
APPENDIX H

TRANSITIONAL PROVISIONS FOR FOREST RESOURCES

Schedule 1 Map of Forestry Transition period planning criteria for forest development plans

DEFINITIONS

1. In this Appendix:
 - a. **“volume of timber harvested under the licence”** means the total of the following that are charged to the holder of the licence:
 - i. the volume of timber cut under the licence and under road permits issued under the licence,
 - ii. the volume of timber estimated to be wasted or damaged under cutting permits and road permits issued under the licence, and
 - iii. the volume of timber cut by the holder of the licence anywhere on Nisga'a Lands, otherwise than in accordance with this Appendix and forest practices legislation;
 - b. **“Nisga'a Lands”** has the same meaning as in this Agreement except that it does not include former Nisga'a Indian reserves, as defined in paragraph 1 of the Forest Resources Chapter; and
 - c. other words and expressions that are defined in paragraph 1 of the Forest Resources Chapter have the same meaning in this Appendix as given in that Chapter.

APPLICATION

2. Except as otherwise provided, this Appendix applies to Nisga'a Lands during the transition period.

CUT CONTROL

3. If the annual volume of timber apportioned to a licence under paragraph 18 of the Forest Resources Chapter is greater than 15, 000 m³, the volume of timber harvested under the licence will:
 - a. for any transition year, not be less than 50%, nor more than 150%, of the annual volume of timber apportioned to that licence; and
 - b. for the entire transition period, not exceed the lesser of:
 - i. the total volume of timber apportioned to that licence, and
 - ii. the total volume of timber apportioned to that licence, less any reductions imposed under sections 5 or 7.
4. If the annual volume of timber apportioned to the licence under paragraph 18 of the Forest Resources Chapter is 15, 000 m³ or less, the volume of timber harvested under the licence during the transition period will not exceed the lesser of:
 - a. the total volume of timber apportioned to that licence; and
 - b. the total volume of timber apportioned to that licence, less any reductions imposed under section 7.
5. If in a transition year, a holder of a licence to which section 3 applies harvests a volume of timber that exceeds the specified limit for that year, the total volume apportioned to that licence for the transition period will be reduced by an amount equal to the excess.
6. Any timber harvest by a holder of a licence that is in excess of the total volume of timber apportioned to that licence is an unauthorized harvest, unless that volume was authorized in a cutting permit or road permit issued by the Forestry Transition Committee.

CUT CONTROL continued...

7. If in a transition year, a holder of a licence to which section 3 applies harvests a volume of timber that is less than the minimum limit specified in that section for that year, the total volume apportioned to that licence for the transition period will be reduced by an amount equal to the undercut below the minimum limit.
8. Any volume reductions to a licence under sections 5 or 7 will be prorated over the remaining years of the transition period.
9. Any prorated volume referred to in section 8 will be available to the Nisga'a Nation to harvest in accordance with this Appendix.

STATUS OF TIMBER HARVESTING RIGHTS AND RELATED OBLIGATIONS ON THE EFFECTIVE DATE

RIGHTS TO HARVEST TIMBER ON NISGA'A LANDS DURING THE TRANSITION PERIOD

10. A cutting permit referred to in section 11, and any road permit associated with that cutting permit, remains valid until the first of the following occurs:
 - a. the date specified in the permit;
 - b. the first anniversary of the effective date; or
 - c. the cancellation of the licence that is associated with the permit.

11. The cutting permits that section 10 applies to are:

TFL#1	FL A16882	FL A16886
6AM	37	001
6AF	38	
7AN		
7AO		
8AN		
8AT		
8AM		
8AL		
8AR		
6AJ		

12. A cutting permit or road permit that was issued before the effective date with the agreement of the Nisga'a Tribal Council under the Interim Protection Measures agreement entered into among Canada, British Columbia and the Nisga'a Tribal Council on December 5, 1996, as amended, remains valid until the first of the following occurs:
 - a. the date specified in the permit;
 - b. the second anniversary of the effective date; or
 - c. the cancellation of the licence that is associated with the permit.
13. An authorization given under section 52 of the *Forest Act* before the effective date that authorizes an employee or agent of British Columbia, acting in the course of duties, to harvest timber on an area that, on the effective date, is Nisga'a Lands, remains valid if the authorization relates to road construction activities associated with a valid timber sale licence.

