Audit of Forest Planning and Practices and Forest Practices Code Enforcement on Nisga'a Lands

FPB/ARC/62

June 2004

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I. Report from the Board

I. Report from the Board

As part of its 2003 audit program, the Forest Practices Board conducted a compliance audit of forest planning and practices and an audit of the appropriateness of government enforcement on Nisga'a lands. The compliance audit is the third of five annual audits of compliance with the *Forest Practices Code of British Columbia Act* and related regulations (the Code) as well as the forestry-related requirements of the *Nisga'a Final Agreement* (the Agreement). The enforcement audit is the second audit of government enforcement on Nisga'a lands.

These audits are required under chapter 5, section 55 of the *Nisga'a Final Agreement* (the Agreement). The Agreement requires the Forest Practices Board to perform annual audits of compliance with and enforcement of forest practices legislation and forestry related requirements of the Agreement during a five-year transition period that ends on May 10, 2005. For more information on the Agreement see www.ntc.bc.ca.

The Reports from the Auditor (Parts II and III) provide details on the scope of the compliance and enforcement audits, and the audit findings. The Reports from the Auditor are based on the audit procedures described in Part IIA of this document.

The Nisga'a lands are located in and around the Nass Valley, which is approximately 100 kilometres northwest of the City of Terrace. The compliance audit report contains a detailed description of the operating areas of the auditees.

Compliance Audit of Forest Planning and Practices on Nisga'a Lands

The compliance audit examined auditees' activities and obligations for the period of August 17, 2002, to July 18, 2003. Five auditees currently have activities or obligations on Nisga'a lands:

- New Skeena Forest Products Inc. (NSFP), formerly known as Skeena Cellulose Inc.—TFL 1 and FL A64298
- Sim Gan Forest Corporation (Sim Gan)—FL A64299
- West Fraser Mills Ltd. (West Fraser)—FL A16882
- BC Timber Sales, Skeena Business Area (BCTS Skeena), formerly known as the Kalum Forest District Small Business Forest Enterprise Program
- Kalum Forest District—district manager

The audit examined NSFP's forest planning and practices related to operational planning; timber harvesting; silviculture; fire-preparedness planning; and road construction,

maintenance and deactivation. The audit of Sim Gan, West Fraser, and BCTS Skeena was limited to silviculture and road maintenance and deactivation obligations, as these auditees did not have active operations during the audit period. The audit examined the activities of the Kalum Forest district manager related to silviculture, road maintenance and forest health obligations.

Before completing this report, the Board considered the Report from the Auditor (Part IIB), along with supporting audit evidence. The Board affirms the auditor's findings and conclusions. The operational planning, timber harvesting, silviculture, fire-preparedness planning, road construction, maintenance and deactivation activities carried out on Nisga'a lands by NSFP, West Fraser, Sim Gan, and BCTS Skeena complied, in all significant respects, with the requirements of the Code and the Agreement as of July 2003. Road maintenance, silviculture and forest health obligations on Nisga'a lands that are the responsibility of the Kalum Forest district manager complied, in all significant respects, with the requirements of the Code as of July 2003.

As the transition period progresses, the level of activity on Nisga'a lands continues to diminish and auditees' operations become increasingly focused on achieving Code and Agreement obligations. Despite the low levels of activity, auditees have maintained a high level of compliance. The Board encourages all auditees to continue their efforts towards achieving sound forest management, especially with respect to the management of forest health issues such as the impacts of Dothistroma needle blight.

In addition to auditing compliance, future Board audits on Nisga'a lands will address issues of concern identified in the auditor's report. Another key issue that will be monitored by the Board is the condition of old (non-status) roads. By the end of the transition period, the province is required to ensure that all roads that require deactivation, either under the *Forest Act* or forest practices legislation, are deactivated unless specifically notified otherwise by the Nisga'a Nation. The concern arises in relation to the condition of a potentially significant number of old roads. Key issues include what standard will be used for road deactivation and what the potential cost is to the province and/or licencees of undertaking the deactivation work.

Audit of Enforcement of the Forest Practices Code on Nisga'a Lands

The Board's audit of the appropriateness of the government of British Columbia's enforcement of the Code on Nisga'a lands included all ministries that have responsibility to enforce the Code. Audit findings are reported to the Nisga'a people and the public.

The three ministries that have primary enforcement authority under the Code are: Forests (MOF); Water, Land and Air Protection (MWLAP); and Energy and Mines (MEM). While the Ministry of Energy and Mines had Code enforcement authority during the audit period, it was not included within the scope of the audit because there was no mining

activity involving timber removal during the audit period. The scope of the audit, therefore, encompassed the enforcement planning and operational activities of MOF and MWLAP for the period of July 17, 2001, to July 18, 2003. While the Board has not conducted an enforcement audit on Nisga'a lands each year of the transition period, the two audits that have been conducted have assessed compliance and enforcement activities over a three–year period.

Before completing this report, the Board considered the Report from the Auditor, along with supporting audit evidence, as well as written representations from MWLAP (Skeena Region). The Board affirms the auditor's findings and conclusions regarding the appropriateness of government's enforcement of the Code on Nisga'a lands.

The audit found that MOF has taken the lead role in Code enforcement, consistent with its primary responsibility for the administration of forestry legislation in British Columbia. MOF continued to make improvements to its enforcement on Nisga'a lands during the audit period. The audit found that MOF is fulfilling its mandate under the Code and the Agreement and is appropriately enforcing forest practices legislation on Nisga'a lands.

The audit found that MWLAP had not completed or implemented its framework for Code enforcement and had not carried out enforcement activity on Nisga'a lands. MWLAP was not specifically aware of forestry activities on Nisga'a lands, had not assessed risk associated with those forestry activities, and has not conducted any inspections on Nisga'a lands. In the absence of an implemented enforcement mechanism, MWLAP is not appropriately enforcing the Code on Nisga'a lands. However, given the high level of Code compliance on Nisga'a lands, the audits did not identify any specific impacts resulting from the lack of MWLAP enforcement.

The Board recognizes that MWLAP is in the process of developing risk management and interagency protocols to address its enforcement responsibilities, and is working with other resource agencies to implement a new memorandum of understanding, which clarifies the respective enforcement roles of each agency for the Code and the *Forest and Range Practices Act*. The Board encourages MWLAP in these efforts specifically with respect to fulfilling its mandate on Nisga'a lands.

