

**Adequacy of the Public Review and Comment  
Period for Forest Development Plans  
in the Slocan Valley**

**Complaints 950067 and 950069**

July 1998

FPB/IRC/07

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## **SUMMARY**

This report concludes the Board's investigation of a complaint about the amount of time allowed for public review of forest development plans in the Arrow Forest District in the Slokan Valley.

### **Nature of the Complaint**

In February 1996, four forest development plans were submitted to the Ministry of Forests in the Arrow Forest District and advertised for public review. The forest development plans showed five years of proposed roads and cutblocks for 1996 to 2000. They had been prepared by Slokan Forest Products (two plans), Pope and Talbot, and the Ministry of Forests for operations in the Small Business Forest Enterprise Program. Two organizations based in the Slokan Valley, the Valhalla Wilderness Society and the Slokan Valley Watershed Alliance, asked the district manager to extend the period for public review and comment on the plans by approximately eight weeks.

The district manager did not grant the request for an eight week extension. He did agree to accept public comments for an extra 10 days. In early May 1996, both organizations complained to the Board about the district manager's decision and complained that he did not provide reasons for his decision.

### **Scope of the Investigation**

The Board must investigate complaints about forest practices described in Parts 3 to 6 of the *Forest Practices Code of British Columbia Act*, unless there is reason not to investigate. In May 1996, following the assessment of these complaints the Board decided to investigate the portions of the complaints that related to the forest development plans in the Arrow Forest District. Following discussion with the complainants, the Board decided to combine the investigation for the two complaints. The Board also decided to limit its investigation to the public review of the two plans submitted by Slokan Forest Products as these plans were of the greatest concern to the complainants and the issues were identical for each of the four forest development plans.

Since the time of this complaint, and during the Board's investigation, the government made changes to the Code and regulations which relate to the matters addressed in this report. Appendix 2 provides details on those changes. The investigation findings and conclusions reflect the legislation that was in place at the time of the complaint. However, the Board's recommendations are being made in the context of the new Code requirements.

## Investigation Findings

Section 4(1)<sup>1</sup> of the *Operational Planning Regulation* requires a district manager to provide a period of at least 60 days for public review and comment on forest development plans. Section 4(4)<sup>2</sup> provides that this period will only be adequate if, in the district manager's opinion, the opportunity for review is "commensurate with the nature and extent" of a person's interest in the plan area. The Board views the review and comment period provided by section 4 as the most important and only legislated opportunity for public review of operational plans, including forest development plans.

The Board finds that while the district manager complied with the wording of the regulation, he placed insufficient weight on the nature and extent of the complainants' interest in the plan area. Instead, the district manager focused primarily on public interest concerns such as the objectives and appropriate scope of public review, the availability of other opportunities for public input, the role of the inter-agency review process, and operational pressures such as availability of timber supply. While these are important and relevant considerations, the Board finds that the wording of the regulation requires an emphasis on the interest of a person affected by or interested in the plan.

## Conclusions

During the investigation of this complaint, the Board reached a number of general conclusions about the public review and comment process under the Forest Practices Code, which are discussed below.

Public review and comment on forest development plans under section 4(1)<sup>3</sup> of the *Operational Planning Regulation* is the only legislated, and the most important, avenue for public review of operational plans for proposed roads and cutblocks. It is, therefore, essential that district managers provide an adequate and meaningful opportunity for public review and comment. The Board views adequate opportunities for public review and comment of forest development plans as one of the most important aspects of the Forest Practices Code.

Section 4(1)<sup>4</sup> of the *Operational Planning Regulation* requires that the public review and comment period must provide an adequate opportunity for persons interested or affected by operations under the plan. The 60 day period is a minimum that should be accepted only if it is commensurate with the nature and extent of the interest of the affected person. The Board concludes that extension upon a reasonable request should be the normal practice unless a 60 day period is clearly adequate.

Section 4(4)<sup>5</sup> of the *Operational Planning Regulation* requires district managers to give predominant weight to the "nature and extent" of a person's interest in the plan area when they request a period longer than 60 days for review and comment. No guidelines or

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<sup>1</sup> Now *Operational Planning Regulation* (BC Reg 107/98) section 27(4) - see appendix 2.

<sup>2</sup> Now *Operational Planning Regulation* (BC Reg 107/98) section 27(8).

<sup>3</sup> Now *Operational Planning Regulation* (BC Reg 107/98) sections 24-30.

<sup>4</sup> See footnote 1.

<sup>5</sup> See footnote 2.

policies exist to assist district managers in determining the nature and extent of a person's interest or otherwise determining the adequacy of a period for public review and comment.

In the context of public review of forest development plans, a person's "interest" should be interpreted in its broader, plain meaning of "public concern or interest in the land, resources or amenities on the area of an forest development plan."

Based on the above considerations, the Board has reached the following conclusions regarding the complaint investigation:

- The public review and comment period for the two 1996-2000 Forest Development Plans submitted by Slocan Forest Products met the requirements of the Code.
- The district manager applied his discretionary power consistent with the Code requirements when he decided to refuse the complainant's request to extend the review period but agreed to receive comments for an additional ten days.
- The 69-day review and comment period and the extension of 10 days allowed by the district manager was not adequate in the circumstances that gave rise to this complaint. The Board concludes that the complainants' request for a review and comment period longer than the statutory minimum was reasonable.
- In the circumstances leading to this complaint, the district manager took a variety of relevant public interest factors into account, but did not sufficiently consider the adequacy of the review and comment period or the nature and extent of the complainants' interests in the plan area.
- The district manager took a narrow view of the complainants' technical ability to review forest development plans. Lack of professional accreditation should not be a reason to limit an organization's opportunity to provide technical comment during the public review and comment period, when they have an interest and ability to do so.
- The Board finds that the district manager's decision not to grant the extension requested by the two complainants was not reasonable.
- The decision-making process would have been improved if the district manager had provided written reasons for his decision not to grant the extensions. This written explanation could have assisted the complainants in making any future requests to the district.

## **Recommendations**

As a result of this investigation, the Board is making the following recommendations to improve the public review and comment process under the Code:

1. District managers should provide a period longer than 60 days for public review and comment on a forest development plan upon a reasonable request, unless a 60-day period is clearly adequate.
2. The Ministry of Forests should provide guidance to district managers regarding factors to consider in deciding the adequacy of a public review and comment period. In addition to the nature of a person's interest, and without limiting the factors, the Ministry should consider including the following:

- availability to the interested or affected person of other opportunities for public input, both legislated and by policy, into the plans;
  - the interest and ability of the person or organization to carry out technical review;
  - the date when all required materials for review would be available to the interested or affected person;
  - the volume and complexity of materials to be reviewed, including those required for the interested or affected person to review operational plans in nearby areas;
  - the degree of past expression of public interest or controversy in areas included in the plan;
  - a general obligation to allow for more than the minimum 60-day period unless there are compelling operational reasons to require only the minimum period;
  - the reasonableness of the date suggested by an interested or affected person for conclusion of review and comment period; and
  - the requirements for inter-agency review and operational pressures for timely approval of the plan.
3. The Ministry of Forests should provide guidance to district managers regarding the nature and extent of a person's "interest" in a forest development plan. "Interest" should be interpreted in its broader, plain meaning of public concern or interest in the land, resources or amenities on the area of a forest development plan.
  4. Persons requesting an extension of the public review and comment period should describe in their request, the nature and extent of their interest in the plan areas, the suggested date of conclusion of public review and comment period, and reasons for the choice of that date. To facilitate the ability of persons to do so, district managers should advise them of the factors they will consider in making a decision.
  5. A district manager who extends a public review and comment period beyond the 60 day minimum should provide for that period to overlap with the early stage of the inter-agency technical review process, unless such an overlap would create a serious and unacceptable delay in plan approval, or be unacceptable to the public. This is already practice in some districts in the province. In such cases, the parties should be made aware of the overlap.
  6. A district manager who decides on a request for an extended public review and comment period should provide the requesting person and affected agreement holders with reasons for the decision.
  7. When there are recognized seasonal constraints to field review or complex inter-agency review requirements, plans should be made available for public review early enough to allow the review and comment period to be extended, if required.
  8. District managers should ensure that all general and technical information needed for effective public review of a forest development plan is made readily available to the public prior to the commencement of the public review and comment period. Plans that exist in electronic form should be made available in that form on request.

