



File: 97250-20/000242

February 21, 2005

Justin Calof
Forest Management Specialist
Sierra Club of Canada, BC Chapter
302 – 733 Johnson Street
Victoria, BC. V8W 3C7

Dear: Justin Calof:

Re: Government Response to Board's Recommendations, Brand Valley Complaint 000242

In July of 1999, the Board was asked by the Sierra Club to appeal a 1998 determination that approved the South Island Forest District's 1999-2001 SBFEP FDP in the Brand operating area on south-western Vancouver Island. The Board decided investigate the issue as a complaint. In November 2001, the Board released its report. The Board decided that the MOF district manager had complied with the Code, but that, in 1998, she had been encumbered by poor policy direction and incomplete landscape planning. Given those poor management conditions at the time she had to decide, the approval was acceptable. The Board made two recommendations:

1. that government complete landscape unit plans as soon as possible to provide better guidance for forest development planning, and
2. that government act more quickly to establish wildlife habitat areas, especially where red-listed species are affected.

The Board's authority is to examine and report, and to make recommendations if desired. If the Board makes recommendations in a complaint investigation, the board must inform the complainant if a party has taken no action that the board believes to be adequate or appropriate. This letter is that report.

Given a change in statutory authority to deal with landscape level planning and wildlife habitat area designation among ministries since the recommendations were made, we waited

for some time before we assessed the responses to the recommendations. Initial responses were somewhat indefinite, but on January 31 of this year, we received more substantive responses.

Response to Recommendation #1:

MSRM responded on the recommendation on landscape unit planning. The MSRM Team Leader for the Coast Region stated that a draft landscape unit plan had been completed in late 2002 and that it included seven proposed wildlife habitat areas for MAMU. First Nations, licensees and the Ministry of Forests had expressed concern about operational and timber supply impacts. Interfor, funded by the Forest Investment Account, had decided in the fall of 2003 to undertake its own LU planning project. MSRM accepted an industry-led process due to reorganization and limited capacity pressures. In the fall of 2004, locations from draft old growth management areas (OGMAs) were finalized. None overlap any of the proposed wildlife habitat areas. The OGMAs are to be formalized by formal notices, planned for February 2005, with OGMAs to be established in the fall of 2005. MSRM says that it has demonstrated substantial progress toward completion of OGMAs consistent with current policy direction.

Response to Recommendation #2:

MWLAP responded on the recommendation on wildlife habitat area designation. It echoed the information provided by MSRM, but added that the draft OGMAs did encompass 17% of the potential MAMU habitat. MWLAP noted that the OGMAs were mostly low/marginal habitat quality and that they overlapped with none of the proposed wildlife habitat areas. The reason is that government policy is to co-locate land designations in the timber harvesting land base to reduce cumulative impact on the province's timber supply. In the meantime, WLAP staff are to submit five of the WHA proposals to Victoria in February. Those five are the ones that have been supported by licensees.

Under section 133 of the *Forest and Range Practices Act*, the Board must decide whether the actions of each agency are appropriate and whether they are adequate.

The actions of MSRM do not appear to be appropriate. Land use planning has apparently still not been completed for the Effingham Landscape Unit, three years after the Board made its recommendation. Landscape-level planning and clear government land use objectives are essential to direct those who plan, propose and approve forest practices in the Brand Valley. There is no indication that there is much more of such direction than there was when the Board investigated. It also appears to be inappropriate to pass landscape level planning to a licensee simply because of reduced capacity of government to carry out planning. While a government agency can be expected to balance forest land uses with a view to reflecting the

broad social, economic and environmental values that make up the public interest, it is questionable that a licensee should be asked to do so.

Given that the land use planning that has occurred has conserved very little high-quality MAMU habitat, and only where it happens to be contained in OGMA's that have been designated for other purposes, it follows that the actions of MSRM in response to Recommendation #1 are also inadequate.