The audit also found that the government has not yet met its obligation under the Agreement to provide a summary of compliance and enforcement activities on Nisga'a lands to the Nisga'a Lisims government. Since both MOF and MWLAP have responsibility for the enforcement of forest practices legislation on Nisga'a lands, both of these resource agencies have a mandate under the Agreement to inform the Nisga'a Lisims government of their compliance and enforcement activities on Nisga'a lands.

Recommendation

As provided by section 185 of the Act, the Board makes the following recommendation:

> Both the Ministry of Forests, Kalum Forest District and the Ministry of Water, Land, and Air Protection, Skeena Region should provide a summary of compliance and enforcement activities on Nisga'a lands to the Nisga'a Lisims government. This summary should include all of the compliance and enforcement activities that have occurred since the commencement of the transition period.

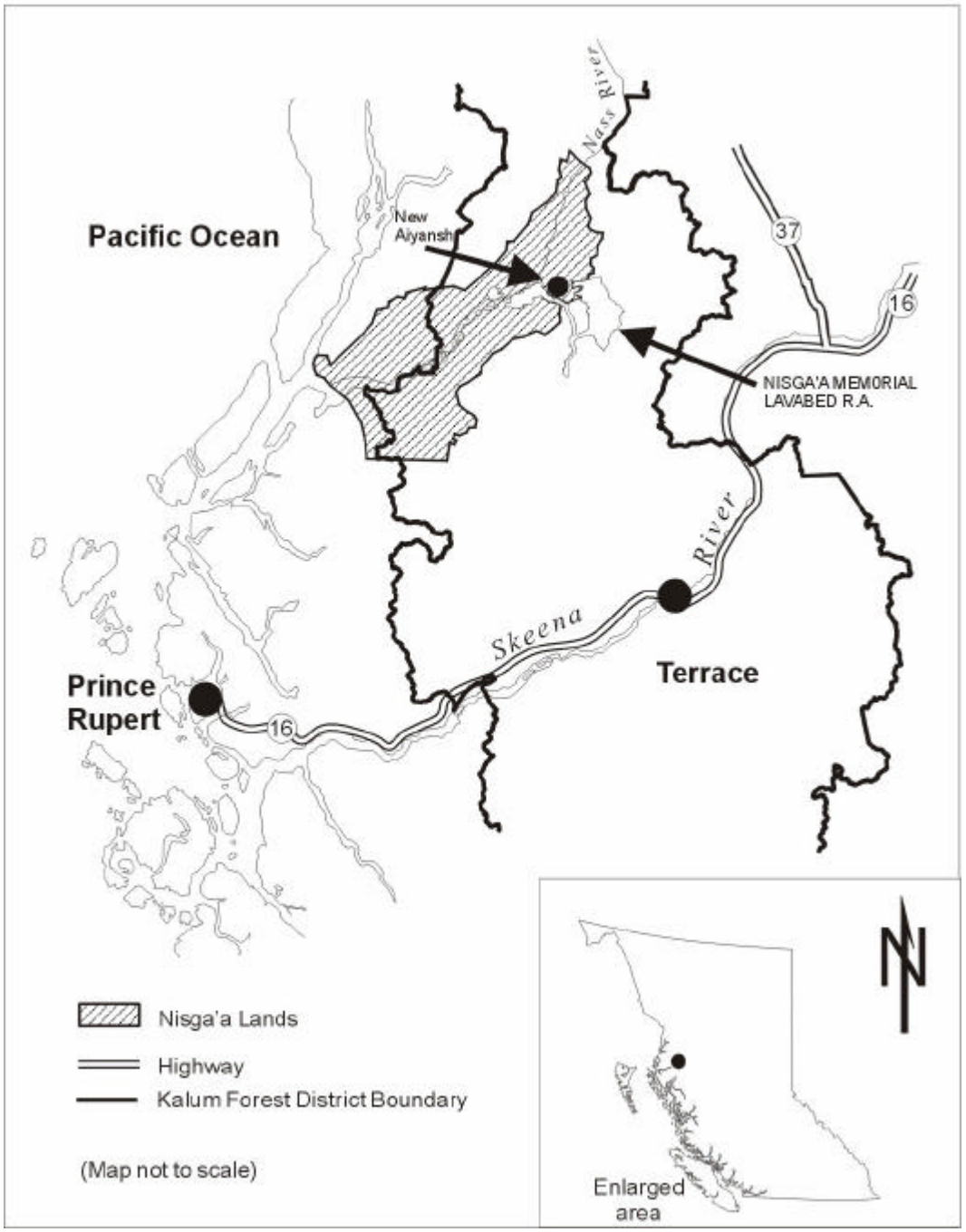
In accordance with section 186 of the Act, the Board requests that both the Ministry of Forests, Kalum Forest District and the Ministry of Water, Land, and Air Protection, Skeena Region advise the Board by July 30, 2004, of the actions taken to address this recommendation.

The Board encourages the Ministry of Forests, Kalum Forest District and the Ministry of Water, Land and Air Protection, Skeena Region in their efforts towards achieving sound forest management on Nisga'a lands, and looks forward to reassessing the appropriateness of government's enforcement in subsequent Board audits on Nisga'a lands during the remainder of the five-year transition period.

Bruce Fraser, PhD
Chair, Forest Practices Board

May 27, 2004

Audit of Nisga'a Lands



II. Audit of Forest Planning and Practices

A. Compliance Audit Process

B. Audit of Nisga’a Lands

II. Audit of Forest Planning and Practices

A. Forest Practices Board Compliance Audit Process for Nisga'a Lands

Background

The Forest Practices Board conducts audits of government and agreement-holders for compliance with the *Forest Practices Code of British Columbia Act* and regulations (the Code). The Board has the authority to conduct these periodic independent audits under section 176 of the *Forest Practices Code of British Columbia Act* (the Act). Compliance audits examine forest planning and practices to determine whether or not they meet Code requirements.

The Forest Practices Board is also required by Chapter 5 – Section 55 of the *Nisga'a Final Agreement* (the Agreement) to perform compliance audits of forest agreements and licences on Nisga'a lands in each year of a defined five-year transition period ending on May 10, 2005. During this period, annual audits must assess compliance with provincial forest practices legislation and the forestry-related requirements of the Agreement.

Audit Standards

Audits by the Forest Practices Board are conducted in accordance with the auditing standards developed by the Board. These standards are consistent with generally accepted auditing standards.

