

Cabinet Decision Document

“OPEN CABINET DOCUMENT”

MINISTER: Honourable Stan Hagen, Minister of Sustainable Resource Management

DATE: May 22, 2002

TITLE:

Establishing Central Coast Protection Areas Under the *Environment and Land Use Act*

ISSUE:

The fall 2001 Cabinet decision on the Central Coast Land and Resource Management Plan (LRMP) approved in principle the creation of protection areas that maintain environmental and cultural values but allow some forms of economic development. Twenty Goal 1 candidate protection areas (CPA) have been ratified by the Central Coast LRMP Completion Table, and Orders in Council are required to legally establish these areas. Legally creating the protected areas demonstrates the government's commitment to the Framework Agreement reached one year ago and maintains the suspension of the international market campaign against coast forest products.

RECOMMENDATION:

Approve the *Environment and Land Use Act* Orders (Appendix 1) to establish the 20 Central Coast Protection Areas (Appendix 2).

BACKGROUND:

The Central Coast LRMP area covers approximately 4.8 million hectares of foreshore and upland area on the west coast of British Columbia. The region is home to over 4,400 people, mostly First Nations, and includes the communities of Bella Bella, Shearwater, Ocean Falls, Klemtu, Bella Coola and Oweekeno. Over the past decade, the Central Coast has received an extraordinarily high level of international and domestic attention. Coastal communities have been harmed by ongoing land use disputes, market campaigns and resource industry adjustments.

The Central Coast LRMP process began in 1996. The first phase ended in April 2001, when interim agreements were reached between Provincial and local governments, First Nations, the forest industry and conservation groups. A critical component of the April 2001 agreements is

the suspension of the international market campaign by environmental groups against the products of forest companies operating in the Central and North Coasts of British Columbia.

In a November 15, 2001 announcement, Sustainable Resource Management Minister Stan Hagen committed that government would decide on legally establishing the CPAs, once the Completion Table had ratified the boundaries and First Nations had been consulted. The Completion Table has now ratified the boundaries of 20 of 21 of the large, Goal 1 CPAs (see map in Appendix 3 for location of protection areas). These represent the vast majority of the area proposed for protection. First Nations have been and continue to be consulted regarding these areas.

Cabinet has recently approved the strategy for workforce and contractor mitigation related to Central Coast land use agreements. On April 3, 2002, Minister Hagen announced the \$35 million Coast Sustainability Trust to "help workers, contractors, communities and companies whose interests have been negatively affected by land-use decisions".

Creation of the one remaining Goal 1 CPA and the smaller Goal 2 CPAs for which boundaries have yet to be ratified by the Completion Table can be deferred until after the Central Coast LRMP is complete and approved by Cabinet. At that time any changes to the original 20 protection area orders can be made to reflect changes in the final LRMP, including more detailed management direction coming from the table, and accommodation of First Nations interests.

Environment and Land Use Act Orders

The government's New Era commitment is to have land use planning revitalize sustainable economic development. Protection areas are a legal designation that will protect key environmental and cultural values while still allowing appropriate forms of economic development. In other land use plans, legal designation of protected areas does not occur until the planning process is complete. Due to the unique circumstances on the Central Coast, it is necessary to establish protection areas as an interim step. An interim designation is also needed to address ongoing concerns of First Nations respecting these protection areas. The *Environment and Land Use Act* is an appropriate tool to accomplish these goals.

The *Environment and Land Use Act* Orders do the following:

- legally establish the protection areas;
- define the boundary of each area and identify any lands within the boundary that are to be excluded from the order;
- designate the Minister of Sustainable Resource Management as the minister responsible for administering the orders;
- clarify the purpose of the protection areas;
- prohibit new dispositions and authorizations to work under existing dispositions for commercial forestry, the exploration for and development of mineral, oil and gas resources, and commercial hydroelectric development involving dams and reservoirs (see Appendix 4 for a description of the specific acts and sections of acts referred in the orders);
- allow new roads under existing authorities, subject to a process acceptable to the Minister to address impacts and mitigation and to any management agreements;
- authorize the Minister to enter into management agreements for these areas; and

- establish an expiry date for the orders.

In recognition of the high mineral potential in one area of the plan, the Upper Klinaklini Protection Area Order allows for mineral exploration and development activities. The Completion Table recommended that these activities be permitted for an initial period of 15 years at which time a decision on the future land use designation should be made with full consideration of all values.

It is proposed that the Orders expire on June 30, 2003. This provides a three month window after the scheduled March 31, 2003 completion date of the Central Coast Completion Table to conduct government to government negotiations to resolve outstanding concerns with First Nations, and for government to make final land use decisions.