9. The Ministry of Forests and agreement holders should continue to explore ways to make proposed forest development plans and maps more readily available to the public. As suggested in the Slocan Valley, these could include placing plans in a local library or resource centre where they could be signed out by interested members of the public, or other means such as the Internet.

## THE INVESTIGATION

In early May 1996, the Valhalla Wilderness Society (Valhalla) and the Slocan Valley Watershed Alliance (the Alliance) wrote to the Board to complain about a decision of the district manager in the Arrow Forest District to not grant their request for an extension to June 30 for the public review and comment period for four forest development plans which described proposed operations in the Slocan Valley. Valhalla made a similar complaint regarding those portions of the plans that were in the adjacent Kootenay Lake Forest District.

Both groups are well established organizations based in the Slocan Valley in the West Kootenays. Valhalla was established to promote the protection of wilderness values in the area, and the Alliance's primary focus is the preservation of the integrity of community water supplies. Both organizations have a strong interest in the impact of forest management practices on their respective concerns.

The forest development plans in question were for the period 1996-2000 and related to planned operations in the Arrow Forest District and adjacent areas in the Kootenay Lake Forest District. Two of the plans were prepared by Slocan Forest Products (Slocan). The others were prepared by Pope and Talbot and by the Ministry of Forests for operations in the Small Business Forest Enterprise Program (SBFEP).

The complainants' main concern was that the period for public review and comment on the plans was insufficient, and did not provide adequate time for them to review the significant amount of material related to the plans. They had requested an extension of the review period but the full extension requested was not granted by the district manager. Instead the district manager allowed an additional ten days to make comments. The complainants stated that they were not familiar with the Code's public review and comment process as this was their first experience with planning under the Code. Given this lack of familiarity, and their belief that there was an urgent need for detailed review of plans in contentious areas, they argued that the public review and comment period should have been extended to June 30, or a total of 123 days rather than the 79 days provided. They also complained that the Arrow Forest district manager did not provide reasons for turning down their request for an extension.

The Code requires that a person who makes a complaint to the Board must state the relief they would like. The relief requested by Valhalla was broader than, and included, the relief requested by the Alliance. Valhalla asked that the Board:

1. recommend that the review and comment period be extended until June 30, 1996 or, preferably, to July 31, 1996;
2. make recommendations regarding the standards to be used by district managers when deciding the adequacy of a review and comment period; and
3. make recommendations regarding the standards to be used by district managers when determining the "nature and extent of that person's (or organization's) interest and resource use rights in the area under the plan".



## **Method of Investigation**

The Board decided to investigate only the portions of the complaints that related to the forest development plans in the Arrow Forest District. Valhalla claimed to have sent a letter to the Kootenay Lake district manager asking for an extension to the period for review and comment in that district as well, but the district manager said that he had not received such a letter and consequently had made no decision regarding an extension.

Although four forest development plans were identified in the complaints, the Board also decided to limit its investigation to the public review of the two plans submitted by Slocan Forest Products, as these were the plans of greatest concern to the complainants and the circumstances and issues were identical for each of the four plans.

Having limited the scope of the investigation in this way, the Board decided to investigate the complaints from the two organizations as one investigation and to prepare one final report. This approach was accepted by both complainants.

As the facts of the case were not in dispute, the investigation did not include an on-site investigation and was conducted entirely by telephone interview.<sup>6</sup> The Board's investigator interviewed the district manager and Arrow District staff as well as representatives from Slocan, Valhalla, and the Alliance. This telephone interview process was undertaken with the consent of the complainants. The Ministry of Forests staff were also in agreement with the process.

## **Three Primary Questions**

The Board addressed three primary questions in investigating the complaint:

1. Did the district manager comply with the requirements of the Act and regulations in making a decision regarding the request for extension of the public review and comment period?
2. Was the decision reasonable?
3. Was the process used to arrive at the decision fair?

The Board considers these last two questions important because discretionary decisions are integral to the effective implementation of the Code. The Board is of the opinion that it must be able to independently review discretionary decisions to help ensure that the public's interests are being served by those responsible for managing forest resources as required under the Code.

## **Opportunity to Make Representations**

Consistent with the requirements of section 182 of the Act, the Board provided a draft copy of this report to the organizations and/or persons which the Board considered might be adversely affected by the report. The Board received written representations from

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<sup>6</sup> Current investigation procedures of the Board now emphasize the importance of face-to-face communication with each of the parties during complaint investigations.

these persons and considered the representations before reaching its decisions and preparing this final report.

## **Background**

### **The Nature of Forest Development Plans**

A major licensee who intends to harvest timber under the authority of the *Forest Act* must prepare and submit a forest development plan that complies with the requirements of the *Forest Practices Code of British Columbia Act* and its associated regulations.

The purpose of a forest development plan is to provide 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<sup>7</sup>. The plan must specify measures that will be carried out to protect forest resources (including biological diversity, water, fisheries, wildlife and other forest resources). The plan must also illustrate and describe how objectives and strategies established in higher level plans, where they have been prepared, will be carried out.

Forest development plans generally include maps, text and tables and must be updated and submitted for approval annually. Thus, a forest development plan for 1996-2000 is replaced the following year by the 1997-2001 plan, and so on.

Before a forest development plan is submitted for approval, there must be an opportunity for the public to review and comment on the plan for at least 60 days. A longer period may be designated by a district manager, after considering the nature and extent of a person's interest in the area under the plan and any right they may have to use that area. This period is often the only legislated opportunity the public has to review and comment about operational plans which include proposed roads and cutblocks.

The licensee must publish a notice advising the public about the opportunity to make comments on the plan and must make the plan available for review. The licensee must review all comments received during the period for public comment set out in the notice and make any revisions to the proposed plan that the licensee considers appropriate. When submitting the plan to the district manager for approval, the licensee must submit a copy of each written comment received and a summary of all revisions made to the proposed plan.

The Code introduced requirements for public review and comment on forest development plans. However, many processes providing an opportunity for public review and consultation about forestry plans were in place before the Code was created. In the Slokan Valley, in particular, there has been a long history of consultation involving the complainants over many years. Section 2.3.5 on page 24 of this report describes that consultation in some detail.

The Board recognizes that the consultation opportunities in the Slokan Valley have continued since the introduction of the Code and are in addition to the opportunities

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<sup>7</sup> *Forest Development Plan Guidebook*, December 1995, p. 1

specifically required by the Code. These consultation opportunities include both strategic and operational level plans.

### **Time Period Allowed for Public Review and Comment.**

The notice advertising that Slocan's forest development plans were available for public review and comment was published in local newspapers for the second time on February 28, 1996. If the public review and comment period had been based on the minimum 60 days required in the regulation, the period for review and comment would have ended on April 28. The review and comment period as described in the notice actually ended on May 7, thus providing a period of 69 days, for review and comment. Shortly after advertising the public review, Slocan held a series of open houses in four communities and made the plans available for review. The first of these open houses was held on March 11. Valhalla and the Alliance both felt that the public review period should have started on this date, not February 28.

On April 16 and 23, the two organizations wrote to the district manager requesting that the period for public review be extended from May 7 until June 30, 1996. If the district manager had granted this eight week extension, it would have allowed a total of 123 days, or just over 17 weeks for public review and comment.

When the district manager responded to the request, he did not grant the extension but agreed that he would accept comments for an additional 10 days up to May 17. Thus, the total effective period for public review and comment was from the date of second publication on February 28 to May 17 - a total of 79 days, or approximately 11 weeks.

A chronology of events is included in Appendix 1.