STATUS OF NON-CUTTING AUTHORITIES ON THE EFFECTIVE DATE

14. On the effective date, a road use permit that was issued before the effective date and was associated with activities referred to in sections 10, 11 or 12, or with a timber sale licence, remains valid until the first of the following occurs:
- a. the date specified in the permit;
 - b. the first anniversary of the effective date; or
 - c. the cancellation of any licence that is associated with the permit.

STATUS OF OPERATIONAL PLANS ON THE EFFECTIVE DATE

15. On the effective date, any silviculture prescription approved or in effect on the day before the effective date, remains valid if it is associated with:
- a. a cutting permit referred to in sections 10, 11 or 12;
 - b. a timber sale licence; or
 - c. a harvested area.
16. On the effective date, any logging plan in effect on the day before the effective date remains valid if it is associated with:
- a. a cutting permit referred to in sections 10, 11 or 12; or
 - b. a timber sale licence.

CONTINUING OBLIGATIONS

17. British Columbia will fulfil on Nisga'a Lands all obligations imposed under forest practices legislation for areas that before the effective date were outside of a tree farm licence area and if the timber on the area was:
- a. damaged or destroyed by natural causes, unless, before the effective date, a determination has been made by the district manager under the *Forest Practices Code of British Columbia Act* that the area is too remote, too small or too inaccessible to warrant the preparation of a prescription; or
 - b. cut, removed, damaged or destroyed in contravention of the *Forest Practices Code of British Columbia Act* by a person other than the holder of a major licence.

FOREST DEVELOPMENT PLAN REQUIREMENTS**REQUIREMENT FOR A FOREST DEVELOPMENT PLAN**

18. Subject to sections 10 to 12, harvesting or road related activities must not occur under a licence unless the holder of the licence has prepared a forest development plan that:
- a. has been approved by the Forestry Transition Committee; and
 - b. is in effect before the activities take place.

FOREST DEVELOPMENT PLAN REQUIREMENTS continued...

19. The Nisga'a Nation will not carry out timber harvesting or road related activities in respect of the volume of timber specified in section 20 and subsection 21(a) of the Forest Resources Chapter unless the Nisga'a Nation has prepared a forest development plan that:
 - a. has been approved by the Forestry Transition Committee; and
 - b. is in effect before the activities take place.
20. A person referred to in section 18 or 19 may apply to the Forestry Transition Committee for an exemption from the requirement to have an approved forest development plan if:
 - a. the only harvesting that will take place on the area is:
 - i. the felling and removal of trees to eliminate a safety hazard,
 - ii. the felling of trees to facilitate the collection of seed, and the proposed harvesting will not result in an opening of greater than one hectare, or
 - iii. the felling and removal of trees that have been or will be treated to facilitate entrapment of pests; and
 - b. no road construction is required to provide access for the timber harvesting referred to in subsection (a).

PERIOD AND TERM OF A FOREST DEVELOPMENT PLAN

21. A forest development plan will cover a period up to the end of the transition period, but will be for a shorter period if:
 - a. the term of the licence to which the plan relates terminates before the end of the transition period; or
 - b. the Forestry Transition Committee is satisfied that a plan cannot be developed to the end of the transition period because:
 - i. a significant portion of the plan is for the harvesting of blowdown or timber damaged by insects or fire and the exact location of the damaged timber cannot be determined,
 - ii. there is insufficient timber available to provide operational activities for the required period, or
 - iii. other similar circumstances exist that prevent a plan being developed for the required period.
22. Unless otherwise specified by the Forestry Transition Committee, a forest development plan expires one year from the date of approval of the plan.
23. Before or after a forest development plan expires, the Forestry Transition Committee, may:
 - a. extend the term of the forest development plan for a period or periods not exceeding a total of one year at the request of or with the consent of the person who prepared the plan; and
 - b. place conditions on the extension.

