



Province of
British Columbia

Forest Appeals Commission

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APPEAL NOS. 2004-FA-072(a) to 074(a), 080(a) to 083(a), 089(a), 2005-FA-031(a) and 046(a)

In the matter of an appeal under section 147 of the *Forest Act*, R.S.B.C. 1996, c. 157.

BETWEEN: Teal Jones Forest Ltd. and **APPELLANTS**
Teal Cedar Products Ltd.

AND: Government of British Columbia **RESPONDENT**

BEFORE: A Panel of the Forest Appeals Commission
Alan Andison, Chair

DATE: April 12 & 13, 2005,
concluding in writing on May 17, 2005

APPEARING: For the Appellants: Peter Voith, Q.C., Counsel
For the Respondent: Nerys Poole, Counsel

APPEALS

Teal Jones Forest Ltd. and Teal Cedar Products Ltd. (collectively, "Teal") appealed ten separate stumpage advisory notices ("SANs") issued between November 2004 and March 2005 by Stephen Edwards, Regional Appraisal Coordinator, Coast Forest Region, Ministry of Forests ("MOF"). The SANs pertain to ten cutting permits ("CPs") that cover areas within two timber licences ("TLs") and a tree farm licence ("TFL") that are held by Teal and are located on the west side of Vancouver Island near Port Renfrew.

At issue in all of the appeals is whether the Regional Appraisal Coordinator erred in using Jordan River, which is located on the west coast of Vancouver Island, as the appraisal log dump in determining the stumpage rates for the CPs. The Commission heard the appeals together.

The appeals are brought before the Commission pursuant to section 146 of the *Forest Act* (the "Act"). The powers of the Commission are set out in section 149(2) of the *Act*:

Powers of commission

149 (2) On an appeal, the commission may

(a) confirm, vary or rescind the determination, order or decision, or

(b) refer the matter back to the person who made the initial determination, order or decision with or without directions.

Teal requests that the Commission rescind the SANs and issue an order directing the Regional Appraisal Coordinator to reappraise the stumpage rates using Shoal Island, which is located near Chemainus on the east coast of Vancouver Island, as the appraisal log dump.

BACKGROUND

A stumpage appraisal is the process by which an MOF employee determines the amount (the stumpage rate) that a licensee must pay to the Government for harvesting Crown timber. Under section 105(1) of the *Act*, stumpage rates must be determined in accordance with the policies and procedures approved for the forest region by the Minister of Forests. In these appeals, the applicable policies and procedures are found in the Coast Appraisal Manual ("CAM") effective February 29, 2004, including Amendment No. 2 (effective November 1, 2004), and, in some cases, Amendment No. 3 (effective January 1, 2005), and No. 4 (effective March 1, 2005), depending on when the SAN was issued.

The ten SANs that are the subject of these appeals were issued on the following dates and pertain to the following CPs:

November 1, 2004, with respect to CPs 11K and 6M of TFL 46, and CP J of TL T0113;

- November 16, 2004, with respect to CP 8J of TFL 46, and CP E of TL T0042;
- November 18, 2004, with respect to CP 8H of TFL 46, and CP D of TL T0042;
- December 6, 2004, with respect to CP 13J of TFL 46;
- January 31, 2005, with respect to CP 11L of TFL 46; and
- March 8, 2005, with respect to CP 13K of TFL 46.

These SANs were all issued after the provincial government introduced a new system for determining stumpage rates in the Coast Region. That system, introduced on February 29, 2004, is called the Market Pricing System ("MPS"). The central concept underlying the MPS is that data from auction sales of timber are used to estimate the value of the timber being appraised. Market values are used, along with certain cost allowances, to determine market stumpage rates.

In these appeals, the allowances for truck hauling costs and road use charges are important, because those allowances are affected by the selection of the appraisal log dump. Higher cost allowances in a stumpage appraisal will produce a lower

stumpage rate. However, another principle underlying the CAM is stated in section 4.1(1) of the CAM: "The person who determines the stumpage rate must estimate the stumpage rate for a cutting authority area in a manner that will produce the highest stumpage rate for the cutting authority area."

In order to understand the parties' submissions, it is helpful to have a general understanding of how stumpage rates are determined under the CAM. The steps for determining market stumpage rates in accordance with the CAM may be summarized as follows:

1. The MOF collects data from recent auction sales conducted under the BC Timber Sales program, as well as data about the timber being appraised. This information is statistically important for estimating timber value. The data includes the winning bid for each timber sale and the characteristics of the sale, such as the slope of the cutblock, tree species, harvesting method used, and timber volume. For timber harvested under a long-term licence, the licensee provides data about the stand being appraised. That data is submitted in Appraisal Data Sheets when applying for a cutting authority (CPs are the most common type of cutting authority).
2. A preliminary estimated winning bid is calculated for the stand being appraised using the data from step 1. Statistical analyses are used to correlate winning auction bids with the characteristics of the stand being appraised, to predict the market value of the stand. The preliminary estimated winning bid is estimated using factors such as market data, timber characteristics, the estimated number of bidders, the harvesting methods, the truck haul distance from the CP to the appraisal log dump, and the towing or barging distance.
3. The final estimated winning bid is calculated by subtracting the estimated cost of any applicable "specified operations" from the preliminary estimated winning bid. Specified operations are unique logging systems or situations that are not represented in the auction data. Specified operations, and their corresponding allowances, are set out in section 4.4 of the CAM.
4. Market stumpage rates are then calculated based on the final estimated winning bid using one of two methods, depending on whether the timber being appraised is under a long-term tenure or is being auctioned under the BC Timber Sales program. For timber under a long-term licence, a "tenure obligation adjustment" is deducted from the final estimated winning bid, resulting in the market stumpage rate (unless the market rate is lower than the minimum rate prescribed by regulation, in which case the minimum rate applies). The tenure obligation adjustment is deducted to account for costs for which licensees are generally responsible, but auction bidders are not,

such as forest planning, road building, road maintenance, and silviculture costs. The tenure obligation adjustment may also include road use charges.

The CAM contains specific provisions that address the calculation of allowances for truck hauling costs and road use charges. In summary, truck haul distance is the net cruise volume weighted average one-way haul distance (measured in kilometers) from the geographical centre of each part of the CP area to the appraisal log dump, and is calculated as set out in section 4.2.4 of the CAM. Under section 5.5 of the CAM, road use charges may be claimed under certain circumstances when a licensee pays a fee to use a road to haul timber from a cutting permit area to the appraisal log dump.

In these appeals, Teal argues that the Regional Appraisal Coordinator erred in selecting Jordan River as the appraisal log dump for the purpose of determining stumpage for the ten CPs in question. Section 1.1 of the CAM defines "appraisal log dump" as the "closest log dump" to the cutting authority area.

When Teal submitted its Appraisal Data Submissions as part of its applications for the ten CPs, it listed Shoal Island as the appraisal log dump. Teal actually hauls its logs from the Port Renfrew area to a log dump located at Duke Point, on the east coast of Vancouver Island near Nanaimo. However, Shoal Island is closer to the ten CPs than Duke Point.