## **Investigation Findings**

### **1. Compliance with Code Requirements in making the decision regarding the request for extension of the public review and comment period.**

The general requirements for the time period for public review of forest development plans are set out by the *Operational Planning Regulation* (BC Reg. 174/95, hereafter referred to as the regulation). Sections 2 and 4<sup>8</sup> of the regulation require that a person who submits a forest development plan for approval must have first published a notice in a newspaper and provided an opportunity for the public to review and comment:

- 4(1) A person that publishes a notice under section 2 must, for a period of at least 60 days from the date of the last publication referred to in section 2(1) ... , provide adequate opportunity for review and comment to persons interested or affected by operations under the plan..."
- 4(4) An opportunity for review and comment provided to an interested or affected person under subsection (1) will only be adequate for the purposes of that subsection if, in the opinion of the District Manager,

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<sup>8</sup> Now sections 25, 27, 28 of the *Operational Planning Regulation* (BC Reg 107/98).

the opportunity is commensurate with the nature and extent of that person's interest in the area under the plan and any right that person may have to use the area under the plan.

Section 4(1) specifies that the review period begins on the "last day of publication" of the notice and must be for a period of at least 60 days. Thus, the official period for public review of each of the four plans which the complainants were interested in began on the last date of publication, February 28, 1996. This was the effective start date of the public review and comment period, as required by the regulation. The review period described in the notice ended on May 7 - nine days more than the minimum of 60 days required by the Code.

On April 16 and 23, 1996, respectively, Valhalla and the Alliance wrote to the district manager requesting that the review and comment period be extended to June 30, 1996 - an extension of 54 days.

Section 4(4) of the Regulation makes clear that it is the district manager's opinion which determines whether the opportunity for review and comment is adequate. In deciding whether to grant the request for an extension, the district manager had the statutory authority to decide whether the 69 days provided an adequate opportunity for review and comment or not.

The district manager's letters to the complainants indicated that he did form an opinion under section 4(4). His letter of April 24, 1996, to the Alliance states,

"It is my opinion, as per the *Operational Planning Regulation*, Part 2, Section 4(4), that the opportunity to review has been commensurate with the nature and extent of the Slocan Valley Watershed Alliance's interest in the areas under the plans. I will not, therefore, be extending the review period.

However, in keeping with my desire to have meaningful public input, I will accept your comments up to May 17, 1996. This will allow the proponents to initiate any subsequently approved activities by the commencement of this field season. It is not my intent to further delay this season's activities."

The same wording was used in an April 24, 1996 letter to Valhalla.

## **FINDING #1**

The initial public review and comment period for the 1996-2000 Forest Development Plans in the Arrow Forest District was a total of 69 days - nine more days than the minimum of 60 days required under section 4(1) of the *Operational Planning Regulation*.

The district manager had sole discretion to determine whether this 69-day period provided for review and comment was adequate and he determined that in his opinion, the review period was commensurate with the nature and extent of the complainants interests as required under section 4(4) of the *Operational Planning Regulation*.

The district manager applied his discretionary power consistent with the Code requirements when he decided to refuse the complainant's request to extend the review period but agreed to receive comments for an additional ten days.

The Board finds that the District Manager complied with the requirements of the Code.

### **2. Reasonableness of the Decision**

In considering whether the DM's decision was reasonable, the Board reviewed a number of factors. These included:

- the nature of the DM's discretion
- the nature and extent of the complainants' interests in the area of the plan
- the intended scope of public review of plans
- the volume of the materials in the plans and its availability

#### **2.1 Nature of the District Manager's Discretion**

The district manager did not extend the public review and comment period beyond May 7 as requested, but agreed that he would accept comments from the complainants for an additional ten days up to May 17. This effectively increased the review and comment period for those organizations to 79 days from the date of the second publication on February 28, 1996.

The essential requirement of section 4(1) of the regulation is that the review and comment opportunity must be "adequate". By emphasizing the duty to determine the adequacy of the review and comment period, section 4(1) suggests that the district manager has an obligation to allow a longer review period if a 60-day period is not adequate. In other words, the 60-day period is a minimum, to be accepted only if that period is adequate "commensurate with the nature and extent of a person's interest in the area under the plan". If the period provided is not commensurate or otherwise adequate, the district manager should not limit the review period to the minimum of 60 days.

The Board interprets the regulation to suggest that extension upon request should be the normal practice, unless there are good reasons to accept the statutory minimum as an adequate period.

The district manager's interpretation of the requirements for public review and comment is different from the Board's. In a letter to the Board dated August 8, 1997, the district manager stated that:

“I would also like to point out that my interpretation of the Code legislation governing adequacy of public review and comment is different from the Board's. In my view, the legislation says that 60 days is sufficient unless there are compelling reasons to extend the review time frame.”

**FINDING #2.**

The Code requires that the public review and comment period must be adequate. The Board finds that the 79 day period provided by the district manager was more than the minimum required by the *Operational Planning Regulation*. However the district manager should not have considered it sufficient to meet Code requirements unless it was clearly adequate.

How should the district manager have decided the adequacy of the review and comment period? The Act and regulation provide no direction regarding what factors must be considered in making such a decision, apart from the regulation's requirement that the DM determine the “nature and extent” of the interested or affected person's “interest” in the area of the plan. Neither law nor policy in place at the time of the investigation provided guidance regarding how a district manager should determine the nature and extent of a person's interest in the area covered by a plan.

The Forest Practices Code guidebooks which were written to help forest resource managers plan, prescribe, and implement sound forest practices that comply with the Code provide some further background.

The *Public Consultation Guidebook* makes no mention of factors to be considered by a district manager in determining an appropriate period for public review. The *Forest Development Plan Guidebook* provides some guidance. It suggests that the overall objective of the public consultation process is to provide opportunities to inform the public, in an understandable manner, of the operations planned in each area, and to provide opportunities for the public to offer comments and suggestions (p. 43). The guidebook adds that the time period during which a proposed forest development plan is available to the public should be tailored to specific community needs. Significantly, page 45 of the guidebook highlights, in bold text, the fact that a 60-day period is only a minimum.

**FINDING #3.**

The Act, regulations and guidebooks provided no meaningful guidance to the district manager on how to decide the adequacy of a public review and comment period for forest development plans.

## 2.2 Nature and Extent of Complainants' Interest in the Plan Area

The wording of the regulation and the guidebook both indicate that the district manager must consider primarily the specific interest of the person rather than the general public interest. The complainants did provide general information to the district manager about the nature and extent of their interest in the plan area. The district manager did not ask them to provide more details. However, as he had dealt with the complainants for many years on numerous issues, it is reasonable to assume that he was generally familiar with the nature and extent of their interests.

However, in his letter of August 8, 1997 to the Board, the district manager stated:

“In my opinion, “nature and extent of a person’s interest in the area under the plan and any right that person may have to use the area under the plan” means that a person must have a vested interest in and right to use the area (e.g., licensed water user, guide outfitter, trapper) to be given special consideration in light of this provision. I did not consider the complainants to have a vested interest in and right to use any areas under the forest development plans in question.”

This opinion seemed to the Board at first to be different from his April 24, 1996 letters to the complainants, which indicated that he had formed the opinion that the opportunity for review and comment had been commensurate with the nature and extent of the complainants’ interests. There was an implication that the district manager accepted that the complainants had an “interest” for the purpose of section 4.

The August 8 letter seemed to say that the complainants did **not** have an interest, since they did not have a “vested interest in and right to use the area”.

The Board asked the district manager to clarify his rationale. His explanation, which the Board accepts, is that he considered both the general interest of the complainants, as members of the general public and whether they had any additional, vested interest or right. He concluded that their interests were only general and that, in this case, 60 days was an adequate period for the general public.

The Board is of the opinion that the restriction of “interest” to mean only formal legal interests would be too narrow in light of the intended function of public review. Section 4 of the *Operational Planning Regulation* is the only legislated requirement for review and comment on forest development plans. There are no requirements for review and comment of other operational plans such as silviculture prescriptions, unless the district manager gives notice under section 6 of the *Operational Planning Regulation*.

Section 4(1) creates a right to “adequate opportunity for review and comment to persons interested or affected by operations under the plan or amendment”. The term “interested” in section 4(1) must have a comparable meaning to “interest” in section 4(4). If “interest” were restricted to “legal interest”, the general public would have no right of review and comment on forest development plans.

