

Background and Intent Document

for the

**SOUTH CENTRAL COAST and
CENTRAL and NORTH COAST
Land Use Objectives Orders**

April 18, 2008

Table of Contents

1	About this Document	3
1.1	Introduction and Purpose	3
1.2	Background and Context for the Orders	3
1.2.1	First Nations Agreements.....	3
1.2.2	Key Background Documents and Reference Material.....	3
1.3	Legislative Context for the SCC and CNC Orders	4
1.3.1	Requirements for establishing legal objectives under the Land Use Objectives Regulation	4
1.3.2	Relationship to the Forest and Range Practices Act.....	4
1.3.3	Relationship to the Non-Spatial Old Growth Order.....	5
1.3.4	Relationship to the Heritage Conservation Act.....	5
1.4	Future Amendments to the SCC and CNC Orders and Background and Intent Document ..	6
2	General Terms and Concepts	7
2.1	Information sharing or consultation	7
3	South Central Coast and Central and North Coast Land Use Objectives – Intent and Implementation Guidance	8
3.2	First Nations Values (Part 2)	8
3.	Objectives for First Nations' traditional forest resources	8
4.	Objectives for First Nations' traditional heritage features	9
5.	Objectives for culturally modified trees.....	12
6.	Objectives for monumental cedar.....	15
7.	Objectives for stand level retention of Western red and Yellow Cedar.....	17
3.3	Aquatic Habitats (Part 3)	18
8.	Objectives for important fisheries watersheds.....	20
9.	Objectives for high value fish habitat.....	22
10.	Objectives for aquatic habitat that is not high value fish habitat	24
11.	Objectives for forested swamps	27
12.	Objectives for upland streams	29
13.	Objectives for active fluvial units	32
3.4	Biodiversity (Part 4).....	35
14.	Objectives for landscape level biodiversity	35
15.	Objectives for red-listed and blue-listed plant communities.....	39
16.	Objectives for stand level retention	41
17.	Objectives for sensitive grizzly bear habitat SCC, (critical grizzly bear habitat - CNC).	43

1 About this Document

1.1 Introduction and Purpose

This Document provides background and intent for **South Central Coast (SCC)** and **Central and North Coast (CNC) Land Use Objectives Orders (the Orders)**. The *Central and North Coast Order* was established January 3, 2008 and the *South Central Coast Order* was established August 2, 2007. As outlined in the Preamble, the Orders provide an important tool for enabling the implementation of Ecosystem-Based Management (EBM) on the North and South Central Coast of BC. They establish legal objectives pursuant to section 93.4 of the *Land Act*, for the purpose of directing forest practices implemented under the *Forest and Range Practices Act (FRPA)*.

The purpose of this Document is to provide supplemental information regarding the intent of the SCC and CNC legal objectives, and context for understanding and implementing the objectives. The overall goals are to facilitate a clear understanding of the Orders.

It is important to note that the information provided in this document should not be construed as a legal interpretation or legal advice for implementation. It is also not intended to provide prescriptive measures or to limit the accountability and flexibility of professionals and delegated-decision makers who will be responsible for developing, approving and implementing forest practices pursuant to the Orders.

Section 1 of this document describes the purpose and relationship to the Orders, and outlines the overarching legal and policy context in which the Orders exist. Section 2 describes key concepts and definitions that are commonly referred to throughout the Document.

The core of this document is found within Section 3. For each legal objective found within the Orders, a statement of intent is provided, followed by key definitions and implementation suggestions.

1.2 Background and Context for the Orders

1.2.1 First Nations Agreements

A number of signed agreements between the Province of British Columbia and First Nations provided management goals that helped to form the CNC and SCC legal land use objective Orders.

1.2.2 Key Background Documents and Reference Material

There are several documents that were developed during the completion phase (2001 to 2004) of the Central Coast Land and Resource Management Planning (CCLRMP) process that provided a foundation for the development of an EBM framework and EBM management direction for the Central Coast. A few key documents are briefly described below.

- **The North Coast Land Resource Management Plan: Final Recommendations (January 2005)**¹ outlines the consensus recommendations of the multi-stakeholder planning table, including recommendations for EBM thresholds and management targets.

¹ The CCLRMP Consensus Recommendations Report can be found at:
http://ilmbwww.gov.bc.ca/lup/lrmp/coast/ncoast/docs/NCLRMP_Final_Recommendations_feb_2_2005.pdf

- **The Coast Information Team (CIT) Ecosystem-Based Management Planning Team Handbook (March 2004)**² reflects the recommendations of a working group of the CIT for implementing EBM across multiple scales, consistent with the CIT definition for EBM.
- **The CIT Scientific Basis of Ecosystem-Based Management (March 2004)**³ provides the rationale and scientific background to the EBM Handbook.
- **The CIT Hydroriparian Planning Guide (January 2004)**⁴ provides a description of hydroriparian concepts and methods, for the purpose of facilitating the design of forest management plans likely to maintain hydroriparian functions at a watershed scale.
- **CIT Peer Review Documents** provide peer reviews of all of the above CIT documents⁵

1.3 Legislative Context for the SCC and CNC Orders

1.3.1 Requirements for establishing legal objectives under the Land Use Objectives Regulation

In order to establish legal objectives under the *Land Use Objectives Regulation*, the Minister responsible for the *Land Act* must be satisfied that the land use objectives will provide for management and use of forest or range resources in a manner that has not otherwise been provided for under the *Land Use Objectives Regulation* or another enactment. In addition, the land use objectives must provide for an appropriate balance of social, economic and environmental benefits.

