

# **REVIEW OF WEYERHAEUSER'S STILLWATER TIMBERLANDS PILOT PROJECT**

November 3, 2000

The following review of the Stillwater Timberlands Pilot Project was prepared on behalf of the BC Environmental Network Forest Caucus by Jessica Clogg; staff counsel at West Coast Environmental Law and Laurel Brewster; forestry advisor at the Sierra Legal Defence Fund.

Our review focused primarily on assessing Draft 7 of the Stillwater Pilot Project Regulation for compliance with Part 10.1 of the Forest Practices Code. It should be noted that we have not had the opportunity to review the Forest Stewardship Zone map and cannot comment on whether this zonation will adequately manage and conserve the forest resources of the area.

At the present time, in our opinion, the Pilot Project does not meet Part 10.1 of the Forest Practices Code. The following concerns were raised during a meeting with Weyerhaeuser staff on November 2, 2000.

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## **ISSUES RELATED TO PUBLIC OVERSIGHT**

In our opinion, as it is currently drafted, the Pilot Project Regulation (PPR) does not meet or exceed the Forest Practices Code opportunities for public review and comment.

- The public has only one legally required opportunity to raise concerns and this is at the very broad landscape level. This is extremely problematic.
- It appears that if concerns are not raised during the public review of the Forest Stewardship Plan (FSP) and are not marked as “areas of concern” there is no legal requirement to record them or to forward them to the District Manager (DM) at the cutting permit stage (refer to sections 20 and 40 of the PPR draft 7).
- Comments at the FSP stage would have to cover a very large area, making it almost impossible for the public to identify all stand level concerns. There is no cutblock and road location information to allow people to provide targeted and specific comments. This format puts the onus on the public to anticipate any possible areas of harvesting within the plan area. It also reduces the ability for members of the public to focus their comments on specific areas of concern and could result in time spent on comments being wasted if the licensee never proposes logging there.

- Although the idea of the operational information map is an excellent one, without timely provision of the information, and a legal requirement to address input received through this mechanism, it does not provide an equivalent opportunity to the present review of FDPs which give information about proposed cutblocks and roads.

We suggest the following as potential solutions:

- All information discussed in the Detailed Proposal text relating to the “Operational Information Map” should be included in section 37 of the PPR, which lists all documents that the licensee will make available for public viewing
- Section 38, which requires the licensee to notify the public when these documents are available for viewing, should be amended so that this information is available to the public at least 60 days before a cutting permit is applied for. Cutblock level comments received during this period should be forwarded to the District Manager for consideration prior to his or her approval of a cutting permit.
- Section 20(a)(iii) of the draft PPR currently requires that when applying for a cutting permit, the licensee include all comments received during the FSP review period that are relevant to the area to be harvested; this section should be modified to include all comments received at any point during the term of the FSP.
- Public review of FSP amendments clearly does not meet or beat the Forest Practices Code. Sections 13, 33 and 42 regarding public review of amendments reduce the Forest Practices Code norm of a mandatory 60 day review and comment on operational plan amendments to a discretionary requirement (section 42 requires that amendments be made available for public review only if the DM or DEO require). In cases where amendments are made available for public review it is only for a thirty day period (refer to section 33 of draft 7).
- The FSP is approved for a five-year term with no subsequent annual review. Approval may be extended for up to 30 months, in contrast with the current provisions of the Forest Practices Code Act (section 19) which limit the extension of FDP approvals to 12 months. There is currently no legal requirement to amend the FSP to take into account new information or comments subsequently received.

## **ISSUES RELATED TO GOVERNMENT APPROVAL**

- It is difficult, if not impossible, for the public or Cabinet to assess if the requirement in section 221.1 of the Code (that the pilot will adequately manage and conserve forest resources) without knowing the specific measurables related to the Forest Stewardship Zone objectives. The current format relegates this decision down to the District Manager and Designated Environment Official (who are responsible for approval of the FSP). This is not the intent of section 221.1 of the Code. It allows the licensee to be exempt from specific provisions of the Code without requiring them to specify any measurable indicators of performance until later in the planning process.

- The PPR must be reviewed and clarified to ensure that exemptions from specific provisions of the Forest Practices Code are not overly broad. For example, Schedule 1 of the PPR currently exempts the licensee from section 41 of the Forest Practices Code Act (this section outlines, among other things, the criteria for District Manager approval of an operational plan) and replaces it with section 47 of the PPR. While section 47 contains the same approval criteria as section 41(1) of the Code, it does not contain equivalent language to several other provisions of section 41.  
For example, section 41(2) of the Code allows the DM to request additional information prior to approval of a plan; the PPR does not contain an equivalent provision. Sections 41(8), 41(9) and 41(10) of the Code also authorize the DM to designate a community watershed, while section 47 of the PPR does not provide equivalent authority. It is our understanding that this is not the intent of the PPR and that it will be modified for clarification.
- Section 21 of the PPR contains a list of criteria for approval of a cutting permit. This section should incorporate an “adequately manage and conserve” requirement equivalent to section 41 of the Code, which currently requires such an assessment at the cutblock level. Although Weyerhaeuser’s intent is that monitoring and auditing will replace government approval at the stand level, both of these assessments are “after the fact” and , in our opinion, do not provide equivalent protection for forest values.

## **ISSUES RELATED TO ASSESSMENTS AT THE FSP STAGE**

- Weyerhaeuser is commended for making assessments available for review under section 32(1) of the PPR .
- Section 15 of the Operational Planning Regulation currently requires that prior to public review and DM approval of an FDP, a riparian assessment be completed to identify the riparian class of streams, wetlands and lakes located in areas of joint approval. As the FSP applies to an area of joint approval, this assessment must be completed at the FSP stage, not at the cutting permit stage as is currently proposed in the PPR. At a minimum, this assessment must be completed in all community watersheds within the plan area prior to public review and DM approval.