Also, the language of section 4(4) distinguishes between a persons “interest” and any “right” the person may have.

The Board is of the opinion that individuals and organizations, in addition to licence and permit holders, want to examine whether forest resource use will reflect management for biological diversity, soil conservation, water, fish, wildlife and other forest resources, and recognize the economic and cultural needs of people and communities (*Forest Development Plan Guidebook*, p. 1).

**FINDING #4.**

For public review and comment purposes, the Board interprets the word “interest” in accordance with its plain, broad meaning of a concern or interest.

The Ministry of Forests also commented on whether the complainants had an “interest”. In a letter to the Board dated August 8, 1997, the Deputy Minister stated:

“ . . . I would also like to draw the Board’s attention to a recent court case finding that I believe the Board may wish to consider when considering the complainants’ interest in and right to use areas under the forest development plans in question.

That court case concerned the Valhalla Wilderness Society’s pursuit of an injunction against a cutting permit in the Slocan Valley. As indicated in Judge Paris’s decision on the case, a persons “expectations” concerning public consultation do not confer rights on that individual to an area under review.

Here is an excerpt from the Judge’s decision:

“It is a precondition of the operation of the doctrine of legitimate expectations that some right of the petitioner must be affected by the decision questioned, for example an alleged right not to be deported or a property right. Although the members of the petitioner are undoubtedly interested parties in the ordinary sense whose concerns are the common good, on the evidence I did not apprehend any substantive right of the petitioner that was engaged.”

In the Board’s view, this passage deals with the specific issue of whether the Valhalla Wilderness Society had a legal “right”, affected by the decision at issue in that case, which would allow it to raise the doctrine of legitimate expectation. The passage has little, if any, relevance to the interpretation of “interest” in section 4 of the *Operational Planning Regulation*.

Furthermore, the Board is of the view that the complainants’ and, indeed, the public’s right to review and comment is given by the Act and regulations, not, as stated by the Ministry, by “expectations.”

The complainants did not provide detailed information about the specific nature and extent of their interest in the plan area in their request for an extension of the public review period. However, the district manager was familiar with the complainants and their general concerns, and did not ask for more specific information about the nature and



extent of their interests. The district manager also believed that the issues likely to be raised by the complainants would be primarily related to land-use and preservation, rather than operational issues in the plans. He believed their review would be based on map review, not on field review.

#### **FINDING #5**

The Board finds that the district manager considered the adequacy of the 69-day public review period, balancing the complainants' opportunities for public input and their forest management and operational concerns with other relevant factors.

The Board also finds that the district manager should have given predominant weight to the specific interests of the complainants in making his decision regarding the adequacy of the review and comment period.

### **2.3 Scope of Public Review of Plans**

In order to determine the adequacy of the review period for forest development plans, it is necessary to consider the amount of work that such a review is likely to entail. This requires an assessment of :

- expectation about which years of the plans are to be reviewed;
- changes in plans since previous public review;
- the level of detail that may be appropriate in a public review;
- the volume and availability of the material involved; and
- other factors such as the opportunities for public input to plans outside the forest development plan public review period.

While none of these factors is mentioned in the Act or regulation, the Board is of the opinion that the district manager needed to consider them, under section 4 of the regulation, to determine whether the opportunity for public review and comment was "commensurate with the nature and extent of the complainants' interests".

#### **2.3.1 Years of the Plans to be Reviewed**

Determining the appropriate emphasis of public review on different parts of forest development plans is problematic for two reasons. First, there is a wide range between the first and last years of the five-year plans both in detail and in imminence of operations.<sup>9</sup> Second, as plans are generally updated and resubmitted for review annually, the public is presented with regular opportunities for review as the plans evolve over time.

The Board's investigation revealed at least four widely differing perceptions regarding which of the five years of the 1996-2000 forest development plans should receive greatest emphasis during the period of public review and comment: all years equally, the first year, the first two years, or years 3 to 5 of the planning period. This issue had a

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<sup>9</sup> FDPs will no longer be required to specify year of harvest or road construction unless the timing is critical to the management of non-timber forest resources.

central bearing on the reasonableness of the decision whether or not to extend the review period, as the amount of effort involved in public review is naturally determined in large part by the time spent on each year of the plan.

Valhalla and the Alliance both felt that a careful and highly detailed review of all five years of proposed work in the forest development plans was essential, even though the plans are subject to annual review. They noted that approval of forest development plans has a “precedent effect” that expedites approval of more detailed operational plans which are not reviewed by the public. Such an “all-years review” is a major task requiring time.

In his April 24 letters to the complainants, the district manager expressed a very different view. He believed that the public was expected to concentrate its review primarily on the first year’s proposed operations. He felt that plans for later years were merely statements of intent and would be subject to public review in future years. A detailed review of only the first year, he believed, could be accomplished within the 79-day review period.

The minutes of the Slocan Valley Round Table Sector Meeting of April 2, 1996 show a third perception of where review effort should have been focused. This sector review group was an offshoot of the Commission on Resources and Environment (CORE) pilot project in the Slocan Valley, and one of its purposes was to comment on forest development plans. The sector representatives concluded that the focus of their review should be on years 3 to 5 of the planning period because “the first two years are generally in an ‘approval’ stage” (i.e. under cutting permit).

A fourth expectation of the appropriate emphasis of public review is indicated in guidebooks published under the Forest Practices Code. While these guidebooks are not law, they create public expectations concerning plan review. The *Public Consultation Guidebook* notes that forest development plans are to provide a minimum of two years of approved operations and notice of “intended operations” for the following three years.

**FINDING #6.**

There was a range of views about which years of the five-year forest development plan should receive emphasis during the public review and comment period. This was important since part of the complainant’s rationale for requesting the extension was to allow them sufficient time to conduct a review of all cutblocks identified on the five-year forest development plans.

The Board finds that it is the responsibility of interested persons to determine for themselves which areas, and which years, of the plan they have interest in and wish to make comments about. The public review period should provide an adequate opportunity for interested persons to make comments on all five years of a forest development plan.

With regard to these forest development plans, the Board finds that consideration of all five years of the plans was important. Emphasis should have been placed on operations that were imminent and that had not previously been made available for public review, and on years 3 to 5 of the plans.

There were three primary reasons for this finding. First, public review under the regulation provides the only legally required public review of forest development plans. Second, once plans have been submitted for approval and for public and interagency review, substantial expenditures begin for detailed assessments. At this stage, public review provides a crucial role in informing licensees and government of issues to be addressed and changes that may be required before detailed preparations are made for the implementation of the plans. Finally, early public review is an essential means of ensuring that comments are received and addressed at a time in the planning process when changes are least disruptive.

### **2.3.2 Changes in the Plans Since Previous Public Review**

Confusion about the appropriate duration of the public review period was heightened by public uncertainty about the nature and extent of the changes that had been made since public review of the previous forest development plans. The activities described by the four forest development plans had previously been reviewed by the public in 1995 and earlier years when they were included in five-year development plans prior to the introduction of the Code. Consequently, only part of the information being presented for review—approximately one-half, in the opinion of the district manager—was new to the complainants.

However, it was not easy for the complainants to determine what was new and what was not. The forest development plan maps had been color-coded to differentiate between operations that had been “approved” (shown as possible developments on former plans but re-scheduled to be much more imminent on the current plans) and those considered “probable.” However, there was no indication of blocks that had been moved forward to an earlier year in this manner and had reached an approval stage where a cutting or road permit had already been issued. Such information, if readily identified, would have helped the complainants to focus their efforts.

### **2.3.3 Appropriate Level of Detail of Public Review**

The appropriate length of time for public review depends in part on the level of plan detail that needs to be examined. A review may be either general or technical in nature, depending on the level of interest and ability of those conducting it. A general review may be described as referring to an analysis at a landscape level, with members of the public examining areas of planned operations in the context of the potential impact on public uses such as recreation and water consumption. By contrast, a technical review may occur at both the landscape level and at the stand or proposed cutblock level, and may include an examination of detailed soil, landform, vegetation and other specific attributes. A technical review requires a much closer look at many more factors than would a general review. The “open house” sessions used in the public review process tend to provide information for a general review.