The actions of MWLAP appear to be appropriate to the extent that the ministry continues to attempt to designate wildlife habitat areas for MAMU and, at least in the case of five proposals, there seems to be some progress. However, the actual results achieved by the actions of MWLAP do not yet appear to be adequate. Despite years of discussion and negotiation, MAMU habitat is still unprotected and not conserved in the Brand Valley. As the Board's complaint report noted, "The marbled murrelet is ... a red-listed, or "threatened" species and loss of nesting habitat is thought to be a major contributor to its decline. The Brand Creek watershed provides significant marbled murrelet nesting habitat, and surveys conducted in 1997 and 1998 showed exceptionally high levels of nesting activity."

The underlying question is: "Why did government respond inappropriately (one ministry) and inadequately (both ministries) to the Board's recommendations?" There are two reasons, both of which have come to the Board's attention in audits and especially in many investigations. Neither one is within the control of regional staff of the agencies to rectify.

First, government agencies have, since the Board's report, had their capacity to act constrained, through reduced staffing and budget. It may be that the capacities of both MWLAP and MSRM have fallen below that required to adequately manage and conserve non-timber resources in a timely manner, including MAMU. The second is the rigid barrier created by a 1999 policy that prevents designation of any commercially-viable timber in the "timber harvesting land base" if doing so will, in conjunction with many other set-asides, have an impact on the timber supply that exceeds an arbitrary one percent of the mature timber volume in that land base. As the Board recommended in a special report on MAMU habitat conservation in 2004:

Government should analyze the one percent policy cap... to determine whether (it is) having a negative effect on Identified Wildlife species such as MAMU on the south coast. If so, adjustments should be made such as increasing or re-apportioning the impact.

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Such an analysis was anticipated to occur in 2001, but never happened. The policy barrier therefore continues to prevent adequate management and conservation of MAMU. A more appropriate conservation model would establish a scientifically formulated species recovery target, - such as the 2002 Conservation Assessment, see * below for reference - identify the habitat requirements needed to reach the target, locate the functionally important habitat that would meet the requirements, ascertain the land use designations available to put habitat aside and then, lastly, to decide how much of that habitat that society was willing to set aside from development based on the cost. At present the one percent policy cap appears to be confining both agencies and licensees to artificially constrain the scientific assessments so as to meet the policy cap so that the requirements of the species and the economic impact considerations are confused. One artifact that illustrates this point is the design of habitat reserve areas that meet the policy cap but create narrow corridors of structurally suitable habitat in riparian zones. Research is not yet definitive about how much non-nesting buffer is needed to create effective nesting conditions so that it would be possible to have WHA's meet the policy cap without in the end establishing functionally useful habitat. The very useful work being conducted by licensees to identify, map and reserve truly effective nesting areas could still turn out to be inadequate if the objective is to design habitat to fit the cap rather than to conserve enough habitat to maintain the species.

The title of the 2001 report was "Was marbled murrelet habitat adequately protected in the Brand Valley?" The Board found the decision making reasonable considering what was known in 1999, but did not actually determine whether MAMU habitat had been adequately protected. In February 2005, the answer would appear to be "no".

Yours sincerely,

A handwritten signature in black ink that reads "Bruce Fraser". The signature is written in a cursive, flowing style.

Bruce Fraser, PhD
Chair

* A Marbled Murrelet Recovery Team has published management guidelines for conserving MAMU¹ and a recovery strategy was developed to address the federal Species at Risk Act, but has not been approved by government². Together, those documents make up the Conservation Assessment.

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¹ Burger, A. E., 2002. *Conservation assessment of Marbled Murrelets in British Columbia: A Review of the Biology, Populations, Habitat Associations and Conservation*, Canadian Wildlife Service Technical Series Report No. 387
[online] <http://www.sfu.ca/biology/wildberg/bertram/mamurt/PartA.pdf>.

² Canadian Marbled Murrelet Recovery Team. 2003. *Marbled Murrelet Conservation Assessment 2003, Part B: Marbled Murrelet Recovery Team Advisory Document on Conservation and Management. Canadian Marbled Murrelet Recovery Team Working Document No. 1.*, Canadian Wildlife Service, Delta, BC.
[online] <http://www.sfu.ca/biology/wildberg/bertram/mamurt/PartB.pdf>.