

**Number of Cutblocks in a
Forest Development Plan on
the North Coast of BC**

Complaint Investigation 990207

FPB/IRC/45

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The Investigation

On June 21, 1999, the Board received a complaint from the David Suzuki Foundation (the complainant) about the approval of a 1999-2003 forest development plan (FDP) prepared by International Forest Products (the licensee) for Forest Licence A16841 in the North Coast Forest District.

The complainant asked the Board to undertake an administrative review of the forest development plan approval. The Board dealt with part of the complaint by undertaking an administrative review. The administrative review addressed the licensee changing category I cutblocks to proposed category A cutblocks without changing the designation on the FDP maps. However, three remaining issues were not handled in the administrative review and are the topic of this complaint investigation:

1. Did cutblocks 60K and H60K meet the requirements for approved category A cutblocks?
2. Did the forest development plan meet the requirements of the *Forest Practices Code of British Columbia Act* and related regulations (the Code) for the number of cutblocks in a forest development plan?
3. Did the large number of cutblocks in the forest development plan make the review and comment period inadequate?

Background

The area covered by Interfor's forest development plan is located on the north coast of British Columbia near Ecstall River, Porcher Island and Grenville Channel. The licensee submitted a proposed forest development plan to the district manager for approval on November 13, 1998. The licensee replaced that plan with a revised forest development plan on December 15, 1998. The district manager approved the December 15, 1998 submission on June 21, 1999.

Code changes

Bill 47 amended the *Operational Planning Regulation* in June of 1998. In order to understand the complainant's concern, the following analysis of a few changes made to the *Operational Planning Regulation* is provided. The forest development plan submission and approval considered in this complaint occurred during the transition from the previous *Operational Planning Regulation* provisions to the new provisions.

Categories of cutblocks

Under the amended *Operational Planning Regulation*, cutblocks approved in the previous forest development plan are considered "category A" cutblocks. "Proposed category A" cutblocks are cutblocks for which the licensee is seeking category A approval in the new FDP. "Category I" cutblocks are for information only and are deemed not to be part of the forest development plan.

Code objectives for a forest development plan

The *Forest Practices Code of British Columbia Act* (the Act) states that a plan must include the size, shape and location of cutblocks proposed for harvesting during the period of the plan. With the advent of categories of cutblocks, the only cutblocks that can be considered to meet the requirements of the Act are category A or proposed category A cutblocks. The period of a forest development plan should usually be at least five years. Therefore, there must be at least five years' worth of category A or proposed category A cutblocks in an FDP. It is clear the Ministry of Forests interprets the new provisions this way: Ministry of Forests policy states,¹ "The idea is that an FDP will contain five years of approved category A cutblocks." Originally the Code objective for a forest development plan was "to provide a minimum of two years of approved operations (years 1 and 2) and notice of intended operations for years 3, 4, and 5."²

The **period** of an FDP is the interval of time that the FDP must show planned roads and cutblocks. The period must be at least five years unless otherwise prescribed.

The **term** of an FDP is the interval of time that the FDP is valid. Normally the term is one year but it may be two years.

Protection for category A cutblocks

Before the *Operational Planning Regulation* was amended in June 1998, the district manager could decide to rescind a cutblock that had been approved in a previous forest development plan. A new provision in section 21 of the *Operational Planning Regulation* limits that discretion. For example, previously-approved category A cutblocks must be approved even if they pre-empt the purpose of candidate areas for special emphasis being proposed in higher level planning. If approved in a previous plan, the district manager may only refuse to approve such blocks in limited circumstances.

Review and comment restricted to proposed category A cutblocks

At the end of each term, an FDP is subject to a new review and comment period. Therefore, before Bill 47, cutblocks went through successive forest development plan public review and comment periods. This allowed time for other interested parties and government agencies to raise questions, gather information and respond to proposed cutblocks that may affect their interests. This multiple exposure of cutblocks over time allowed the licensee to interact with government agencies, other vested interests and the public. Those who made comments on a forest development plan could see if the comments had been addressed in the next plan and then decide whether or not to comment further.