Both Valhalla and the Alliance maintained that it was important that they be given sufficient time to conduct a detailed technical analysis of some parts of the plan areas. Both groups are in the position of being a public organization with expertise and analytical equipment to carry out very technical data analysis independently.

The complainants supported their need for additional time to carry out a technical review by noting that, since the coming into force of the Code, only long-term operational plans—forest development plans, access management plans, five-year silviculture plans,<sup>10</sup> range use plans and amendments to those plans—are available for public review and comment. Before the Code came into effect, there was routine public review of “pre-harvest silviculture prescriptions”. Now, however, silviculture prescriptions and other detailed operational plans are no longer available for review by the public unless the district manager specifically orders a review under section 6<sup>11</sup> of the regulation or a licensee voluntarily offers to invite public review, as Slocan Forest Products currently does in the case of silviculture prescriptions. The complainants argued that the loss of opportunity under the Code to review detailed operational plans, including silviculture prescriptions, made their technical review of forest development plans more important than previously.

Another consideration in assessing the importance of detailed technical analysis during public review of forest development plans is the role of government agencies as technical reviewers. In the Arrow District, draft forest development plans are referred by the Ministry of Forests to other resource management agencies such as the Ministry of Environment, Lands and Parks. Those agencies are expected to determine the potential impact of the planned forestry operations and make recommendations to mitigate impacts. However, the complainants were unwilling to rely on those agencies to do a comprehensive technical review of proposed forest development plans, especially given increasing constraints on governmental staff and budgets.

The district manager considered the purpose of a public review to be a general rather than a technical assessment, and noted that the government resource agencies have the technical expertise to assess potential impacts on the full range of forest resources and to recommend mitigating measures if necessary. In his view, it was the task of government to conduct a technical review, and there was no reason for the public to duplicate that process. He pointed out that government agencies have continuous involvement with forest operations through the life of a forest development plan, as the full range of operational plans and permits are referred to such agencies. He felt that public groups, being less involved, were in a less advantageous position to provide comprehensive technical input. The district manager stated, in his August 8, 1997 letter to the Board:

“In my view, neither complainant had sufficient technical expertise to conduct technical assessments that would have added value to my decision concerning the plans. This is primarily because technical assessments submitted by the complainants have, to date, been conducted by unaccredited non-professionals. These individuals are not required by law to state opinions free of bias, nor are they subject to any other requirements of the code of ethics, bylaws, or misconduct proceedings which are an integral part of professional associations in

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<sup>10</sup> Access management plans and five-year silviculture plans are no longer required - *Forest Statutes Amendment Act, 1997*.

<sup>11</sup> Now section 47; see also section 7.

B. C. As such, in my view, the assessments submitted by these organizations have, to date, lacked credibility.”

The Ministry of Forests expressed a similar view in the Deputy Minister’s letter of August 8, 1997:

“As a further consideration, I must stress to the Board that it is the responsibility of the agencies and licensees to conduct detailed technical assessments that support practices proposed under operational plans. Those assessments are conducted by accredited professionals who are accountable for the practices they propose, and are subject to a code of ethics, bylaws and misconduct proceedings. Assessment or technical reviews conducted by non-professionals, as the complainants have submitted in the past, are not subject to these requirements and, as such, may lack credibility.

The district manager must consider whether it is in the public interest to reconsider the results of an assessment conducted by an accredited professional based on the results of a technical review conducted by an unaccredited non-professional, or, even more basically, whether it is in the public interest to support a duplication of effort by an interested member of the public.”

The Board finds merit in the views of the complainants, the district manager and the Ministry of Forests. While staff and budget reductions inevitably restrict the ability of the government resource agency staff to conduct comprehensive technical reviews, the agencies nevertheless possess technical expertise that may be lacking for many public groups (although the members of Valhalla and the Alliance did have considerable technical expertise). The investigation did not reveal any evidence that the line agencies could not handle the technical reviews of forest development plans, despite the assertions by the complainants.

The guidebooks provide no indication of the level of detail intended to be considered during public review and comment on forest development plans. They indicate that public review is meant to achieve a greater purpose than the simple provision of information to the public; public comment, possibly including technical advice, is anticipated. Beyond that, however, the intended scope of public comment is not described. As noted earlier, the Board is of the opinion that it is the responsibility of interested persons, or groups, to determine for themselves which areas, and which years, of the plan that they have interest in and what comments they wish to make. The public review period should provide an adequate opportunity for interested parties to do that.

The Board, therefore, concluded that public review should not preclude detailed technical comment on forest development plans. If a public group such as Valhalla has the expertise to “double check” government resource agency input and expresses a wish to do so, the public review period should allow them to do so. There is no obvious reason to not extend the public review period in this circumstance provided that the detailed review does not cause unreasonable delays in plan approvals. Provisions for public review of forest development plans become meaningless if the public is not provided adequate time

or detailed information for the review, but public review must occur in a timely manner to allow finalization of forest development plans.

The Board's opinion is that organizations, including those without individuals who are accredited professionals, may have the ability to provide constructive technical comment and should not be discouraged, or restricted from doing so as part of the public review process.

**FINDING #7.**

The district manager did not consider that the complainants had the ability or professional expertise to conduct a technical review. In the Board's view, persons and organizations should have an adequate opportunity to conduct a technical review of forest development plans where they have the means and interest to do so, provided that such a review does not result in unreasonable delay in plan approval.

The Board also finds that professional accreditation should not have been a factor considered by the district manager in deciding whether to extend the review and comment period.

**2.3.4 Volume and Availability and Materials**

The challenge of reviewing all forest development plans for the entire Arrow Forest District and part of the Kootenay Lake Forest District was one of the key factors in the complainants' request for a longer review period. Valhalla emphasized the complexity involved in conducting a simultaneous review of each of the following:

- two Slocan Forest Products plans, one with 280 cutblocks and one with 150;
- one Pope and Talbot plan, containing more than 350 cutblocks;
- one Small Business Forest Enterprise Program plan, with 30 cutblocks;
- one Slocan Forest Products plan in the Kootenay Lake Forest District, with more than 100 cutblocks;
- another Small Business Forest Enterprise Program plan in the Kootenay Lake Forest District, with 40 cutblocks; and
- another 50 cutblocks in other areas such as Meadow Creek.

In total, Valhalla wanted to review 500 to 600 cutblocks in Arrow Forest District and roughly 200 in the adjacent Kootenay Lake Forest District. In addition, they wanted to examine a series of terrain, visual quality and other assessments included in each plan. The Alliance had a smaller task, being concerned only with the Slocan Valley; however, that involved review of some 430 blocks. Approximately half of the blocks were new to the complainants, having not been included in plans submitted in earlier years.

In the Board's opinion, simultaneous review of forest development plans is often considered useful by public groups because it allows an overview of all planned operations in an area of interest before comments are made on a specific plan. It does, however, greatly increase the work required during the review period.

The district manager acknowledged that there was a large amount of material to be reviewed, but noted that it was not significantly more than the complainants had reviewed under the former five-year development plans. Additionally, he felt that the review could have been expedited, regardless of the volume of material, if the complainants had restricted the scope of their review to the current year's operations. He had also had considerable experience with both organizations in the past and felt that he knew and understood the nature of their anticipated comments. These points were valid. However, given that the plans covered controversial areas, that public groups were unfamiliar with the Code's new public review requirements, and that the simultaneous release of several plans greatly magnified the task at hand, the Board concludes that the volume of material to be reviewed was a factor which supported the need for an extension.

**FINDING #8:**

There was a considerable volume of materials and maps to review in the proposed forest development plans. In the Board's view, the district manager should have placed additional weight on the high volume of material in the plans in deciding whether the review and comment period should have been extended.

The task of reviewing the forest development plans within the allowed review period was made more difficult by the late receipt of maps and assessments that the complainants needed for proper review. The plans, including maps and assessments, were available for review in Slocan Forest Products office in Slocan, BC from February 1, well before the start of the review period on February 28. The material was also available at the Ministry of Forests office in Castlegar. However, both locations required representatives of the organizations, many of whom had full-time jobs, to travel to the offices during normal office hours to review the maps.