Audits on Nisga'a lands determine compliance with the Code based on criteria derived from the *Forest Practices Code of British Columbia Act* and its related regulations as well as the forestry-related requirements of the Agreement. Audit criteria are established for the evaluation or measurement of each practice required by the Code or Agreement. The criteria reflect judgments about the level of performance that constitutes compliance with each requirement.

The standards and procedures for compliance audits are described in the Board's *Compliance Audit Reference Manual.* In addition, specific additional tests were required to audit the requirements of the Agreement (Chapter 5 and appendix H).

Audit Process

Conducting the Audit

The Board determines the staff and resources required to conduct the audit and the period covered by the audit. Board staff also meet with the party being audited to discuss the logistics of the audit before commencing the work.

Aside from notifying those licensees that operate on Nisga'a lands about the audit, the Board also notifies the Forestry Transition Committee. The Forestry Transition Committee and the Ministry of Forests, Kalum Forest District, which is part of the Prince Rupert Forest Region, jointly administer forestry activities on Nisga'a lands. The Forestry Transition Committee consists of the Kalum forest district manager and one person authorized by the Nisga'a Nation.

All the activities carried out during the period subject to audit are identified; for example, harvesting or replanting sites and building or deactivating road sections. The items that make up each forest activity are referred to as a "population." For example, all sites harvested form the "timber harvesting population." All road sections constructed form the "road construction population." The populations are then sub-divided based on factors such as characteristics of the sites and potential severity of the consequences of non-compliance on the sites.

For each population, the auditors choose the most efficient means of obtaining information to conclude whether there is compliance with the Code. Because of limited resources, auditors usually rely upon sampling to obtain audit evidence, rather than inspecting all activities.

Individual sites and forest practices within each population have different characteristics, such as the type of terrain or type of yarding. Each population is divided into distinct sub-populations on the basis of common characteristics (e.g., steep ground vs. flat ground). A separate sample is selected for each population (e.g., the cutblocks selected for auditing timber harvesting). Within each population, more audit effort (i.e., more audit sampling) is allocated to the sub-population where the risk of non-compliance is greater.

Audit work in the field includes assessments from the air using helicopters and intensive ground procedures, such as measuring specific features like road or riparian reserve zone width. The audit teams generally spend one to two weeks in the field.

Evaluating the Results

The Board recognizes that compliance with the many requirements of the Code or the Agreement is more a matter of degree than absolute adherence. Determining compliance, and assessing the significance of non-compliance, requires the exercise of professional judgment within the direction provided by the Board.

Auditors collect, analyze, interpret and document information to determine the audit results. The audit team, composed of professionals and technical experts, first determines whether forest practices are in compliance with Code or Agreement requirements. For those practices considered to not be in compliance, the audit team then evaluates the degree to which the practices are judged not in compliance. The significance of the non-compliance is determined based on a number of criteria, including the magnitude of the event, the frequency of its occurrence, and the severity of the consequences.

As part of the assessment process, auditors categorize their findings into the following levels of compliance:

Compliance – where the auditor finds that practices meet Code or Agreement requirements.

Not significant non-compliance – where 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 worthy of reporting.

Significant non-compliance – where the auditor determines that the event or condition, or the accumulation and consequences of a number of non-compliance events or conditions, is or has the potential to be significant, and is considered worthy of reporting.

Significant breach – where the auditor finds that significant harm has occurred, or is beginning to occur, to persons or the environment as a result of the non-compliance. A significant breach can also result from the cumulative effect of a number of non-compliance events or conditions.

Identification of a possible significant breach requires the auditor to conduct tests to confirm whether or not there has been a breach. If it is determined that a significant breach has occurred, the auditor is required by the *Forest Practices Board Regulation* to immediately advise the Board, the party being audited, and the Ministers of Forests, Energy and Mines, and Water, Land and Air Protection.

Reporting

Based on the above evaluation, the auditor then prepares the "Report from the Auditor" for submission to the Board. The party being audited is given a draft of the report before it is submitted to the Board so that the party is fully aware of the findings. The auditee is also kept fully informed of the audit findings throughout the process, and is given opportunities to provide additional relevant information and to ensure the auditor has complete and correct information.

Once the auditor submits the report, the Board reviews it and determines if the audit findings may adversely affect any party or person. If so, the party or person must be given an opportunity to make representations before the Board decides the matter and issues a final report to the public and government. The representations allow parties that may potentially be adversely affected to present their views to the Board.

At the discretion of the Board, representations may be written or oral. The Board will generally decide on written representations, unless the circumstances strongly support the need for an oral hearing.

The Board then reviews the report from the auditor and the representations from parties that may potentially be adversely affected before preparing its final report, which includes the Board's conclusions and, if appropriate, recommendations.

If the Board's conclusions or recommendations result in newly adversely affected parties or persons, additional offers of representations would be required.

Once the representations have been completed, the report is finalized and released: first to the auditee and then to the public and government.

B. Audit of Forest Planning and Practices for Nisga’a Lands

Report from the Auditor

1.0 Introduction

In 2003, as required by chapter 5, section 55 of the *Nisga'a Final Agreement* (the Agreement), the Forest Practices Board carried out the third of five annual audits of compliance with provincial forest practices legislation and the forestry-related requirements of the Agreement.

The Agreement requires the Forest Practices Board to perform compliance audits of forest agreements and licences on Nisga'a lands in each year of a defined five-year transition period that ends on May 10, 2005. During this period, annual compliance audits must assess:

- Compliance with the *Forest Practices Code of British Columbia Act* and related regulations (the Code)
- Compliance with the forestry-related provisions of the *Nisga’a Final Agreement*. These provisions include forest cover constraints (e.g., a minimum age of 120 years must be maintained for at least 80 percent of the pine mushroom polygon); visual objectives for specific sites; requirements for local approval of harvesting in specific locations (e.g., harvesting within one kilometre of Gingietl Creek Ecological Reserve requires the agreement of the Gitwinksihlkw Village Government); and specific no harvest zones (e.g., 100 metres either side of the centre line of the Grease Trail).

Description of the Nisga’a Lands

The Nisga’a lands are located in and around the Nass Valley, which is approximately 100 kilometres northwest of the city of Terrace.

Overview of Nisga’a Lands

Operations on Nisga’a Lands

Five operators currently have activities or obligations on Nisga’a lands:

- New Skeena Forest Products Inc. (NSFP), formerly known as Skeena Cellulose Inc.