When the Regional Appraisal Coordinator determined the stumpage rates for the ten CPs, he used Jordan River as the appraisal log dump. The Jordan River log dump is located along the Jordan River, on private property owned by Western Forest Products Ltd. ("Western"). The Jordan River log dump is closer by road to Teal's CPs than the Shoal Island log dump. However, at the appeal hearing, Teal provided evidence that Western uses the Jordan River facility to its full capacity, and that the facility's capacity cannot be expanded due to tidal, seasonal, and environmental limitations. The Government did not challenge that evidence, but argued that it is irrelevant to these appeals.

The truck haul distance from the ten CPs to Shoal Island is further than to Jordan River. In addition, when Shoal Island is the appraisal log dump, Teal can claim certain road use charges that cannot be claimed if Jordan River is the appraisal log dump. Therefore, if Jordan River is the appraisal log dump for the ten CPs, Teal's allowances for truck hauling and road use charges are lower and its stumpage rates are higher, than if Shoal Island is the appraisal log dump.

Both the Forest Appeal Board ("FAB"), whose jurisdiction is now held by the Commission, and the District Manager of the MOF's South Island Forest District (the "District Manager") have previously considered and rejected Jordan River as a towing/barging point of origin (which is not necessarily the same as an appraisal log dump) for licensees other than Western. Those decisions are discussed later in this decision, and were based on pre-2004 versions of the CAM.

Teal argues that a district manager has the discretion to determine whether a “harvest method” is “unsuitable” under section 4.1 of the CAM, and that “harvest method” includes transporting logs from a CP to a suitable appraisal log dump. Teal argues that both the FAB and the District Manager have previously determined that Jordan River is unsuitable as an appraisal log dump for any licensee other than Western. Teal maintains that the Shoal Island log dump is the closest suitable appraisal log dump for the ten CPs. Teal further argues that the selection of an appraisal log dump is an exercise of discretion by the Regional Appraisal Coordinator, and that such discretion must be exercised in a reasonable manner.

The Government submits that the versions of the CAM that apply to these appeals provide neither the Regional Appraisal Coordinator nor the District Manager with discretion to determine the “suitability” of an appraisal log dump. The Government argues that, in selecting the appraisal log dump, the Regional Appraisal Coordinator simply picks the closest log dump to the CPs, and then calculates the truck haul distance and any applicable road use charges based on the methodology set out in the CAM. The Government further submits that, although the District Manager has the discretion to determine the suitability of a “harvest method”, harvest methods do not include methods for transporting logs to an appraisal log dump, or the suitability of the log dump itself. The Government also submits that truck hauling is a method of transporting logs, and therefore, Teal’s submissions regarding the suitability of the Jordan River log dump are irrelevant.

ISSUES

The issues in these appeals are as follows:

1. Whether the MOF employees who determine stumpage rates exercise discretion when selecting the appraisal log dump for a cutting authority.
2. Whether “harvest method” in the context of section 4.1 of the CAM includes methods for transporting logs to an appraisal log dump.

RELEVANT LEGISLATION AND POLICIES

The determination of stumpage rates is addressed in section 105 of the *Act*:

105 (1) Subject to the regulations made under subsections (6) and (7), if stumpage is payable to the government under an agreement entered into under this Act or under section 103 (3), the rates of stumpage must be determined, redetermined and varied

(a) by an employee of the ministry, identified in the policies and procedures referred to in paragraph (c),

(b) at the times specified by the minister, and

(c) in accordance with the policies and procedures approved for the forest region by the minister.

Sections 146 to 149.2 of the *Act* apply to appeals to the Commission. The following section is relevant to this appeal:

149 (3) If the commission decides an appeal of a determination made under section 105, the commission must, in deciding the appeal, apply the policies and procedures approved by the minister under section 105 that were in effect at the time of the initial determination.

The “policies and procedures approved ... by the minister” for the Coast Region are found in the CAM. In these appeals, eight of the ten SANs were issued under the CAM effective February 29, 2004, including Amendment No. 2 (effective November 1, 2004). Amendment Nos. 3 and 4 were in force when some of the SANs were issued, but those amendments did not affect most of the sections of the CAM that are relevant to these appeals. Where an amendment did affect sections of the CAM that are cited in this decision, the language in the relevant section both before and after the amendment came into effect is cited.

The following sections of the CAM are relevant to this appeal. Other relevant sections of the CAM are reproduced in the body of this decision, for convenience.

1.1 Definitions and Interpretations

In this manual:

...

“Appraisal Log Dump” means the log dump that is the closest log dump to a part of a cutting authority area as determined by the person who determines the stumpage rate;

It should be noted that, in Amendment No. 4 effective March 1, 2005, the definition of “appraisal log dump” was amended to read as follows:

“Appraisal Log Dump” means the log dump that is the closest log dump to a part of a cutting authority area;

4.1 Appraisal Methodology

1. The person who determines the stumpage rate must estimate the stumpage rate for a cutting authority area in a manner that will produce the highest stumpage rate for the cutting authority area.
2. For each part of the cutting authority area, the person who determines the stumpage rate must use the procedures in this manual that must be used for the harvest method that produces the highest stumpage rate other than a

method that the district manager states is unsuitable for that part of the cutting authority area.

3. Regardless of the harvest method that the holder of a cutting authority uses or intends to use on the cutting authority area or a part of the cutting authority area, or any other fact or law pertaining to the harvest method to be used, the district manager when deciding whether a harvest method is unsuitable may only consider:
 - a. the physical features and terrain stability of the cutting authority area and the areas through which access to the cutting authority area may be gained,
 - b. the physical features of the areas outside of the cutting authority area that may be affected by the harvesting in or the transportation of the timber from the cutting authority area,
 - c. visual quality objectives, and
 - d. public safety.

4.2 Market Pricing System (MPS) Variables

...

HELI The fraction of the total net cruise volume, including deciduous volume of timber in a cutting authority area that must be helicopter yarded or yarded by skyline where logs are fully suspended more than 600 m in a straight line to the centre of the closest possible landing. This is calculated by dividing the total volume of timber that must be helicopter yarded or skyline yarded over 600 m by the total net cruise volume of the cutting authority area.

HAUL The truck haul distance expressed in km. This is calculated using the procedures prescribed in section 4.2.4.

...

CABLE The fraction of the total net cruise volume of timber in a cutting authority area that must be cable yarded. Cable yarding is an overhead cable system including highlead (spar), mobile (grapple or dropline) and skyline less than 600 m in a straight line horizontal yarding distance.

In Amendment No. 4, effective March 1, 2005, the meaning of "CABLE" was amended to read as follows:

CABLE The fraction of the total net cruise volume of timber in a cutting authority area where terrain conditions require timber to be cable yarded. Cable yarding is an overhead cable system including highlead (spar), mobile (grapple or dropline) and skyline less than 600 m in a straight line horizontal yarding distance. Timber from within road right-of-ways that traverse cutting authority areas will have its volume assigned to the harvest method used to determine the stumpage rate in the same area on which the road lies.

...

