

**RATIONALE FOR MY  
DECISION**

ON

**606546 BC Ltd.'s**

**2002 to 2005 FOREST  
DEVELOPMENT  
PLAN (FDP)**

**Amendment # 5**

## 1. My Legal Authority as a Statutory Decision Maker

Section 41(1) of the *Forest Practices Code of British Columbia Act (FPC)* provides that a district manager *MUST APPROVE* an operational plan if:

- a) *the plan or amendment was prepared and submitted in accordance with the FPC, the regulations and the standards, and*
- b) *the district manager is satisfied that the plan or amendment will adequately manage and conserve the **forest resources** [emphasis added] of the area to which it applies.*

**Forest resources** are defined in the *FPC* as “resources and values associated with forests and range including, without limitation, timber, water, wildlife, fisheries, recreation, botanical forest products, forage and biological diversity”.

The discretion granted to me by section 41(1)(b) is not unlimited. Statutory discretion must be exercised within the boundaries set out in the legislation and by the common law principles of administrative fairness, i.e., I cannot impose additional content requirements on licensees that are outside of the legal requirements.

I considered the **statutory** [emphasis added] limit of my discretion by applying the rules of statutory interpretation. This involves a consideration of the context within which the statutory power is granted. A fundamental part of the context I considered is the **PREAMBLE to the CODE**, which states:

WHEREAS British Columbians desire sustainable use of the forests they hold in trust for future generations; AND WHEREAS sustainable use includes

- a) managing forests to meet present needs without compromising the needs of future generations,
- b) providing stewardship of forests based on an ethic of respect for the land,
- c) balancing economic, productive, spiritual, ecological and recreational values of forests to meet the economic, social and cultural needs of peoples and communities, including First Nations,
- d) conserving biological diversity, soil, water, fish, wildlife, scenic diversity and other forest resources, and
- e) restoring damaged ecologies;

As the *FPC* and the *Forest Act* comprise part of the Province’s statutory forest management regime, they set the context within which statutory interpretation should be determined. For example, the contractual rights of licensees, as reflected in the terms of their *Forest Act* tenure agreements, form part of the context for decision making. This is not to say that the terms of the tenure agreement can restrict my discretion with respect to evaluating whether or not a

proposed plan satisfies the “adequately manage and conserve test”. However, the existence of those contractual rights is one factor to be considered as part of balancing the economic, social and environmental values. Also to be considered is the *Ministry of Forests Act*, which sets out the ministry’s mandate.

The **common law** rules of administrative fairness, on the other hand, limit the discretion of statutory decision makers by requiring that decisions on whether to approve or not approve a proposed operational plan must be made in a manner that is fair, reasonable, and legally defensible. It is not defensible for statutory decision makers to base statutory decisions on irrelevant considerations, or to exceed their statutory authority. For example, the courts have recently confirmed that statutory decision makers must avoid mixing political issues with their duties as statutory decision makers, and that broad land use decisions should be made by cabinet, unless the power to make them is expressly or by necessary implication, granted to the statutory decision maker in the enabling statute.

Administrative fairness also requires that decisions must not be made arbitrarily. Having an adequate evidentiary basis is a fundamental test for the reasonableness of any statutory decision. Unlike determinations made by the courts with respect to criminal matters, which have to be proved “beyond a reasonable doubt”, the standard of proof for FDP approval is the “balance of probabilities”. *This means that prior to approving a proposed plan, I must be satisfied that it is more likely than not that the plan satisfies both the*

*41(1)(a) and 41(1)(b) tests that were explained previously.* The consequence is that prior to not approving a proposed plan, I must be satisfied that it is more likely than not that the plan fails to satisfy one or both of those tests. An adequate evidentiary basis, therefore, is one that has enough weight to tip the balance one way or the other – either toward plan approval or plan non-approval. In weighing the evidence, the statutory decision maker must be unbiased, and must not start with a preconceived presumption either against or in favour of approval of the plan. I must balance what may appear to be conflicting statutory requirements. I did this by weighing the evidence and information related to mandatory content, along with information concerning “other” forest resources.

