

Audit of Forest Planning and Practices On Nisga'a Lands



FPB/ARC/90

May 2007

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Board Commentary

The Nisga'a final agreement requires government to bring the forest lands on Nisga'a territory up to agreed-upon standards. The agreement also requires the Forest Practices Board to audit forest planning and practices on Nisga'a lands for the five-year period ending in May 2005.

The fifth audit began in 2005 and was completed in early 2007. The audit examined the planning and practices of West Fraser Mills Limited, Sim Gan Forest Corporation, New Skeena Forest Products, BC Timber Sales and the obligations of the Kalum district manager.

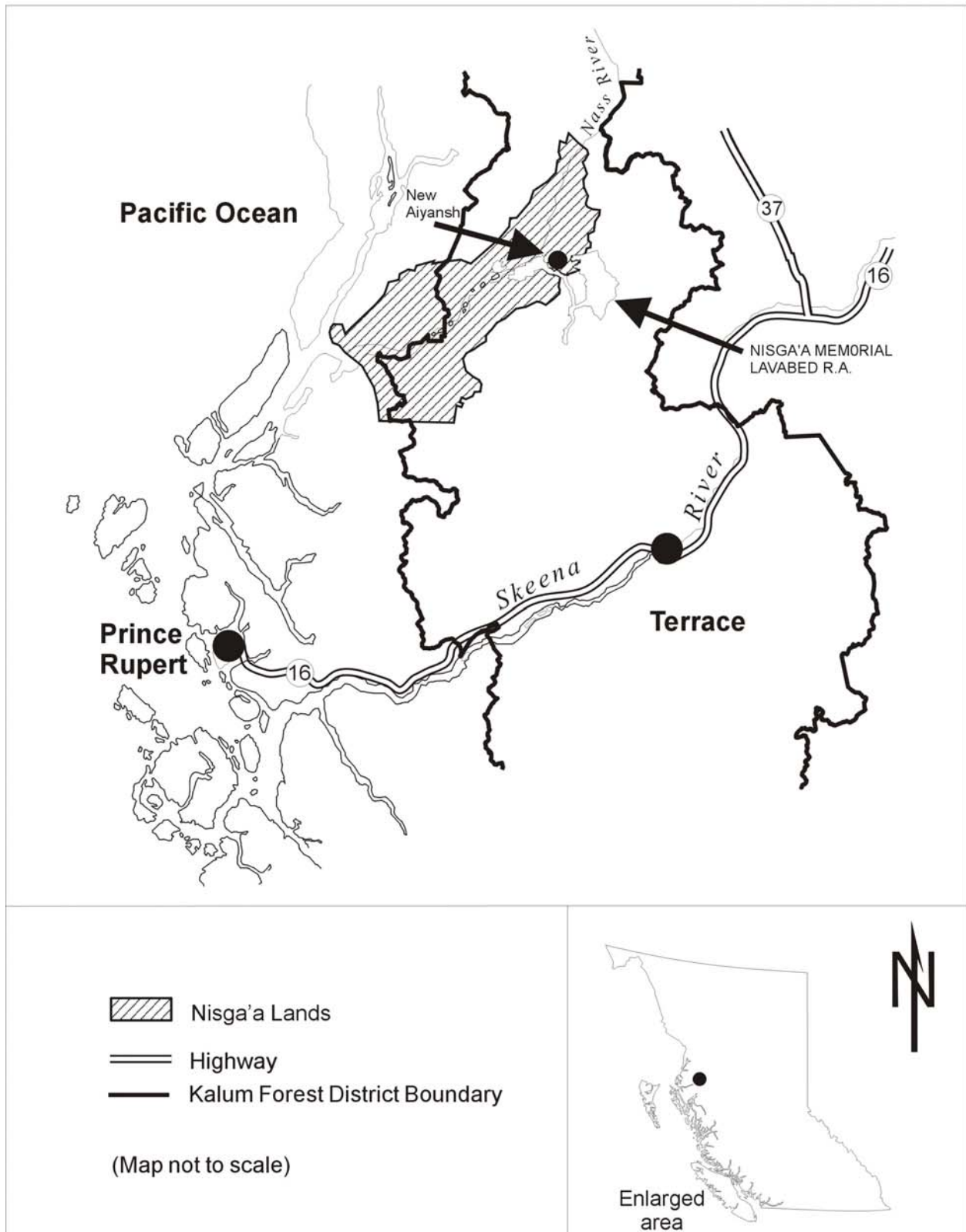
The audit found that activities of West Fraser Mills Limited, Sim Gan Forest Corporation, BC Timber sales and the Kalum district manager complied in all significant respects with the Nisga'a final agreement and the *Forest Practices Code of BC Act*.