4.2.4 Truck Hauling

1. Truck hauling is the transportation of logs from the cutting authority area by truck and all rehaul situations.
2. Truck haul distance, is the net cruise volume weighted average one-way haul distance measured in kilometres and rounded to the nearest 0.1 km from the geographical centre of each part of the cutting authority area to the appraisal log dump.
3. The truck haul distance (HAUL) is established by:
 - a. determining for each cutblock the shortest distance between the geographical centre of the cutblock and the nearest road,
 - b. determining for each cutblock the distance from the point on the road determined in paragraph (a) of this subsection to the first road junction which all may be accessed by road from each of the points determined in paragraph (a),
 - c. weighting for each cutblock the distance from the cutblock to the road junction by the net cruise volume of timber on the cutblock,
 - d. determining the weighted average distance of the cutblocks to the road junction, and
 - e. measuring the distance from the road junction to the appraisal log dump.
4. The truck haul distance is the sum of the weighted average distance of the cutblocks to the road junction plus the distance from the road junction to the appraisal log dump plus the rehaul distance if required for inland water transportation provided for under section 4.4.2.

DISCUSSION AND ANALYSIS

1. Whether the MOF employees who determine stumpage rates exercise discretion in selecting the appraisal log dump for a cutting authority.

Section 2.1.1 of the CAM states that the following MOF employees are authorized to determine, redetermine and vary rates of stumpage:

- a. Regional Managers, regional appraisal coordinators and employees of the regional revenue section, and
- b. The Director, and employees of the Revenue Branch.

It is important to note that district managers are not listed in section 2.1.1 of the CAM. Therefore, while district managers have the authority under section 4.1 of the CAM to determine whether a "harvest method" is unsuitable, they do not have discretion to determine the stumpage rates set out in the SANs.

Teal submits that the determination of an appraisal log dump under the CAM is discretionary. It argues that the discretion to select an appraisal log dump must be exercised reasonably. Teal argues, therefore, that the employee determining the stumpage rate may choose a log dump that is not necessarily the closest to the cutting authority, if such a selection is consistent with other provisions of the CAM.

In particular, Teal argues that the CAM is based on the MPS, and the goal of the MPS is to generate market stumpage rates by taking the market value for the timber in a given stand, and then adjusting that value based on certain factors that are designed to approximate average operating costs (such as cutblock slope, truck haul distance, and barge distance), as well as inflationary pressures (such as the number of bidders and the consumer price index) that affect the bidding behavior of the "average notional bidder." Teal submits that stumpage rates generated by the MPS are intended to approximate rates that would be paid in an open market; namely, what a reasonable buyer would pay and what a reasonable seller would accept.

Teal argues that it is unreasonable and inconsistent with the MPS to designate Jordan River as an appraisal log dump when no operator in the market except Western can use that log dump. Teal submits that the Jordan River log dump is an example of a facility that creates certain efficiencies for one licensee that are unavailable to other licensees or bidders. Teal maintains that the average notional bidder would not offer to pay a stumpage rate based on a truck haul distance to a log dump that it could not use, even if that log dump is the closest to the cutting authority. Teal argues that this would be equivalent to calculating stumpage rates based on log dumps that are decommissioned or log dumps to which there is no road access. Teal argues, therefore, that the use of Jordan River as the appraisal log dump for the ten CPs is contrary to the MPS policy underlying the CAM.

In addition, Teal argues that the CAM is in the nature of subordinate legislation, and therefore, the determination of an appraisal log dump is an exercise of statutory discretion granted by the definition of "appraisal log dump." Teal argues that such discretion must be exercised reasonably, and that, since no reasonable bidder would bid on timber that was priced according to an appraisal log dump that was inaccessible or not functioning, no reasonable person acting objectively would designate such sites as appraisal log dumps. Similarly, Teal argues that designating a log dump that cannot be accessed by anyone other than Western is an unreasonable exercise of the discretion vested in the Regional Appraisal Coordinator by the CAM.

Teal maintains that a reasonable exercise of discretion would be to select Shoal Island as the appraisal log dump for the ten CPs, because there are no physical or environmental impediments to the use of Shoal Island, and the average licensee or bidder could use that facility. Therefore, Teal argues that Shoal Island represents a fair and reasonable choice of appraisal log dump that is consistent with the MPS.

In support of those submissions, Teal cited several judicial decisions including the Supreme Court of Canada decisions in *Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038 at 1076 (hereinafter *Slaight*), and *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 (hereinafter *Baker*).

In addition, Teal called several witness who testified regarding the physical and environmental limitations of the Jordan River log dump.

Terry Anderson, a stumpage appraisal supervisor with Western, explained that the Jordan River log dump has limited storage capacity due to the site's exposure to wave action and winds, and that the site operates at full capacity from May to September, when it has capacity for 16 sections of logs. He further explained that the log dump operates from March to May and from September to November with a limited capacity of 12 sections of logs in the upper river part of the log dump, which is more protected. The log dump does not operate at all from December to February.

He also stated that, during its operating season, the site is limited because operations must be conducted during a four-hour window around high tide, because there is inadequate water depth at other times. Mr. Anderson advised that the booming grounds and the mouth of the river must be dredged about two times per year in order to maintain adequate water depth, and Western must obtain approval from the federal Department of Fisheries and Oceans ("DFO") before commencing dredging. He stated that the DFO restricts dredging operations to certain times of the year, due to concerns about fish and fish habitat in the Jordan River.

Mr. Anderson stated that the maximum annual capacity of the Jordan River log dump is approximately 200,000 m³, and Western processes about 165,000 m³ of logs from a TFL, as well as 20,000 to 30,000 m³ of logs from Western's private forest lands, through the Jordan River log dump. He stated that no other

companies have used the Jordan River log dump since 1997, with the exception of approximately 20,000 m³ of logs that were processed there in 2000, when Western's Port Renfrew operations were temporarily shut down and Western was, therefore, unable to fully utilize the Jordan River log dump.

In response to questions from the Commission panel, Mr. Anderson stated that the only other log dump site on the west coast of Vancouver Island south of Jordan River is located in or around Sooke, but that site was decommissioned in 2004.

Michael Pegg, a forestry engineer with Teal, also testified on behalf of Teal. He stated that changing the appraisal log dump from Shoal Island to Jordan River results in a stumpage rate increase of \$1 to \$3 per m³ for the ten CPs, which cover approximately 400,000 m³ of timber. This works out to an increase in total stumpage of between \$400,000 and \$1.2 million. He also stated that the Sooke area log dump was decommissioned in May 2004, and that, if there was a functioning log dump there, it would be closer to the ten CPs than the Shoal Island log dump.

The Government agrees that the Regional Appraisal Coordinator makes a statutory decision when determining the closest log dump pursuant to the definition of "appraisal log dump". However, the Government submits that there is no discretion involved in determining an appraisal log dump. The Regional Appraisal Coordinator simply chooses the log dump that is closest to the cutting authority, and then calculates the road distance to that log dump based on the process set out in section 4.2.4 of the CAM.

The Government further submits that Teal's references to the *Baker* decision, and the "reasonableness" standard of judicial review, are irrelevant to these appeals. The Government argues that statutory appeals to the Commission are not judicial reviews, and therefore, there is no question of "reasonableness" in these appeals. Furthermore, the Government maintains that the statutory provision that was at issue in *Baker* granted considerable discretion to the decision-maker, while the definition of "appraisal log dump" does not. The Government submits that the CAM dictates a specific outcome, and not a choice of possible courses of action, once the distance from the cutting authority to the closest log dump is calculated.

