

Transfer of Planning Objectives under FRPA: Stillwater Timberlands

Complaint Investigation



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Introduction

Between May and July 2006, the Board received three complaints from the Powell River area; one from private citizens, one from the Powell River Parks and Wilderness Society and a third from the Powell River Alpine Club.

Three issues were raised in the complaints.

1. The private citizens asserted that a draft Western Forest Products forest stewardship plan, made available for public review and comment, was not understandable because of the format and language in the plan.
2. The private citizens and the Powell River Alpine Club asserted that a revised community advisory group no longer adequately represented the community.
3. The Powell River Parks and Wilderness Society asserted that community values that were incorporated into the Stillwater Pilot Plan were not included in the draft FSP.

The Board investigated the three issues.

Background

In 2000, Weyerhaeuser Company Ltd. initiated a pilot planning project for the Stillwater Timberlands part of its Tree Farm Licence (TFL) 39 in the Powell River area. This plan was one of several pilot plans initiated in the province under the *Forest Practices Code of British Columbia Act* (the Code) to develop a new results-based forest stewardship plan (FSP) process to replace the rules-based forest development plan process. The intent of the pilot plans was to create efficiency and save costs for both industry and government, while maintaining high standards of forest practices. Only two pilots were fully implemented – the Stillwater pilot project and the Fort St. John pilot project.

The Stillwater pilot project planning process involved incorporating input from the public, primarily through a community advisory group (CAG). Weyerhaeuser's involvement in the pilot project was voluntary, but in return for participating, they could omit some of the planning required under the Forest Practices Code, speeding up the approval process. This, and the move away from a rules-based structure, also gave the company more flexibility to adapt to changing market conditions. As well, Weyerhaeuser was also in the process of preparing a sustainable forest management plan (SFMP) as a requirement for certification under the Canadian Standards Association (CSA). The certification process required public involvement and the CAG was used to provide public input into both the pilot FSP and the SFMP processes.

Using the results of the Stillwater pilot project, government passed the *Stillwater Pilot Project Regulation* (SPPR) in 2001 as a means to set content requirements and rules for developing FSPs in the Stillwater area. In addition to establishing a number of broad resource value goals, the regulation created resource management zones for timber, habitat, old growth, recreation and tourism. It also set management objectives for the zones. The regulation required that any FSP be consistent with these values.

The Stillwater Pilot FSP was completed in 2002 and approved for a five-year term, which ended in June 2007.

Currently, there is no higher level plan for the Sunshine Coast, but landscape-level planning has been completed for all landscape units in the Stillwater Timberlands area. This planning has included the designation of old growth management areas, ungulate winter ranges, and wildlife habitat areas for marbled murrelet and grizzly bears.

With the passing of the *Forest and Range Practices Act* (FRPA) in 2004, government initiated a new province-wide, results-based planning program that adopted some aspects of the pilot plans. Forest development plans were replaced by FSPs. The content requirements for FSPs under FRPA are less onerous and more general than the content requirements in the SPPR.

When Weyerhaeuser eventually sold its license for the area to Cascadia Forest Products, Ltd., Cascadia advised the Ministry of Forests and Range (MFR) of its intent to abandon the Stillwater Pilot FSP and move to a FRPA FSP. MFR's view of this was that Cascadia was just coming in line with other licensees.

Cascadia's draft FSP (using FRPA requirements) was made available for public review and comment in February 2006. However, there was no requirement under FRPA to describe what would happen with each of the former obligations under the Stillwater Pilot FSP, and no explanation was provided. The FSP covered all of Cascadia's coastal operations including Vancouver Island, the Queen Charlotte Islands and the mainland.

Following a public request, the district manager extended the usual 60-day FSP review period to the end of April 2006. During the public review period, the licence for the Stillwater Timberlands area was acquired by Western Forest Products Inc. (the licensee).

In May 2006, after feedback from some members of the CAG, the licensee initiated a revision to the membership of the CAG because it felt the original group was not functioning as intended anymore. The CAG was reduced in size from 16 to 10 members, including both new and original members. Two of the three complainants are former members of the CAG.

