



**Forest  
Practices  
Board**

## **Forest Planning and Practices at East Creek**

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*Complaint Investigation #15086*

**FPB/IRC/206**

March 2017

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# Introduction

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## The Complaint

In May 2016, Sierra Club BC submitted a complaint about logging practices in the East Creek Valley. This valley is just north of M̓aḥq̓w̓in / Brooks Peninsula Provincial Park on northwest Vancouver Island. Sierra Club BC (the complainant) was concerned with a wide range of issues related to forest planning and practices. These concerns included old growth management, culturally modified tree (CMT) preservation, cultural heritage feature management, riparian management, wildlife habitat area (WHA) preservation, karst management, worker safety and access to forest planning information.

The complaint was complex and not all facets were within the Board's mandate. The Board, in consultation with the complainant, narrowed the complaint to two lines of investigation that would deal with the complainant's concerns that are within the Board's mandate: 1) compliance of forest operations in the East Creek Valley with the *Forest and Range Practices Act* (FRPA) and the *Vancouver Island Land Use Plan* (VILUP); and 2) access to forest planning information.

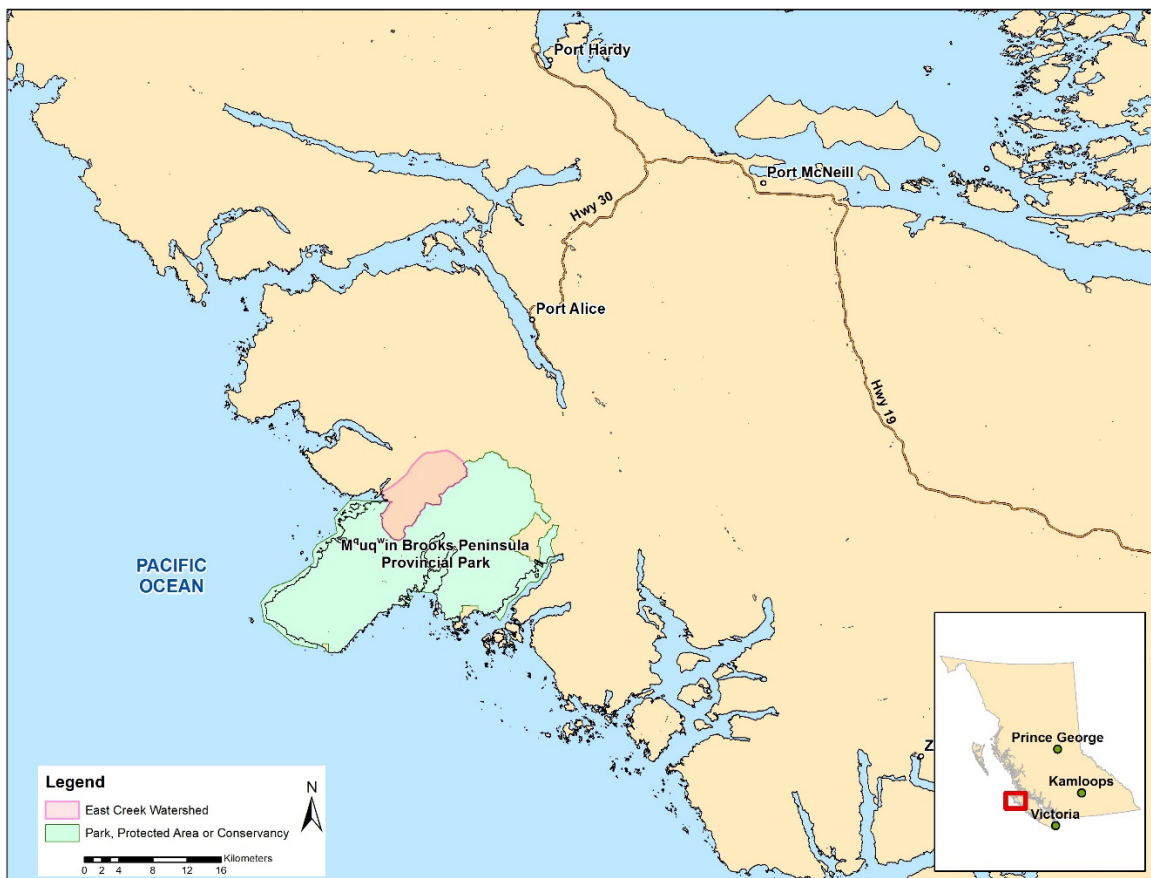
## Background

### East Creek Location and Attributes

The East Creek Valley is about 5000 hectares in size and lies just north of Brooks Peninsula on northwest Vancouver Island. The valley includes two major streams, East Creek, which flows west into Klaskish Inlet, and Harris Creek, a major tributary of East Creek, which flows generally north, joining East Creek near Klaskish Inlet. Elevations range from sea level to a maximum of 960 metres at Klaskish Peak.

The valley is heavily forested with hemlock, cedar, amabilis fir and other conifers, but also has alder on disturbed sites. The upper East Creek Valley contains some cutblocks that were logged and reforested about 10 years ago. Lower East Creek and all of the Harris Creek portions of the valley had no modern logging until late 2014. Most of the unlogged parts of the valley consist of forests in excess of 250 years of age.

Although geological maps show moderate potential for karst formation in some sections of the valley, Board investigators did not find evidence of any karst features during site visits or interviews with a karst specialist.



**Figure 1.** Location of East Creek Valley on Northern Vancouver Island

## History

First Nations peoples have long used forest resources in East Creek Valley. There are CMTs and a historic First Nations trail in the lower valley. More recently, industrial logging began in 2003. LeMare Lake Logging Ltd. (holder of Forest Licence A59539) and its related company, Lions Gate Forest Products Ltd. (holder of Timber Licence T0629 and Forest Licence A75083) have been the sole operators in the valley since then. This report refers to both companies as “the licensee.”