- Sim Gan Forest Corporation (Sim Gan)
- West Fraser Mills Ltd. (West Fraser)
- BC Timber Sales, Skeena Business Area (BCTS Skeena), formerly known as the Kalum Forest District Small Business Forest Enterprise Program
- In addition, the district manager of the Kalum Forest District has obligations on Nisga'a lands.

NSFP was the only company logging on Nisga'a lands at the time of the audit. NSFP's allowable annual cut (AAC) ranges between 113,000 and 140,000 cubic metres for each year of the five-year transition period.

The current breakdown of activities and obligations on Nisga'a lands is described in Table 1.

Table 1: Activities and Obligations on Nisga'a Land

	Reforestation and road/bridge maintenance and deactivation obligations	Planning, road construction and harvesting
NSFP Forest Licence (FL) A64298	Yes	Yes
NSFP Tree Farm Licence #1	Yes	No
Sim Gan Forest Corporation FL A64299	Yes	No
West Fraser Mills Ltd. FL A16882	Yes	No
BCTS Skeena	Yes	No

2.0 Audit Scope

All forestry activities, planning and obligations subject to the Code for the period August 17, 2002, to July 18, 2003, were included in the scope of the audit. These included ongoing forest practices as well as continuing reforestation and road maintenance obligations.

The activities and obligations subject to audit are described in Table 2.

Table 2: Activities and Obligations Subject to Audit

Activity/ Obligation	NSFP	Sim Gan	West Fraser	BCTS Skeena
Operational Planning	The 2002-2005 forest development plan[i] was approved during the audit period.	No new operational plans approved during audit period.	No new operational plans approved during audit period.	No new operational plans approved during audit period.
Harvesting	13 cutblocks	None	None	None
Road Construction	8.1 kilometres	None	None	None
Road Maintenance	286.2 kilometres	39.8 kilometres	10.5 kilometres	None
Permanent Road Deactivation	2.9 kilometres	None	None	None
Bridge Construction	1 bridge	None	None	None
Bridge Maintenance	44 bridges	9 bridges	None	None
Silviculture Activities	2 cutblocks	10 cutblocks	14 cutblocks	6 cutblocks
Silviculture Obligations	18 cutblocks	None	9 cutblocks	3 cutblock

The district manager of the Kalum Forest District also has obligations for forest management on Nisga'a lands. Specific obligations, which were subject to audit, are:

- maintenance of forest service roads (FSRs) not maintained by other parties under road use agreements (there are currently 45.7 kilometres of these FSRs), including maintenance of 5 bridges; and

- actions to address forest health issues.

Scope Restriction

The audit of fire protection was limited to an assessment of NSFP's fire-preparedness plan. Only NSFP had active operations that required a fire-preparedness plan and measures to be in place. Sim Gan, West Fraser, and the BCTS Skeena have not conducted activities on Nisga'a lands that require fire-preparedness plans, and had no active operations at the time of the audit fieldwork.

3.0 Audit Findings

Planning and practices examined

The audit work on selected roads and cutblocks included ground-based procedures and assessments from the air using a helicopter.

The activities examined in the audit are described in Table 3.

Table 3: Activities Examined

Activity/ Obligation	NSFP	Sim Gan	West Fraser	BCTS Skeena
Operational Planning	1 forest development plan	N/A	N/A	N/A
Harvesting	9 cutblocks	N/A	N/A	N/A
Road Construction	8.1 kilometres	N/A	N/A	N/A
Road Maintenance	79.9 kilometres	31.2 kilometres	7.7 kilometres	N/A
Permanent Road Deactivation	0.8 kilometres	N/A	N/A	N/A
Bridge Construction	1 bridge	N/A	N/A	N/A

Activity/ Obligation	NSFP	Sim Gan	West Fraser	BCTS Skeena
Bridge Maintenance	None**	9 bridges	N/A	N/A
Silviculture Activities	1 cutblock	1 cutblock	1 cutblock	1 cutblock
Silviculture Obligations***	8 cutblocks	N/A	6 cutblocks	1 cutblock
Fire-Preparedness Measures	2003 Fire-preparedness plan	N/A	N/A	N/A

** The majority of NSFP bridges were inspected for bridge maintenance in 2002, and no issues were noted.

***In addition to existing silviculture obligations (regeneration delay and free growing), there is a general requirement to maintain stands that have met regeneration delay but are not yet free growing (section 70 4(d) of the *Forest Practices Code of British Columbia Act*). This requirement expires once the stands are free growing. Currently, approximately 150 cutblocks fall into this population. Audit overview flights and field examination of 33 cutblocks between 2001-2003 did not identify any potentially significant issues with this population, except as described in section 4.1 of this report.

The audit also examined the following district manager obligations:

- road maintenance of 33.4 kilometres of forest service road (all other FSRs are maintained by other parties under road use agreements), and 3 bridges; and
- actions to address forest health issues.

Findings

The audit found that NSFP's forest planning and practices were in compliance, in all significant respects, with applicable Code and Agreement requirements for operational planning; timber harvesting; silviculture; fire-preparedness planning; and road construction, maintenance and deactivation.

Sim Gan and West Fraser were found to be in compliance, in all significant respects, with applicable Code and Agreement requirements for silviculture and road maintenance and deactivation. BCTS Skeena was found to be in compliance, in all significant respects, with applicable Code and Agreement requirements for silviculture.

Additionally, the audit found that the activities of the Ministry of Forests, Kalum Forest District were in compliance, in all significant respects, with applicable Code and Agreement requirements for road maintenance and forest health obligations.

4.0 Other Comments

Kalum District - Forest Health Actions

The 2002 Forest Practices Board audit on Nisga'a lands noted that the incidence of Dothistroma needle blight (Mycosphaerella pini) had increased significantly in lodgepole pine plantations on Nisga'a lands, particularly in the lower elevations of the interior cedar hemlock biogeoclimatic zone. In 2003, the audit noted that the presence of this disease has continued to increase, but has not yet had a significant impact on the achievement of reforestation obligations.

Dothistroma needle blight is a potentially devastating foliar disease that infects and kills needles of a wide range of pine species. Damage seems to be the most severe on trees growing in sub-optimal sites (e.g., depressions and moist sites). Trees under 10 years of age are the most susceptible.