**MINISTRY OF FORESTS  
BRITISH COLUMBIA FOREST SERVICE  
Rationale for Decision on Proposed Amendment #5 to  
FL A74688 2002 – 2005 FDP**

File: 19500-55/A74688 2002 - 2006 FDP

**I ISSUE:**

Review of the 606546 BC Ltd. proposed amendment #5 to the approved 2002 – 2005 Forest Development Plan (FDP) under Forest Licence A74688.

**II BACKGROUND:**

On April 13, 2006 a proposed amendment #5 to the approved 2002 – 2005 Forest Development Plan, under FL A74688, was received from 606546 BC Ltd. The plan was advertised and available for public review and comment from April 13, 2006 to June 16, 2006.

The proposal adds 9 cutblocks (74.5 ha) and 6 sections of road (6.8 km total), in the vicinity of Deroche, to the approved FDP.

**III DISCUSSION:**

**Advertising:**

As required under Section 25 of the Operational and Site Planning Regulation (OSPR), the proposed amendment was advertised to the general public in a newspaper stating that the forest development plan was available for public review and comment (for a minimum 60 day period) from April 13, 2006 to June 16, 2006. The licensee submitted copies of the advertisement as it appeared in The Mission Record on April 13, and 20, 2006.

**Summary of Changes to the FDP:**

As required under Section 30 of the OSPR, after the review and comment period, the proponent submitted further information on September 22, 2006 including a copy of written comments received, responses to comments and a summary of revisions made to the proposed plan.

Referencing section 41(2) of the *Forest Practices Code of British Columbia Act*, I sent a letter to the licensee on October 23, 2006 requesting additional information regarding the visual impact assessment work for this amendment. As well, I asked for information explaining how the licensee intends to address the recommendations in the regional Research Geomorphologist/Hydrologist's overview assessment of the licensee's

proposed development related impacts. I also asked for clarification as to whether the Leq'a:mel First Nation's concerns with cultural sites in the area of the plan have been resolved.

The licensee responded to this request with a submission on December 14, 2006. Please see section "District Manager Request for Additional Information" for details on how the licensee responded to these requests.

On January 18, 2006 I sent an email to the licensee advising of outstanding concerns with the Visual Assessment Package submission and offered the licensee a final opportunity to be heard prior to my determination for the amendment. I met with the licensee on January 25, 2006 and additional information to address visual concerns was presented at that time. More detail is available in the section "District Manager Request for Additional Information".

### **Referrals:**

The licensee distributed copies of the proposed amendment to:

Ministry of Environment,  
Fraser Valley Regional District,  
Sto:Lo Nation,  
Seabird Island Indian Band  
Leq'a:mel First Nation,  
Sto:lo Tribal Council  
Scowlitz First Nation  
Chehalis Indian Band  
Skawahlook First Nation  
Hatzic Valley, McConnell Creek Ratepayers Association,  
and Northwest Hardwoods.

### **Summary of First Nations Comments:**

Letter #1 was sent to the Sto:lo Tribal Council, the Sto:lo Nation, the Seabird Island Indian Band, the Leq'a:mel First Nation, Chehalis Indian Band, Scowlitz First Nation and the Skawahlook First Nation by the Ministry of Forests (MOF) initiating consultation on April 21, 2006. A second letter was sent to these same First Nations on May 24, 2006 as a reminder of the consultation period for this amendment and to offer an opportunity to meet and review the proposed plan. No response was received from the Scowlitz First Nation, the Sto:Lo Nation or the Skawahlook First Nation. The licensee attached copies of their correspondence with First Nations in their final plan submission. Comments on the proposal were received from the following First Nations:

#### **Chehalis Indian Band**

- The Chehalis Indian Band stated that they have no concerns with the amendment

#### **Sto:lo Tribal Council**

- The Sto:lo Tribal Council said that they would like to spend time reviewing this and other development proposals, but are hampered from doing this because they do not have the budget to bring in people from the communities or to do archaeological assessments

or other studies. The MoFR responded by advising the First Nation that one of the many purposes of the \$100 Million New Relationship Fund is to provide First Nations with tools, training and skills for land and resource management including capacity for consultation.