In contrast, New Skeena Forest Products remained under bankruptcy protection during the audit period and did not fulfill its obligations. The audit found New Skeena Forest Products' silviculture¹, harvesting, road maintenance, bridge maintenance and road deactivation to be in significant non-compliance with the Nisga'a final agreement and the *Forest Practices Code of BC Act*.

In its 2004 audit report, in light of New Skeena's situation, the Board recommended that government review outstanding obligations and implement an action plan to address them. The Ministry of Forests and Range has satisfactorily addressed the Board's recommendation and has cooperated with the Nisga'a Lisims Government in identifying and addressing remaining obligations, and we commend this cooperative approach.

Most of the outstanding obligations relate to silviculture and a number of silviculture prescriptions that must be amended. It is our hope that the cooperation demonstrated by government and the Nisga'a Lisims Government will address these outstanding obligations to the satisfaction of all parties. In 2008, we will review government's performance in addressing New Skeena's obligations.

Audit of Nisga'a Lands



Audit Results

Background

Chapter 5, section 55 of the *Nisga'a Final Agreement* (the Agreement) required the Forest Practices Board to perform annual compliance audits of forest agreements and licences on Nisga'a lands during a defined five-year transition period beginning in May, 2000.

The transition period ended on May 10, 2005. This is the last of five compliance audit reports relating to forestry operations and obligations under Crown tenures on the Nisga'a lands during that period.



Figure 1: Overview of Nisga'a Lands

Description of the Nisga'a Lands

Under the Agreement, the Nisga'a Lisims Government was formally granted rights to the Nisga'a lands, an area of approximately 200,000 hectares in and around the Nass Valley, 100 kilometres northwest of Terrace .

The Nisga'a Final Agreement Transition Period

The Agreement provided for a five-year transition during which forestry operations under existing Crown licences on Nisga'a lands would be wound down.

During the transition, existing Crown licences had an allowable cut varying between 125,000 m³ and 155,000 m³ per annum. The actual amount cut was significantly less and varied between 97,600 m³ for the year ending May 10, 2001 and approximately 23,000 m³ for the year ending May 10, 2005

Activities under Crown licences on Nisga'a land were not subject to the Forest and Range Practices Act (FRPA) or the Kalum Land and Resource Management Plan. The Agreement defined the applicable requirements as:

- The Forest Practices Code (the Code) as it existed in May 2000; and,
- The forestry-related provisions of the Agreement (including site specific constraints around pine mushroom harvest areas, specified visually sensitive areas, no harvest zones along the Grease Trail and local village government approval requirements for harvesting near the Gingietl Creek Ecological Reserve).

Operations on Nisga'a Lands

Five parties had forestry activities or obligations on Nisga'a lands that were subject to audit in the final year of the transition period:

- New Skeena Forest Products Inc. (NSFP);
- Sim Gan Forest Corporation;
- West Fraser Mills Ltd.;
- BC Timber Sales; and
- The district manager of the Kalum Forest District.

In addition, forestry activities were also carried out by the Nisga'a Lisims Government on Nisga'a Lands. However, these activities are subject to the Nisga'a Forest Act rather than the Code and were outside the scope of this audit.

