

Discipline Case: 2010-04

Subject Members: Three Registered Professional Foresters (names withheld)

Referred to: Complaints Resolution Committee

Date of Decision: June 2010

Allegations

This case resulted from a complaint from a member of the public about the conduct of three ABCFP members in regards to the management and protection of endangered Coastal Douglas Fir (CDF) ecosystems on Vancouver Island. The complaint alleges that the subject members acted unprofessionally by:

1. Awarding a licence for harvesting in an area with high value element occurrence which supports the CDFmm red-listed Oregon-grape plant community. The complainant felt there was no evidence the ABCFP members demonstrated stewardship accountability, shown there will be no loss to this endangered ecosystem, or demonstrated an acceptable level of risk.
2. Awarding a licence to log which failed to heed the Chief Forester's Timber Supply Area Rationale for Annual Allowable Cut Determination report that included a commitment to refrain from harvesting in the CDFmm until a provincial management strategy has been developed. The licence ignored previous agreements not to award any additional tenure in the CDFmm. The licence was awarded despite the fact that a Land Use Order was pending for protection of some CDF sites.
3. For failing to answer the complainant's letters requesting that the ABCFP members show the complainant how due diligence was carried out in assessing a particular parcel of land.
4. For Code of Ethics 3.6 and 4.4 violations in connection with the complainant's phone call followed by a number of letters exchanged in the complainant's attempt to get factual information, as it appeared to the complainant that incorrect or insufficient information was used to evaluate a particular parcel of land as a prime CDFmm conservation candidate.

5. Given the current system it is not possible to know until after logging whether an ABCFP member took the proper steps to demonstrate stewardship and could reasonably assure the public there would be no harm to this ecosystem. Given that an ecologist stated “the rank (EOR) will go down if it is logged...And yes, the conservation value will go down.” The complainant does not see how it can be reasonably shown that there is not a high risk of loss of viability of this ecosystem.
6. Failure to properly consider the effect of logging on the only intact watershed of a certain wild salmon-bearing creek, which could negate the efforts to restore wild salmon habitat in the area.
7. Failure to consider the effect of logging on local residents with respect to water supply, investment in property, and recreational use and failure to consult local residents who have extensive on-the-ground ecological knowledge of the parcel of land, including knowledge of red- and blue-listed species such as red-legged frog.

The complainant felt that the subject members engaged in conduct unbecoming a member and may have contravened the following bylaws:

- 11.3.1. To advocate and practise good stewardship of forest land based on sound ecological principles to sustain its ability to provide those values that have been assigned by society.
- 11.3.2. To uphold professional principles above the demands of employment.
- 11.3.6. To work to extend public knowledge of forestry, and to promote truthful and accurate statements on forestry matters.
- 11.4.4. Not to misrepresent facts.

Decision

Upon reviewing the evidence and following discussion with the Complaints Resolution Committee (CRC), the registrar declined to issue a citation.

Reasons for Decision

Government retains the right to grant licences on Crown land that is within the timber harvesting land base and hence a licence was awarded by the Ministry of Forests and Range (MFR). Our members have a responsibility to meet the applicable requirements of the *Foresters Act* and the ABCFP code of ethics. The code of ethics requires our members to “advocate and practise good stewardship of forest land based on sound ecological principles to sustain its ability to provide those values that have been assigned by society” and to “have regard for existing legislation, regulation, policy and common law; and to seek to balance the health and sustainability of forests, forest lands, forest resources, and forest ecosystems with the needs of those who derive benefits from, rely on, have ownership of, have rights to, and interact with them.” Our members are required to practise stewardship within the values that have been assigned by society. These values are identified by policy, statute and regulation. Our stewardship obligations require us to advocate for stewardship, but the legal power to determine what is protected lies solely with government as the representatives of the public interest assigned by society. Our professional obligations are limited by our legal authority. We have no legal authority to set provincial policy regarding endangered species or ecosystems. Our members have no legal authority to prevent logging on an area that has been deemed part of a licence by government. If government, as the representative of the public interest, decides that logging will take place in a given area, then our members’ role is to ensure that the logging meets the objectives set by government for protection of identified environmental values.

Our members have a professional obligation to make their employers aware of potential stewardship issues. However, the government retains the right to issue a licence and determine what environmental protection measures are appropriate. Our members were well aware that the CDFmm is an endangered ecosystem. They did make their employers aware that there were environmental concerns and issues with the CDFmm. In this case, despite of the efforts of our members to highlight the concerns regarding the area of land in question, a decision was made to issue a licence. As professional foresters, our members do not have the power to stop potential harvesting or to ensure there will be no logging within the CDFmm. At present, no logging has taken place and no cutting permit has been issued to allow harvesting on the area of concern. Further, we understand that no cutting permit is currently being processed. The evidence presented does not support the allegations that our members have failed to meet their professional obligations.

We agree that the Chief Forester issued sound advice regarding the need for a management strategy for CDFmm. This strategy is under development as part of the Land Use Order (LUO) process. As we understand it, the process of assessing what parcels of land will be protected by the LUO has been completed; however, the LUO has not been officially made into law. Government has decided that it will not protect 100% of the CDFmm through the proposed LUO and, as a result, some CDF areas may not be selected for protection.

We expect that our members will act professionally and respond in a professional manner to their correspondence. There has been significant e-mail correspondence and a number of field trips made to the area of concern. After a review of the e-mails that have been sent back and forth and a summary of the field trips that have occurred, we do not believe that the evidence supports the allegations that the identified ABCFP members acted unprofessionally in regards to their correspondence on this matter.

The code of ethics requires members: to work to extend public knowledge of forestry and to promote truthful and accurate statements on forestry matters, in section 3.6; and not to misrepresent facts, in section 4.4. In our review of the information provided, we found that the biogeoclimatic ecosystem classification (BEC) maps in the area indicate that areas lower than 150 metres are generally classified as CDFmm and areas above that elevation are generally classified as Coastal Western Hemlock (CWH) xm1. Apparently this could cause a potential division of the area of concern into CDFmm and CWHxm1. However, in order to confirm any BEC classification, a thorough on-the-ground assessment by a trained professional is required. We understand that an initial on-the-ground ecological assessment indicated that the area of land in question should be classified as CDF throughout. After our review of the correspondence, we do not find that the evidence supports the allegations that ABCFP members misrepresented the facts or failed to be truthful regarding the ecological assessment. We believe that our members have been consistent in support of the use of the best available ecological information regarding the area of concern.

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It is not possible to know until after logging (assuming the prescription is followed to the letter) whether the proper steps have been taken to demonstrate stewardship. The role of the forest professional is to prepare a plan that addresses, and provides a reasonable level of assurance of, what will happen. If logging goes ahead, it will be the ABCFP member's responsibility to develop a harvesting prescription that protects the fisheries and watershed values for the area. There are both provincial and federal laws to be considered in the protection of salmon. Any plan that is developed will have to meet all identified legal requirements and meet professional obligations for stewardship. The evidence presented does not support the contention that the ABCFP members have failed to live up to professional obligations regarding a harvesting prescription at this time.

Our review of the e-mails and the field trips to the area in question leads us to believe that there have been considerable consultations and dialogue regarding the values associated with the parcel of land in question. The evidence presented does not support the allegations that ABCFP members have failed to live up to their legal or professional obligations in this regard.

In summary, insufficient evidence was found to support any of the allegations. This complaint is now closed.