### **Leq'a:mel First Nation**

- The Leq'a:mel First Nation identified concerns with the sensitivity of the Pye Creek, Deroche Creek and Norrish Creek watershed areas and associated drinking water quality. They also expressed concerns with aesthetic impairments as well as impacts to slope stability and wildlife habitat in areas that lie to the north and west of their community. As well, they referenced a May 17, 2006 meeting and a discussion about cultural sites or sites that may have been used by community members in cultural practices and that they had identified them on an attached map (note that no map was attached to the copy of the letter received by the MoFR).

The licensee advised that the proposed harvesting is in the Pye Creek area and also west of the Deroche Creek Community Watershed and that there are no logging activities proposed in the Deroche Creek or Norrish Creek watersheds. The licensee explained that all harvesting and road construction activities are governed by the Forest Practices Code and that qualified professionals will carry out all assessments and any associated recommendations will be incorporated into the plans for the nine proposed blocks. The licensee advised that they did not receive a copy of the map referenced in the Leq'a:mel letter nor were they party to the meeting referenced in this same letter.

The licensee followed up further by sending a second letter to Chief Alice Thompson (attached in licensee documentation) asking for a response regarding any outstanding concerns. The licensee advised that they received no response to this letter.

The MoFR followed up by contacting the Leq'a:mel First Nation (Chief Alice Thompson) about concerns with cultural sites and cultural practices in the area of the plan. A copy of the map referenced in the May 24, 2006 Leq'a:mel letter was reviewed by the MoFR and it was determined that the cultural sites identified are outside of the area under the plan for the proposed amendment. Chief Alice Thompson was advised of this finding and offered an opportunity to meet with MoFR staff to discuss further (a follow up meeting was never requested).

### **Seabird Island Indian Band**

- The Seabird Island Indian Band sent a letter stating that in general they don't have any concerns with the proposed activities. However, they did ask for information concerning planned silviculture treatments, notification of when road building and harvesting would be taking place in blocks containing cedar as well as notification of any archaeological information that may be revealed during any phase of the licensee's operations. They asked that this information be provided as details become known.

The licensee followed up with a letter to the Seabird Island Indian Band (dated December 8, 2006) advising that they will submit notification of road construction and harvesting when they have firm dates for these activities.

*I am satisfied that the First Nations consultation carried out for this FDP amendment is adequate and consistent with the Ministry of Forests' Aboriginal Rights and Title Policy and Consultation Guidelines.*

## **Summary of Public and Other Agency Comments:**

### **Public Comments**

The licensee submitted copies of letters from 11 local residents who commented on the proposed amendment. The public comments are collated and summarized below.

- Many residents in the area get their drinking water supply from streams flowing from the mountains in the Deroche area and so are concerned with potential logging impacts to water quantity and quality.
- The mouth of Deroche Creek was identified as an alluvial fan at high risk to erosion, run-off and flooding associated with logging activities. Mud slides, debris slides and general terrain stability concerns were also identified as a concern associated with logging in this area.
- The safety aspect associated with logging trucks travelling on local roads (ie children playing in area) was cited in specific reference to Brooks Road. Concern was also expressed with the bridge on Brooks Road and its inability to withstand heavy logging trucks.
- Concern was raised over noise associated with helicopters, logging trucks and logging operations in general, air quality concerns from the burning of logging related slash and potential fire hazards related to increased public access from logging road developments.
- Several individuals were concerned with the possible displacement of wildlife, damage to fish bearing streams and impacts on visual quality.
- One resident advised that their property is immediately adjacent to the harvest area and requested a buffer around their property.

The licensee responded to each of the public letters with a form letter advising that the logging operations proposed are within the Timber Harvesting Land Base of the Provincial Forests of British Columbia and are subject to the Forest Practices Code of British Columbia Act and the Forest and Range Practices Act. They further explained that this legislation includes requirements to manage for water quality, fish habitat, wildlife, recreational values, visual impacts, cultural heritage resources and other non-timber resources.

The licensee stated that “All blocks will have a complete package of assessments for terrain, visuals, windthrow, cultural heritage, etc., and these assessments will be undertaken by Qualified Professionals with their recommendations incorporated into the timber harvesting and road construction plans for the blocks.”

The licensee acknowledged that some of the roads within the Deroche area were not built to the highest standards and that when operating on these roads the licensee will be governed by the standards set by the Ministry of Transport.