CONTENT OF A FOREST DEVELOPMENT PLAN

24. A forest development plan will address an area sufficient in size to include all areas affected by the timber harvesting and road construction or modification operations proposed under the plan.
25. A forest development plan will include maps, schedules and other information for the area under the plan, sufficient to permit adequate assessment by the Forestry Transition Committee and resource agencies of:

- a. the topography and natural features of the area under the plan; and
 - b. the proposed timber harvesting and road construction or modification operations to be carried out under the plan.
26. Without limiting section 25, a forest development plan in respect of a licence will:
- a. contain information required under the *Forest Practices Code of British Columbia Act* and its regulations in respect of forest development plans for a holder of a major licence;
 - b. contain information to the standard required by the district manager of the Kalum Forest District for a forest development plan in that forest district in respect of:
 - i. logging method,
 - ii. silvicultural system,
 - iii. harvest season, and
 - iv. wildlife tree patches;
 - c. specify for each cutblock where harvesting is proposed during the first two years of the plan:
 - i. the maximum proportion of the area that may be occupied by permanent access structures,
 - ii. the maximum proportion of the net area to be reforested that may be occupied by temporary access structures, and
 - iii. the free growing stocking standards that will apply to the area;
 - d. specify, for each proposed road, the proposed right of way, which will not exceed 30 metres in width unless a greater width is approved by the Forestry Transition Committee; and
 - e. unless otherwise authorized by the Forestry Transition Committee, be consistent with the relevant material specified for similar sites and conditions contained within Ministry of Forests guidebook publications associated with the *Forest Practices Code of British Columbia Act*, and the regulations under that Act.
27. Without limiting section 25, a forest development plan submitted by the Nisga'a Nation will contain the following:
- a. all information required under laws made under paragraph 6 of the Forest Resources Chapter; and
 - b. for the area under the plan:
 - i. the size, shape and location of cutblocks proposed for harvesting during the term of the plan, and
 - ii. the timing of proposed timber harvesting and related road construction, maintenance and deactivation.
28. A forest development plan will comply with the following constraints:
- a. timber harvesting is not permitted within the following areas as shown in Schedule 1 to this Appendix:
 - i. the Nass Bottomlands polygon,
 - ii. any ecological reserve polygon,
 - iii. any archeological polygon, and
 - iv. 100 metres of either side of the centre line of the Grease Trail;
 - b. timber harvesting of a road right of way is not permitted if that harvesting is for the sole purpose of facilitating the extraction of gravel;

FOREST DEVELOPMENT PLAN REQUIREMENTS continued...

- c. for the Pine Mushroom polygon as shown in Schedule 1 to this Appendix:
 - i. timber harvesting, including that associated with roads, will retain a minimum of 80% of the forest cover at an age of at least 120 years, and
 - ii. silvicultural systems, other than for areas to be occupied by roads, will be a selection system and provide for retention of a minimum of 70% of the total basal area of the cutblock;
 - d. for the Tseax polygon, as shown in Schedule 1 to this Appendix, timber harvesting will not result in more than 10% of the visual area having vegetation of a height of less than five metres;
 - e. timber harvesting will not occur within one kilometre of former Kincolith IR #14, Lagaltsap IR #9, New Aiyansh IR #1 or Gitwinksihlkw IR #7 without the agreement of the Village Government for the affected former Nisga'a Indian Reserve;
 - f. timber harvesting will not occur within one kilometre of the Gingietl Creek Ecological Reserve without the agreement of the Gitwinksihlkw Village Government; and
 - g. timber harvesting within one kilometre of Lava Bed Memorial Park will not result in more than 10% of the visual area having vegetation of a height of less than five metres.
29. A forest development plan will contain:
- a. if the plan is submitted by a holder of a licence, the signature of the holder or a person who has authority to sign the plan on behalf of the holder; and
 - b. if the plan is submitted by the Nisga'a Nation, the signature of a person who has authority to sign the plan on behalf of the Nisga'a Nation.
30. Notwithstanding sections 25 to 28, if the Forestry Transition Committee determines that a timber harvesting activity that is proposed to be carried out is restricted to minor salvage operations, the Forestry Transition Committee may waive any of the forest development plan content requirements specified in those sections.