With the new *Operational Planning Regulation* requirements, the licensee need only consider comments arising from the public review period on proposed category A cutblocks. If an interested person misses the opportunity to review the forest development plan the one time a cutblock is proposed as category A, and the cutblock is approved, that person has lost the chance to bring his or her interest to the district manager.

¹ *General Bulletin #18*, Forest Practices Code Section 41(5) Approving Forest Development Plans After October 15, 1998.

² *Forest Development Plan Guidebook*, introduction.

Even agencies to which plans are referred may only have one chance to review the cutblock. Timing could be such that the resource agency would not have an opportunity to field review the cutblock before it is approved. If a forest resource is present and needs special protection, but the resource has not been identified in a written comment to the licensee before the FDP is approved, the opportunity for the government to protect the resource is severely restricted. As a result, the cutblock gains strong protection under the Code.³

Both the government and licensee have also lost an opportunity to gauge public reaction to proposed cutblocks. Often district managers rely on public comments to ensure the forest resources are being managed and conserved. Having only one opportunity to solicit a comment from the public before a cutblock is approved reduces the district manager's ability to ensure the forest resources are being managed and conserved.

Harvest schedule not required for all cutblocks

Section 10 of the Act states that a forest development plan must include, in accordance with the regulations, the timing of proposed timber harvesting. With the provisions of the new *Operational Planning Regulation*, the harvest schedule is only required if the timing is critical to the management of non-timber forest resources. Previously, a forest development plan required a scheduled year of harvest for each cutblock. As a cutblock's scheduled year of harvest moved toward the present, the certainty increased that the cutblock would be logged as proposed. This gave people doing the review and comment an opportunity to concentrate on cutblocks that had a higher likelihood of being logged. It also allowed the person making comments to decide what kind of comment to make. For example, should the person still object to the licensee logging a cutblock or should the comment regard how the cutblock addresses a specific forest resource?

Investigation Findings

Issue 1 – Did cutblocks 60K and H60K meet the requirements for approved category A cutblocks?

The licensee's compliance with the code

In the December 15, 1998 FDP submission many cutblocks were shown as "category A approved." The complainant stated that two cutblocks, 60K and H60K, did not meet Code requirements for category A approval.

The Code provisions that apply to the two cutblocks depend on the approval history of the forest development plan. The licensee first submitted the two cutblocks for approval in an amendment to a previous forest development plan on April 15, 1998. The district manager approved that amendment on September 23, 1998, with the condition that a cutting permit for the two cutblocks would not be considered until after October 1998. The purpose of the condition was to allow a culturally modified tree (CMT) workshop for the Kitkatla Indian Band

³ Section 21 of the *Operational Planning Regulation*

to take place before the cutblocks were harvested. The district manager required this workshop to allow the Kitkatla Indian Band further opportunity to indicate specific interests in CMTs in the area.

The November 13, 1998 proposed forest development plan was submitted by the licensee prior to the CMT workshop and showed the two cutblocks as “category A proposed.” On December 15, 1998, the licensee resubmitted the proposed forest development plan, explaining:

Blocks H75, 60J, 60K, 60L, H60G, H60K, H60L have been reclassified as category A approved (CAA) blocks, as they were part of the 98-3 Major Amendment to the 1996 to 2000 FDP which was approved on September 23, 1998. They were previously listed as CAP blocks.

The licensee could have used either of two sections of the amended *Operational Planning Regulation* when submitting those cutblocks to the FDP:

1. Section 20 allows a licensee to propose cutblocks for approval if they meet a list of specified requirements. Both cutblocks met the requirements to be submitted as proposed category A cutblocks under section 20 of the *Operational Planning Regulation*.⁴
2. When the FDP was approved, section 23 of the *Operational Planning Regulation* allowed cutblocks in a previously approved forest development plan to be grandparented as approved category A cutblocks. The two cutblocks were in the previously approved FDP, as amended in September 1998. Although the approval to the amendment had placed a condition on the cutblocks, the condition was met after October 1998.