In the early 2000s, the licensee built a road over a divide from the Klaskish Valley and logged 21 cutblocks in the upper portion of East Creek Valley. The lower reaches of East Creek and its tributaries remained unlogged until late 2014 when the licensee built a barge loading facility at the base of the East Creek Valley. This allowed economic log shipment to market by barge rather than by the long and expensive truck haul up and over the divide. Since then, the licensee has logged 16 more cutblocks and built approximately 21 kilometres of road in the lower East Creek Valley and its largest tributary, Harris Creek.

## Concerns

In October 2015, a representative of the complainant visited East Creek Valley while logging was active and became concerned with forest planning and practices. In early 2016, the complainant contacted the Board citing concerns about several aspects of the logging and road activities. Additionally, the complainant wondered if all aspects of the planning requirements were complied with, including those for the special management zone 3 (SMZ 3) in the VILUP, for riparian

management in FRPA, and for the marbled murrelet wildlife habitat area. The complainant was also concerned about management of old-growth forest, karst, and habitat loss for red- or blue-listed species.

In early December 2015, the complainant emailed the licensee to request site plans (SPs) and other information for cutblocks in the watershed. The licensee did not immediately respond, but after the complainant sent further emails and made phone calls to the licensee and the Ministry of Forests, Lands and Natural Resource Operations' (FLNRO) district office, the licensee responded in mid-January 2016 with some proposed dates for the complainant to view SPs. There were difficulties in arranging mutually agreeable dates, and the complainant did not actually see any SP information until June 2016.

## Forest Planning and Practice Requirements at East Creek

A licensee, when engaged in forest activities, must follow legally required planning and practice requirements designed to meet government objectives.

These requirements come from the licensee's forest stewardship plan (FSP), FRPA, and government orders and designations.

Some of the FSP content includes results or strategies designed to meet government's objectives, as expressed in the *Forest Planning and Practices Regulation* (FPPR), including those for riparian management areas, stand-level and landscape-level biodiversity, visual quality, soil management and others.

Government orders and designations relevant to the East Creek Valley include the *Vancouver Island Land Use Plan Higher Level Plan Order* (VILUP Order), a marbled murrelet wildlife habitat area (WHA 1-077), and an ungulate winter range area (u-1-011). Some of these orders and designations are in the form of objectives. Licensees must specify results or strategies that are consistent with these objectives in their FSP. The licensee must also comply with FRPA practice requirements.