MFR approved the new FSP under FRPA in January 2007. However, it could not be implemented without an amendment to the SPPR, so MFR worked with the licensee to amend the regulation. The amendment made it so that all new applications will be subject to FRPA requirements, but applications made prior to the amendment will continue to be subject to the requirements of the SPPR.

The licensee still has approximately one year's worth of harvesting (436,000 metres³) approved under cutting permits that are subject to the obligations under the Stillwater Pilot FSP.

Discussion

Issue 1:

Was the draft FSP understandable?

While the FSP review period is the only legislated opportunity for the public to review a licensee's harvest plans, people may request to see more detailed site plans. However, as with forest development plans, reviewing an FSP continues to be the primary way for the public to review and provide comment on planned forest practices.

The content requirements for an FSP under FRPA have changed considerably from those for a forest development plan under the Code. If content is not understandable to the public, however, an FSP loses value as an informational document.

The Board considers public input to be an essential part of the planning process. Therefore, it is important that the public be able to understand what is being proposed in an FSP.

Was the draft FSP difficult to read?

FRPA requires licensees to make a draft FSP available for public review and comment before submitting it for approval. During this period, the representative for the private citizens (complainant #1) attended a public meeting on the FSP and also went to the licensee's office in Powell River to view and discuss the plan with licensee staff.

The complainant found the document difficult to understand. He said that the legalistic language and reference to legislation throughout the draft FDP was something the public would not understand. He found that the plan text continually referred to other documents and he constantly had to look up those references. This complicated procedure made it difficult to follow the plan. Although the concern about understanding the plan applies to all of the draft FSP, the complainant is mainly interested in visual quality objectives. He could not interpret the associated visual resource map of the area he was interested in and could not understand what visual objective applied in some areas. The Board discussed the visual quality issues with the licensee and it agreed to try and revise the map to address this concern.

The complainant also wanted to know more specifics about where harvesting would occur, what the current condition of the landscape was, and what the landscape would look like at the end of the plan. However, the location of proposed cutblocks within the larger forest development units shown in a plan is not part of the content requirement for FSPs and was not included.

The licensee recognized early on that the public might have difficulty understanding the FSP and held a public meeting to explain the plan and answer questions. At that meeting, the licensee gave a PowerPoint presentation explaining the plan and also made the presentation available to the public on its website. In addition, the licensee produced and placed on its website a summary document to put the key content into a format that would be easier for the public to understand. The licensee pointed out that the complainant must have been able to understand the plan to some degree because he wrote several letters commenting on the draft FSP.

Despite the licensee's efforts, however, the Board found that in reviewing the draft FSP, it was necessary to go back and forth between the legislation and the plan, and between sections of the plan, to understand the intent of particular strategies and how and where they applied. For example, there are several issues covered under the topic "objectives for management of biodiversity":

- objectives created by the Vancouver Island Summary Land Use Plan (VISLUP)
- spatial old growth retention objectives
- non-spatial old growth retention objectives
- cutblock size
- wildlife tree retention objectives

But the plan does not prepare the reader for easily understanding what applies in their area of interest. As well, the majority of this section applies only to Vancouver Island—but there is no obvious transition when an objective applies elsewhere. Because of the difficult format of the FSP, an extension to the review period was necessary.

The area to which the plan applied was also a confounding factor. In addition to including all of the licensee's coastal operations, the majority of the area is included in one forest development unit.

Finding: While the licensee tried to provide the public with clarification to the language in the draft FSP through the summary document, and also to explain the FRPA framework in a PowerPoint presentation at the public meeting and on its website, the draft FSP itself was still difficult to read and understand. The licensee's efforts are noteworthy, but to make the review opportunity effective the public either has to have a good knowledge of FRPA legislation or else has to put considerable effort into looking up referenced material.

Is the format of the draft FSP a result of the FRPA requirements?

With regard to the legal language used in the FSP, the licensee argued that it was a result of the FRPA focus on enforcement, and was more an issue for government than the licensee.

FRPA requires that a licensee's forest stewardship plan must identify results or strategies for a number of government objectives unless it adopts the governments' default strategy for an objective. The objectives are stated in the *Forest Practices and Planning Regulation* (FPPR) and include objectives for:

- Soils
- Timber
- Forest health
- Fish
- Wildlife
- Water
- Biodiversity
- Cultural heritage
- Visual quality
- Recreation
- Resource features
- Forest and associated plant communities

In addition, FSPs must address any objectives that are established under the *Government Actions Regulation*, such as wildlife habitat areas and ungulate winter ranges, and objectives established under the *Land Act*, such as old growth management areas.