The silviculture prescriptions for the two cutblocks were submitted in April 1999, before the approval of the 1999-2003 FDP. The prescriptions met the requirements of section 23(2)(b)(iii) of the *Operational Planning Regulation*.

Finding #1:

Cutblocks 60K and H60K met the requirements to be proposed for category A approval and the requirements to be grandparented as approved category A cutblocks.

The district manager’s decision

The Board reviews discretionary decisions to determine if the decision is a reasonable one, but does not evaluate whether it is the best decision.

In November of 1998, when the licensee first submitted the forest development plan, the culturally modified tree workshop had not been completed, so the licensee and Ministry of Forests did not consider that the cutblocks had forest development plan approval. The

⁴ Section 20 of the *Operational Planning Regulation* is a list of specific requirements that each cutblock must meet. The requirements deal with issues such as known information near the cutblocks; whether the cutblock is a clear-cut; where log drops will be located; timing of harvest if required; and whether the harvesting will be cable, aerial or ground-based.

culturally modified tree workshop was completed in December 1998, before the forest development plan was submitted a second time. At that time, both Ministry of Forests and the licensee considered the condition to have been met and the cutblocks approved.

For either submission, it was within the discretion of the licensee to rely either on the transitional provisions of section 23 of the *Operational Planning Regulation* or the new provision of section 20 of the *Operational Planning Regulation*.

Finding #2:

It was reasonable for the district manager to approve the forest development plan with the two cutblocks shown as approved category A cutblocks.

Issue 2 – Did the forest development plan meet the requirements of the *Forest Practices Code of British Columbia Act* for the number of cutblocks in a forest development plan?

Did the forest development plan comply with the Code?

During the review and comment period, the David Suzuki Foundation commented that:

The FDP has almost twice the number of cutblocks required to achieve the 5 year cut control for the AAC⁵ under the Forest Licence ... therefore it is impossible to know which cutblocks are not part of the FDP, which contravenes section 10 of the Act, as the plan must show the location of cutblocks for the duration of the FDP.

The forest development plan contained an estimate of volume to be harvested for each cutblock. The total estimated volume for all cutblocks in the forest development plan was nine years' worth of the AAC. The complaint maintains that there must be enough cutblocks and only enough cutblocks to show what is proposed for harvesting in the period of the plan. The complainant did not know what the plan was because it was impossible to determine which cutblocks were or were not going to be harvested in the period of the plan.

The district manager responded to the complainant's comment, stated above, in the determination letter. He said:

The FDP covers a period of **at least** five years and includes maps and schedules describing the cutblocks proposed for harvesting. The Act does not stipulate the FDP must be limited to a five-year period. As well, Interfor must adhere to the *Forest Act's* cut control requirements where the five-year cut control volume must be within 10 percent of the total allowed. Regardless the amount of volume illustrated in the FDP, the acts and regulations must be adhered to.

⁵ Allowable Annual Cut (AAC): means the rate of timber harvest specified in the forest licence.

The complainant took exception to the way the district manager interprets the legislation, because that interpretation allows the licensee to gain cutblock protection for more cutblocks than can be logged in the period of the plan.

In this case, the complainant claims that the licensee could get protection for up to nine years' worth of cutblocks in a forest development plan that has a period of five years. The complainant also asserts that approving more cutblocks than can be logged in the period of the plan may restrict future options for managing other resources.

The Board understands that, if there are more cutblocks than can be logged in the period of the plan, it is impossible to know exactly which cutblocks are planned for harvesting during the period. The Board also understands that the licensee may gain cutblock protection for more cutblocks than can be logged in the period of the plan. An excessive number of approved category A cutblocks could lead to a restriction of future options for management of other forest resources. However, the Board interprets this section to mean that the licensee must show an inventory of roads and cutblocks it can harvest in the period of the plan. There is no restriction on including more cutblocks than can be logged in the period of the plan. Therefore, that inventory may contain more cutblocks than the licensee intends to log in the period of the plan.