## Vancouver Island Land Use Plan

The VILUP was created in the 1990s and has extensive information and recommendations for management of forest land on Vancouver Island.<sup>i</sup> However, the plan itself does not contain legal requirements for forest operations—these are contained in the VILUP Order.<sup>ii</sup> The order is a much shorter document (five pages) and does not contain the level of detail or the number of recommendations the VILUP has.

### What are cutblock site plans and why do they matter?

Site plans, commonly called SPs, show the locations of cutblocks, and identify how the intended results or strategies described in the forest stewardship plan apply to the site. SPs are usually created for each cutblock and consist of 3 or 4 pages of text, and a site map at 1:5,000 or 1:10,000 scale. A more detailed description is available on page 62, with examples in appendix 1, of the [Administrative Guide to Forest Stewardship Plans](#), volume 2.

SPs matter because they are a blueprint for meeting government objectives and tell the workers on site how the harvesting, road building and subsequent silviculture operations are to take place. They can also show the concerned public how forest practices will take place.

The VILUP Order officially established resource management zones and special management zones throughout Vancouver Island, and set objectives that apply, depending on the zone. Upper East Creek Valley is in a general management zone where usual forest management objectives apply. In lower East Creek Valley, SMZ 3 applies. Some of VILUP's objectives for SMZ 3 include:

- maintaining the proportion of mature seral forest to at least 25 percent of the SMZ 3 area,
- retaining structural forest attributes with important biodiversity functions within cutblocks,
- not creating clearcuts over 5 hectares (the *retention silviculture system* is permissible on larger cutblocks), and
- maintaining late-successional habitat elements and attributes of biodiversity, with emphasis on rare and underrepresented ecosystems, by retaining old seral forest.

The VILUP summary document recommends that, “when applying retention silvicultural systems, the amount of retention should generally range between 10 and 20 percent of the gross cutblock area.” However, this recommendation was not transferred to the legal order. Instead, the legal requirement is set by the licensee in the approved FSP and is 7 percent.

**Vancouver Island land Use Plan (VILUP) and VILUP Order: What is the difference?**

VILUP was created in 1994 after a long public process. The [documents](#) that comprise the plan are lengthy, contain many recommendations, and contain text that provided background and other information important to the plan. Government created practice requirements and objectives from some, but not all, of the recommendations contained in the VILUP documents and put them into the [VILUP Order](#) in 2000. Aspects of VILUP not carried through to the Order are not legally required, although they may be considered in forest planning to meet the intent of VILUP.

## Public Consultation Requirements at East Creek Valley

There are no special public review and comment requirements at East Creek Valley. As with other areas in the province, FSPs (and their major amendments), must be advertised and made available for public review and comment by the licensee prior to government approval. The licensee must consider any written comments made during the review period. Licensees must make SPs available upon request, but there is no requirement to advertise them or consider public comments on them.

## Investigation Results

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The complainant raised many concerns, not all of which were within the Board's jurisdiction to investigate. After discussing the issues with the complainant, and with their agreement, the Board decided to focus the investigation on two main questions:

1. Did the licensee comply with the *Forest and Range Practices Act* and the *Vancouver Island Land Use Plan* while conducting its planning, harvesting, road and bridge construction, and road and bridge maintenance in the East Creek Valley?
2. Did the licensee provide the complainant with reasonable access to site plans?

The Board considered all activities carried out between July 1, 2014, and August 16, 2016, including harvesting, roads, and associated planning. Board investigators visited East Creek Valley, accompanied by the complainant and the licensee. The Board interviewed staff from the licensee, FLNRO, the Quatsino First Nation, the complainant and others with knowledge of the situation or the



East Creek Valley. The Board also examined the licensee's FSP, SPs and the land use planning direction relevant to the area.