Generally the Board has found that licensee's are choosing to specify strategies rather than results in their FSPs.ⁱ

WFP staff said that the FRPA model focuses less on planning objectives and more on enforcement, and that this results in the need for the licensee to use legal language in their strategies. They said that more simplified language could be misinterpreted by the reader.

The Board looked for examples of government's expectations for language in FSPs. An FSP administration guide states that the form and format for presenting the required FSP content is generally left to the discretion of the plan preparer.ⁱⁱ An example of possible FSP text found is in a bulletin released after the draft FSP was prepared. It provides guidance to MFR Compliance and Enforcement staff for assessing whether results or strategies in an FSP are measurable or verifiable and gives some insight into government's expectations.ⁱⁱⁱ

The bulletin provides an example of a result or strategy that is missing some elements.

Here is an example of a result or strategy that is missing one or more of the essential elements (from a fictional FSP submission), and below it, some of the missing elements are identified:

<p>Result or Strategy for Objective set by government for water, fish, wildlife and biodiversity within riparian areas (FPPR s.8)</p> <p>5.1.1: Each Holder of this FSP adopts that the width of the riparian management zone (RMZ), riparian reserve zone (RRZ) and the riparian management area (RMA) shall be either:</p> <p>a) as specified in FPPR s.47(4), 48(3) and 49(2), as they were on the Date of Submission; or</p> <p>b) other specified widths as may be specified by a Holder of this FSP in a site plan, provided that these widths reflect FPPR Schedule 1 s.2 factors as they may apply to the riparian areas, and</p> <p>i) no net change in total riparian reserve area at a watershed (area between 5 – 500 km²) or landscape unit level, within +/- 10% (based on a sampling error greater than 10) over the term of the FSP; with the balance of the riparian reserve area being allowed to be carried over into the next term, to the extent that such factors are not already addressed by a requirement, i) under this FSP, or ii) in an enactment that applies to the riparian area covered by the site plan, or</p> <p>ii) practicable to harvesting high value timber.</p>

The basic framework/language is similar to what is in the licensee's draft FSP. It illustrates that government expects that the strategies will be worded so that there is reference to the specific sections of legislation that apply.

The bulletin notes one of the problems with the example text is that it doesn't have enough legal reference: "... no mention of FPPR s.50, 51, 52(2) or 53 as related to FPPR s.8, 12.1(2) and 12.3." The language in the example is no clearer for the public than what was in some sections of the WFP draft FSP.

The format of the draft FSP is partly a result of the licensee preparing the plan in a way to ensure it meets the FRPA requirements and also because using one plan to cover all of the licensee's coastal operations complicated the plan more than it needed to be.

However, this approach complies with the legislated requirements because, although FRPA has FSP content requirements, it does not specify in what format the information is to be made available to the public for review. There is also no requirement for FSPs to have adequate information for effective public review; it is left to the individual members of the public to make extra efforts to ensure their interests are addressed.

The complainant had some satisfaction with how the licensee addressed concerns in the final FSP submitted for approval in July 2006.

Finding: The format of the FSP was a result of the FRPA requirements and the coast-wide scope chosen by the licensee.

Issue 2:

Was the licensee authorized to change the Community Advisory Group membership?

In April 2006, the CAG was informed by the licensee that the original group would be disbanded. Members were invited to apply to be on a new CAG. The membership of the new group included some original members but the overall size of the group was reduced from 16 to 10 members. Those who applied but were not chosen were informed on how to remain connected to the group.

There were two complaints about the revision of the CAG, one from the private citizens and one from the Powell River Alpine Club, which was a member of the original CAG. The Alpine Club did not apply for membership in the new CAG as it did not want to validate the new group. The complainants asserted that the new group was not as representative of the community and many of the new members had affiliations with the licensee. There are competing opinions about whether there has been a reduction in the values that are represented at the CAG, but regardless, the Board does not have the jurisdiction to address this.