At one of the open houses in March, the licensee gave the complainants copies of some maps and agreed to provide the remainder of the maps as soon as they could be reproduced. This reasonable and voluntary gesture on the part of Slocan assisted the complainants by allowing them to review the maps in their own offices at times convenient to them.

The task of reproducing the large colored maps was time consuming and costly and the full set of maps was not made available to the complainants until April 10—more than five weeks into the public review period. Thus, although the licensee provided the maps reasonably quickly, the complainants were unable to carefully examine them until more than halfway through the review and comment period, which was set to end 30 days later on May 10.

**FINDING #9**

The Board finds that an unavoidable one-month delay occurred as a result of Slocan Forest Products' offer to provide maps and assessments to the complainants to assist their review. In considering the need for an extension, the district manager should have considered the delay in delivery of necessary materials to the complainants. In the

Board's opinion, this delay increased the need for an extension to the review and comment period to allow the complainants to adequately review the plans.

In a letter to Slocan about the plans, Valhalla suggested that the availability of plan materials for public review would be improved if licensee plans were placed in a library and available for interested members of the public to sign out and return. Slocan has discussed this suggestion and efforts are being made to find a suitable public location for such a system to be set up. The Board supports this approach.

### **2.3.5 Other Factors Considered by the DM**

In addition to the factors described above, the district manager considered whether the availability of other opportunities for public input reduced the need for an extended period of public review. He also considered the need for inter-agency review and the operational effect a decision to extend the review period would have in delaying plan approval.

#### **a) Other Opportunities for Public Input**

The district manager's decision not to extend the review period as requested was significantly influenced by his view that other opportunities to make comments on the plans were, or had recently been, available to the complainants. These included the West Kootenay-Boundary Commission on Resources and Environment (CORE) Land-Use Plan (1993-1995), the Slocan Valley Pilot Project (1993-1994) and the Slocan Valley Round Table.

The *Public Consultation Guidebook* confirms that public consultation under the Forest Practices Code is not intended to be the sole means of public review and comment on forest land uses (p. 1). To that extent, the district manager's position corresponded with the approach taken by the guidebook.

The most significant of these other opportunities was the Round Table, a pilot project established in 1993 to provide input to the development of the West Kootenay regional (CORE) land use plan. The Round Table included a broad representation of sectors with interest in land use planning. Meetings of sector representatives continued as an offshoot of the CORE process after the Round Table had completed its contribution to the development of the regional plan. One of the purposes of these meetings was the review of forest development plans. The wilderness sector was represented by a member of Valhalla, and the watershed sector by a member of the Alliance.

The district manager noted that the sector review group was offered the chance to review forest development plans at a meeting on April 2, 1996, but that neither of the representatives from Valhalla or the Alliance attended. In response, Valhalla noted that various environmental representatives, including the complainants, had formally abandoned the sector review process in October 1995 because they perceived it to be "industry-driven" and biased. Because they had withdrawn from that process, the complainants did not consider that it was an opportunity for public input to plans that was still available to them.



**FINDING #10**

In the Board's view, public review of forest development plans is intended to occur in concert with other, non-legislated, processes that provide opportunity for public input into operational planning processes.

However, the public review and comment period for forest development plans is the only legislated opportunity for public review and is, therefore, the most important public review and comment process.

The Board finds that, although the complainants chose not to use other non-legislated consultation processes, this lack of participation should not have affected their opportunities to have adequate time to provide comments during the legislated review and comment period for the forest development plans. The complainants' withdrawal from other processes was not a reason to extend, nor a reason to refuse to extend, the review and comment period.

**b) Inter-Agency Review and Operational Pressures**

The *Operational Planning Regulation* does not explicitly require an inter-agency review of forest development plans, but referrals to other government agencies are routinely made so that the district manager can be "satisfied that the plan will adequately manage and conserve the forest resources of the area to which it applies," as required by section 41 of the Act.

In the Arrow Forest District, the district manager felt obliged to fit public comments into an orderly, sequential plan approval process, and believed that the public review and comment period had to be completed prior to the start of the inter-agency review process. Both the district manager and Slokan provided logistical reasons why the two types of review had to occur in sequence rather than overlap. The Board, however, found no legal requirement that the public comment period must be completed before this inter-agency review begins.

The fieldwork for inter-agency review was complex and difficult to organize and had to be arranged far in advance. It usually required the participation of staff of the Ministry of Environment, Lands and Parks, regional and district Ministry of Forests offices, consultants and licensee representatives. Slokan noted that the inter-agency field inspections could require that up to 14 technical staff attend some sites at the same time.

In addition, the more concerns there were about a particular site, the more staff were required. There were also concerns that field review had to occur between May and October and could not be delayed because of impending snow conditions in the fall. Consequently, areas of high public concern had to be identified at the earliest stages, not late in the process, and during the summer months, if the inter-agency review was to be guided by public comment.

By limiting the public review period to 79 days, the district manager believed that the Ministry of Forests and the other review agencies would be able to organize their field reviews and provide timely input to the company. In the district manager's view,

comments from the public at a later date would have made it more difficult to organize and complete the inter-agency process before the arrival of snow in the fall prevented field review.

In addition to the need for inter-agency review, other operational factors created pressure for a timely approval of the Slocan's plans. As Slocan is a major local employer, the district manager was under pressure to ensure an uninterrupted availability of timber for harvesting and milling by providing for at least two years of approved timber in operational plans.

The district manager was also eager to ensure operations were in compliance with the Code and explained that there were three options available to him:

1. approve Slocan's plans when the existing plan approvals expired in the fall of 1996;
2. re-extend the outdated five-year development plans that regulated forest operations in the plan areas; or
3. force Slocan to cease operations in the absence of an approved plan.

The district manager, therefore, believed that timely review was essential in the case of the Slocan plans and considered this an additional reason for concluding public review so the inter-agency review could begin.

The Board concludes that it was in the public interest to have new forest development plans approved for the Arrow Forest District before the existing, extended five-year development plans expired. Given the unusual circumstances in the Slocan Valley and the public interests in the area, the Board accepts that the district manager believed that it would be unwise to proceed with inter-agency field reviews in advance of public review comments.

However, the Board is aware that periods of public review and inter-agency review do overlap in some other districts in the province. If the district manager had granted the extension to the review and comment period requested by the complainants the period for public review would have ended on June 30. It would have overlapped on only the first month or two of the inter-agency field review season, leaving more than three months for field review by the agencies.

The Board concludes that extension of the public review period, would not necessarily have impeded the ability of the inter-agency review process to respond to public concerns or have resulted in a delay in plan approvals.

Public comment in June might have been less effective than earlier comments in directing inter-agency field reviews, especially if field inspections were already underway or completed, but could still have been considered by the agencies and the licensee. Options to overlap public review with inter-agency review would have been feasible and would have allowed the plans to be approved in the required time.

The Board is of the opinion that the requirements for inter-agency field review, and operational pressures to approve the plans were not sufficiently compelling reasons for limiting the public review and comment period to 79 days.

If seasonal constraints or needs for inter-agency review restricted the review and comment period, it would have been desirable to start the review period earlier. The Board is of the view that overlap of public and inter-agency review can occur without compromising either process, and notes that other forest districts regularly follow a process of overlapping reviews.

The Board also recommends that if the public review and inter-agency review periods are to overlap, this should be communicated in advance, and agreed to by all parties.

**FINDING #11**

The district manager did not want to overlap the inter-agency review with the public review and comment period because of possible delays. The Board however, found no legal requirement that the review and comment period must be completed before this inter-agency review begins.

The Board is of the opinion that options to overlap the processes were feasible. With good communications to all parties, it should have been possible to extend the public review and comment period without unduly affecting the completion of the inter-agency review and approval of the forest development plans in a reasonable time.

**2.3.6 Summary**

The Board concludes that, for a number of reasons, the complainant's request for an extension to the review and comment period was reasonable.

