible, and
 - b) carry out its commitment to rehabilitation, as approved by the Ministry of Forests, to address sedimentation and loss of growing site.
2. The Ministry of Forests and Lone Tree Logging should review the current sedimentation problem where Spur 1 crosses the S3 stream, and implement any necessary sediment erosion controls.
3. The Ministry of Forests should:
 - a) ensure that Lone Tree Logging meets its obligations under the Code, and implement formal enforcement measures if the licensee continues to fail to meet its obligations, and
 - b) take steps to ensure the timely completion of Code obligations and the implementation of preventive measures, such as timely planting, on sites with a high risk of landslides.
4. In accordance with section 186 of the Code, the Board requests that Lone Tree Logging and the Ministry of Forests advise it by November 30, 1998 of the steps that have been or are proposed to be taken to comply with these recommendations.

Response: *Ministry of Forests sent a letter in November 1998 outlining the actions taken by the licensee and the ministry, addressing all of the recommendations.*

Forest Planning and Practices in Coastal Areas with Streams

To remedy the problems identified during the investigation and encourage continued improvements in forest planning and practices in coastal British Columbia, the Board presents a detailed list of recommendations (see section 4 of the Technical Report). The Board's key recommendations are listed here:

- Government, working with the forest industry, should provide standards, guidance and training to improve stream inventories, identification and classification. A clear definition of a "stream" is also essential.
- Government should develop more specific requirements and recommendations for retention of trees and vegetation in riparian management zones, to meet objectives for biodiversity and habitat management.
- Government and the forest industry should work together to improve planning and practices around small streams, particularly to prevent the transport of debris in non-fish-bearing streams.
- Government and the forest industry should prepare plans that are clearly written and practical for the sites they address, so that they can be implemented in the field.
- Government and industry should consider undertaking long-term assessments to monitor the effects of specified forest practices in controlling or preventing such occurrences as blow-down.

Recommendations Made to December 31, 1997 by the Forest Practices Board and Responses Received

AUDIT PROGRAM

96001 – Finlay Forest Industries Inc.
February 1997

Finlay Forest Industries should continue to address all of the significant non-compliance findings in the audit.

Response: April 1997 – Finlay Forest Industries advised the Board that actions were being taken in response to the audit findings.

Ministry of Forests, and Ministry of Environment, Lands and Parks should review the significant non-compliance events related to streams and blocked culverts.

Response: November 1997 – Ministry of Forests has conducted inspections. The Board is not aware of any enforcement actions being taken.

Finlay Forest Industries with Ministry of Forests should review inadequate maintenance of some "inactive" roads.

Response: November 1997 – Finlay Forest Industries addressed this issue through its forest development plan, which was approved by the Ministry of Forests.

96002 – International Forest Products Limited
March 1997

International Forest Products should continue to address significant non-compliance issues.

Response: February 1997 – Interfor advised the Board that actions were being taken in response to the audit findings.

Ministry of Forests should review the significant non-compliance related to road construction and decide if further actions are necessary.

Response: April 1997 – Ministry of Forests reviewed the audit findings and determined that no enforcement actions were necessary.

96004 – Lakes Forest District SBFEP
July 1997

The district manager of the Lakes Forest District should:

- classify riparian areas for operational planning in the future,
- begin preparation of a comprehensive mountain pine beetle management strategy, and
- continue to improve operational plans at the harvesting stage for the SBFEP, including: classification and location of streams, wetlands and riparian areas; and the quality of maps and their consistency with other operational plans.

Response: July 1997 – Lakes District advised the Board that actions were being taken in response to audit findings.

- The government should clarify the interpretation of sections 22(1), 30(1)(c), 30(2), and 30(3) of the *Forest Act* regarding preparation of silviculture prescriptions and the conditions of exemptions and provide policy guidance to district managers and the public on implementation of this interpretation.

Response: October 1997 – Ministry of Forests advised the Board that it does not intend to follow the Board's recommendation.

97003 – Cattermole Timber Ltd.
December 1997

Ministry of Forests, and Ministry of Environment, Lands and Parks should address the damage to the environment that is occurring as a result of the lack of maintenance on certain old roads.