However, while the issue of which members may best serve the community interest is not one the Board can adjudicate, the changing of the membership relates to the public consultation process. Therefore, the Board examined the regulatory framework and the authority of the licensee to change the CAG.

The CAG was formed in 2000 by the original licensee (Weyerhaeuser) to address the requirements for public consultation under the CSA certification program that the company was working under, and CAG membership originally included anyone who attended the first meeting in 2000.

At the same time Weyerhaeuser voluntarily initiated the Stillwater FSP pilot project, and the same CAG was used to provide input on both the SFMP being developed for the certification program and the pilot FSP. One complainant said that it was also a forum to bring up other concerns such as access policies not being followed by contractors and trucks speeding on logging roads.

The complainants said that the original CAG was working well. The licensee said that it was not, and asserted that the original composition was unbalanced, leaning toward conservation interests. The restructured CAG includes more forest workers, and the licensee referred to an independent audit report on its certification program that said that the new membership of the advisory group had a healthier dynamic.^{iv}

The licensee also said that because the pilot plan was complete, the public input into the plan was also complete, and that the restructured CAG was now working solely on CSA activities, which required the member structure to include more forest workers.

Members of the public not on the CAG still may contact and meet directly with the licensee for any concerns about planning or the licensee's practices on the ground.

Did the licensee have the legal authority to change the group?

The CAG is referenced in the Stillwater Pilot Plan, which is legally established under the *Stillwater Pilot Project Regulation* (SPPR), part of the Forest Practices Code legislation and is still in effect under the transition provisions of FRPA.

Section 35 of the SPPR states that the licensee must establish a process to facilitate public involvement in the development of strategies and measurable targets required for the FSP (Stillwater Pilot Plan FSP 2002, not the current FSP under FRPA), but the SPPR does not specifically require the licensee to create a community advisory group. Section 72 requires the licensee to evaluate the effectiveness of the pilot in achieving desired environmental performance through maintenance of CSA or other suitable forest management certification.

References to the CAG in the Stillwater Pilot Plan are descriptive in nature. The plan says, "At the request of the licensee, local citizens formed a permanent, autonomous community advisory group to participate in the development of the Stillwater Pilot Project and Stillwater Timberlands pursuit of Canadian Standards Association (CSA) Sustainable Forest Management certification."

Section 1.5 of the (Stillwater) Forest Stewardship Plan under the regulation states:

1.5 The Community Advisory Group (CAG)

Throughout the development of the Stillwater Pilot Project, the Stillwater Pilot Project Regulation and the Forest Stewardship plan, Stillwater Timberlands has worked closely with the local Community Advisory Group. The CAG is a permanent, autonomous advisory committee formed by volunteers representing a cross-section of community interests and values, to consult with Stillwater Timberlands and provide input regarding forest management issues and decisions.

The plan refers the reader to the CAG website for information on composition and the terms of reference.

The original terms of reference on the website, which were in effect at the time of the change in the composition of the CAG, state under s.3.5.2 that primary members and alternates will be selected by the Advisory Group. Section 3.5.5.3 further states that new seats, primary member's seats and alternate's seats will be decided upon by group consensus. There is no provision for the licensee to revise the membership.

After the CAG restructuring, the terms of reference were revised in June 2006 to say that the CAG and the organization (the licensee) would decide the membership.

The term 'autonomous' in the Stillwater Pilot FSP implies self-government and would presumably preclude the licensee from changing the membership. However, the licensee argues that the CAG was not intended to carry on indefinitely. In terms of the Stillwater Pilot, its purpose was to assist with the development of the plan and that job was completed.

The licensee intends to replace the Stillwater Pilot FSP with its new FSP. The links to the community advisory group through the SPPR and the Stillwater pilot plan do not relate to the new FSP under FRPA.

The changes to membership are contrary to the description of the CAG in the Stillwater Pilot FSP and also to the rules of the CAG that were in effect when the changes were made. This will impact the public trust for those who participated in the Stillwater Pilot planning process and now feel they have lost some of their ability to influence planning and bring forth concerns. However, the Stillwater Pilot FSP was a pilot exercise to help develop a new regulatory model to replace the Forest Practices Code, and the internal working of the CAG was not entrenched in regulations. As there is no similar body in place under the FRPA model, it is ultimately up to the licensees to decide how it will conduct public consultation.