There were a number of forest development plans in which the complainants had an interest. They wished to review these plans in a detailed, technical way and had the means to do so. The plans were all presented for review at the same time and included a large number of cutblocks, many of which were new to the complainants. The complainants also had difficulty conducting their review at the Slocan or Ministry of Forests offices during normal office hours. Although Slocan provided the necessary maps and assessments, there was a delay in delivering them to the complainants.

In considering their request for an extension, the district manager considered a variety of factors, including the need for inter-agency review, operational pressures and the other opportunities the complainants had to make comments on the plans.

The Board concludes that he should have given predominant weight to the specific interests of the complainants and should not have presumed to limited their review to only the first year of the plans or to a general, non-technical review. The Board also concludes that it would have been feasible to extend the review period without unduly affecting the ability to complete inter-agency review as required.

**FINDING #12**

In the circumstances, the Board finds that the decision of the district manager not to extend the review and comment period was not reasonable.

**3. Fairness of the Decision-Making Process**

Section 4(4) of the regulation gives the district manager sole discretion to determine the adequacy of the review and comment period. The district manager made a decision not to grant the extension requested by the complainants after he considered a broad range of factors. He effectively granted a 10 day extension by allowing an additional ten days during which he would receive comments. The district manager promptly advised Valhalla and the Alliance of his decision.

However, the district manager's letter of response to the complainants request for an extension did not inform them of the reasons for his decision or demonstrate how he had determined the "nature and extent" of their respective interest in the area.

Given the broad discretion of the district manager to decide the duration of the public review and comment period, and the legislated onus to provide an adequate period for public review and comment, he should have provided reasons for his decision. Although the Code does not specifically require reasons, the Board is of the opinion that reasons should be provided when they affect the rights of individuals or groups.

**FINDING #13**

The decision-making process would have been improved if the district manager had provided written reasons for the decision not to approve the extensions requested by the two complainants. This written explanation could have assisted the complainants in making any future requests to the District.

**Conclusions****Compliance with the Code**

1. The four forest development plans in the Arrow Forest District met the time frame requirements of the Code with respect to public review and comment. The district manager applied his discretionary power consistent with Code requirements when he decided not to extend the review period. The Board finds that the district manager complied with the requirements of the Code.

**Reasonableness of the Decision**

2. The 69-day review and comment period and the extension of 10 days allowed by the district manager was not adequate in the circumstances that gave rise to this complaint. The complainants' request for a review and comment period longer than the statutory minimum was reasonable, based on the following investigation findings:

- It is the responsibility of interested persons and groups to determine for themselves which plan areas and which years of a plan they wish to review. In this case a review of all five years of the plan was important.
  - The complainants were not shown which blocks had been moved forward in the planning period.
  - Public review need not be restricted to a general overview of plans, but may include technical analysis where persons have the interest and means to undertake it.
  - Several forest development plans of concern to the complainants were submitted for review simultaneously, placing a heavy burden on the complainants.
  - A one-month delay in providing detailed maps and other information to the complainants increased their need for a longer review and comment period.
  - It should have been possible to extend the public review and comments period without unduly affecting the opportunity for inter-agency review.
3. The district manager took a narrow view of the complainants' technical ability to review forest development plans. In the Board's view, lack of professional accreditation should not be a reason to limit an organization's opportunity to provide technical comment during the public review and comment period, when they have an interest and ability to do so.
  4. In the circumstances leading to this complaint, the district manager took a variety of relevant public interest factors into account in determining the adequacy of the review and comment period, but did not give predominant weight to the nature and extent of the complainants' interests in the plan area.
  5. The district manager's decision not to grant the request for an extension was not reasonable.

### **Fairness of the Decision-Making Process**

6. The decision-making process would have been improved if the district manager had provided written reasons for the decision not to approve the extensions requested by the two complainants. This written explanation could have assisted the complainants in making any future requests to the District.

### **Public Review and Comment on Forest Development Plans**

7. Public review and comment on forest development plans under section 4(1) of the *Operational Planning Regulation* is the only legislated, and the most important, avenue for public review of operational plans for proposed roads and cutblocks. It is, therefore, essential that district managers provide an adequate and meaningful opportunity for public review and comment. The Board emphasizes that ensuring adequate opportunities for public review and comment of forest development plans is one of the most important aspects of the Forest Practices Code.

8. Section 4(1) of the *Operational Planning Regulation* requires that the public review and comment period must provide an adequate opportunity for persons interested or affected by operations under the plan. The 60 day period is a minimum that should be accepted only if it is commensurate with the nature and extent of the interest of the affected person. Extension upon a reasonable request should be the normal practice unless a 60 day period is clearly adequate.
9. Section 4(4) of the *Operational Planning Regulation* requires district managers to give predominant weight to the “nature and extent” of a person’s interest in the plan area when the person requests a period longer than 60 days for review and comment. No guidelines or policies exist to assist district managers in determining the nature and extent of a person’s interest or otherwise determining the adequacy of a period for public review and comment.
10. In the context of public review of forest development plans, a person’s “interest” should be interpreted in its broader, plain meaning of public concern or interest in the land, resources or amenities on the area of an forest development plan. The Board is of the opinion that this interpretation is the intent of section 4 of the *Operational Planning Regulation*.

## **Recommendations**

The complainants asked that the Board:

1. recommend that the review and comment period be extended until June 30, 1996 or, preferably, to July 31, 1996;
2. make recommendations regarding the standards to be used by district managers when deciding the adequacy of a review and comment period; and
3. make recommendations regarding the standards to be used by district managers when determining the “nature and extent of that person’s (or organization’s) interest and resource use rights in the area under the plan”.

As both forest development plans submitted by Slocan Forest Products were approved in the fall of 1996, the first relief requested is no longer relevant. Both plans came up for review again in the spring of 1997, as part of the 1997-2001 forest development plans, and have now been approved along with the 1998-2002 forest development plans.

The Board agrees with the complainants that guidance is needed regarding standards for determining an appropriate duration for the review and comment period, and particularly for determining the nature and extent of a person’s interest in a plan area. To ensure that the public review and comment process under the Code is meaningful, fair and efficient, the Board is making the following recommendations:

1. District managers should provide a period longer than 60 days for public review and comment on a forest development plan upon a reasonable request, unless a 60-day period is clearly adequate.

2. The Ministry of Forests should provide guidance to district managers regarding factors to consider in deciding the adequacy of a public review and comment period. In addition to the nature of a person's interest, and without limiting the factors, the Ministry should consider including the following:
  - availability to the interested or affected person of other opportunities for public input, both legislated and by policy, into the plans;
  - the interest and ability of the person or organization to carry out technical review;
  - the date when all required materials for review would be available to the interested or affected person;
  - the volume and complexity of materials to be reviewed, including those required for the interested or affected person to review operational plans in nearby areas;
  - the degree of past expression of public interest or controversy in areas included in the plan;
  - a general obligation to allow for more than the minimum 60-day period unless there are compelling operational reasons to require only the minimum period;
  - the reasonableness of the date suggested by an interested or affected person for conclusion of review and comment period; and
  - the requirements for inter-agency review and operational pressures for timely approval of the plan.
3. The Ministry of Forests should provide guidance to district managers regarding the nature and extent of a person's "interest" in a forest development plan. "Interest" should be interpreted in its broader, plain meaning of public concern or interest in the land, resources or amenities on the area of a forest development plan.
4. Persons requesting an extension of the public review and comment period should describe in their request, the nature and extent of their interest in the plan areas, the suggested date of conclusion of public review and comment period, and reasons for the choice of that date. To facilitate the ability of persons to do so, district managers should advise them of the factors they will consider in making a decision.
5. A district manager who extends a public review and comment period beyond the 60 day minimum should provide for that period to overlap with the early stage of the inter-agency technical review process, unless such an overlap would create a serious and unacceptable delay in plan approval, or be unacceptable to the public. This is already practice in some districts in the province. In such cases, the parties should be made aware of the overlap.
6. A district manager who decides on a request for an extended public review and comment period should provide the requesting person and affected agreement holders with reasons for the decision.
7. When there are recognized seasonal constraints to field review or complex inter-agency review requirements, plans should be made available for public review early enough to allow the review and comment period to be extended, if required.