### **Did the licensee comply with FRPA and the VILUP?**

Because of the breadth of concerns, the Board chose to take a field-based audit approach to the investigation and examined a large sample of the licensee's harvesting, road and bridge activities. This included both field and office components. In the field, the Board checked cutblocks, roads and bridges on the ground for compliance with legislation and quality of practices. In the office, Board investigators reviewed individual SPs and the combined effects of activities prescribed in all SPs for compliance with the FSP, VILUP and other legal orders. The Board did not review compliance with silviculture and *Wildfire Act* requirements, as they were not relevant to the complaint.

### ***Operational Planning***

The licensee's 2007 FSP guides its activities. The FSP applies to both LeMare Lake Logging Ltd. and Lions Gate Forest Products Ltd. Government has established land use objectives for the operating area through the VILUP Order. The FSP addresses all aspects of the VILUP Order pertinent to forest management in the East Creek Valley. The FSP also contains all other required content and is approved by government.

The Board examined SPs in the office and considered them during field sampling, to ensure that they accurately identified site conditions. SPs were consistent with FRPA requirements.

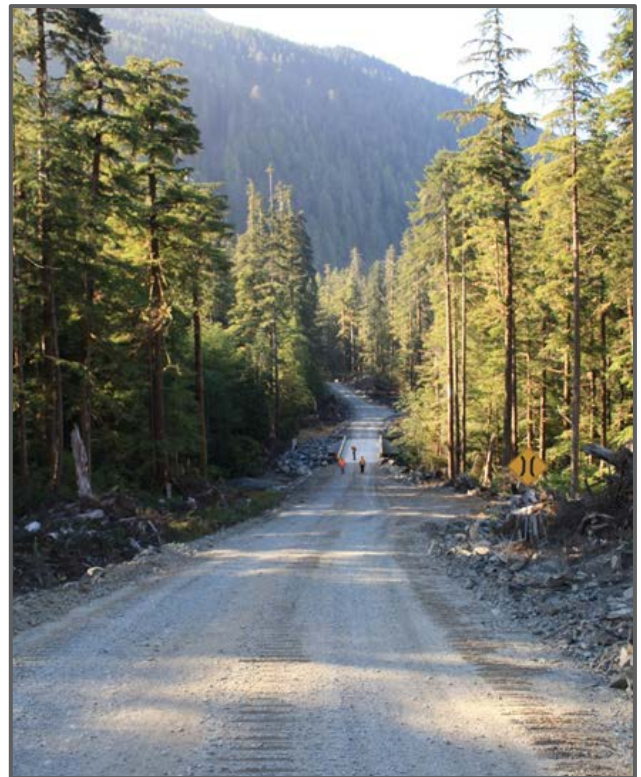
The Board considered the licensee's compliance with the VILUP Order, but not the adequacy of the VILUP.

### ***Harvesting***

As of August 2016, there were 37 cutblocks in the East Creek Valley, all logged by the licensee.

Twenty-one of these were in the upper valley and were logged between 2003 and 2008. Harvesting in the lower valley commenced in late 2014, and was ongoing at the time of the Board's field visit in August 2016. At that time, 16 cutblocks were completed or in progress, and were all active at some point during the period of interest (July 2014 to August 2016). The Board examined 15 of these.

Harvesting conformed to the SPs. The SPs accurately identified resource features and specified how those features would be protected. Streams requiring reserves, were either excluded from cutblocks or protected with appropriate reserves, consistent with FRPA requirements. Natural surface drainage patterns were maintained. Soil disturbance was well managed and was well within the limits set in FRPA. Wildlife tree patches were retained as prescribed in all cases.



**Figure 2.** Road through the Marbled Murrelet WHA.

East Creek Valley contains a large (744 hectares) wildlife habitat area for marbled murrelet ([WHA 1-077](#)), extending from tidewater to the upper reaches of East Creek. Harvesting and most road construction are not permitted in the WHA. Several cutblocks border the WHA, but there were no harvesting incursions. Two roads cross the WHA, but the WHA order itself provided specific exemptions allowing the roads on the condition that the clearing width be minimized. The Board examined the most recent road crossing and found that the condition was well met.

One cutblock was located near Klaskish Inlet, in an area with an established visual quality objective (VQO). Harvesting on this cutblock was not complete at the time of the field visit, but the licensee appeared to have addressed the VQO effectively through a combination of careful orientation of the block boundary and strategic location of wildlife tree reserves.