Finding: Although the Stillwater Pilot FSP said that the group was autonomous, a description of the membership of the group is only in the terms of reference, so the licensee had the legal authority to change the community advisory group. There is no restriction in regulation against doing so.

Issue 3:

Must the licensee address community values from the pilot project in the new FSP?

The Powell River Parks and Wilderness Society complained to the Board that the draft FSP put forward for public review did not incorporate the community values that had been negotiated into the Stillwater Pilot FSP. The complainant had represented local recreation interests until the CAG membership was revised and said that the CAG had made concessions to the licensee in return for forest stewardship zoning and more retention in some zones.

The Stillwater Pilot FSP created several management zones including old growth zones; habitat zones; recreation and tourism zones; and a timber zone. While the Stillwater Pilot FSP was an operational plan, the resource management zoning is similar to what might be in an LRMP or land use plan.

The 2006 draft FSP under FRPA did not incorporate the resource zones from the Stillwater Pilot FSP. Early in the development of the FSP the licensee asked the CAG what priorities it wanted in the FSP. There was an opportunity to include resource zones, but the group could not reach agreement and so no submission was made to the licensee.

The draft FSP addressed each of the 11 legal government objectives required by FRPA. As there is no requirement for a forest stewardship plan to address any other objectives or values except objectives established under either the *Government Actions Regulation* or the *Land Act*—such as wildlife habitat areas, ungulate winter ranges and old growth management areas—there is no requirement to address any objectives or values in the Stillwater Pilot FSP that are not specified as a government objective.

The licensee said that early on in the work of the CAG, the two planning processes—CSA certification and the Stillwater Pilot FSP—became intermingled and there was confusion about where values were being addressed, so it became difficult to separate the two processes. This is evident in the Stillwater Pilot FSP which states, “The resource values and goals ... were developed in cooperation with the CAG, following the CSA sustainable forest management process.”

However, the licensee recognizes the concern regarding the values and told the Board that values from the Stillwater Pilot FSP continue to be addressed through the certification program and also through the licensee’s sustainable forest management plan (SFMP) which the CAG assisted in developing, and into which it continues to have input. The licensee added that the SFMP is the correct place to identify community values and that ‘community values’ is actually a CSA term.

Meanwhile, legal spatial commitments identifying the location of old growth management areas have been completed for several landscape units. For the rest of the landscape units in the Stillwater area there is a legal requirement to meet the non-spatial old growth targets, which are addressed in the new FSP.

Four of the ten old growth zones from the Stillwater Pilot FSP had a 100 percent productive landbase retention objective and the remaining six zones had a 66 percent retention objective. One of the 100 percent zones, and two of the 66 percent zones, have been taken back from the licensee as part of the government’s 20 percent take back program.

The licensee said that almost all the old growth identified for retention in the Stillwater Pilot FSP in the remaining three 100 percent zones is still being retained through OGMAs and marbled murrelet habitat areas. Similarly, in the 66 percent zones, the licensee said that much of the old growth retention from the Stillwater Pilot FSP will be retained through a combination of OGMAs, marbled murrelet habitat areas, terrain restrictions and otherwise limited harvest opportunities.

The complainant also has an interest in the protection of the Sunshine Coast Trail, an important recreational feature that was recognized in the Stillwater Pilot FSP, but never legally established. That plan committed to specified reserve and management zones where the trail did not follow an old road. The licensee's SFMP recognizes the trail and sets an objective to manage for its integrity by ensuring that field or management review is conducted wherever harvesting may impact the trail, though buffers are not specified as they were previously in the Stillwater Pilot FSP. This is similar to government's objectives in FRPA—the objective is fairly loose and the licensee will be evaluated by the results on the ground.

The complainant does not dispute that the values may be addressed through certification; however, they are concerned that, because continuing with the certification program is voluntary on the part of the licensee, the licensee could change or abandon the SFMP without government approval, so the complainant wants a legal commitment to the values in the FSP.

The Board previously noted two possible ways of improving the transparency and usefulness of FSPs:

- increasing the comprehensiveness of the content requirements and the approval tests, and/or,
- formalizing the attachment of the licensee's SFMP or similar statements to the legal plans.