NSFP, the primary holder of harvest rights, remained in bankruptcy protection throughout the final year of the transition period. The Board's previous compliance audit drew attention to the potential for future environmental impacts if NSFP's outstanding harvest, road maintenance, and silviculture obligations were not addressed in a timely manner. As a result, this audit was intended to focus on the fulfillment of these obligations.

Audit field work conducted in the fall of 2005 determined that NSFP had not addressed its outstanding harvest, road maintenance, and silviculture obligations during the final year of the transition period. However, shortly after the end of the transition period, the Ministry of Forests and Range (MOFR) initiated its own actions to address NSFP's outstanding obligations. By the fall of 2005, MOFR had initiated work in relation to road maintenance, road deactivation, bridge maintenance, harvest waste and residue surveys, and forest regeneration surveys. However, the majority of this work was not completed by the end of our 2005 field audit. Therefore, it was too early to conclude on the effectiveness of the actions being undertaken in mitigating the potential environmental impact associated with NSFP's unaddressed compliance obligations.

To provide a degree of closure on the performance of government agencies and forest licensees in addressing their obligations during the transition period, additional follow-up field assessments were conducted in the fall of 2006. This work focused specifically on the extent to which NSFP's key road maintenance, road deactivation, bridge maintenance and forest regeneration obligations had been addressed by MOFR, and whether or not impacts had occurred as a result of NSFP's initial failure to address these obligations in a timely manner.

Audit Approach

All forestry activities, planning and obligations subject to the Code for the period July 9, 2004, to May 10, 2005, were included in the scope of the audit, except fire protection. These included ongoing forest practices as well as continuing reforestation and road maintenance obligations.

Fire protection was not audited because there were no active operations during the field audit and neither 2004 or 2005 operations required a fire preparedness plan.

The activities and obligations that occurred during the audit period and that were subject to audit are described in Table 1. The audit work on selected roads and cutblocks included ground-based procedures and assessments from the air using a helicopter.

Activity/ Obligation	NSFP	Sim Gan	West Fraser	BCTS Skeena
Operational Planning	No new plans	No new plans	No new plans	No new plans
Harvesting activities	4 of 4	None	None	None
Road Construction activities	None	None	None	None
Road Maintenance obligations	82 of 294 kilometres	4 of 39 kilometres	12 of 17 kilometres	None
Permanent Road Deactivation activities	None	None	5 of 5 kilometres	None
Bridge Construction activities	None	None	None	None
Bridge Maintenance obligations	4 of 44	5 of 9	None	None
Silviculture Activities	None	2 of 2 cutblocks	1 of 4 cutblocks	None
Silviculture Obligations*	5 of 10 cutblocks	None	5 of 11 cutblocks	5 of 19 cutblocks

Table 1: Audit sample and population for activities and obligations during the audit period.

*In addition to regeneration delay and free growing obligations that fell due during the audit period there is a general requirement to maintain stands that have met regeneration delay but are not yet free growing (section 70 4(d) of the *Forest Practices Code of British Columbia Act*). At the time of our 2006 field assessment approximately 225 cutblocks fell into this population. During our assessment, we field examined or conducted overview flights on 18 of these cutblocks. In addition to field assessments, we were provided with a significant amount of 2006 survey data collected by MOFR in relation to NSFP's ongoing silviculture obligations.

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

- Maintenance of forest service roads (FSR) not maintained by other parties under road use agreements. The audit assessed 3 of the 28 kilometres of forest service road that are the District Manager's responsibilities, including maintenance of 2 of 5 bridges.
- Actions to address forest health issues.

- Actions to address outstanding reforestation obligations of MOFR for areas logged prior to October 1, 1987, where a backlog silviculture prescription had been written and approved (backlog blocks).