Dothistroma infected lodgepole pine stand

Where environmental conditions favour infection (cool, moist summers), this blight can spread rapidly and cause significant damage. Trees can be defoliated within one year and mortality is common with repeated attacks, especially in young stands.

The blight has the potential to affect plantations that are either recently declared free-growing or due to be declared free-growing. Because the declaration of free-growing status is the act that transfers the plantations to Nisga'a responsibility, there is considerable

sensitivity to the potential impact of the blight. Of particular concern would be plantations that are declared free-growing under current free-growing standards and then quickly revert to non-free-growing status as a result of pre-existing blight problems.

A number of guidelines for free-growing standards in blight-affected stands have been developed over the past two years. The guidelines are becoming progressively more conservative with respect to the amount of blight that is acceptable on a free-growing tree. Where significant damage has been caused to young stands, surveys have been conducted to help determine whether fill planting with alternative tree species is required to meet minimum free-growing standards. Future annual compliance audits will continue to examine responses to the blight by the Kalum District and the affected licencees.

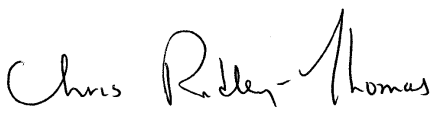
5.0 Audit Opinion

In my opinion, the operational planning; timber harvesting; silviculture; fire-preparedness planning; and road construction, maintenance and deactivation activities carried out on Nisga'a lands by New Skeena Forest Products Inc., West Fraser Mills Ltd., Sim Gan Forest Corporation, and BC Timber Sales, Skeena Business Area complied in all significant respects with the requirements of the Code and the Agreement as of July 2003.

Additionally, road maintenance and forest health obligations on Nisga'a lands that are the responsibility of the Ministry of Forests, Kalum Forest District complied in all significant respects with the requirements of the Code as of July 2003.

In reference to compliance, the term "in all significant respects" recognizes that there may be minor instances of non-compliance that either may not be detected by the audit, or that are detected but not considered worthy of inclusion in the audit report.

Sections 2.0 and 3.0 of this report from the auditor describe the basis of the audit work performed in reaching the above opinion. The audit was conducted in accordance with the auditing standards of the Forest Practices Board. Such an audit includes examining sufficient forest planning and practices to support an overall evaluation of compliance with the Code and the Agreement.



Chris Ridley-Thomas, R.P.Bio
Auditor of Record
Vancouver, British Columbia
March 11, 2004

[i] A forest development plan is an operational plan that provides the public and government agencies with information about the location and scheduling of proposed roads and cutblocks for harvesting timber over a period of at least five years. The plan must specify measures that will be carried out to protect forest resources (including water, fisheries, and other forest resources). It must also illustrate and describe how objectives and strategies established in higher level plans, where they have been prepared, will be carried out. Site-specific plans are required to be consistent with the forest development plan.

III. Audit of the Government of British Columbia's Enforcement of the Forest Practices Code on Nisga'a Land

III. Audit of the Government of British Columbia's Enforcement of the Forest Practices Code on Nisga'a Lands

Auditor of Record Report

1.0 Introduction

The *Nisga'a Final Agreement* (the Agreement*)* requires the Forest Practices Board to perform audits of the appropriateness of government's enforcement of the *Forest Practices Code of British Columbia* Act and related regulations (the Code) on Nisga'a lands during a five-year transition period, which ends on May 10, 2005.

In 2003, the Forest Practices Board conducted its second enforcement audit on Nisga'a lands. The first enforcement audit was conducted in 2001.

The Nisga'a lands are located in and around the Nass Valley, which is approximately 100 kilometres northwest of the City of Terrace.

Forestry operations on Nisga'a lands are subject to the Code and the Agreement. The Kalum Land and Resource Management Plan and higher-level planning elements of the Code do not apply and the Agreement is the source of direction regarding key forest resources and transitional provisions. A Forestry Transition Committee is responsible for jointly approving forest development plans during the five-year transition period and also approves other operational plans on a phased-in basis. The Committee consists of the Kalum Forest district manager and one person authorized by the Nisga'a Lisims Government.

From an administrative perspective, the Nisga'a lands lie within portions of the Ministry of Forests' Kalum and North Coast Forest Districts and within the Skeena Region of the Ministry of Water Land and Air Protection.

There were few active forestry operations during the period covered by the audit. New Skeena Forest Products Inc. (NSFP), formerly known as Skeena Cellulose Inc., was the only licensee to conduct harvesting operations.

Sim Gan Forest Corporation (Sim Gan), West Fraser Mills Ltd. (West Fraser) and British Columbia Timber Sales–Skeena Region (formerly the Kalum Forest District Small

Business Forest Enterprise Program) all have continuing silviculture and road maintenance obligations within the Nisga'a lands.

2.0 Audit Scope and Approach

The scope of the audit encompassed the enforcement planning and operational activities of two of the three ministries with authority for Code enforcement on Nisga'a lands — the Ministry of Forests (MOF) and the Ministry of Water, Land and Air Protection (MWLAP).

While the Ministry of Energy and Mines also had Code enforcement authority during the audit period, it was not included within the scope of the audit because there was no mining activity involving timber removal during the audit period.

The period over which activities were examined was July 17, 2001, to July 18, 2003.

The specific activities carried out during the audit period, and therefore subject to government enforcement, were:

- harvesting of 15 cutblocks
- construction of approximately 21 kilometres of road
- maintenance of approximately 355 kilometres of forest road and deactivation of approximately 11 kilometres of forest road
- licensee obligations for silviculture treatments and achievement of regenerated and free-growing stands
- fire protection requirements during forest operations

In relation to the above activities and obligations, the following compliance and enforcement (C&E) inspections were undertaken:

- MOF undertook a total of 150 harvest and road inspections, 4 inspections of free-growing obligations and 2 inspections of regeneration obligations.
- MWLAP did not undertake any inspections during the audit period.

Audit Criteria

The audit assessed three broad aspects of government enforcement: the design of the C&E organization and business processes; their application in practice (through sampling compliance and enforcement activities); and the management framework used to direct, support, monitor and report on C&E activity.