Finding: The licensee is not required to address non-legal objectives in its new FSP, which includes many of the objectives that were legal requirements under the *Stillwater Pilot Project Regulation* but not under FRPA. The licensee has committed to continuing to address many community values through its SFMP planning but it is understandable that the shift from the legal to the non-legal realm for addressing these issues causes concern for the complainants.

Conclusions

The FSP was difficult to read and understand and therefore did not facilitate public input. However, the licensee did make efforts to compensate for this. The complainant did provide comments and the licensee attempted to address these. Ultimately, the FRPA-required focus on general objectives and large forest development areas, rather than cutblock specific information, is the greatest hindrance to writing a plan intended for public input.

The licensee was within its authority to change the membership of the community advisory group. This does not fall under FRPA legislation.

Although not prevented from doing so, the licensee is not required to address non-legal objectives in its FSP. The licensee's approach is to deal with these through its certification program planning; however, this does not provide a legal commitment.

Board Commentary

The issues discussed in this report are largely about the role, value and efficacy of public input into forest planning. While the investigation found that the licensee had followed the law in the changeover from the Stillwater Pilot FSP to the FRPA FSP, and made significant efforts to explain the FRPA FSP, the Board recognizes two main issues that question the fairness of the process for the public.

1. The fidelity of transfer of the publicly negotiated objectives from the pilot regime to the FRPA regime.
2. The effectiveness of the review and comment opportunity provided within the FRPA FSP for informing the public about how the pilot commitments were to be rendered in the future.

The public went from having a plan with clear objectives, legally endorsed by means of a government regulation, to a plan with broad general objectives that did not transparently address all of the original Stillwater objectives. The FRPA FSP was difficult to understand, largely due to the frequent reference to legislation and regulations in the text and the general nature of the objectives. This difficulty was enhanced by the coast-wide scope of this particular FSP, which included large forest development units without geographic reference to proposed harvest and road developments—a feature that is permitted by the FRPA legislation but that limits the value of the public review and comment opportunity.

The Ministry of Forests and Range acted within the requirements of the FRPA legislation by approving the FRPA FSP and amending the *Stillwater Pilot Project Regulation* so that the new FSP could be implemented, but, in the process, it appears that the ministry did not ensure that the public understood what would happen to all of the objectives that had been negotiated in the Stillwater Pilot Project.

Given the effort that members of the public had put into the Stillwater Pilot Project, they reasonably expected that government would ensure the commitments they had incorporated into a formal regulation and officially sanctioned plan were effectively and faithfully transferred.

Through the sustainable forest management plan under its certification program, the licensee has essentially entered voluntarily into a social contract with the members of its public advisory committee on how it will manage the Stillwater area, incorporating some, but not necessarily all of the Stillwater objectives. The wider public who were party to the Stillwater objectives now have no legal certainty for any objectives that lie outside of the FRPA requirements for FSP content, because the FRPA regime has delegated such detailed information and the public involvement process to the discretion of licensees.

The effectiveness of this transfer generally remains an issue of concern to the Board.

In the unique case of the transfer of the Stillwater commitments from the pilot FSP to the FRPA FSP, and the ensuing confusion over continuity of those commitments, there is potential for loss of public confidence in the forest planning process. Maintenance of public trust in the quality of public involvement should be carefully considered as FRPA's review and comment with the limited information in legal FSPs and non-legal, certification-based, voluntary advisory processes for more detailed SFMPs become the common vehicles for public involvement in forest planning.

ⁱ *A Review of the Early Forest Stewardship Plans Under FRPA*, Special Report #28, 2006.

ⁱⁱ MFR, 1996. *Administration Guide for Forest Stewardship Plans*.

ⁱⁱⁱ C & E Program Staff Bulletin #12. Guidance to C&E Program Staff on the Assessment of Measurable or Verifiable Results or Strategies C&E Program Staff on the Assessment of Measurable or Verifiable Results or Strategies Within a Forest Stewardship Plan (FSP) June 2006.

^{iv} QMI Management Systems Registration. 2006. *Sustainable Forest Management System Audit Report* CAN/CSA-Z809:2002. File No. 11057-09.