Response: These roads are not a high priority for rehabilitation, given limited resources available.

INVESTIGATIONS PROGRAM

950036 – Rare Mushroom Habitat
August 1996

If the district manager chooses to allow logging to proceed, the district manager should extend the timber sale by the length of time logging has been delayed, giving consideration to seasonal constraints on logging the remaining blocks.

Response: September 1996 – Although changes to the Act or guidebooks were not made, the Ministry of Forests clarified policies with regional and district staff with respect to the issues raised in the investigation.

Ministry of Forests, and Ministry of Environment, Lands and Parks should review their referral agreements to ensure that if substantial information about biological values becomes available after a public review and comment deadline, and before an operational plan is prepared, there is adequate opportunity for consideration.

The government should amend section 40 of the Act to be consistent with section 41. Specifically, subsection (b) of section 41(1), which states, "the district manager is satisfied that the plan or amendment will adequately manage and conserve the forest resources of the area to which it applies," should be added to section 40(1).

The government should clarify the interpretation of the *Biodiversity Guidebook* regarding when "special efforts may be needed" to protect the habitat of individual species.

Responses to comments during public review and comment periods should be documented, and reasons should be provided when no action is taken on written requests to accommodate forest resources in plans.

950038 – Forest Development Planning
in the Cariboo
December 1996

The government should publicly clarify the apparent discrepancy between the requirements of the Forest Practices Code, the timetable for implementation of the Cariboo-Chilcotin Land-Use Plan (CCLUP), and the various expectations regarding consistency of the 1996 - 2001 forest development plans with the higher-level plan.

Response: *January 1997 – Ministers are to write a letter to decision makers, clarifying this (not done yet).*

Local operational guidance will be provided by subregional plans (under development). Strategic guidance will be provided by integration report (see below).

The IAMC and RRB should complete the *Final CCLUP Integration Report* as quickly as possible.

Response: *Report was approved in principle by RRB, and is pending approval by IAMC.*

Sub-unit planning processes should be initiated by the RRB and the IAMC as quickly as possible, beginning with the Special Resource Development Zone sub-units.

Response: *Development of subregional plans is underway, incorporating Special Resource Development Zone sub-units.*

Cooperative sessions to review forest development plans in each sub-unit should be considered as an alternative to the current step-by-step approach. The district managers should initiate these cooperative sessions.

Response: *Government is encouraging agreement holders to consult, but not leading cooperative sessions.*

Government should review the CCLUP implementation process to ensure that there is adequate financial support for RRB.

Response: *No further funding is required, in the government's view.*

When agreement cannot be reached on integration of timber and non-timber targets with the interpretation of the CCLUP, and the dispute resolution process already in place does not provide for prompt resolution, the Board recommends that an independent arbitrator make interim decisions.

Response: *The government does not agree that an independent arbitrator is required.*

The option to extend the approval of the 1995 - 2000 plans – for six months, to June 15, 1997 – should be explored. If that is not practical, clarify for the public how the 1996 - 2001 forest development plans will be reviewed to ensure that they address all the timber and non-timber targets.

Response: *The approval is not extended. Additional clarification is not provided.*

If the 1995 - 2000 forest development plans are extended, any silviculture prescriptions, logging plans, and road permits approved after December 15, 1996 for roads and blocks approved in the 1995 - 2000 forest development plans should be assessed and amended to ensure consistency with the requirements in the *Final CCLUP Integration Report*.

Response: *Not applicable, since plans are not extended.*

In order to avoid false expectations about other land-use plans in future, the government should state whether higher-level plans are to be implemented in advance of formal declaration, or whether they do not take effect until declared. The authority for implementation in advance of formal declaration must be clear.

Response: *June 1997 – Addressed in Bill 47, 1997, amendments to the Forest Practices Code of British Columbia Act.*

The Board recommends that implementation guidelines and a timetable for incorporating the objectives into operational plans be developed before a higher-level plan is declared.

Response: *(See immediately above.)*

Review hearings should be oral, public hearings when public involvement/interests or particularly significant issues are involved.