### **Fraser Valley Regional District (FVRD)**

- In a letter to the licensee dated May 9, 2006, the FVRD asked that Terrain Stability Field Assessments be carried out in areas exceeding 60% gradient to provide assurance that harvesting activities will not negatively impact slope stability, sediment transport, and risk to downstream properties and infrastructure in the Barnes Creek and Pye Creek watersheds. They requested that property owners located within Pye Creek and Barnes Creek alluvial fans be notified and provided an opportunity to comment on the proposal. They asked that the boundaries of the Deroche Creek Community Watershed be verified on the ground and flagged to ensure that any activities in association with harvesting and road construction avoid encroachment within the community watershed boundaries. They further asked that water license holders in the Pye Creek and Barnes Creek drainages be notified prior to any activities commencing to ensure the safety of water supply and water quality.

- The FVRD sent a second letter to the licensee dated May 29, 2006 referencing a public meeting that was organized by Deroche residents on May 24, 2006 to review FDP proposals in the Deroche area. The FVRD advised that residents expressed the following concerns:

- Residents were not adequately notified of the two proposals as the majority of residents do not read the local papers and only select individuals were notified by mail.
- Residents who hold water licenses or obtain their domestic water from the Pye Creek and Barnes Creek drainages are concerned with impacts to water quality and water availability.
- Slope stability is a concern for many residents and it was noted that due to alluvial fan hazards, many residents have covenants and other restraints to development on their properties while proposed forestry operations are in close proximity to residential areas and appear to not be subject to the same constraints. Slope instability is already evident in the upper watershed of Pye Creek.
- Helicopter logging and air traffic has already caused disturbance to the community and livestock and there is a concern over increased air and road traffic in the area. There are already concerns with the safety of Brooks Road which has been indicated as a possible access point for proposals by 606546 BC Ltd. Logging roads may also increase illegal camping and may increase forest fire risk.
- Concern was expressed over potential visual impacts and associated impacts to property values. Mention was made of several local sites that have not greened up following harvesting activities.

The licensee responded to both FVRD letters in a letter dated September 18, 2006. The licensee advised that amendment #5 was advertised in the local paper on April 13, 20 and



27, 2006 and a notice was distributed by Canada Post to 614 rural route addresses as well as 165 P.O. Box addresses in Deroche and 187 P.O. Box addresses at Dewdney. This was all of the local residents listed by Canada Post and not just selected individuals.

The licensee explained that timber harvesting and road construction activities on the Timber Harvesting Land Base of the Provincial Forests of British Columbia are subject to the provisions of the Forest Practices Code of British Columbia Act and the new Forest and Range Practices Act. These Acts include requirements to manage for water quality, fish habitat, wildlife, recreation values, visual impacts, cultural heritage and non-timber resources. All blocks will have a complete package of assessments for visuals, terrain, water, windthrow and cultural heritage indicators. These assessments will be undertaken by qualified professionals with their recommendations incorporated into the timber harvesting and road construction plans for the blocks.

The licensee further explained that as per the Water Act, Water Regulation section 43(2) if persons who are lawfully diverting or using water under the Water Act may be adversely affected, a person proposing to make changes in and about a stream must give 3 days notice to those persons prior to commencing to make the changes.

#### **Summary of Ministry of Transportation (MOT) Comments**

- The MOT explained that Brooks road is steep with sharp curves and the road base is not to standard. In addition the surface has recently been chip sealed. Although the road base may be weak, the road is expected to stand up to average traffic use for the long term. Heavy truck loads may damage the chip seal surface and compromise the road structure strength especially in wet weather or freeze/thaw cycles. The MOT advised that if it becomes apparent that road damage may occur, a 70% or 50% load restriction may be applied.

#### **Summary of Ministry of Forests and Range (MOFR) Comments:**

- The Ministry of Forests and Range (MOFR) advised the licensee that the amendment proposes a significant amount of development within a highly visible corridor and suggested that detailed information should be provided in the final plan illustrating how the visual resources would be adequately managed and conserved under the proposal.