The *Operational Planning Regulation* changed in June of 1998. Previously, a forest development plan included a schedule detailing what was to be harvested in each year of the plan. Now a forest development plan is more of an inventory of cutblocks that a licensee may choose from and less of a description of how harvesting will occur in the period of the plan. The government approved this change to the *Operational Planning Regulation*. The licensee's forest development plan met the requirement of the Code to show the cutblocks for at least a five-year period.

The Board understands the concern of the complainant. If nine years' worth of cutblocks were approved, it could limit options for future higher level plans. Approved cutblocks may conflict with other resource values. If certain conditions are met, such as cutting permit approval, the district manager would still have to approve the cutblock in subsequent FDPs. Even if the conditions had not been met, higher level planning processes would tend to work around the approved cutblocks rather than pick the best solution considering all resource values. The combination of limited public review and comment on forest development plans, coupled with cutblock protection, has reduced public confidence in forest development planning.

The Board also understands that licensees need assurance that they can log following development of roads and cutblocks. The Code currently allows very limited opportunity for reversal of an approval of a cutblock, however the Board urges government to ensure a more adequate provision for reversing an approval of a cutblock in appropriate, defined circumstances. Cutblock protection is important but should not be granted at the expense of other forest resources.

Finding #3:

The licensee complied with the Code requirement that forest development plans must show the cutblocks proposed for harvest for the period of the plan. There is no restriction on including more cutblocks than can be logged in the period of the plan. This can lead to protection of cutblocks that may restrict future options for resource management.

Did the FDP contain more cutblocks than could be logged in the period of the plan?

Putting an estimate on volume in a forest development plan is not a requirement of the Code. Traditionally, licensees include volume as an administration aid to the Ministry of Forests. The *Forest Development Plan Guidebook*, now outdated,⁶ contained a column for volume in the suggested harvest table. *The Forest Development Plan Template*, a guide to licensees, retains volume as a column in the harvesting table. There are three categories of template components: those required by legislation, those recommended that fulfil an administrative or business need, and those that are voluntary. Volume falls into the recommended category and is noted as a “business requirement to assist in planning, cut control, etc.” It is standard practice for most licensees to include volume in the harvest tables for forest development plans.

Despite it not being a requirement of the Code, the licensee included a volume column in the harvesting section of the forest development plan. The licensee’s estimate of the volume per hectare multiplied by the gross cutblock area gave that estimated volume.

Both the licensee and Ministry of Forests explained that, by the time the cutblocks are approved in a cutting permit, the cutblock volume is reduced by 30 to 50 percent. Reducing the forest development plan cutblock area to the final cutting permit area accounts for the major portion of the decrease in volume. Site-specific assessments following forest development plan approval refine the area to be logged. Reductions in area result from such things as excluding areas for wildlife tree patches, riparian management, engineering limitations and unsuitable timber.

Board staff requested, and the licensee supplied, a table listing cutblocks developed since the December 15, 1998 submission of the forest development plan. The table showed that the final engineered volume for the cutblocks was 58 percent of the estimated forest development plan volume for the cutblocks. If this ratio is applied to the licensee’s estimate of volume for all the cutblocks in the forest development plan, the expected volume for the plan is approximately five years’ worth of allowable annual cut.

Finding #4:

The forest development plan did not contain more cutblocks than could be logged in the period of the plan.

Why did the FDP contain so many proposed category A cutblocks?

The 1998 changes to the *Operational Planning Regulation* made it a requirement of the Code to have at least five years of category A or proposed category A cutblocks in a forest development plan. Before 1998, one objective for forest development plans was to have two years’ worth of approved cutblocks, not five. When the term⁷ of the FDP approval was complete, many of the cutblocks approved in the FDP before the 1998 changes came into force would have been logged. This would leave the licensee with one year or less of approved cutblocks that could be

⁶ At present the Forest Practices Branch of the Ministry of Forests is working on an update of the *Forest Development Plan Guidebook*.

⁷ The term of a plan is the period of time the FDP is valid. Normally the term is one year but it may be two years. See sidebar, page 2.

grandparented into the next plan. Therefore, in order for the first plan submitted under the 1998 requirements to comply with the new provisions, it would have to include at least four years' worth of proposed category A cutblocks to reach the required five years' worth of cutblocks in the plan. The large number of proposed category A cutblocks was a one-time situation to address the shift from two years' worth of approved cutblocks to five years' worth of category A cutblocks in a plan. The next plan would then propose just one or two years' worth of new cutblocks, to replace the ones that were logged during the term of the previous plan.