In support of those submissions, the Government called one witness, Bill Heggs, Revenue Supervisor for the South Island Forest District. Mr. Heggs testified that he reviews Appraisal Data Submissions that are submitted by licensees when they apply for cutting authorities. In particular, he reviews the appraisal log dump that is indicated by the licensee, and he measures truck haul distances to the appraisal log dump. He then forwards that information, along with his comments, to the Regional Appraisal Coordinator, who signs off stumpage determinations. Mr. Heggs stated that, when he reviewed Teal's Appraisal Data Submissions for the ten CPs, he noted that Teal had indicated Shoal Island as the appraisal log dump. However, he noticed that Jordan River appeared to be closer, and he forwarded comments to

that effect to the Regional Appraisal Coordinator, along with Teal's Appraisal Data Submissions.

Mr. Heggs provided a map of the sites in the South Island Forest District that he considers could be selected as appraisal log dumps. He stated that appraisal log dumps are not listed in the CAM, but some log dumps are also "points of origin" for towing or barging, which are listed in the CAM. He stated that, if a site could be used as a log dump, he considered it to be a site that could be selected as an appraisal log dump. He stated that two of the sites indicated on his map are inactive, namely, Coleman Creek and Sooke. He stated that, although those sites have been decommissioned, he believed that they could be reactivated, assuming that the owners still hold the foreshore leases and other permits necessary to operate a log dump. He also stated that some of the sites on his map are only used periodically as log dumps, depending on whether there is active logging in the area.

Mr. Heggs also testified regarding photos of the site located at Coleman Creek which were taken by MOF staff on March 24, 2005. The photos show a dirt road leading towards a clearing along the shore of Alberni Inlet. Mr. Heggs stated that the site was used as a log dump until about ten years ago, when the owner removed a bridge that had been used by logging trucks, and an A-frame that had been used to transfer logs into the water. Mr. Heggs stated that, although the Coleman Creek site could not be used as a log dump in its current state, it could be reactivated in the future. He also stated that the site is considered by MOF to be an appraisal log dump, and some licensees continue to indicate Coleman Creek as an appraisal log dump in their Appraisal Data Submissions.

In cross-examination, Mr. Heggs acknowledged that his map does not represent an official list of appraisal log dumps. He stated that he compiled the map based on log scaling information, and that he also receives advice from the Regional Appraisal Coordinator regarding which sites can be considered appraisal log dumps. When asked why he thought that the Coleman Creek site could be reactivated, he stated that the site stopped being used for economic reasons, and he assumes that the owner still holds the leases and permits needed to use the site as a log dump. However, Mr. Heggs acknowledged that he does not know or verify whether such license and permits are still valid.

The Commission's findings

Teal and the Government agree that the CAM is akin to subordinate legislation, and that the selection of an appraisal log dump is an exercise of statutory authority. However, they disagree regarding whether the selection of an appraisal log dump is an exercise of statutory discretion. Related to the discretion issue is a question regarding what kind of site may be considered an "appraisal log dump" under the CAM. If the selection of an appraisal log dump is an exercise of discretion, and such discretion must be exercised in a reasonable manner, then it is important to be clear about what types of sites may properly be considered "appraisal log dumps."

Both of those questions require consideration of the relevant language in the CAM.

Is the determination of the "appraisal log dump" an exercise of discretion?

In deciding whether the selection of an appraisal log dump is an exercise of discretion, the Commission has focused on the definition of appraisal log dump, and other relevant sections of the CAM. The Commission has also considered the witnesses' testimony and the cases that were discussed by the parties.

The definition of "appraisal log dump" in section 1.1 of the CAM refers to the "closest log dump" to the cutting authority area "as determined by the person who determines the stumpage rate." It does not say "as determined by section 4.2.4 of the CAM," or "based on the points of origin listed in the CAM." The definition suggests that the person who determines the stumpage rate makes a choice in selecting the appraisal log dump. However, to be clear about the intended meaning of the definition, other sections of the CAM must be considered.

It should be noted that, in Amendment No. 4, effective March 1, 2005, which applies to the last one of the ten SANs under appeal, the definition of "appraisal log dump" was amended by deleting the phrase "as determined by the person who determines the stumpage rate." However, the Commission finds that this amendment is not material to these appeals because, for all ten SANs, the Regional Appraisal Coordinator rejected Shoal Island and selected Jordan River. The change in the definition of "appraisal log dump" did not result in a change to who selected the appraisal log dump for the CPs, and does not change the outcome of his process for selecting the appraisal log dump. In addition, neither of the parties provided submissions that would suggest that this amendment alters the procedure for selecting the "closest log dump."

The Commission has reviewed section 4.2.4 of the CAM. The Commission finds that the calculation of truck haul distance in accordance with section 4.2.4 involves little discretion. However, the Commission finds that the choice of an appraisal log dump precedes the calculation process set out in section 4.2.4. The distance from the centre of the cutting authority to the appraisal log dump cannot be calculated unless the appraisal log dump has first been selected.

The Commission has also considered that there is no list of "appraisal log dumps" in the CAM. In contrast, points of origin are listed in table 4-4 of the CAM, and points of appraisal are listed in section 4.2.5.1 of the CAM. Table 4-5 of the CAM lists barging distances between the points of origin and points of appraisal. The Commission notes that a log dump may or may not be located at a point of origin, as indicated by the witnesses' testimony and the fact that section 4.2.5.2 of the CAM describes how to calculate towing and barging distances for situations where the appraisal log dump lies between two points of origin. Thus, although Coleman Creek, Sooke and Jordan River are all listed in Table 4-4 as points of origin, that does not mean that they should automatically be considered as appraisal log dumps.

Based on all of these considerations, the Commission finds that selecting the appraisal log dump for a cutting authority is not simply a matter of reviewing a list of "appraisal log dumps," or the points of origin listed in table 4-4, and picking the closest one to the centre of the cutting authority based on the process set out in section 4.2.4. Selecting an appraisal log dump involves a process of considering various alternative sites which may include sites that are listed in the CAM as points of origin, and may include other sites that are neither points of origin nor listed in the CAM.

The Commission also notes that the CAM provides no guidance regarding the characteristics of an "appraisal log dump," such as whether the site must be actively used as a log dump at the time of appraisal, or whether the site must be usable as a log dump at the time of appraisal. Further, there was no evidence of any clear or cogent criteria that are used by MOF staff to determine what types of sites are considered valid choices as "appraisal log dumps." Mr. Heggs' testimony reveals that MOF staff may consider a decommissioned log dump to be an appraisal log dump based on the assumption that the site could be reactivated, yet he did not know or verify whether the owner of a decommissioned site still holds the leases and permits required to use the site as a log dump. Mr. Heggs also stated that the closest log dump is sometimes rejected by the MOF because access to it may result in risk to the environment, risk to public safety, or extraordinary expense due to bridge building.