The following audit criteria were used:

- Government agencies obtain, use and maintain adequate information on the forest activities subject to compliance and enforcement.
- Government agencies have an effective way of identifying risks associated with forest activities and utilizing risk in inspection planning.
- Government agencies conduct a sufficient number of inspections, in a fair, objective and effective way, and accurately record and report results.
- Investigations and determinations are carried out in all applicable situations and only when warranted. They are performed in a fair, objective and consistent way, and are accurately recorded and reported.
- Agencies establish, through operational plan approval and related processes, expectations for forest practices, which are enforceable and in accordance with the Code.
- There are established organizational structures, policies and processes that contribute to and support appropriate enforcement of the Code.
- The decisions and actions of different parts of government responsible for enforcement of the Code are appropriate and coordinated.
- Reporting systems provide adequate information on agency performance in relation to enforcement objectives.

Audit Work and Activities Examined

The audit work included:

- interviews with MOF staff and communications with MWLAP staff
- review and evaluation of agency policies, processes and controls
- office-based examination and analysis of MOF C&E inspections that were undertaken during the audit period
- field examination of seven selected cutblocks and roads, attended by MOF C&E staff responsible for each area
- consideration of the results of the related compliance audit from a C&E perspective

3.0 Overall Conclusions

The audit examined the organization and activities of the two government agencies with Code enforcement responsibilities on Nisga'a lands for the period July 17, 2001, to July 18, 2003.

Ministry of Forests

MOF takes the lead role in Code enforcement, consistent with its primary responsibility for the administration of forestry legislation in British Columbia.

Overall, MOF is appropriately enforcing the Code on Nisga'a lands.

The district and forest licensees within the area audited have achieved government's primary objective of Code enforcement, which is a high level of compliance with the Code. No situations of significant non-compliance were found in the compliance audit work and the few instances of potential non-compliance identified by C&E inspectors were relatively minor in nature. Instances of potential non-compliance with the Code were generally detected, recognized, and appropriately addressed by the district.

It should be noted that the low level of activity on Nisga'a lands and the very recent implementation of significant changes in MOF's C&E framework made it impossible for the auditors to assess certain key elements of the C&E process, including investigations and determinations, the district's organizational model (which changed less than three months prior to the end of the audit period) and recently revised reporting objectives.

The audit identified a number of areas of weakness in current enforcement practices. While these weaknesses were not considered to significantly impact the overall appropriateness of MOF's enforcement of the Code on Nisga'a land, they were of sufficient importance to discuss in the detailed findings in Section 4.0 of this report. Key areas of weakness were:

- Documentation of follow-up and closure of issues identified during inspections was inconsistent.
- The decisions and actions of MOF and MWLAP were not formally coordinated at the time of the audit.
- Public reporting of C&E activity is significantly undermined by a lack of timeliness.
- MOF has not, to date, met its obligation to provide a summary of compliance and enforcement activities on Nisga'a lands to the Nisga'a Lisims Government.

Ministry of Water, Land and Air Protection

At the time of the audit, MWLAP had not completed or implemented its framework for Code enforcement and had not carried out enforcement activity on Nisga'a land. In the absence of an implemented enforcement mechanism, MWLAP is not appropriately enforcing the Code on Nisga'a lands.

Subsequent to the audit period, government has been working toward completion of a new memorandum of understanding intended to clarify the respective enforcement roles of each agency for the Code and the *Forest and Range Practices Act.*

4.0 Findings And Conclusions

The detailed findings and conclusions of the audit are set out in this section, by assessment criterion.

4.1 Audit criterion: *Government agencies obtain, use and maintain adequate information on the forest activities subject to compliance and enforcement.*

Ministry of Forests

For most of the audit period, licensees informally notified the district of planned harvesting and road construction activities through emails or phone calls. Notifications were tracked by the C&E technicians by various means and appear sufficient to enable inspection planning. Since April of 2003, major licensees are required, by cutting permit and road permit conditions, to notify the district office of the date of commencement of operations. However, there have been no new permits issued since the new system was implemented, so the audit was unable to evaluate these notifications.

Licensees report on silviculture activities, such as planting and brushing, after completion of the activities, as required by legislation. The district uses an electronic silviculture information system to identify cutblocks with outstanding obligations, to verify that required information is submitted on a timely basis, and to ensure that the licensee is meeting silviculture obligations, such as free-growing obligations.

Ministry of Water, Land and Air Protection

MWLAP is not informed of the locations and timing of forest activities.

Conclusions

MOF has adequate knowledge of the locations and timing of forest activities.

MWLAP does not have adequate knowledge of the locations and timing of forest activities.

4.2 Audit Criterion: *Government agencies have an effective way of identifying risks associated with forest activities and utilizing risk in inspection planning.*

Ministry of Forests

Risk assessment

MOF implemented updated compliance procedures in April 2001. These procedures establish consistent requirements for risk assessment and inspection planning for Code activities.

A formal risk-assessment process is used for harvesting and road construction activities. Risk ratings consider relevant risk factors, including past performance, inherent risk such as terrain, and geographic isolation.

The risk-assessment process for cutblocks with silvicultural obligations for free growing and regeneration has undergone significant revision during the audit period. In 2001, risk assessments were informal. Since 2002, the district has revised and implemented a detailed silviculture risk rating framework that appropriately considers factors such as presence of forest health problems and ecosystem classification, and aspects of operator performance such as vegetation management history and previous amendments to prescriptions.

Inspection planning

In planning inspections for forest activities subject to C&E, risk ratings determine the minimum number of planned inspections. The 2002 district inspection plan, in effect for most of the audit period, comprehensively sets requirements for inspections by risk for all relevant forest activities.

Ministry of Water, Land and Air Protection

MWLAP does not assess risk associated with forest activities in a structured way, and no inspection planning is done.

Conclusions

MOF has an effective way of identifying risks associated with forest activities and it utilizes this information in inspection planning.

MWLAP does not have an effective way of identifying risks associated with forest activities and it does not conduct inspection planning.

4.3 Audit criterion: *Government agencies conduct a sufficient number of inspections, in a fair, objective and effective way, and accurately record and report results.*

Ministry of Forests

Forest officials have the necessary authority under the Code to perform enforcement duties. Forest officials maintain field files that include legal and operational documents associated with cutting permit and road permit operations. Forest officials do not prepare plans for inspections and licensees are not formally notified prior to inspections.

Harvesting and Roads

The inspection program for harvesting and roads adheres to MOF's April 2001 compliance procedures. Forest officials responsible for inspections have substantial C&E experience, and have been conducting C&E practices since the Code came into force.