Findings

The audit found that West Fraser Mills Ltd., Sim Gan Forest Corporation, BC Timber Sales and Skeena Business Area complied in all significant respects with the applicable silviculture, road maintenance, bridge maintenance and road deactivation requirements of the Code and the Agreement as of May 2005.

Additionally the silviculture, road maintenance, bridge maintenance and forest health obligations on Nisga'a Lands that are the responsibility of the Ministry of Forests and Range, Kalum Forest District complied in all significant respects with the requirements of the Code and the Agreement as of July 2005.

However, the audit found that NSFP was in significant non-compliance with the Code. It did not undertake activities to address its outstanding harvest, silviculture, bridge inspection, road maintenance or road deactivation obligations during the final year of the transition period. The unaddressed obligations did not arise solely during the last year of the transition period, but accumulated throughout the period. Prior annual audits by the Board had identified the increasing level of risk associated with the lack of timely fulfillment of these obligations by NSFP. This non-compliance was pervasive across all elements of the Company's operations on Nisga'a lands. As a result, MOFR was required to take its own actions in relation to harvest clean-up, silviculture surveys, road maintenance and road deactivation to reduce the potential for future significant environmental impacts. Key aspects of this significant non-compliance were as follows:

- NSFP Harvest activities – Approximately 18,000m³ of timber was identified as damaged or wasted on the final NSFP cutblocks, including areas of felled timber that remain unyarded on 2 cutblocks after more than 2 years and additional amounts of decked timber have been left on inactive blocks for which the harvest rights were sold by NSFP. Additionally, pile burning remains to be completed on 16 cutblocks. Lack of timely completion of logging activities elevates the fire risk, reduces the value of the timber, leads to delayed payment of stumpage to the Crown and delayed the transfer payments to the Nisga'a Lisims Government. The obligation to regenerate the stand within the required timeframes is also potentially compromised.
- NSFP road and bridge maintenance and deactivation obligations – NSFP did not have an active road maintenance, bridge maintenance or road deactivation program during the final year of the transition period. As a result:
 - The general state of road networks deteriorated during the audit period. However, no individually significant environmental impacts were observed.
 - 5 of NSFP's 44 bridges were found to be in non-compliance with minimum inspection requirements.
 - In-block roads on 10 cutblocks had not been deactivated as required by the end of the transition period.

Subsequent to the audit period, MOFR undertook significant works to address NSFP's outstanding bridge inspection, bridge maintenance, road maintenance and road deactivation obligations. MOFR indicates that approximately \$600,000 of road and bridge works were required, of which approximately 90 percent have now been completed, reducing the potential for future environmental impacts.

- NSFP silviculture program – NSFP did not have an active silviculture program during the final year of the transition period. Our audit process is designed to test the adequacy of the existing program on a sample basis. In the case of NSFP, where there was no program, a limited field audit sample would not provide adequate evidence upon which to base compliance conclusions. However, we were able to rely on MOFR survey data collected after the audit period to draw conclusions. We found that:
 - 4 blocks had passed late free growing dates and had not been declared free growing at the end of the transition period.
 - 21 blocks had passed regeneration delay dates and no regeneration delay declaration had been made at the end of the transition period.
 - Additionally, no actions had been taken on those cutblocks that had passed the regeneration delay date but had not yet reached late free growing. While not all blocks need actions, active maintenance of these populations (e.g. through brushing and fill planting as required) is necessary to ensure they meet free growing requirements by the late free growing date.

MOFR has now taken over NSFP's silviculture program and is in the process of addressing NSFP's outstanding obligations. Timely completion of this work is expected to alleviate any potentially significant environmental or economic impacts associated with the delays to date. Surveys to date indicate the following actions are currently required:

- 220 hectares of planting or fill planting
- 65 hectares of priority brushing
- 188 hectares of lower priority brushing

Additional actions will likely be required once the remaining surveys (approximately 425 hectares) are completed.