## **ISSUES RELATED TO EQUIVALENT PROTECTION FOR FOREST VALUES AND FSP “MEASURABLE STRATEGIES AND TARGETS”**

- The PPR should clarify that the forest stewardship zones and associated map will be attached as part of the regulation. It is our understanding that the zones will be established and mapped under Part 2 of the PPR.

- To make a results-based approach work, it is critical that the licensee complete appropriate inventories and collect sufficient baseline data against which to measure whether values are maintained and the objectives of forest stewardship zones are met. The PPR should contain a provision requiring this.
- We strongly encourage Weyerhaeuser to provide a written rationale to demonstrate clearly how selected strategies and targets will achieve the broad objectives set out for each Forest Stewardship Zone. It is our understanding that Weyerhaeuser supports this suggestion.
- Modify the PPR to clarify that environmental standards, including specific prohibitions and constraints in the Forest Practices Code, remain in effect and that the provisions in sections 53 and 54 of the PPR complement, rather than replace outright, current Forest Practices Code standards. For example, clarify that riparian standards in the Forest Practices Code will continue to apply to the pilot area.
- The PPR should be reviewed to ensure that the licensee is not exempt from specific environmental standards in the Forest Practices Code. For example, the Timber Harvesting Practices Regulation currently prohibits cross-stream yarding (section 11(1)(b)), whereas the PPR currently requires only that “strategies for yarding, according to stream class” be established (section 53(2)(b)(ii) of PPR draft 7)

## **ISSUES RELATED TO STAND MANAGEMENT IN FREE GROWING AREAS**

- Section 23 of the PPR should be modified to clarify that although they are exempt from a requirement to submit stand management prescriptions, the licensee will still be required to comply with the Vancouver Forest Region stocking standards. This section should also clarify that a cutting permit will be required for stand management activities such as commercial thinning.

## **ISSUES RELATED TO AUDITING AND THE ROLE OF THE FOREST PRACTICES BOARD**

- As currently drafted, sections 75 and 77 of the PPR appear to limit the scope of Forest Practices Board audits and investigations to a) determining compliance with the pilot regulation and b) reviewing the appropriateness of government enforcement. It is our understanding, based on conversations with Weyerhaeuser staff, that the intent of the PPR is not to limit the powers of the Board, and that this section will be re-worded to clarify this.
- Similarly, the current wording of section 82 purports to limit government’s ability to levy administrative penalties or prosecute by inserting an additional layer of analysis related to the remediation or mitigation plan. Again, it is our understanding that this is not the intent of the PPR and that it will be re-worded for clarification.

# **HIGHER LEVEL PLANS AND THE REGULATION FOR BALANCING COMPETING INTERESTS**

## **ISSUES RELATED TO LANDSCAPE UNIT PLANNING**

- In order to be consistent with section 221.1(5) of the Forest Practices Code, the PPR must include one of the following provisions related to landscape unit objectives (note that our preference is for option 1 or 2):
  1. 1. A requirement that landscape unit objectives will be legally established prior to implementation of the pilot or, at a minimum, prior to approval of the FSP;
  2. 2. A requirement to complete draft landscape unit objectives prior to approval of the FSP and a commitment to comply with or exceed these draft objectives; or,
  3. 3. A requirement that Weyerhaeuser will amend the FSP to reflect draft landscape unit objectives where the objectives ecologically exceed existing strategies and targets.
- 4. Section 3 of the PPR should be modified to include a provision that when Old Growth Management Areas (OGMAs) are legally established (under Landscape Unit Planning) the FSP will be amended to incorporate them.
- 5. Section 51 of the PPR should be re-worded to clarify that the FSP must comply with, or exceed, Landscape Unit objectives, not just incorporate them.
- 6. The PPR needs to make it explicit that Weyerhaeuser's zone specific objectives may impact timber supply. The PPR should also specify that these impacts will be considered by both the licensee and the Chief Forester in AAC determinations. It is our understanding that approval of the PPR will be treated in the same fashion as a Higher Level Plan in terms of timber supply impacts; i.e. the PPR will permit the licensee to exceed the six percent cap on timber supply impacts.

We strongly encourage Weyerhaeuser to reflect the pilot project in their current Management Plan and AAC determination in order to avoid a situation where a legally established AAC conflicts with other legally established strategies and targets.

## **ISSUES RELATED TO RESOURCE MANAGEMENT ZONE OBJECTIVES**

The initial intent of Part 10.1 of the Code was to establish pilot projects in areas where strategic level planning through LRMPs or CORE had occurred and the resource management zones and objectives contained in them had been designated as higher level plans.

The development of the regulation for balancing competing values and interests falls short of the opportunity that would have been provided to participants in a strategic level planning process in the following ways:

1. There was no opportunity to negotiate resource management zone objectives to address landscape level requirements of “higher level plan” species such as grizzly bear which could impact on timber supply beyond the 1% cap placed on implementation of the Identified Wildlife Management Strategy.
2. There was no opportunity to negotiate resource management zone objectives that dealt with values associated with full biodiversity planning (e.g. forest ecosystem networks, landscape connectivity, seral stage distribution etc.), as opposed to landscape unit planning constrained by present MOF policy (e.g. limited to partial biodiversity planning, which requires only wildlife tree retention and establishment of old growth management areas.)
3. There was no opportunity to negotiate resource management zone objectives which result in greater impacts to timber supply than the caps established through Chief Forester direction regarding the implementation of landscape unit planning.
4. There was no opportunity to negotiate fully protected areas, usually approximately 12% of a planning area.