Number of Inspections

A substantial number of inspections were undertaken for harvesting and roads. All cutblocks were inspected at least once with high- and very high-risk cutblocks receiving proportionately more inspections than those rated medium and low risk. For cutblocks, it is apparent that risk determines the number of inspections completed, as set out in the objectives of the district inspection plan.

For roads, with the exception of one licensee's roads, high- and low-risk roads received similar levels of inspection, indicating that risk did not fully determine the number of inspections completed. Approximately 240 of 355 kilometres of road were inspected, including all road construction and approximately 50 percent of the road deactivation.

Quality of Inspections

Based on the review of inspection files and field assessment of C&E inspection practices, inspections are generally conducted in a fair and objective way. Key resource features within cutblocks, and adjacent features that may be affected by operations, are usually a focus in inspections.

Overall, few potential non-compliances or other problems were noted in inspection reports, which is consistent with the overall field results of the Board's 2002 and 2003 compliance audits on Nisga'a lands.

Documentation of harvesting and road inspections indicated a high standard of inspection. There were 56 harvesting and road inspections where instructions were given or potential non-compliances were noted. However, follow-up on these issues was not strong. There was clearly documented follow-up for 21 of the 56 cases. In 23 cases, there is no record of a follow-up inspection (although some may yet be done) and in 12 cases there is no specific mention of the issue in the next inspection report. Improvement in follow-up documentation is warranted.

The implementation of an inspection tracking system (CIMS) occurred during the audit period. This system enables improved tracking of incidents and associated compliance actions, including items requiring follow-up, and should help improve the implementation and documentation of future follow-up items.

Silviculture

MOF's April 2001 compliance procedures include silviculture inspection procedures. During the audit period, blocks submitted by licensees as having met regeneration and free-growing obligations were office reviewed to assess compliance with Code requirements and to establish risk ratings. The district's inspection plan, in effect during most of the audit period, called for 20 percent of a licensee's free-growing submissions and 5 percent of regeneration-due submissions to be inspected, with highest-risk blocks to be examined as a priority.

In 2001, two blocks in the audit area were rated as high risk. Both of them were inspected, although the inspections were not adequately documented. In 2002, no blocks were rated high or very high risk and no inspections were done in the audit area. In 2003, the field season had just started and risk rating was in progress and had not yet been completed for some blocks when the audit work was done. Three blocks that had been rated high risk were inspected. At the time of the audit the district was meeting its inspection plan objectives for free-growing and regeneration-due blocks.

Ministry of Water, Land and Air Protection

MWLAP did not conduct compliance inspections in the area audited.

Conclusions

MOF has generally achieved this criterion for harvesting and roads, except that:

- For road inspections, risk did not fully influence the number of inspections completed.
- Some issues identified during inspections did not have documented follow-up
- Improvement is needed in silviculture inspection documentation.

MWLAP did not conduct compliance inspections in the area audited.

4.4 Audit criterion: *Investigations and determinations are conducted or made in all applicable situations and only when warranted. They are performed in a fair, objective and consistent way, and are accurately recorded and reported.*

Neither the compliance audit nor the enforcement audit identified situations for which an investigation was warranted.

No formal investigations were completed during the audit period.

Accordingly, it was not possible to assess performance against this criterion.

Conclusion

The audit was unable to assess the investigation and determination processes.

4.5 Audit criterion: *Agencies establish, through operational plan approval and related processes, expectations for forest practices that are enforceable and in accordance with the Code.*

Ministry of Forests

Our audit did not identify problems in operational plan content or enforceability. Further, no problems were noted in the related compliance audit work that suggested operational plans had requirements that were difficult to enforce.

Instructions and other follow-up items in inspections were found to be clear and unambiguous.

It should be noted that in the case of the Nisga'a lands most new operational plans (including all forest development plans) are approved by the Forestry Transition Committee, which consists of the district manager and a person authorized by the Nisga'a Lisims Government.

Ministry of Water, Land and Air Protection

MWLAP is not involved in operational plan approvals under the Nisga'a Agreement and does not provide input to draft operational plans.

Conclusions

MOF (through its role in the Forestry Transition Committee) has generally established clear and enforceable expectations for forest practices.

MWLAP is not involved in operational plan approvals or related processes.

4.6 Audit criterion: *There should be organizational structures, policies and processes that contribute to, and support, appropriate enforcement of the Code.*

Ministry of Forests

Organizational Structure

For the majority of the audit period, until April 2003, the district used a zonal organizational model, in which field staff had both program management and C&E duties. This is considered an inappropriate model for C&E because it can lead to conflict of interest situations. This potential conflict was eliminated in April 2003, with the establishment of a separate C&E organization that has no responsibility for program administration.

Also effective in April 2003, MOF established a separate timber sales organization (BC Timber Sales) to replace the Small Business Forest Enterprise Program (SBFEP) province-wide. The district is now responsible for conducting C&E on BC Timber Sales activities, but no longer has involvement in program management. This eliminates a potential conflict that had been common to districts when they both administered and performed C&E on SBFEP activities. However, the district's new organizational model was essentially untested during the audit as there was very little activity subject to C&E between April and July 2003.

Human, physical and financial resources devoted to C&E functions were sufficient and staff performing C&E functions had been assigned the proper authority.

Policy and Management Direction

The MOF C&E framework is relatively complete (except for a public reporting framework) and is complemented by district C&E operating procedures developed in 2000. However, due to the significant changes in the MOF organizational model in April 2003, the district program now requires updating to accurately reflect current practices and responsibilities.

C&E authority, responsibility and accountability are clearly defined and documented in the district's organization chart and through draft job descriptions. Expectations are set primarily through informal staff discussions and meetings.

Staffing

C&E supervisors and staff have training needs identified and incorporated into their training plans. Interviews and sampling of training records indicated that staff have received adequate C&E training.

At the time of the audit, the new C&E organizational structure had not been in place long enough to adequately assess supervision.

Ministry of Water, Land and Air Protection

The MWLAP conservation officer service handles any enforcement activity, while habitat ecosystem management staff handle compliance activity. It was not possible to test the efficacy of this enforcement organization due to the lack of activity in the audit area.

Conclusions

MOF's organizational structure, policies and processes adequately support implementation of the Code within the audit area. Potential C&E conflicts of interest inherent in previous structures have been removed. However, because it was only recently implemented, this model was essentially untested by the audit.

MWLAP has not enforced the Code within the audit area.