Use of the *Environment and Land Use Act* to establish protection areas

All lawful activities not specifically prohibited within the protection areas will be allowed subject to appropriate law, policy and jurisprudence. Except for prohibited activities, management of the land and resources of the protection areas will continue to be provided by the full suite of resource agencies. The Minister of Sustainable Resource Management will be given the responsibility to ensure that the overall management of resources and human activity in the protection areas is consistent with the purpose of the protection areas as defined in the orders. Administrative mechanisms are being developed to ensure the Minister can fulfil this role.

Environment and Land Use Act protection areas fall within at least three of six protected area management categories established by the World Commission on Protected Areas/International Union for the Conservation of Nature.

The *Environment and Land Use Act* may be used to prohibit new dispositions under specific Acts or section of Acts, as well as prohibiting new authorizations under existing dispositions, but is not considered to be competent to prohibit actions already authorized under existing dispositions or to expropriate existing dispositions.

The Ministry of Forests Cabinet Submission called "Part 13 Designated Area for the Central Coast Land and Resource Management Plan" requests an Order-in-Council under section 169, Part 13 of the *Forest Act* to allow temporary deferral of forest development in protection areas and to provide a mechanism to temporarily reduce allowable annual cut levels for licensees.

In terms of the proposed "2 zone" system for the mining sector, *Environment and Land Use Act* protection areas will be "no mining" or "zone 1" areas.

If the orders are approved, a total of 441,256 hectares will be protected. If included with the current amount of protected areas in the system this would raise the total percentage of protected areas from 12.52% to 12.98% of the total provincial land base.

OPTIONS:

Option 1: Approve the *Environment and Land Use Act Orders* (Appendix 1) to establish the 20 Central Coast Protection Areas (Appendix 2).

Option 2: Defer approval of the *Environment and Land Use Act Orders* to establish the 20 Central Coast Protection Areas and consider the legal establishment of all Goal 1 and 2 protection areas as a complete package after the Central Coast LRMP is finalized and approved by Cabinet.

Recommended Option: Option 1

INTERNATIONAL CONSIDERATIONS:

The Central Coast of British Columbia has been the focus of international attention on the provincial government's land use policies and forest practices. The April 4, 2001 agreement was hailed as ground breaking and resulted in the suspension of an international campaign against BC coastal forest products. Legal designation of the protection areas, along with the Part 13 deferral of forest development in the protection areas and option areas, would confirm the province's commitment to balanced and sustainable land use planning. This decision may help forest licensees secure product certification and increase their access to overseas markets.

CONSULTATIONS:

Public and Local Government Consultation

A wide range of public stakeholders, including forest licensees and workers, as well as local governments have been engaged in the Central Coast LRMP process and have signalled their support for the agreements reached in April 2001, including the CPAs. The Completion Table has ratified the boundaries of the 20 Goal 1 CPAs and supports their timely legal establishment.

The communities of Port Hardy, Port McNeil, Campbell River, Bella Bella, Klemtu, Bella Coola and Oweekeno have already been impacted by the decisions of the forest companies to voluntarily defer operations in the CPAs. Forest workers and suppliers and others in ancillary supporting industries have felt the effects of these decisions. The April 3, 2002 announcement of the \$35 million Coast Sustainability Trust to mitigate those workers, contractors and communities impacted by the land use decisions is key to maintaining the support of these interests for the CPAs and the LRMP process.

First Nations Consultation

Most First Nations in the Central Coast LRMP planning area have been actively engaged in the process for several years. There are two First Nations that have been repeatedly invited but have chosen not to participate. The April 4, 2001 phase 1 land use agreements, including the CPAs, were made subject to further review by First Nations. Funds were provided to engaged First Nations to support their review of the CPAs. A formal written response was received from the

Kwakiutl groups; most Bands were opposed to the legal designation of most of the CPAs. This led to a high priority effort to consult further with First Nations with a view to determining if the Province could accommodate First Nations interests and address their concerns.

A letter was sent to every Central Coast First Nation from Minister Stan Hagen that commits the Province to ongoing consultations that could lead to amendments to the boundaries or other aspects of the *Environment and Land Use Act* orders to accommodate First Nations interests.

First Nations were provided an opportunity to comment on the draft wording of a sample *Environment and Land Use Act* Order, and amendments were made to reflect their input.

As a result of these changes and ongoing negotiations with the involved First Nations, subject to final consultations internal to the First Nations, it is believed that these First Nations are now prepared to support the time limited, legal designation of the protection areas.

Inter-Ministry Consultation

The Ministry of Sustainable Resource Management is the lead agency for the Central Coast LRMP. The Ministry of Forests, Treaty Negotiations Office, the Ministry of Water, Land and Air Protection and the Ministry of Energy and Mines have been planning participants. The Ministries of Forests and Water, Land and Air Protection and TNO support establishment of the Central Coast Protection Areas. The Ministry of Energy and Mines has been consulted and is aware of the implications of establishing the protection areas.