Outstanding Obligations on Nisga'a Lands

As at the end of the transition period, the primary remaining forestry obligations of licensees were in relation to silviculture obligations. Minor pile burning, road deactivation and road and bridge maintenance obligations also exist. The estimated silviculture obligations of each of the licensees are shown below.

Activity/ Obligation	NSFP	Sim Gan	West Fraser	BCTS Skeena	District Manager, Kalum Forest District
Number of cutblocks with outstanding free growing obligations	71*	12	29	15	5*

Table 2: Outstanding obligations on Nisga'a Lands.

* Silvicultural records for NSFP and for the District Manager's obligations are subject to adjustment. MOFR has been working with available NSFP data, historic and current silvicultural databases and external input to re-establish the full silvicultural record for both NSFP and MOFR obligations. While the NSFP obligations span the period from October 1, 1987 to the end of the transition period the District Manager's obligations relate solely to those cutblocks logged prior to October 1, 1987 that had a backlog silvicultural prescription prepared and approved, generating a free growing obligation where one had not previously existed. This old data was not stored in reliable databases. While the quality of the silvicultural data is improving, it is likely that future adjustments will be required.

Audit Opinion

In my opinion:

- 1) The silviculture, road maintenance, bridge maintenance and road deactivation activities of West Fraser Mills Ltd., Sim Gan Forest Corporation, BC Timber Sales and Skeena Business Area complied in all significant respects with the requirements of the Code and the Agreement as of May 2005.
- 2) The silviculture, road maintenance, bridge maintenance and forest health obligations on Nisga'a Lands that are the responsibility of the Ministry of Forests and Range, Kalum Forest District, complied in all significant respects with the requirements of the Code and the Agreement as of July 2005.
- 3) The silviculture, harvesting, road maintenance, bridge maintenance and road deactivation activities of New Skeena Forest Products were found to be in significant non-compliance with the requirements of the Code and the Agreement as of May 2005 as described in the paragraph immediately below.

New Skeena Forest Products did not undertake activities to address its accumulated harvest obligations, silviculture obligations, bridge inspection obligations, road maintenance obligations or road deactivation obligations during the final year of the transition period. This non-compliance was pervasive across all elements of the Company's operations on Nisga'a lands. As a result, the Ministry of Forests and Range was subsequently required to take its own actions in relation to unaddressed harvest clean-up, silviculture survey, and road maintenance and road deactivation obligations in order to reduce the potential for future significant environmental impacts.

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

The Audit Approach section of this report describes the basis of the audit work performed in reaching the above conclusion. The audit was conducted in accordance with the auditing standards of the Forest Practices Board. Such an audit includes examining sufficient forest planning and practices to support an overall evaluation of compliance with the Code and the Agreement.



Chris Ridley-Thomas, RPBio
Auditor of Record
Vancouver, British Columbia
April 16, 2007

Appendix 1:

Compliance Audit Process for Nisga'a Lands

Background

The Forest Practices Board conducts audits of government and agreement holders for compliance with FRPA. The Board has the authority to conduct these periodic independent audits under section 122(1) of FRPA. Compliance audits examine forest planning and practices to determine whether or not they meet FRPA requirements.

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

Most of the the Code was repealed on January 31, 2004, and replaced with the FRPA. However, as per the Agreement and section 216 of FRPA, the Code continues to apply on Nisga'a lands and has not been replaced by FRPA Audit Standards.

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

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

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

Audit Process

Conducting the Audit

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

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

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

For each population, the auditors choose the most efficient means of obtaining information to conclude whether there is compliance with the Code. Because of limited resources, auditors usually rely upon sampling to obtain audit evidence, rather than inspecting all activities. Individual sites and forest practices within each population have different characteristics, such as the type of terrain or type of yarding. Each population is divided into distinct subpopulations on the basis of common characteristics (e.g., steep ground vs. flat ground). A separate sample is selected for each population (e.g., the cutblocks selected for auditing timber harvesting). Within each population, more audit effort (i.e., more audit sampling) is allocated to the sub-population where the risk of non-compliance is greater.