Finding #5:

Transition to the new provisions required more cutblocks to be proposed as category A cutblocks than would be expected in future forest development plan submissions.

Issue 3 – Did the large number of cutblocks in the forest development plan make the review and comment period inadequate?

The complainant believes that the public's ability to review and comment on the FDP was substantially impaired by the contents of the FDP. Specifically, it would have been difficult for the public to adequately review the plan because it contained so many cutblocks. The investigation examined whether or not the number of cutblocks in the forest development plan made the review and comment period inadequate. The forest development plan apparently contained an estimate of nine years' worth of gross volume. In other words, the number of cutblocks in the FDP appeared to be the equivalent of nine years' worth of AAC for the licence.

Beginning on November 10, 1998, the forest development plan was advertised and made available for viewing. When the forest development plan was revised in December, a new review and comment period began and was to continue until February 15, 1999. However, in response to a First Nations request, the review and comment period was extended to February 26, 1999. In summary, the forest development plan was available for public review and comment between December 15, 1998 and February 26, 1999.

One comment made by the complainant in the review and comment period was:

The inclusion of cutblocks which won't be logged during the five-year period of the plan severely impedes the public's ability to review and comment on this plan. These excess cutblocks would also be protected under section 21 of the *Operational Planning Regulation*, giving Interfor a nine-year FDP, which the public would not be allowed to comment on for the next nine years. This is clearly unacceptable. Interfor must resubmit a new FDP, with a new 60-day public review and comment period, to allow for the public to meaningfully review and comment on a new plan.

As shown earlier in this report, there were not more cutblocks than could be logged in the period of the plan. Nevertheless, there were more cutblocks proposed than would be expected in future forest development plan submissions.

The review period is part of the opportunity for review and comment. The opportunity for review and comment is adequate only if it "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.”⁸ Even though the review period depends on the person's interest in the area, the person's ability to review the plan is contingent upon the amount of information in the plan. If there were more cutblocks in the forest development plan than the complainant could review, the complainant could have requested an extended review and comment period, and justified that request with an explanation of the nature and extent of their interest in the area. Then, by giving notice to the person who prepared the plan,⁹ the district manager could have extended the review and comment period. Instead, the complainant requested that the forest development plan be rejected and requested a new plan because they believed that the plan did not meet Code requirements.

The district manager understood that a forest development plan could contain more volume in cutblocks than could be logged in the term of the plan. Therefore, it was reasonable for the district manager not to grant the complainant's request to have the licensee submit a new forest development plan with a new 60-day review period.

A First Nations request resulted in a two-week extension to the review and comment period. The complainant did not request an extended review and comment period.

Finding #6:

It was reasonable for the district manager not to grant the complainant's request to have the licensee submit a new forest development plan with a new 60-day review period. The review and comment period was adequate under these circumstances.

Board commentary

An early model of gating contemplated that cutblocks would progress through more than one gate. As cutblocks progressed through the gates, certainty that the cutblocks would be logged increased. In the end, Bill 47 ended up with one gate – the cutblock is either approved and the licensee can harvest it, or it is not approved and the licensee cannot harvest. Benefits of this strategy include more certainty, less administrative burden and reduced cost associated with operational planning. However, the Board notes two disadvantages to this strategy. First, agencies and the public have less opportunity to review and comment on proposed cutblocks. Second, cutblock protection may affect strategic planning by foreclosing future options.

Review and Comment

The Board's special report, *A Review of the Forest Development Planning Process in British Columbia*, found higher levels of satisfaction with the FDP process where affected parties were included early in the process and where there was ongoing consultation with affected parties. A major component of licensees' consultation is review and comment on proposed FDPs. Although licensees are not required to consider comments on category I cutblocks, a brochure

⁸ *Operational Planning Regulation* subsection 27(8).