REVIEW AND COMMENT OF A FOREST DEVELOPMENT PLAN

31. The review and comment requirements of the forest practices legislation apply to forest development plans during the transition period.
32. Notwithstanding section 31, if the Forestry Transition Committee determines that a forest development plan or amendment is necessary to address an emergency, the Forestry Transition Committee may vary the review and comment requirements.

EVALUATION OF A FOREST DEVELOPMENT PLAN

33. The Forestry Transition Committee:
- a. subject to subsection (b), will approve a forest development plan that meets the requirements of this Appendix; but
 - b. may refuse to approve a cutblock or road proposed in the forest development plan that meets the requirements of this Appendix, if the Forestry Transition Committee determines that the plan, in respect of the matters referred to in section 26, does not adequately manage and conserve the forest resources on Nisga'a Lands.

34. Subject to sections 35 and 36 and the dispute resolution rules adopted under section 64, the Forestry Transition Committee will make a determination under section 33 within 45 days after receiving the submission.
35. Before concluding its evaluation of a forest development plan, the Forestry Transition Committee may require the person who submitted the plan to submit additional information that the committee reasonably requires to determine if the plan meets the requirements specified in this Appendix.
36. If the Forestry Transition Committee makes a request under section 35, the time period specified in section 34 is extended by the period of time between the request for additional information and the receipt of that information.

SILVICULTURE PRESCRIPTION REQUIREMENTS

37. Timber harvesting, other than that associated with roads, must not occur under a licence without an approved silviculture prescription for the area.
38. The district manager will prepare a silviculture prescription for an area where the holder of a licence referred to in paragraph 29 of the Forest Resources Chapter has cut, removed, damaged or destroyed timber on Nisga'a Lands in contravention of the forest practices legislation.
39. The holder of a major licence will prepare and obtain approval of a silviculture prescription for an area where the holder has cut, removed, damaged or destroyed timber on Nisga'a Lands in contravention of the forest practices legislation.
40. A person referred to in sections 38 and 39 may apply to the district manager or the Forestry Transition Committee, as the case may be, for an exemption from the requirement to have an approved silviculture prescription.

CONTENT OF A SILVICULTURE PRESCRIPTION

41. A silviculture prescription will:
 - a. be consistent with an approved forest development plan for the area, unless it is a silviculture prescription referred to in section 15;
 - b. contain all information required under the *Forest Practices Code of British Columbia Act* and its regulations in respect of silviculture prescriptions, unless that information is contained within an approved forest development plan for the area; and
 - c. unless authorized by the district manager or the Forest Transition Committee, as the case may be, be consistent with the relevant material specified for similar sites and conditions contained within Ministry of Forests guidebook publications associated with the *Forest Practices Code of British Columbia Act* and the regulations under that Act.

EVALUATION OF A SILVICULTURE PRESCRIPTION

42. The Forestry Transition Committee or the district manager, as the case may be:
 - a. may require that a silviculture prescription be referred to resource agencies for review and comment; and

SILVICULTURE PRESCRIPTION REQUIREMENTS continued...

- b. will approve a silviculture prescription that meets the requirements of this Appendix unless it is determined that the silviculture prescription, in respect of matters referred to in section 41, does not adequately manage and conserve the forest resources on Nisga'a Lands.
- 43. Subject to sections 44 and 45 and the dispute resolution rules adopted under section 64, the Forestry Transition Committee will make a determination under section 42 within 45 snow free days after the silviculture prescription being submitted for approval.
- 44. Before concluding the evaluation of a silviculture prescription, the district manager or the Forestry Transition Committee, as the case may be, may require the person who submitted the prescription to submit additional information that the district manager or committee reasonably requires to determine if the prescription meets the requirements of this Appendix.
- 45. If a request is made under section 44, the time period specified in section 43 is extended by the period of time between the request for additional information and the receipt of that information.