Based on the relevant provisions of the CAM and the witnesses' evidence, the Commission finds that the process of selecting an appraisal log dump is an exercise of discretion. It involves selecting between sites that are considered to be log dumps, and the options include sites that are listed in the CAM as points of origin and sites that are not listed as points of origin. It also involves an exercise of discretion, with little guidance from the CAM, in determining what characteristics make a site an option as an "appraisal log dump." As stated at page 821 of *Baker*:

The concept of discretion refers to decisions where the law does not dictate a specific outcome, or where the decision-maker is given a choice of options within a statutorily imposed set of boundaries.

In this case, the CAM does not dictate a specific outcome regarding which sites may be selected as the appraisal log dump for a particular cutting authority, or even which sites may be considered as options in selecting the appraisal log dump. This conclusion is consistent with Mr. Heggs' testimony that he considers numerous sites, which are not necessarily points of origin, to be potential selections as the appraisal log dump, and that he receives direction from the Regional Appraisal Coordinator regarding which sites may be considered appraisal log dumps.

Additionally, while the discretion to select an appraisal log dump may not be as broad as the discretion in the *Baker* case, it is clear from both *Baker* and *Slaight* that the discretionary powers held by administrative decision-makers must be exercised in a reasonable manner. While the concept of "reasonableness" may be

applied as a standard of judicial review, the cases establish that reasonableness can also be applied as a general legal principle. In particular, a reasonable exercise of discretion is, among other things, one that is made in good faith, is based only on relevant considerations, and is consistent with the objectives and intent of the governing legislation.

Therefore, in the context of these appeals, the Commission finds that the discretion to select the "appraisal log dump" for a particular cutting authority must be exercised in a reasonable manner, and must be consistent with the objectives and intent of the CAM.

What is a reasonable exercise of discretion in selecting an "appraisal log dump" in this case?

As discussed above, the CAM provides little guidance regarding what makes a site a reasonable selection as an "appraisal log dump." The definition of "appraisal log dump" indicates that it should be the "closest log dump" to the cutting authority area, but the CAM and the witnesses' evidence are unclear regarding what makes a site a "log dump" for the purposes of determining the appraisal log dump. The term "log dump" is not defined in the CAM, the *Forest Act*, or any regulations under that Act. It is also not defined in the *Merriam Webster's* dictionary, and therefore, appears to be a "term of art" in the forest industry. Therefore, the Commission has considered the meaning of "appraisal log dump" in the context of the principles underlying the CAM.

The MPS principles that underlie that CAM provide guidance as to what may be a reasonable choice of "appraisal log dump". The MPS attempts to create a market-based system for determining stumpage rates. In particular, it attempts to ensure that the stumpage paid for a stand of timber held under a long-term licence is based on the amount of stumpage that would be paid for that timber by a notional average bidder at an auction, taking into account the characteristics of the timber, the operating circumstances of the cutblock, and the costs associated with those operating circumstances. The Commission agrees with Teal that, in a market-based system, a notional average bidder acting objectively and rationally would not pay a stumpage rate that reflects hauling logs to a log dump that is decommissioned or is available to only one licensee, even if that log dump is the closest by road. Notional average bidders would pay a price that reflects hauling to the closest log dump that was actually usable or functional as a log dump at the time of bidding (or, for licensees, at the time of appraisal), and was generally available for use by that licensee or bidder. To find otherwise would be inconsistent with the MPS that underlies the CAM.

Applying those principles to the facts in these appeals, the Commission finds that the Jordan River facility is not a reasonable selection as an appraisal log dump for the ten CPs. While the Jordan River facility was functional as a log dump at the time of appraisal, the evidence indicates that it has been unavailable to users other than Western since 1997, with one minor exception in 2000, because Western used

it to its full capacity. The evidence also indicates that the facility's capacity is limited by physical and environmental factors, and Western has no obligation to open the facility to other users, given that it is located on Western's private land. Therefore, the Jordan River site is unavailable to Teal and any other user, except Western.

Under these circumstances, the Commission finds that the selection of Shoal Island as the appraisal log dump would be a reasonable exercise of discretion in this case.

The Commission is mindful that at least some of the CPs involved in these appeals are valid for four years, and that it is possible that the Jordan River site, the Sooke site, or another site that is closer than Shoal Island could become functional and generally available as a log dump over that time. After the oral hearing of these appeals ended, the parties provided written submissions regarding whether the CAM provides a mechanism for redetermining stumpage rates to reflect such a change in circumstances. The parties disagreed on the point, and the Commission has reviewed the submissions.

Based on those submissions, and without having the benefit of having full argument on the point, the Commission finds that section 3.3.1 of the CAM does not provide the MOF with the ability to reappraise a stumpage rate or amend a SAN in response to a change in circumstances arising from a change in the location of the appraisal log dump. This is because section 3.3.1 sets out what constitutes a changed circumstance for the purposes of a reappraisal under section 3.1. Given that the Commission has found that the transportation of timber from a cutting authority area to the appraisal log dump is not a "harvest method," as is discussed below, section 3.3.1 cannot be used to trigger a reappraisal due to a change in the appraisal log dump. Further, that section cannot be used to correct a stumpage appraisal due to a change in circumstances. It appears that the Minister can order a reappraisal for any reason, including a change in appraisal log dump location under section 3.3.3 of the CAM. However, such a reappraisal would not correct any historic inequities arising from changed circumstances such as a change in appraisal log dump location.

Further, by way of comment, the Commission notes that the MPS is intended to create a process for valuing timber based on notional market bidders who take into account truck hauling distances, and that at least some of the factors used to determine stumpage rates are updated regularly in response to changing market conditions, such as the consumer price index. Thus, it would appear to be consistent with the MPS underlying the CAM that stumpage rates should be responsive to changes in the circumstances of log dumps.

Summary

For the reasons provided above, the Commission finds that determining the appraisal log dump for a cutting authority area is an exercise of discretion that must be exercised in a reasonable manner, and must be consistent with the

objectives and intent of the CAM. In the context of the CAM, which is based on the MPS and the principle that stumpage rates must be determined in a manner that produces the highest stumpage rate, the definition of "appraisal log dump" must be applied to mean the closest site that is functional as a log dump at the time of appraisal, and is generally available for use by the licensee or market bidder.

Based on the evidence in these appeals, it is not a reasonable exercise of discretion under the CAM to select Jordan River as the appraisal log dump for the ten CP's. The evidence indicates that Shoal Island is the closest log dump to the ten CPs that was functional as a log dump at the time of appraisal, and was available to this licensee. Therefore, stumpage rates for the ten CPs should be assessed based on Shoal Island as the appraisal log dump.

2. Whether "harvest method" in the context of section 4.1 of the CAM includes methods for transporting logs to an appraisal log dump.

Teal submits that the term "harvest method" in section 4.1 of the CAM includes methods for transporting logs from a cutting authority area to the appraisal log dump, and therefore, the method of transporting logs to the appraisal log dump must be "suitable."

Teal submits that the question of Jordan River's suitability was previously addressed by the FAB and the District Manager, and the facts in the present appeals are practically identical to the facts in those cases. Teal argues that any changes in the language in the CAM do not affect the previous conclusions of the FAB and the District Manager. Teal submits that, based on those decision, Jordan River is unsuitable as the appraisal log dump for the ten CP's. Teal further submits that this conclusion is supported by the plain language in the CAM, and the market-based objectives underlying the CAM.