⁹ *Operational Planning Regulation* subsection 27(5).

recently published by the Ministry of Forests¹⁰ takes a step forward to address this. The brochure informs members of the public that they may wish to comment on category I cutblocks to guide the preparation of future forest development plans. The Board encourages members of the public to comment on category I cutblocks. The Board also encourages licensees to treat comments on category I cutblocks as if they were comments on proposed category A cutblocks.

The brochure also states that although all comments will be considered, approved cutblocks and roads are only re-evaluated when conditions in section 21 of the *Operational Planning Regulation* apply.

The Board notes that licensees may voluntarily consider all comments, but that they are legally required to consider only those on proposed category A cutblocks.¹¹ However, the Board also encourages both licensees and statutory decision-makers to fully consider all comments made on category A cutblocks.

Cutblock protection and strategic planning

Although the circumstances of this complaint did not substantiate the complainant's concern that the licensee obtained nine years' worth of cutblock approval, the current design of the Code makes that legally possible. The Board is concerned that approving substantially more cutblocks than can be logged during the period of a plan can foreclose options for future strategic planning. Once a cutblock is approved in an FDP, section 21 of the *Operational Planning Regulation* provides protection to that approval, allowing it to be reversed only under very limited circumstances. For instance, statutory decision-makers may at their discretion not re-approve a category A cutblock if it is inconsistent with a higher level plan. However, the Board's special report *A Review of the Forest Development Planning Process in British Columbia* identified that "although strategic land use plans (excluding landscape unit plans) are a necessary component of planning, they are usually too broad to give specific guidance to FDPs." Likewise, if strategic plans and landscape unit plan objectives are not defined in sufficient detail as higher level plans, it will be difficult for statutory decision-makers to determine that approved category A cutblocks are inconsistent with the higher level plan.

The Board's special report on forest development planning also identified that the current government policy to limit the scope of landscape unit plans (to address old-growth management areas and wildlife tree patches only) will not be sufficient to accomplish the objective of facilitating efficient and effective forest development planning that manages and conserves forest resources. The report also found that adequate measures for management and conservation of forest resources end up being debated and decided in each FDP, which is not the appropriate place. Once cutblocks are approved, there is a risk that strategic planning committees will plan around the approved cutblocks. The Board is concerned that, with the limited scope of landscape unit planning, the forest development planning process will steer strategic planning. The Board understands the need for licensees to have a certain number of protected cutblocks; however, where landscape unit plans are not in place, that protection should be limited.

¹⁰ *Forest Development Plans, Public Review and Comment*.

¹¹ Section 29 of the *Operational Planning Regulation*.

Conclusions

Cutblocks 60K and H60K met the transitional requirements of the Code to be deemed category A cutblocks. It was reasonable for the district manager to approve the forest development plan with those two cutblocks submitted as category A cutblocks.

In this case, the forest development plan did not contain more cutblocks than could be logged in the five-year period of the plan. However, the forest development plan contained more proposed category A cutblocks than would be expected because it was prepared during the transition period for 1998 changes to the *Operational Planning Regulation*.

The complainant completed a review of the forest development plan. It was reasonable for the district manager to conclude that the review and comment period was adequate.

The June 1998 changes to the *Operational Planning Regulation* have changed the Code objectives for a forest development plan from two years' worth of approved operations to at least five years' worth of approved cutblocks. As well, there is no restriction on including more cutblocks than can be logged in the period of the plan. Approvals of more cutblocks than can be logged in the period of the plan, coupled with protection for category A cutblocks, may restrict future options for strategic planning and forest resource management.

Recommendations

The Ministry of Forests should initiate changes to the *Operational Planning Regulation* to require licensees to consider all comments received in the review and comment period.

The Ministry of Forests should initiate changes to the *Operational Planning Regulation* to limit the number of cutblocks that can be protected to be approximately five years' worth of volume unless an approved landscape unit plan allows protection beyond five years.

In accordance with section 186 of the *Forest Practices Code of British Columbia Act*, the Board requests that the Ministry of Forests notify it, by December 31, 2001, of steps taken to respond to these recommendations.