The licensee responded by stating that the proposed harvesting and road construction will have low visual impact on the area and the Existing Visual Condition (EVC) does not exceed the rVQC and therefore as per the Standard Operating Procedure (SOP) a Visual Assessment Package will be completed on the final engineering for all cutblocks and roads and submitted to government for approval before the road and cutting permit applications.

- The MoFR suggested that the licensee undertake further public consultation with local residents who may be affected by the proposal.

The licensee advised that further consultation had taken place with notices of the amendment distributed on April 27, 2006 by Canada Post to 614 Rural Route addresses and 165 P.O. Box addresses in Deroche and 187 P.O. Box addresses in Dewdney.

- The MoFR explained that a Hatzic Landscape Unit Plan has not been approved and therefore no OGMA's have been legally identified for this LU, but ILMB may have some information regarding proposed OGMA's for the Hatzic LU. ILMB later informed the MoFR that no information is available concerning draft OGMA's in the Hatzic LU. They also stated their expectation that the draft FDP under review would likely have been brought forward by the licensee so that there should be few conflicts with future OGMA proposals.

The licensee explained that they met with ILMB staff regarding potential OGMA's in the Hatzic Landscape Unit and they indicated that they pointed out to ILMB staff that there are large stands of mature timber in the Deroche Community Watershed, adjacent to the area under the plan, that could be designated as OGMA's.

- The MoFR requested that the licensee provide a rationale to explain why this proposal is entirely outside 606546 BC Ltd.'s approved chart area and within another licensee's chart area.

The licensee responded by stating that this amendment is for harvesting by the Scowlitz Nation as part of their Forest and Range Agreement for a 5 year non-replaceable Forest Licence and is within the Traditional Territory of the Scowlitz First Nation.

### **District Manager Request for Additional Information**

- On October 23, 2006 I sent a letter to the licensee under section 41(2) of the *Forest Practices Code of British Columbia Act* requesting additional information in considering the plan for approval. I asked that the licensee provide information demonstrating that the proposal meets the basic rVQC definition and exhibits elements of good design as detailed in the Chilliwack Forest District Standard Operating Procedure for Visual Resource Management. I also asked that the licensee review the overview assessment of development impacts related to amendment #5, prepared by the regional Research Geomorphologist/Hydrologist, and explain how recommendations in this report will be addressed by the licensee. Finally, I asked that the licensee explain if the Leq'a:mel First Nation's concern with "cultural sites" was resolved (see First Nations referrals section for how this issue was addressed).

The licensee committed to following the recommendations in the regional Geomorphologist/Hydrologist's report. As indicated under the First Nations consultation section, concerns that the Leq'a:mel First Nation had with cultural sites was determined to be outside the area under the plan for this amendment.

The licensee responded to the visual management issues by submitting a Visual Assessment Package (VAP). There were still outstanding issues with this submission that made it difficult for me to determine whether the proposal would meet the test of section 41(1)(b) of the *Forest Practices Code of British Columbia Act* and adequately manage and conserve the visual forest resources of the area to which it applies.

- On January 18, 2007 I sent an email to the licensee offering a final opportunity to be heard prior to my determination for FDP amendment #5. I explained that the outstanding items included a lack of measurable commitments by the licensee, percent alteration

calculations based on Visual Sensitivity Unit areas instead of the subcomponent landforms and one existing alteration that was missing in the calculations.

I met with the licensee in an opportunity to be heard on January 25, 2007. At this meeting, the licensee presented a revised Visual Assessment Package that adequately addressed the landform issue as well as the missing alterations. A signed and sealed cover letter was also presented in which the licensee committed to the recommendations in the Visual Assessment Package.


**Summary of Ministry of Environment (MOE) Comments:**

The MOE did not comment on this amendment.

**IV Conclusions**

This FDP amendment was submitted in accordance with the Forest Practices Code of BC Act and associated regulations fulfilling the requirements of section 41(1)(a) of the Act. The supporting information provided by the licensee also satisfies section 41(1) (b) of the FPC Act in that it adequately manages and conserves the forest resources to which it applies.

Therefore, **it is my determination that this FDP Amendment is approved.**

  
\_\_\_\_\_ Jan 26/07  
Date

Kerry Grozier  
District Manager  
Chilliwack Forest District