REQUIREMENTS FOR PERMITS

CUTTING PERMITS

- 46. Subject to the dispute resolution rules adopted under section 64, the district manager, or the Forestry Transition Committee, as the case may be, will issue a cutting permit within 45 days after receiving an application for a cutting permit if the district manager or Forestry Transition Committee determines that:
 - a. the person making the application has the right to harvest timber and that right is not under suspension;
 - b. the application complies with the requirements specified in this Appendix and any requirements specified in the licence; and
 - c. the application is completely consistent with all operational plans approved for the area.

ROAD PERMITS AND ROAD USE PERMITS

- 47. A holder of a licence must have a valid road use permit issued by the Forestry Transition Committee to use a road for timber harvesting and related activities, unless the road is:
 - a. a Crown road; or
 - b. under a valid road permit held by the holder.
- 48. The Nisga'a Nation must have a valid road use permit issued by the Forestry Transition Committee to use a road for timber harvesting and related activities, if the road is:
 - a. a Crown road; or
 - b. subject to a valid road permit.
- 49. Subject to the dispute resolution rules adopted under section 64, the district manager or Forestry Transition Committee, as the case may be, will issue a road permit or road use permit within 45 snow free days after receiving an application for a road permit or road use permit if the district manager or Forestry Transition Committee determines that:

- a. the person making the application has the right to harvest timber and that right is not under suspension;
- b. the application complies with the requirements specified in this Appendix and any requirements specified in the licence; and
- c. the application is completely consistent with all operational plans approved for the area.

BURNING PERMITS

50. Forest practices legislation with respect to burning permits applies to:
- a. timber harvesting and related activities by the holder of a licence on Nisga'a Lands; and
 - b. all persons carrying out timber harvesting and related activities on Nisga'a Lands during the transition period.

FOREST PRACTICES

SILVICULTURE

51. A free growing stand will be established within the net area to be reforested on all areas of Nisga'a Lands harvested by the holder of a licence during the transition period.

FOREST HEALTH

52. If the Forestry Transition Committee determines that there are insects or diseases causing damage to a forest on an area of Nisga'a Lands that is subject to a holder of a licence's forest development plan, the district manager will, in a notice given to the holder of the licence, order measures acceptable to the Forestry Transition Committee to be undertaken within a specified time to control or dispose of the insects or diseases.

FOREST OPERATIONS ON NISGA'A LANDS AFTER THE TRANSITION PERIOD

53. Timber felled under a valid cutting permit issued to the holder of a licence may not be removed after the transition period, unless the holder of the licence:
- a. was unable to remove the timber prior to the end of the transition period as a result of events beyond the holder's control; and
 - b. removes the timber within a period of not more than 30 days after the Nisga'a Nation and British Columbia determine that conditions allow for the removal.
54. A road permit or road use permit issued before the end of the transition period may authorize the holder of the permit to continue to use the road referred to in the permit after the transition period, to the extent necessary to:
- a. carry out fire hazard abatement activities;
 - b. fulfil silviculture obligations; and
 - c. complete road deactivation.
55. Activities referred to in section 54 must be completed within a reasonable time.

56. Until the activities referred to in sections 53 and 54 are completed, the requirements of this Appendix continue to apply, to the extent necessary to address those activities and their enforcement.

GENERAL

NISGA'A CONTRACTORS

57. A licence referred to in paragraph 27 of the Forest Resources Chapter will require the holder of the licence to use Nisga'a Contractors to harvest, during each transition year, the following percentages of the actual volume harvested under the licence:
- a. year 1 50%;
 - b. year 2 70%;
 - c. year 3 70%;
 - d. year 4 70%; and
 - e. year 5 70%.
58. Contracts referred to in section 57 will be for a term of five years, or until the end of the transition period, whichever period is shorter.
59. Notwithstanding section 57, in any transition year, the holder of a licence is relieved from the requirement in that section to the extent that no Nisga'a Contractor is reasonably available to carry out full phase logging of the required volume within that transition year.