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

Evaluating the Results

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

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

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

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

Not significant non-compliance – where the auditor, upon reaching a non-compliance conclusion, determines that a non-compliance event or the accumulation and consequences of a number of non-compliance events, is not significant and is not considered worthy of reporting.

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

Significant breach – where the auditor finds that significant harm has occurred, or is beginning to occur, to persons or the environment as a result of the non-compliance. A significant breach can also result from the cumulative effect of a number of non-compliance events or conditions. Identification of a possible significant breach requires the auditor to conduct tests to confirm whether or not there has been a breach. If it is determined that a significant breach has occurred, the auditor is required by the Forest Practices Board Regulation to immediately advise the Board, the party being audited and the Ministers of Forests and Range.

Reporting

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

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

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

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

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

Once the representations have been completed, the report is finalized and released: first to the auditees and then to the Nisga'a, Federal and Provincial governments, and then to the public and the Ministers.

¹ Silviculture prescription — a site-specific operational plan that describes the forest management objectives for an area to be harvested (a cutblock). The silviculture prescriptions examined in the audit are required to describe the management activities proposed to maintain the inherent productivity of the site, accommodate all resource values including biological diversity, and produce a free-growing stand capable of meeting stated management objectives. Silviculture prescriptions must be consistent with forest development plans that encompass the area to which the prescription applies.

Forest development plan — an operational plan that provides the public and government agencies with information about the location of proposed roads and cutblocks for harvesting timber over a period of at least five years. The plan must specify measures that will be carried out to protect certain forest resources prescribed by regulation. It must also be consistent with any higher level plans. Site-specific plans are required to be consistent with the forest development plan.



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NEWS release

For Immediate Release
May 17, 2007

Government addressing New Skeena obligations on Nisga'a Lands

VICTORIA – The provincial government is making good progress in addressing significant non-compliance by New Skeena Forest Products on Nisga'a lands, the Forest Practices Board reported today.

The board's fifth audit of forest planning and practices on Nisga'a lands found that all licensees apart from New Skeena were compliant with Forest Practices Code and Nisga'a final agreement obligations.

In previous audit reports, the board had warned that government would need to take action to address outstanding treaty obligations, in the context of New Skeena's continuing bankruptcy proceedings. The current audit found significant non-compliance by New Skeena for silviculture, harvesting, road and bridge maintenance and road deactivation obligations.

"We had urged the Ministry of Forests and Range to develop an action plan to address New Skeena's serious non-compliance, and we are pleased to report they have acted on our recommendations," said board chair Bruce Fraser. "The board congratulates the ministry for working co-operatively with the Nisga'a Lisims Government to make sure the remaining problems are identified and resolved in a timely manner."

The audit examined the activities of five auditees: New Skeena Forest Products Inc., formerly known as Skeena Cellulose Inc.; Sim Gan Forest Corporation; West Fraser Mills Ltd.; BC Timber Sales, Skeena Business Area; and the Kalum Forest District Manager, for the period of July 9, 2004 to May 10, 2005.

This fifth compliance audit completes the board's obligation under the final agreement to audit forest planning and practices, and government enforcement of forest practices legislation, on Nisga'a lands for the first five years of the agreement's implementation.

“While our formal auditing role on Nisga’a lands is now complete, the board will review government’s performance in addressing the remaining New Skeena forestry obligations and we will report on this issue in 2008,” said Fraser.

The Forest Practices Board is B.C.’s independent watchdog for sound forest and range practices, reporting its findings and recommendations directly to the public and government. The board:

- audits forest and range practices on public lands;
- audits appropriateness of government enforcement;
- investigates public complaints;
- undertakes special investigations of current forestry issues;
- participates in administrative appeals; and
- makes recommendations for improvement to practices and legislation.

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This news release and more information about the board are available on the Forest Practices Board website at www.fpb.gov.bc.ca or by contacting:

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