Specifically, Teal argues that in *TimberWest Forest Ltd. v. The Province of British Columbia (Ministry of Forests)*, Appeal No. 97-FAB-07, March 4, 1998 (unreported) (hereinafter *TimberWest No. 1*), the FAB held that the use of Jordan River as an appraisal log dump for cutting authorities held by TimberWest Forest Ltd. ("TimberWest") in the Port Renfrew area was "not possible" within the meaning of section 4.1 of the CAM effective from April 1, 1997, which stated as follows:

4.1 Cost Estimates

The forest officer must estimate operating costs for a cutting authority in a manner which will produce the least total operating cost estimate for the cutting authority area. To do this, the forest officer must base estimates of harvesting and transportation costs on the operating cost estimates set out in this manual for the method, which will produce the least cost estimate to the point of appraisal, unless that particular method of harvesting or transportation is not possible under the cutting authority. An appraisal assumes compatible operating phases.

[emphasis added]

Following *TimberWest No. 1*, the Minister of Forests amended the language in section 4.1 of the CAM, so that it read as follows:

4.1 Cost Estimates

...

- (8) The estimate of harvesting costs must be determined for the method of harvesting referred to in this manual, other than a method that the district manager states is unsuitable for the cutting authority area, that will produce the appraisal least total operating cost estimate.
- (9) The estimate of transportation costs must be determined for the method of harvesting referred to in this manual, other than a method that the district manager states is unsuitable for the cutting authority area, that will produce the appraisal least total operating cost estimate.

[emphasis added]

The MOF then issued stumpage determinations to TimberWest that were again based on Jordan River as the appraisal log dump. Consequently, TimberWest sought a determination from the District Manager regarding the "suitability" of Jordan River as an appraisal log dump or point of origin under section 4.1(9) of the CAM.

In a letter dated May 30, 2003 (hereinafter *TimberWest No. 2*), the District Manager determined that Jordan River was "not a suitable appraisal log dump for determination of truck hauling and towing costs" for TimberWest's cutting Authorities in the Port Renfrew area, pursuant to section 4.1(9) of the CAM.

Teal argues that Jordan River remains unsuitable as the appraisal log dump for the ten CPs, notwithstanding the changes to the language in the CAM that applies to these appeals. Teal argues that, not only must the choice of an appraisal log dump be a reasonable exercise of discretion, but the appraisal log dump must also be "suitable" within the meaning of section 4.1 of the CAM. In particular, Teal refers to sections 4.1(2) and 4.1(3)(b), which state as follows:

2. For each part of the cutting authority area, the person who determines the stumpage rate must use the procedures in this manual that must be used for the harvest method that produces the highest stumpage rate other than a method that the district manager states is unsuitable for that part of the cutting authority area.
3. Regardless of the harvest method that the holder of a cutting authority uses or intends to use on the cutting authority area or a part of the

cutting authority area, or any other fact or law pertaining to the harvest method to be used, the district manager when deciding whether a harvest method is unsuitable may only consider:

...

- b. the physical features of the areas outside of the cutting authority area that may be affected by the harvesting in or the transportation of the timber from the cutting authority area,

[emphasis added]

Teal argues that the “physical features” of the Jordan River log dump, namely, its physical and environmental constraints, preclude the facility’s expansion to accommodate timber from Teal’s cutting authorities in the Port Renfrew area. Therefore, it is unsuitable.

Moreover, Teal submits that the term “transportation” in the context of section 4.1 includes the transportation phases of a harvesting operation. Teal argues that the selection of the appraisal log dump is an integral part of the transportation phases that are taken into account under the CAM, and therefore, the selection of the appraisal log dump must be subject to the suitability condition imposed in section 4.1(2) of the CAM. Thus, each phase of the “harvest method” used to determine the stumpage rate must be “suitable” for the cutting authority area, and a transportation phase that uses Jordan River as the appraisal log dump is “unsuitable.”

“Harvest method” is not defined in the CAM, but Teal maintains that stumpage rates determined under the CAM are “stump-to-dump” rates that take into account the physical characteristics of the cutblock, yarding methods (e.g. helicopter yarding and cable yarding), and transportation criteria (e.g. haul distance). In addition, the tenure obligation adjustment incorporates costs such as road maintenance and construction.

Teal maintains that the definitions of “phase” and “timber harvesting services” in the *Timber Harvesting Contract and Subcontract Regulation*, B.C. Reg. 22/96, which is a regulation under the *Forest Act*, provide guidance as to the meaning of “harvest method.” Based on those definitions, Teal argues that a “timber harvesting operation” includes a number of phases including felling, bucking, yarding, skidding, decking, loading, hauling, unloading, sorting, booming, road construction, and road maintenance. Teal also notes that this definition does not include phases such as towing and barging, while the calculation of stumpage under the CAM does. Teal argues that the CAM should be read in a manner that is consistent with the *Timber Harvesting Contract and Subcontract Regulation* because they deal with similar subject matter. Teal further argues that, in the event of a conflict between the CAM and the regulation, the regulation should prevail given that it is actually subordinate legislation and the CAM is not.

Teal also provided submissions on the meaning of "unsuitable" in section 4.1 of the CAM. In that regard, Teal referred to the Commission's decision in *Weyerhaeuser Company Limited v. Government of British Columbia*, Appeal No. 2000-FA-009, March 21, 2002 (unreported) (hereinafter *Weyerhaeuser*). In that case, the Commission considered whether conventional logging, as opposed to helicopter logging, was unsuitable for part of a cutblock. The Commission concluded that, although it would be "possible" to use a conventional system of logging to access the area in question, it would be inappropriate to do so "for both environmental and practical reasons," including the risk of slope failure associated with conventional road building and the high cost of building a road that would avoid the likelihood of slope failure.

In conclusion, Teal asserts that Shoal Island is the closest "suitable" log dump to the ten CPs, because there are no physical or environmental impediments to Teal's use of Shoal Island, and the average licensee or bidder could make use of that facility.

The Government submits that the CAM provides neither a district manager nor the person who is determining stumpage with the authority to determine the suitability of a log transportation method or an appraisal log dump. The Government notes that the definition of "appraisal log dump" contains no reference to "suitability". The Government also submits that section 4.1 of the CAM includes no language regarding the suitability of the appraisal log dump. Rather, the Government argues that section 4.1 empowers a district manager to determine the suitability of a "harvest method", which, the Government argues, does not include a log transportation method or the determination of an appraisal log dump. Similarly, the Government maintains that section 4.2.4 of the CAM, which governs the calculation of truck haul distances, makes no reference to "suitability" or "availability" of the appraisal log dump.

The Government notes that the version of the CAM that applied to the CPs in *TimberWest No. 1* required stumpage to be determined by estimating harvesting and transportation costs based on the methods of harvesting and transportation which produced the lowest cost estimates to the point of appraisal, unless that particular method of harvesting or transportation was "not possible" for that cutting authority. The Government also notes that the version of the CAM that applied when the District Manager issued *TimberWest No. 2* empowered the District Manager to make determinations regarding the suitability of both harvesting methods and transportation methods. Thus, the Government argues that earlier versions of the CAM made a clear distinction between harvesting methods and transportation methods.