4.7 Audit criterion: *The decisions and actions of different parts of government responsible for enforcement of the Code are appropriate and coordinated.*

MOF and MWLAP are the only agencies with responsibility for Code enforcement in the area audited, as there was no mining activity. MOF takes the lead enforcement role, consistent with its primary responsibility for administration of the Code.

The audit found that there were no formal procedures in effect to guide agency interactions and that MWLAP is not actively involved in enforcement of the Code in the audit area.

However, it should be noted that most of the activities in the audit area during the audit period were conducted under previously approved operational plans and the low level of activity in the audit area was found to have a high level of compliance with the Code. As a result, there is no evidence that the lack of a MWLAP presence in C&E activities has had a significant impact at this time.

Conclusion

The decisions and actions of MOF and MWLAP were not formally coordinated at the time of the audit, and MWLAP was not actively involved in enforcement of the Code.

4.8 Audit criterion: *Reporting systems provide adequate information on agency performance in relation to enforcement objectives.*

Ministry of Forests

The C&E branch has been responsible for assessing the performance of the C&E program as a whole, and reporting results to the public. However, reporting of results is not timely, undermining the relevance of the reports. The most recent period reported was April 1999 to March 2000.

Underlying reporting systems changed during the audit period and performance measures associated with the most recent (2003/2004) MOF Service Plan appear to be an advance over previous measures, including measures of the percentage of high- and very high-priority sites inspected, percentage of compliance contraventions concluded and percentage of enforcement contraventions concluded.

The district reports to the MOF regional office on the performance measures established in the service plan. These results are then rolled up to contribute to ministry reports. The CIMS information system and the Enforcement Review and Appeal Tracking System are in place to roll up statistics for each performance measure.

Under Appendix H of the *Nisga'a Final Agreement*, there is a requirement for the province to provide, for each year of the transition period, a summary of compliance and enforcement activities on Nisga'a lands. This has not been done to date.

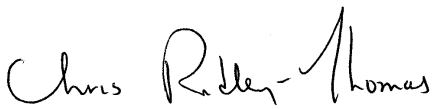
Ministry of Water, Land and Air Protection

As a result of a lack of enforcement activity within the audit area, there are no applicable reporting systems or performance measures.

Conclusions

MOF reporting systems are in place and are being upgraded but public reporting is undermined by a lack of timeliness. Additionally, MOF has not yet met its obligation to provide a summary of compliance and enforcement activities on Nisga'a lands to the Nisga'a Lisims Government.

MWLAP does not have applicable reporting systems as it does not conduct enforcement activity within the audit area.



Christopher Ridley-Thomas
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March 11, 2004

NEWS RELEASE

For Immediate Release
June 4, 2004

Audit on Nisga'a lands finds good forestry practices, mixed enforcement results

VICTORIA – The third round of Forest Practices Board compliance audits on Nisga'a lands found forest planning and practices complied in all significant respects with the Forest Practices Code and the Nisga'a Final Agreement. The Nisga'a lands are in and around the Nass Valley, about 100 kilometres northwest of Terrace, and cover about 2,000 square kilometres.

A separate enforcement audit found that the Ministry of Forests (MOF) is appropriately enforcing the code and agreement on Nisga'a lands, while the Ministry of Water, Land and Air Protection (MWLAP) is not appropriately enforcing the code in this region. Since the audit was completed, MWLAP and MOF have agreed that MOF will take the lead on all enforcement activities. MOF will notify MWLAP of any concerns that relate to its mandate and MWLAP will have the option to take the lead on those issues.

The compliance audit examined the activities and obligations of five auditees: New Skeena Forest Products Inc., formerly known as Skeena Cellulose Inc.; Sim Gan Forest Corporation; West Fraser Mills Ltd.; BC Timber Sales, Skeena Business Area; and the Kalum Forest District Manager, for the period of August 17, 2002, to July 18, 2003. The audit found that auditees complied in all significant aspects with the code and agreement requirements for this period.

"While there was a low level of forestry activity during the audit period, we congratulate the auditees for maintaining a high level of compliance," said board chair Bruce Fraser. "The board encourages all auditees to continue their efforts towards achieving sound forest management on Nisga'a lands."

The board also audited the appropriateness of government's enforcement of forest practices legislation on Nisga'a lands for the period of July 17, 2001, to July 18, 2003. The audit found that the Ministry of Forests continued to make improvements to its enforcement during the audit period and is appropriately enforcing forest practices legislation on Nisga'a lands.

The audit found that MWLAP had not assessed risk associated with forestry activities on Nisga'a lands and had not conducted any inspections in this area. The audit concluded that the ministry was not appropriately enforcing the Code on Nisga'a lands during the audit period; the same problem was identified in the 2001 Nisga'a lands enforcement audit. There is no evidence of environmental harm resulting from lack of enforcement for the period under review.

"With some minor exceptions, the Ministry of Forests is doing a good job in enforcing forestry legislation on the Nisga'a lands," said Fraser. "We are pleased that the Ministry of Forests and MWLAP have reached an agreement on enforcement obligations and we will be monitoring the effectiveness of this arrangement in future audits."

The audit also found that the government has not yet met its obligation under the Agreement to provide a summary of compliance and enforcement activities on Nisga'a lands to the Nisga'a Lisims government. The board recommends that the ministries of Forests and Water, Land and Air Protection provide the summary by July 30, 2004.

This was the third of five annual audits under Chapter 5, Section 55 of the Nisga'a Final Agreement, which requires the board to perform annual audits of forest agreements and licences for compliance with the Forest Practices Code and the Nisga'a Agreement, during a five-year transition period ending May 10, 2005.

The Forest Practices Board is an independent public watchdog that reports to the public about compliance with the Forest Practices Code and the achievement of its intent. The board's mandate has been retained under the new Forest and Range Practices Act (FRPA). The board's main roles under FRPA are:

Audit of Forest Planning and Practices and Forest Practices Code Enforcement on Nisga'a Lands

This compliance audit is the third of five annual audits of compliance with the Forest Practices Code as well as forestry-related requirements of the Nisga'a Final Agreement, and the second audit of government enforcement on Nisga'a lands.

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- Auditing forest practices of government and licence holders on public lands.
- Auditing government enforcement of the code.
- Investigating public complaints.
- Undertaking special investigations of code-related forestry issues.
- Participating in administrative reviews and appeals.
- Providing reports on board activities, findings and recommendations.

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Backgrounder

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