

# **Audit of Forest Planning and Practices and Forest Practices Code Enforcement on Nisga'a Lands**

**Report from the Chair**



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**FPB/ARC/48S**

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## Report from the Chair

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As part of the its 2001 audit program, the Forest Practices Board audited forest planning and practices on Nisga'a lands for compliance with the Forest Practices Code. The activities of West Fraser Timber, Sim Gan Corporation, Skeena Cellulose Inc. and the Ministry of Forests' Small Business Forest Enterprise Program were subject to the audit. The Board also audited the appropriateness of government's enforcement of forest practices legislation on Nisga'a lands.

These audits are required under Chapter 5 – Section 55 of the *Nisga'a Final Agreement* (the Agreement). The Agreement requires the Board to perform annual audits of compliance with and enforcement of forest practices legislation and forestry related requirements of the Agreement during a five-year transition period ending May 10, 2005. For more information on the Agreement see [www.ntc.bc.ca](http://www.ntc.bc.ca).

The Nisga'a lands are located in and around the Nass Valley, which is approximately 100 kilometres northwest of the city of Terrace. The compliance audit reports contain detailed descriptions of the operating areas for the auditees.

The Agreement and appendices provide direction regarding key forest resources on Nisga'a lands. Neither the Kalum Land and Resource Management Plan nor higher-level planning elements of the Code apply to activities on Nisga'a lands.

The following represents the Board Chair's commentary related to the audits, as allowed by section 189(3) of the *Forest Practices Code of British Columbia Act*. The purpose of the section 189 report is to comment on facts and issues relevant to stewardship of the land as generally represented in the Forest Practices Code's preamble. The full report contains the Board and auditor of record reports for the audits. The full report is available on the Board's Web site (<http://www.fpb.gov.bc.ca>), or by calling 1-800-994-5899. This is the Board's first of five annual audits of forest planning and practices and Code enforcement on Nisga'a lands.

The audits of forestry planning and practices on Nisga'a lands have relevance to the Nisga'a people and the general public in determining whether provincially authorized forestry operations on Nisga'a lands are being appropriately managed during the transition period. The audits will also determine whether obligations (e.g., free-growing obligations) will be met, in order to ensure that the lands are turned over from the Province to the Nisga'a people in a well-managed state. Under the Agreement, the Province must ensure that all outstanding obligations on Nisga'a lands are fulfilled.

### ***Whose activities on Nisga'a lands can the Board audit?***

Chapter 5 – Section 54 of the Agreement states that, “During the transition period, the powers of the Forest Practices Board set out in forest practices legislation in respect of complaints, audits and special reports apply on Nisga'a lands to holders of agreements under the Forest Act and to holders of licences.”

As of the effective date of the Agreement, Nisga'a lands were recognized as belonging to the Nisga'a Nation. However, during the transition period, provincially authorized forestry activities are permitted to continue. It is these activities that the Board has jurisdiction to audit. The Board does not have jurisdiction to audit forestry activities authorized by the Nisga'a Nation.

### ***How are the Board's audits on Nisga'a lands different from other Board audits?***

The compliance and enforcement audits on Nisga'a lands differ from other Board audits in a number of ways. Auditees for other Board audits are selected randomly, either as a separate licensee or as part of an audit of an area of land. All forest and range activity in the selected area or within the selected licence is audited. The Nisga'a lands and the licensees in that area were not selected randomly; the audit was required by the Agreement.

The audits on Nisga'a lands also differ from other Board audits in that compliance with both the requirements of the Agreement and forest practices legislation are audited. The Board's audits outside of Nisga'a lands have jurisdiction to audit only Code requirements.

The Board will be conducting annual audits of forest practices on Nisga'a lands during the transition period; these are the only annual audits that the Board conducts of the same auditees. The Board does not usually conduct annual audits of the same auditee due to the expense associated with the audits. Conducting annual audits will provide the Board with a unique opportunity to assess emerging issues, follow-up on issues identified in previous audits, and assess auditees' follow-up on Board recommendations.

### ***What requirements of the Agreement were not audited in 2001, and why?***

Chapter 5 – section 55 of the Agreement requires the Board to audit “forest practices legislation.” The Agreement defines forest practices legislation as the *Forest Practices Code of British Columbia Act*, the *Forest Act*, or any regulations under those Acts. The Board's 2001 audit focussed on compliance with and enforcement of forest practices requirements under the Code and the Agreement. *Forest Act* requirements were not audited for several reasons. For one reason, the Board has not previously had the jurisdiction to audit *Forest Act* requirements, and therefore has not audited to these requirements in the past.

Although the Agreement provides the Board with the necessary jurisdiction, on Nisga'a lands, to audit activities subject to the *Forest Act*, it is not anticipated that the Board will audit these requirements due to the low level of harvest activity and associated obligations on Nisga'a lands under the *Forest Act*. The Board also notes that there does not appear to be any value to the parties of the Agreement in the Board auditing *Forest Act* requirements. The Nisga'a Lisim's Government and the Province have indicated that they had not anticipated that the Board would audit *Forest Act* requirements; the position of the Government of Canada is unknown.

The Board did not audit compliance with district manager obligations (e.g., backlog not-satisfactorily stocked areas) as part of the 2001 audit. District manager obligations will be audited in future Board audits on Nisga'a lands.

### ***What were the results of the 2001 audits?***

The Board's 2001 compliance audits on Nisga'a lands determined that, in general, sound forest management was being practiced during the first year of the transition period. Some significant non-compliance findings were identified however, related to riparian management and road maintenance. The detailed findings of the compliance audits are contained in the auditor of record reports included in section II of this document.

The enforcement audit identified a number of weaknesses in the Kalum Forest District's compliance and enforcement program on Nisga'a lands. The Board notes that the district has taken steps to ensure that no significant environmental harm has occurred on Nisga'a lands, including assignment of experienced staff to conduct compliance and enforcement in the area. The detailed findings of the enforcement audit are contained in the auditor of record report included in section III of this document.

The auditors did identify one section of private road on Nisga'a lands that was not built to the standards set by the Code; however, the Code does not apply to private land and the Board does not have jurisdiction to assess activities on private land.

### ***What will future Board audits on Nisga'a lands address?***

Future Board audits will continue to assess compliance with Code and Agreement requirements on an annual basis. Audits of the appropriateness of government's enforcement will not be conducted on an annual basis; however, the audit period for future enforcement audits will include all enforcement related activity that occurred following the most recent enforcement audit.

In addition to assessing compliance and enforcement, future Board audits will follow up on any issues of non-compliance noted in past audits on Nisga'a lands, as well as any other

issues of public interest. Future audits will also assess how auditees addressed any applicable Board recommendations.

It was noted during the 2001 audits that there are large areas of regenerating stands on Nisga'a lands that have not yet reached the age and stocking levels where they are considered free-growing. The audits also noted that a number of those areas experience either high levels of brush competition or potential forest-health issues. Future Board audits will pay particular attention to the achievement of silviculture obligations in these areas.

The first Board audit on Nisga'a lands notes issues related to forest planning and practices by some auditees around riparian areas. Future audits will include a focus on assessing compliance with Code and Agreement requirements around riparian areas.

Future audits will include auditing compliance with Code and Agreement requirements related to district manger obligations and Forestry Transition Committee responsibilities. As noted above, the Board does not anticipate auditing *Forest Act* requirements in future audits on Nisga'a lands.

A handwritten signature in black ink, appearing to read "W.N. Cafferata". The signature is written in a cursive, flowing style.

W.N. (Bill) Cafferata, RPF  
Chair, Forest Practices Board  
July 26, 2002

# Audit of Nisga'a Lands