FORESTRY TRANSITION COMMITTEE

60. The Forestry Transition Committee consists of:
- a. the district manager or person authorized by the district manager; and
 - b. a person authorized by the Nisga'a Nation.
61. British Columbia and the Nisga'a Nation are each responsible for the respective costs associated with their member of the Forestry Transition Committee.
62. The Forestry Transition Committee has the following mandate:
- a. to evaluate all matters associated with operational plans, and permits referred to it in paragraph 33 of the Forest Resources Chapter, including approvals, amendments, extensions and exemptions;
 - b. to annually evaluate and report on the cut control status of each holder of a licence to which section 3 applies and to impose any resultant cut control reductions;
 - c. to determine the volume of timber, if any, available under section 9 for harvesting by the Nisga'a Nation; and
 - d. to provide to British Columbia, the Nisga'a Nation and Canada an annual report concerning:
 - i. the cut control status, and
 - ii. the expenses incurred by the Forestry Transition Committee during the preceding transition year.

63. The Forestry Transition Committee is not responsible for the completeness and accuracy of information provided to it by British Columbia, the Nisga'a Nation or the holder of a major licence.

DISPUTE RESOLUTION

64. The Forestry Transition Committee will adopt rules for arbitration of disputes referred to in paragraph 38 of the Forest Resources Chapter.
65. The rules referred to in section 64 will provide that, unless the members of the Forestry Transition Committee otherwise agree, any arbitration will be resolved within 45 days.

ANNUAL REPORTING

66. British Columbia will, for each year of the transition period, provide to the Nisga'a Nation a summary of compliance and enforcement activities on Nisga'a Lands.
67. British Columbia will, on a quarterly basis, provide to the Nisga'a Nation a summary of timber marking and scale returns on Nisga'a Lands.

SAME ECONOMIC POSITION

68. British Columbia will pay to the Nisga'a Nation an amount for each cubic metre of timber harvested by a holder of a licence during the transition period.
69. The amount referred to in section 68 will be:
- a. \$6 per cubic metre; or
 - b. if either billed stumpage or industry performance exceeds \$6 per cubic metre:
 - i. billed stumpage determined in accordance with the Ministry of Forests Interior Appraisal Manual, and
 - ii. industry performance up to a maximum of \$10 per cubic metre, determined as the value per cubic metre of the timber as at the date of scaling on the Vancouver Log Market, less the appraised operating costs per cubic metre for that volume.
70. British Columbia and the Nisga'a Nation will determine a conversion factor for estimating the Vancouver Log Market value of timber harvested on Nisga'a Lands by species and grade.
71. The operating costs referred to in subsection 69(b)(ii) will be the costs associated with each timber mark on Nisga'a Lands as determined in accordance with the Ministry of Forests Interior Appraisal Manual, and will include the following:
- a. development costs;
 - b. harvesting costs;
 - c. transportation costs, including any barging cost adjustment;
 - d. administration costs;
 - e. post-logging treatment costs;
 - f. silviculture costs; and
 - g. stumpage costs.

72. The amounts referred to in subsections 69(a) and (b)(ii) will be adjusted annually for inflation using the Canada Final Domestic Demand Implicit Price Index, as agreed to by the Nisga'a Nation and British Columbia, commencing on the second anniversary of the effective date.
73. Every three months, British Columbia will pay to the Nisga'a Nation the amount referred to in subsection 69(a).
74. In addition to the payment referred to in section 73, British Columbia will pay to the Nisga'a Nation, on a semi-annual basis unless otherwise agreed to by British Columbia and the Nisga'a Nation, an amount equal to the difference between the amount calculated under subsection 69(b) and the amount that was paid under section 73.
75. British Columbia will provide the Nisga'a Nation with quarterly reports on the volume of timber harvested from Nisga'a Lands by timber mark, specifying:
 - a. species and grade;
 - b. scale date; and
 - c. billed stumpage.
76. British Columbia will provide the Nisga'a Nation with a report on operating costs by timber mark at the same frequency as specified in section 74.
77. British Columbia will pay the Nisga'a Nation any amount recovered from a holder of a licence for having negligently caused or contributed to a forest fire on Nisga'a Lands during the transition period.
78. The amount referred to in section 77 will be net of any reasonable costs incurred by British Columbia in controlling or suppressing a forest fire on Nisga'a Lands.