The Government argues that changes in the wording of the CAM effective February 29, 2004, removed any discretion to determine the suitability of a transportation method, and therefore, both *TimberWest No. 1* and *TimberWest No. 2* are irrelevant to the present appeals. The Government notes that the definition of "appraisal log dump" was absent from the versions of the CAM in effect before February 29, 2004.

The Government also notes that the determination of suitability under section 4.1 of the CAM now only addresses harvesting methods.

The Government submits that the objective of the CAM effective February 29, 2004, is to introduce a new appraisal system that no longer includes phases of an operation or the "least operating costs" of those phases, and which eliminates district managers' discretion to find a transportation method unsuitable. The Government acknowledges that section 4.1(3)(b) of the CAM refers to "the transportation of the timber from the cutting authority area," but the Government argues that it is only a factor that a district manager may consider when deciding whether a harvest method is unsuitable. The Government argues that, if Teal's logic were applied to the other paragraphs in section 4.1(3), then visual quality objectives (4.1(3)(c)) and public safety (4.1(3)(d)) would also have to be construed as "harvest methods," which would be absurd.

The Government submits that section 3.2(3) of the CAM supports this interpretation. That section refers to "helicopter and cable methods of harvesting" in the context of a district manager being not satisfied that the harvest method proposed by the licensee is the only method suitable for the area to be harvested.

The Government submits that the *Timber Harvesting Contract and Subcontract Regulation* referred to by Teal is not helpful because it discusses the meaning of "phase" and "timber harvesting operation", not "harvest method."

For assistance in interpreting the meaning of "harvest method" within the CAM, the Government refers to the definition of "harvest" found in the *Forest Planning and Practices Regulation*, B.C. Reg. 14, 2004, a regulation under the *Forest and Range Practices Act*. That regulation states as follows:

"harvest", in relation to timber, means to fell or remove timber, other than under a silviculture treatment, including to

- (a) yard, deck or load timber,
- (b) process timber on site,
- (c) pile or dispose of logging debris,
- (d) construct excavated or bladed trails or other logging trails,
- (e) rehabilitate an area referred to in section 35, and
- (f) carry out sanitation treatments associated with operations referred to in paragraphs (a) to (e);

The Government also refers to other regulations that are now repealed, as well as the *Cruise Compilation Manual* effective April 1, 2004, which is issued by the MOF's Revenue Branch and contains the MOF's policies for compiling timber cruise data

collected on Crown land. Such data is submitted to the MOF as part of the data used in stumpage determinations. Page 13-1 of the *Cruise Compilation Manual* lists several "Approved Harvest Methods" for the purpose of reporting timber volume and grade data. The methods include: cable clear cut; cable selective cut; helicopter clear cut; helicopter single stem; skyline clear cut; skyline selective cut; horse; ground skidding clear cut; and, ground skidding selective cut. The Government notes that the *Cruise Compilation Manual* does not include truck hauling or transportation methods in the list of harvest methods.

In reply, Teal argues that earlier versions of the CAM cannot be used as aids in the interpretation of the current version of the CAM. In addition, Teal argues that section 22.1 of the *Forest and Range Practices Act* supports a broad interpretation of "harvest method" that is not restricted to felling, yarding and decking timber. That section prohibits the use of a road for "timber harvesting, including the transportation of the timber..." except in certain circumstances. Teal argues that any "harvest method" that results in the transportation of timber to an unsuitable log dump, such as one that cannot accommodate the timber due to physical and environmental restrictions, must also be unsuitable.

The Commission's findings

The question is whether the term "harvest method" in section 4.1 of the CAM includes methods for transporting logs from a part of the cutting authority area to the appraisal log dump, such that a district manager's determination regarding whether a "harvest method" is unsuitable must take into account whether the method of transporting logs to the appraisal log dump is also unsuitable. Teal argues that, in making that determination, the district manager must further consider the suitability of the log dump itself.

The Commission finds that the *Timber Harvesting Contract and Subcontract Regulation* provides little assistance because it discusses the meaning of "phase" and "timber harvesting operation", not "harvest method" or "timber harvesting method." In contrast, the Commission finds that the definition of "harvest" in the *Forest Planning and Practices Regulation* does provide assistance in interpreting the meaning of "harvest method" in section 4.1 of the CAM. The Commission notes that, in that regulation, the meaning of "harvest" in relation to timber is restricted to felling timber and removing timber from a cutblock, including yarding, decking or loading timber. It does not include the entire timber harvesting operation. This suggests that "harvest methods" are methods of felling and removing timber from a cutblock, including yarding, but not hauling logs from the cutting authority area or dumping logs at a log dump.

In addition, the Commission finds that the decisions in *TimberWest No. 1* and *TimberWest No. 2* provide little assistance because the language in the versions of the CAM that applied to those appeals was different from the language in the CAM effective February 29, 2004. In particular, section 4.1 of the CAM that applied in *TimberWest No. 1* used the words "not possible" in reference to the phrase "method

of harvesting or transportation.” In addition, the earlier versions of the CAM did not include a definition of “appraisal log dump” and were not based on the MPS. The CAM that came into effect on February 29, 2004 introduced a new appraisal system that no longer focuses on the “phases” of an operation or the “least operating costs” principle. Rather, it is based on the MPS and the general principle stated in section 4.1, namely, that stumpage rates must be determined based on the “harvest method” that produces the “highest stumpage rate”, other than a harvest method that the district manager finds is unsuitable.

The Commission has also considered the relationship between the term “harvest method” in sections 4.1(2) and (3) of the CAM, and the phrase “transportation of timber from the cutting authority area” in paragraph 4.1(3)(b). Section 4.1(3) states that “the district manager when deciding whether a harvest method is unsuitable may only consider” the things listed in paragraphs (a) through (d). Thus, the things described in those paragraphs are considerations for determining the suitability of a harvest method. The things described in those paragraphs are not themselves the subject of the suitability determination. Consequently, the Commission finds that “the transportation of the timber from the cutting authority area,” as referred to in section 4.1(3)(b) of the CAM, may be part of a district manager’s considerations when determining whether a “harvest method” is unsuitable. The “transportation”, in itself, is not the subject of the suitability determination.

In addition, the Commission notes that the thing being considered under paragraph (b) is “the physical features of the areas outside of the cutting authority area that may be affected by” the harvesting in or transportation of the timber from the cutting authority area. That paragraph does not state that the consideration is the “suitability” of the means of transporting timber from the cutting authority area, the “suitability” of the appraisal log dump, or the physical features of the areas outside of the cutting authority area that may be affected “by the dumping or sorting of logs at the appraisal log dump.” Indeed, paragraph (3) makes no mention of the term “appraisal log dump” or the activities that may occur at log dumps, such as unloading, scaling, dumping, sorting, and bundling logs.