Review panels should consist of at least three members in the above types of cases.

Response: *Ministry of Forests did not agree that public interest in a case necessitates oral hearings or multi-person panels. Oral hearings would only be necessary when critical issues turn on complex evidence.*

OTHER

Changes to Bill 47 July 1997

To enable the Board to participate in referrals of questions of law to the Forest Appeals Commission.

Response: *Government did not address this in Bill 47, but agreed to consult with the Board on how the issue could be addressed through regulation.*

To enable the Board to request administrative review of penalties for contraventions.

Response: *Government did not address this in Bill 47, but agreed to consult closely with the Board on the regulation governing compensatory penalty.*

REVIEWS AND APPEALS PROGRAM

97350-30 – Special Report on Administrative Review Procedures May 1997

Administrative reviews that involve contradictory and complex evidence should allow for oral presentation of that evidence.

Response: *September 1997 – Ministry of Forests agreed that oral hearings offer the most effective method of review where cases involve complex or contradictory evidence.*

Glossary of Terms

ADMINISTRATIVE PENALTY is a penalty levied by any of three BC ministries—Forests; Environment, Lands and Parks; or Energy and Mines—against a person who has contravened the Forest Practices Code (the Code).

ADMINISTRATIVE REVIEW is a BC-government review of certain types of determinations. It can lead to confirmation, cancellation or variation of the determination, or to a new determination.

AGREEMENT HOLDER is the holder of an agreement under British Columbia's *Forest Act* or *Range Act*.

COMPLIANCE is when the auditor finds that practices meet Code requirements.

COMPLAINT is a matter brought to the Forest Practices Board (the Board) in writing. It includes information specified in the "Notice of Complaint."

COMPLAINT ASSESSMENT is the process by which the Board determines whether or not it must investigate a complaint.

CONCERN is a matter brought to the Board's attention, but not filed as a formal complaint.

DETERMINATION is an act, omission, decision, procedure, levy, order, or other action made or taken by an official under authority of the Code.

FOREST APPEALS COMMISSION is the independent tribunal that hears appeals from administrative review decisions made under the Code.

FOREST PRACTICES BOARD is the independent watchdog for sound practices in British Columbia. The Board works on behalf of the public interest.

FULL-SCOPE AUDIT is an audit of forest practices for performance under all of the requirements of the Code.

LIMITED-SCOPE AUDIT is an audit of forest practices for performance under some, but not all, of the requirements of the Code.

NOT SIGNIFICANT NON-COMPLIANCE is when the auditor, upon reaching a non-compliance conclusion, determines that a non-compliance event, or the accumulation and consequences of a number of non-compliance events, is not significant and is not considered worth reporting.

PARTY is the government or the agreement holder(s) under the *Forest Act* or the *Range Act*.

REMEDICATION ORDERS to an agreement holder are orders to do work to remedy a Code contravention, including any damage done to the land.

ROAD DEACTIVATION, which is done during periods of commercial harvesting inactivity, consists of measures to stabilize roads and logging trails. It includes controlling drainage, removing side-cast where necessary, and re-establishing vegetation for permanent deactivation.

SIGNIFICANT BREACH may follow a non-compliance conclusion, if the auditor determines that significant harm has occurred or is beginning to occur to persons or the environment as a result of the non-compliance event or condition.

A significant breach can also result from the cumulative effect of a number of non-compliance events or conditions. If a possible significant breach is identified, the auditor must conduct tests to determine its extent. If it is clear from those tests that a significant breach has occurred, the auditor must then immediately advise the Board, the party being audited, and the three ministers.

SIGNIFICANT NON-COMPLIANCE also follows a non-compliance conclusion—after the auditor has reached a non-compliance conclusion—when the auditor assesses that the non-compliance event or condition, or the accumulation of a number of non-compliance events or conditions, is significant.

SMALL BUSINESS FOREST ENTERPRISE PROGRAM (SBFEP) is a Ministry of Forests program that enables registered individuals or companies to acquire rights to harvest Crown timber under a timber sale licence. Responsibility for most forestry planning and management requirements is held by the Ministry of Forests.

1998 Annual Report Response Card



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