Lower East Creek is in SMZ 3. Practice requirements in the VILUP Order for this SMZ prohibit clearcuts greater than 5 hectares, but do allow “retention silviculture system” cutblocks of up to 40 hectares. The main difference between the retention system and clearcutting is that at least 50 percent of the cutblock area must be within 1-tree height of a tree or group of trees.<sup>iii</sup> The licensee



**Figure 3.** The retention Silviculture system as practiced at East Creek. Note the patches of reserved timber—more than 50 percent of the cutblock area must be within one tree length of an edge. There are two cutblocks in this photo with a narrow strip of timber between them.

was diligent in planning cutblocks that met this objective—all cutblocks met this requirement when logged.

The Board noted that, although the practice requirements for the SMZ place limits on the cutblock sizes, they do not have minimum distance requirements between cutblocks. This can allow a series of cutblocks to be separated by only narrow leave strips or wildlife tree retention areas, which create the appearance of much larger cutblocks. Board staff observed significant windthrow in some of these narrow leave strips and wildlife tree reserves, which may lead to conditions that are inconsistent with the intent of SMZ 3.

The VILUP summary document recommended 10 to 20 percent of a cutblock’s gross areas be retained as standing timber. However, the legal requirement set out in the licensee’s FSP is for 7 percent retention. The licensee met the 7 percent legal requirement in all cases, but only met the recommended amount in 2 of 13 cutblocks where the Board examined retention levels.

In summary, all harvesting activities complied with the requirements of FRPA and the VILUP Order, but not necessarily with the recommendations within the VILUP summary document itself.



## Roads and Bridges

The Board examined road construction, maintenance and deactivation activities for roads built, maintained, or deactivated between July 1, 2014, and August 16, 2016, and found generally good practices. Roads were well constructed. Drainage structures were appropriately designed and built. All roads were capped with shot rock and very little sedimentation was noted. Roads and bridges were adequately maintained. Road deactivation was well done with the road prisms fully decommissioned and drainage structures removed.

The licensee installed four bridges during the investigation period. All four were field checked and the documentation reviewed. Aside from one minor issue with a bridge approach barrier log, the structures were well built and the documentation was accurate and complete.



Figure 4. Dryland sort facility adjacent to Klaskish Inlet

The licensee built a dry land sort and barge loading facility during the investigation period. Logs are unloaded from trucks, sorted and then loaded on barges at this site. The licensee maintained a screen of trees so that the sort is very difficult to see from the water, helping to maintain visual quality as observed from the water. In addition, the logs are loaded directly onto barges without contacting tidewater, reducing impacts on sea life.

## Finding

The licensee met FRPA requirements. Bridges and roads were generally well-built and maintained and met regulatory requirements. Harvesting was conducted in accordance with the FSP, SPs and other FRPA requirements. The licensee also met the VILUP Order requirements.

### Did the licensee provide reasonable access to site plans?

FRPA is clear regarding access to SPs: *A holder of a site plan must make it publicly available on request at any reasonable time at the holder's place of business nearest to the area under the site plan.*<sup>1</sup> In this case, the time from the complainant's first request to the actual viewing of the SPs was over six months.

Several circumstances contributed to this lengthy period—the complainant had to make travel arrangements to get to the licensee's place of business in Port McNeill, the licensee wanted a member of its planning staff there to help explain the material, and the request was extensive, including potentially over 30 SPs and related material. As well, the licensee is quite small, has widespread

<sup>1</sup> *Forest and Range Practices Act*, section 11.

operations, and planning staff are often in the field for extended periods. These circumstances combined to narrow the opportunities for the SP viewings.

Although these circumstances contributed to this lengthy period, a more timely response would have been appropriate because:

- The legislation says an SP must be made publicly available “on request at any reasonable time.”
- The licensee is working on public lands, and the public has a right to see plans for this work.
- Under FRPA, there is no other avenue for the public to see a licensee’s specific cutblock or road plans.
- A person may wish to see and comment on an SP while there is still time to affect management of the area.
- Difficulties in accessing SP information can erode public confidence in forest management.