Communications Strategy

The Ministry of Sustainable Resource Management in co-operation with the Ministry of Forests is preparing a communications strategy for announcement on May 22, 2002. The two agencies will co-ordinate the release and implementation of the announcements.

RECOMMENDED DECISION:

Option 1: Approve the *Environment and Land Use Act* Orders (Appendix 1) to establish the 20 Central Coast Protection Areas (Appendix 2).

SIGNATURE:

Stanley B. Hagen
Minister of Sustainable Resource Management

Key Contact: David Johns, ADM, Resource Management Division, Ministry of Sustainable Resource Management, Phone 387-1526

Appendix 1. *Environment and Land Use Act* Orders for Central Coast Protection Areas

Appendix 2. Proposed *Environment and Land Use Act* Protection Area Names and Hectarage (all are Goal 1 areas for which the boundaries have been ratified by the Central Coast Completion Table).

Protection Area Name	Hectares
Ahnuhati Complex	50,669
Ape Lake	20,965
Broughton Extension	4,281
Cape Caution	10,567
Catto Creek	6,678
Clayton Falls	4,929
Dean River Estuary and Corridor	5,070
Gitga'at Chapple/Cornwall	22,854
Hanson Island	1,431
Hot Springs/No Name Creek	22,714
Khutze	34,479
Kitasoo Spirit Bear	90,402
Koeye	18,342
Lockhart Gordon	33,621
Pooley Island	6,587
Price/Swindle	14,008
Racey Inlet	6,228
Smokehouse	37,769
Upper Kimsquit	10,575
Upper Klinaklini	39,087
Total Protection Area Hectares	441,256

Appendix 3. Map of Central Coast Protection Areas and Option Areas

Appendix 4. Central Coast Protection Area Orders-in-Council - Section 3 Prohibitions

Section 3 of the Orders prohibits a number of activities. The table below provides an explanation of the scope of the prohibition for each of the Acts and sections listed in the Orders.

Act/Section	What is prohibited within the protection area
<i>Coal Act</i>	Issuance of a tenure or approval to explore for, develop, or produce coal.
<i>Forest Act</i> , section 13	Inviting, evaluating and approving or rejecting applications for forest licenses.
<i>Forest Act</i> , section 20	District or regional manager advertising for, evaluating and approving or rejecting applications for timber sales licenses.
<i>Forest Act</i> , section 21	Minister of Forest, or designate, advertising for, evaluating and approving or rejecting applications for timber sales licenses.
<i>Forest Act</i> , section 23	Direct offer of a timber sale license.
<i>Forest Act</i> , section 24	Replacement of a timber sale license for a “designated applicant”.
<i>Forest Act</i> , section 28	Issuance of a timber license.
<i>Forest Act</i> , section 33	Advertising for, evaluating, and approving applications for a tree farm license.
<i>Forest Act</i> , section 40	Advertising for, holding hearings, evaluating and approving or rejecting applications for pulpwood agreements
<i>Forest Act</i> , section 42	Replacement of an existing pulpwood agreement
<i>Forest Act</i> , section 43.5	Inviting applications for and entering into community forest pilot agreements
<i>Forest Act</i> , section 44	Advertising for, evaluating approving or rejecting applications for woodlot licenses and entering into woodlot license agreements.
<i>Forest Act</i> , section 46	Replacement of a woodlot license.
<i>Forest Act</i> , section 50	Enter into an agreement in the form of a Christmas tree permit
<i>Land Act</i> , section 11, fee simple dispositions	Fee simple dispositions (sales) of Crown land
<i>Mines Act</i>	All dispositions or authorizations under the Act, including exploration, and developing or constructing mines
<i>Mineral Tenure Act</i>	All dispositions or authorizations under the Act, including recording of mineral claims, or issuance of mining or placer leases
<i>Petroleum and Natural Gas Act</i>	All dispositions or authorizations under the Act, including geophysical exploration licenses, exploratory permits, petroleum and natural gas leases, and well and test hole authorizations.
<i>Water Act</i> , section 12, for power production purposes or for storage for power production purposes	Issuance of water licenses for power production purposes, except where the power is to be used for a residence or a commercial enterprise, such as a lodge, and does not require a storage license (i.e. run-of-stream projects).

Note: Allowable authorizations under the *Forest Act* are free use permits (used to authorize First Nations cultural harvesting and harvesting for firewood for volumes under 50m³), licenses to cut (used to authorize land clearing for Crown land tenure holders), and road building permits.