The Commission understands paragraph 4.1(3)(b) to contemplate situations where a particular harvest method, i.e. the method of felling and removing timber from a cutblock, will have an impact on forest values outside of the cutting authority area. For example, if the harvest method selected by the licensee results in roads having to be built through a sensitive riparian area or an area with a high risk of slope failure, then that harvest method may be unsuitable. In such a case, helicopter logging may be a suitable harvest method. However, in circumstances where the method of felling and removing timber from a cutblock does not raise such concerns, and there are no concerns about the effects of building new roads or using existing roads, as appears to be the case with the ten CPs in this case, then the question of suitability becomes irrelevant, assuming that the proposed harvest method raises no concerns under the other factors listed in paragraph (3).

Although Teal cited the *Weyerhaeuser* decision in support of its submissions, the Commission finds that the facts and issues in the present appeals are distinguishable from those in *Weyerhaeuser*. In the present appeals, the issue is not whether conventional logging, as opposed to helicopter logging, is unsuitable for any part of a cutblock due to environmental concerns or excessive cost. The issue in these appeals is the selection of the appraisal log dump, and Teal has never suggested that changing the appraisal log dump for the ten CPs will have any effect on Teal's choice of harvest method on any part of the CP areas, or for that matter, on Teal's use of trucks to haul timber from the CP areas. Also, Teal has provided no evidence that the harvest methods to be used in the CP areas pose any threat to the physical features and terrain stability of the CP areas, or the physical features of areas outside of the CPs that may be affected by the harvesting in or transportation of timber from the CP areas.

Thus, the Commission finds that, when the language in section 4.1 is read in its plain and ordinary sense, it does not support Teal's interpretation. Rather, it supports the conclusion that "harvest method" means the felling and removal of timber from the cutting authority area, including yarding, decking and loading timber. It does not include the "transportation" of timber by truck from the cutting authority area, or the activities that typically occur at a log dump. Therefore, a determination regarding the suitability of a "harvest method" does not include a determination regarding the suitability of the means of transporting timber from the cutting authority area, or the suitability of the appraisal log dump.

The Commission finds that other sections of the CAM support the conclusion that the term "harvest method" does not include the transportation of logs from the cutting authority area, or the activities that typically occur at log dumps. For example, the Commission has considered section 4.1 of the CAM in the context of section 3.2. Section 4.1 sets out the "appraisal methodology" to be followed once all of the relevant data has been provided to the person who determines the stumpage rate, but prior to that, section 3.2 sets out the steps in the "appraisal process" by which licensees submit information to the MOF and then certain MOF staff review or consider that information. The Commission notes that section 3.2(3) refers to "methods of harvesting" and "suitable" as follows:

3.2 Appraisals

...

3. The district manager may require the licensee or BCTS [BC Timber Sales] to complete and submit an estimated stumpage rate calculation for both helicopter and cable methods of harvesting when the district manager is not satisfied that the method proposed by the licensee or BCTS is the only method that is suitable for the area intended to be harvested.

[underlining added]

The meaning of helicopter and cable “methods of harvesting” must be interpreted in conjunction with other sections of the CAM. Teal argues that both yarding and truck hauling are methods of transporting timber, and therefore, both are part of the “harvest method.” However, the Commission notes that the CAM makes reference to “harvest methods” that include yarding but do not include the transport of logs by truck.

For example, section 4.2 of the CAM lists certain market pricing system variables that are used in calculating the preliminary estimated winning bid, including “HELI,” “HAUL” and “CABLE.” The Commission notes that HAUL, which accounts for truck haul distance, is a separate factor from HELI and CABLE, and that HELI and CABLE expressly include yarding logs from the cutblock to a landing. The descriptions of HELI and CABLE also state that skyline yarding may be included in either HELI or CABLE, depending on the yarding distance. This suggests that the movement of logs from the cutblock to a landing using a given yarding method is, for appraisal purposes, a part of the helicopter and cable “harvest methods,” but the hauling of timber by truck is not.

In addition, an adjustment for “helicopter single standing stem selection” may apply as a specified operation under section 4.4 of the CAM:

4.4.5 Helicopter Single Standing Stem Selection

1. In this manual helicopter single standing stem selection means the harvesting of standing single trees that have been marked, limbed, undercut and wedged and then broken from the stump and removed using a helicopter.

[emphasis added]

Thus, section 4.4.5 provides that helicopter single standing stem selection is a method of “harvesting” standing trees, and includes the removal of trees from the cutblock by helicopter, but does not include other forms of transportation that may follow.

Other sections of the CAM distinguish between “yarding” logs as part of a harvest method, and the “transportation” that may occur after the logs have been taken to a landing or other site for temporary storage. For example, section 4.2.4(1) states that, “Truck hauling is the transportation of logs from the cutting authority area by truck” [emphasis added]. It does not say that truck hauling is a part of a harvest method. Similarly, section 5.5(1)(a) of the CAM states that a road use charge may be applied if, among other things, “the road to which the road use charge applies is required to transport logs from the cutting authority area to the appraisal log dump” [emphasis added]. Furthermore, section 4.2.5.2 of the CAM (which is section 4.2.5.3 of the CAM under Amendment No. 4 effective March 1, 2005), states that “Log barging is a log transportation method that may be considered in an appraisal or reappraisal” [emphasis added].

Finally, Appendix V of the CAM, which sets out minimum content requirements for the appraisal maps that accompany Appraisal Data Submissions, distinguishes mapping the timber to be harvested within the cutting authority area, and delineating areas by "harvest method," from mapping the geographic midpoint and common junction of the cutting authority area for the purpose of calculating truck haul distances. There is no requirement to map roads by "harvest method." Appendix V states, in part:

Appendix V Appraisal Map Content

...

2. At a minimum, the maps shall provide the following information:
 - a. Cutting permit and block boundaries.
 - b. Delineation of timber to be harvested and timber to be retained within the cutting authority area.
 - c. Delineation of areas by harvest method.
 - d. Delineation of areas where tree crown modification is planned.
 - e. The geographic midpoint and common junction of the permit for truck haul distance calculations.
 - f. Existing roads.
 - g. Roads to be constructed.

...

Based on the CAM provisions discussed above, the Commission finds that the term "harvest method" in section 4.1 of the CAM is limited to the methods of cutting, felling, and yarding or removing timber from a cutblock, usually to a landing but sometimes to other temporary sites. "Harvest method" does not include truck hauling, or other forms of transportation such as towing and barging that occur after logs have been removed from the cutblock. While truck hauling, towing, barging, road construction, and road maintenance are cost factors that are taken into account in the process of determining market stumpage rates under the CAM, it is clear that the CAM treats those factors as distinct from "harvest methods" for the purpose of a district manager's suitability determination under section 4.1 of the CAM.

For all of these reasons, this ground for appeal fails. However, Teal was successful under issue 1, and is, therefore, entitled to the remedy it seeks.

DECISION

The Commission has carefully considered all of the submissions of the parties and the documents and evidence before it, whether or not specifically reiterated herein.

For the reasons set out above, the Commission finds that the stumpage rates set out in the ten SANs should be assessed based on Shoal Island as the appraisal log dump. The Commission refers the matter back to the Regional Appraisal Coordinator with directions to recalculate the total stumpage rates set out in the SANs under appeal, based on Shoal Island as the appraisal log dump.

The appeals are allowed.

"Alan Andison"

Alan Andison, Chair
Forest Appeals Commission

May 20, 2005