In June, when the complainant viewed the SPs in the licensee’s office, the licensee did not provide maps, which normally accompany SPs. The licensee told the Board that its legal advice was that the maps were not part of the SP and therefore it was not a requirement to make them available. However, the Board notes that FRPA requires SPs to “identify the approximate locations of cutblocks” and to “identify how the intended results or strategies described in the forest stewardship plan apply to the site” both of which, depending on circumstances, can be difficult or impossible to identify without a map.

The licensee also did not allow the complainant to make copies or remove copies of the SPs from the licensee’s office. This made it difficult for the complainant to adequately examine or come to an understanding about the SP content.

The Board has frequently commented on public consultation. In a bulletin entitled *Opportunity for Public Consultation under the Forest and Range Practices Act*,<sup>iv</sup> the Board lists and discusses several principles for consultation. Two of these principles are particularly important in this case:

- Early and meaningful – consultation is early enough to allow for changes in plans
- Informative and accessible – sufficient and understandable information is provided to enable the public to make informed comment

The licensee did not meet these principles because of the long delay in getting SP information to the complainant, and because of its refusal to provide maps or allow the complainant to make copies of SPs.

In the time between the original request to view the SPs (December 2015) and the SP viewing (June 2016), the complainant made several requests to have the SPs mailed, faxed or sent electronically. The licensee would not send them, citing concerns about sending legal documents electronically.

Also during the same time period, the complainant had a representative visit the licensee’s office to see the SPs. Licensee staff told the representative that they needed time to prepare for the viewing. The representative called back, but the licensee and the representative were unable to set up a viewing.

The legislation says that the SP must be available at the “holder’s place of business.” This does not mean that the licensee cannot voluntarily make the SPs available at other locations or by other means.

Some licensees put planned cutblock information, or full SP information, on public websites prior to harvest. It is also relatively simple to email documents or convey them on an FTP site or web-based file sharing service.

Board investigators learned that during this time when the complainant was trying to get access to the East Creek SPs, another member of the public, not associated with the complainant, dropped into the licensee's office and asked for a small number of SPs. The licensee provided these SPs within two days, although maps were not included.

During the investigation, the licensee advised the Board that "it is our intention to post site plans" on a new website "when it is completed this spring."

### ***Finding***

The licensee eventually provided much of the requested material for a viewing, but this took over six months. The lengthy period was due in part to both the complainant's and the licensee's scheduling difficulties. When the viewing took place, the SP maps were not included, and the complainant was not permitted to make copies of the material. The licensee did not make the SPs "publicly available on request at any reasonable time" to this complainant. Yet in the same period another member of the public, with a much smaller request, was able to view SPs (albeit without maps) in a short time. The licensee did not provide the complainant with reasonable access to the SPs.

## **Conclusions**

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The investigation considered two questions:

1. Did the licensee comply with FRPA and the VILUP while conducting its planning, harvesting, road and bridge construction, and road and bridge maintenance in the East Creek Valley?
2. Did the licensee provide the complainant with reasonable access to site plans?

The Board reviewed forest operations conducted in the last two years and concluded that the licensee complied with FRPA and VILUP while conducting its operations.

The investigators found that, for a variety of reasons, the complainant was unable to view the SPs for over six months. When the viewing took place, the licensee did not provide SP maps and did not permit copying of the site plans. The Board concludes that the licensee did not provide the complainant with reasonable access to SPs "on request at any reasonable time" as required by FRPA.

However, the Board is encouraged by the licensee's stated intent to improve public access to SPs in the future.

## ENDNOTES

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- <sup>i</sup> British Columbia, [Vancouver Island Summary Land Use Plan](#), February 2000.
- <sup>ii</sup> British Columbia, [Vancouver Island Land Use Plan Higher Level Plan Order](#), October 2000.
- <sup>iii</sup> British Columbia Forest Service, [The Retention System: Maintaining Forest Ecosystem Diversity](#), in Notes to the Field, Volume 7, March 2002.
- <sup>iv</sup> British Columbia Forest Practices Board, [Opportunity for Public Consultation under the Forest and Range Practices Act](#), *Board Bulletin*, Volume 3.



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