8. District managers should ensure that all general and technical information needed for effective public review of a forest development plan is made readily available to the public prior to the commencement of the public review and comment period. Plans that exist in electronic form should be made available in that form on request.
9. The Ministry of Forests and agreement holders should continue to explore ways to make proposed forest development plans and maps more readily available to the public. As suggested in the Slocan Valley, these could include placing plans in a local library or resource centre where they could be signed out by interested members of the public, or other means such as the Internet.



## **APPENDIX 1 - Chronology of Events**

The Board's investigation revealed the following events during 1996 that were pertinent to the issues raised by the complainants:

- Feb. 1 Slocan Forest Products (Slocan) informs the complainants by letter that draft forest development plans are available at their offices in Slocan for public inspection. The plans were also available at the Arrow District office in Castlegar.
- Feb. 21 & 28 The availability of the Forest Development Plan and the associated open houses is advertised in local newspapers. The public review and comment period officially began on the date of the second publication, February 28, 1996. It was scheduled to end on May 7, 69 days later.
- Mar 11 to 15 Slocan holds open houses in four locations (Nakusp, Slocan, Castlegar and Edgewood). Representatives of each complainant organization attend at least one open house to view the forest development plans and request background maps and assessment reports from Slocan after the viewing. The public review and comment period was believed by the complainants to begin on the date of the first open house, March 11, 1996.
- Apr. 2 The forest development plans in question are discussed at a Slocan Valley Round Table Sector meeting and a special meeting is offered to the complainants by the Arrow district office. That offer was not accepted by the complainants.
- Apr. 10 Complainants receive copies of maps and assessments pertaining to the plans from Slocan. Receipt of these documents was 42 days after the beginning of the 69-day review period on Feb 28.
- Apr. 16 Valhalla Wilderness Society (Valhalla) asks the Arrow DM to extend the public review deadline from May 7 to June 30 to allow a total of 123 days which is approximately double the minimum requirement.
- Apr. 23 The Slocan Valley Watershed Alliance (Alliance) makes identical request.
- Apr. 24 DM writes to Valhalla and the Alliance. He did not grant their request for a substantial extension but he allowed 10 extra days (i.e. a total of 79 days) for comment until May 17.
- Apr. 26 Arrow Forest District staff meet with members of Valhalla to discuss Forest Development Plan issues and concerns of that organization.
- May 7 End of original review and comment period. This was 69 days after the start of the review period on February 28, and was the date approved by the Arrow DM.

- May 17 End of the review and comment period after an extension of then days was granted by the district manager. The period for review and comment was a total of 79 days. Both complainants submit written comments on the forest development plans although the comments were, in their opinion inadequate.
- June Slocan writes to the complainants in response to the comments received.
- Oct 21 Forest development plan for Slocan Forest Products forest licence approved by the Arrow district manager.
- Nov 14 Forest development plan for Slocan Forest Products tree farm licence approved by the Arrow district manager.

## APPENDIX 2 - New Regulations

Changes to the Operational Planning Regulation, announced in April 1998, took effect on June 15, 1998. These include changes to the review and comment provisions and changes to the requirements relating to forest development plans (most notably, introduction of new categories of cutblocks). The following summarizes the changes to sections of the Code considered in this report.

### Public review and comment on forest development plans

Notice to the public is now required in one edition of a newspaper, rather than two. Notice in the Gazette is no longer required.

The review period is now 60 days, rather than “at least” 60 days, except in the case of expedited major salvage, where the review period is “at least” 10 days.

The district manager may extend the period for review. The district manager is not required to give an opportunity to be heard or to give reasons with respect to an extension.

An opportunity for review provided to an interested or affected person will be adequate only if, in the opinion of the district manager<sup>12</sup>, the opportunity is commensurate with the nature and extent of that person’s interest in the area under the plan and any right that person may have to use the area under the plan. This has not changed. The relevant provisions of the new *Operational Planning Regulation* (BC Reg 107/98) are as follows:

*25 Before a person submits a forest development plan or amendment for approval, or a district manager puts into effect a forest development plan or amendment, the person or the district manager as the case may be, must publish a notice, in a form acceptable to the district manager, in a newspaper stating that the forest development plan is available for public review and comment.*

...

*27(1) A person required to publish a notice under section 25 must provide an opportunity to review a proposed forest development plan or amendment to members of the public interested in or affected by operations under the proposed plan or amendment in accordance with this division.*

...

*27(4) Subject to subsections (5) and (6), the opportunity for a review under subsection (1) must be for*

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<sup>12</sup> This includes designated environment officials in designated community watersheds and areas where joint approval is required under a higher level plan.

- (a) *a period of 60 days from the date of the first publication referred to in section 25, except for a forest development plan or amendment referred to in paragraph (b), or*
  - (b) *a period of at least 10 days from the date of the first publication referred to in section 25, if the entire forest development plan or amendment relates to an expedited major salvage operation.*
- (5) *Despite subsection (4) (a) the district manager, or for an area referred to in section 41 (6) of the Act the district manager or the designated environment official, may, by notice in writing given before the expiry of the 60 day period under subsection (4) (a) to a person required to provide a review under this section, extend the period for a review under subsection (4) (a) and, with respect to the extension, is not required to provide an opportunity to be heard or to give reasons.*
- ...
- (8) *An opportunity for review provided to an interested or affected person under subsection (1) will be adequate only if, in the opinion of the district manager, or in a n area referred to in section 41 (6) of the Act the district manager or the designated environment official, the opportunity to commensurate with the nature and extend of that person’s interest in the area under the plan and any right that person may have to use the area under the plan.*

**Forest development plan content**

Forest development plans are no longer required to state the year of harvest for cutblocks or the year of construction for roads, unless the timing is critical to the management of a forest resource other than timber. The relevant provisions of the new *Operational Planning Regulation* are:

- 18(1)** *A person must ensure that a forest development plan includes the following information for the area under the plan . . .*
- (h) *the approximate location of proposed work construction and modification, and*
    - (i) *the year the work is proposed to take place if the timing is critical to the management of non-timber forest resources*
- 20(1)** *A cutblock may be shown as a proposed category A cutblock on a proposed forest development plan only if the proposed plan meets the following requirements:*
- (b) *the plan describes for the cutblock the following:*
    - (i) *the year of harvest, if timing is critical to the management of non-timber forest resources*

Forest development plans which are made available for public review and comment will be required to show proposed cutblocks and roads in one of three categories:

- (1) **blocks and roads which are included for information only** - these are deemed not to be part of the forest development plan;

*19(1) A cutblock that does not meet the requirements of category A, under section 20, may be shown on a forest development plan only as a category I cutblock, and a category I cutblock is for information purposes only, and is deemed not to be part of the forest development plan.*

*(2) A road may be shown as a category I road on a forest development plan for information purposes only, and a category I road is deemed not to be part of the forest development plan.*

- (2) **proposed category A cutblocks and proposed roads**- the licensee, or the district manager in the case of the Small Business Forest Enterprise Program, is required to consider all comments in writing in relation to these cutblocks, to make any revisions to the proposed plan or amendment that they consider appropriate, to submit a copy of comments and a list of revisions to the district manager when the plan is submitted for approval

- (3) **approved category A cutblocks and approved roads**- the licensee and the district manager are not required to consider or address comments with respect to approved category A cutblocks. The relevant provisions of the new *Operational Planning Regulation* are:

*29(1) A person required to publish a notice under section 25 must consider all comments received during the period for review under section 27 in relation to proposed category A cutblocks and proposed road construction, modification and deactivation and make any revisions to the proposed plan or amendment that the person considers appropriate.*

- (2) Despite subsection (1), neither the person required to publish a notice under section 25 nor the district manager is required to consider or address a comment with respect to*
- (a) a cutblock that is included as part of the most recently approved forest development plan as a category A cutblock, unless the comment is related to an assessment required under sections 16 and 17 that was not completed for the cutblock before the approval of that plan, or*
  - (b) a road that has been included as part of a previously approved forest development plan.*