Accordingly, one of the steps undertaken in the decision process to establish the SCC and CNC Orders was a systematic review of existing legal direction provided under various enactments (e.g. the *Forest and Range Practices Act*, *Forest Planning and Practices Regulation* and *Government Actions Regulation*, the *Land Use Objectives Regulation*, *Heritage Conservation Act* and *Wildlife Act* to name a few) to identify whether the proposed objectives are duplicative of legal direction provided elsewhere. The final legal objectives established in the SCC and CNC Orders should therefore be considered complementary and supplemental to legal direction provided by other enactments, unless otherwise specified.

More specific discussion of the relationship between the SCC and CNC Orders and key related enactments is provided in the following sections.

1.3.2 Relationship to the Forest and Range Practices Act

The *Forest and Range Practices Act* framework relies on the establishment of objectives to provide the overarching direction for forest management in BC. There are three types of objectives that may be established or enabled under FRPA:

- 1) Land Use Objectives established under section 93.4 of the *Land Act* (such as the SCC and CNC Orders) or grandfathered under S. 181 of FRPA for objectives that were previously established under sections 3-5 of the *Forest Practices Code*;
- 2) Objectives set by government pursuant to section 149(1) of FRPA (e.g. *Forest Planning and Practices Regulation* section 5-10), and;
- 3) Objectives enabled by regulation pursuant to section 149(1) of FRPA and sections 2 to 4 of the *Government Actions Regulation*.

² The CIT EBM Handbook can be found at: <http://www.citbc.org/c-ebm-hdbk-fin-22mar04.pdf>

³ The CIT Scientific Basis of EBM can be found at: <http://www.citbc.org/c-ebm-scibas-fin-04May04.pdf>

⁴ The CIT Hydroriparian Planning Guide can be found at: <http://www.citbc.org/c-hpg-final-30Mar04.pdf>

⁵ CIT Peer Review documents can be found at: <http://www.citbc.org/abopeer-comm.html>

Forest licensees are required to identify strategies and/or desired results in a Forest Stewardship Plan that will be consistent with all of the objectives that are in effect for any given area.

In the event of an inconsistency between any of the above types of objectives, section 149(2) of FRPA provides that land use objectives established under the *Land Act* prevail over objectives prescribed under section 149(1) of FRPA. In the case of the SCC and CNC Orders only one conflict has been noted. The Orders note in section 1(2):

In accordance with section 5 of the *Land Use Objective Regulation* (B.C. Reg. 357/2005), the objective made in section 10 of the *Forest Planning and Practices Regulation* (B.C. Reg. 14/2004) under the *Forest and Range Practices Act* is disclosed as being in conflict with this Order, for the landscape units shown on the map attached as Schedule 1.

Section 10 of the FPPR establishes objectives for cultural heritage resources that are of continuing importance to First Nations, and that are not regulated under the *Heritage Conservation Act*. The SCC and CNC Orders also provide objectives for cultural heritage resources that are not regulated under the *Heritage Conservation Act* in greater detail specific to the South Central Coast and Central and North Coast areas and First Nations. Because a conflict has been specified between these two sets of objectives, objectives 3 to 7 in the Orders are deemed to supersede or replace those identified in section 10 of the FPPR.

To date, no other conflicts have been specified within the SCC or CNC Orders. Licensees must prepare results and strategies that are consistent with the SCC and CNC objectives and with FRPA objectives.

1.3.3 Relationship to the Non-Spatial Old Growth Order

The Provincial Non-Spatial Old Growth Order legally establishes old growth objectives for landscape units across the Province that do not otherwise have old growth objectives formally established. As noted in section B of the Non-Spatial Old Growth Order:

"When a new order of the Minister of Sustainable Resource Management or delegate establishes old forest objectives, this Order will, on the effective date of the new order, cease to have effect for the area or areas affected by old forest established in the new order. Where a new order of the Minister of Sustainable Resource Management or delegate establishes old forest objectives for a portion of a landscape unit that is established under this Order, this Order remains in effect for the portion of the landscape unit for which the new order does not establish old forest objectives."

The South Central Coast and Central and North Coast Land Use Objectives Orders include objectives for landscape level biodiversity and old forest. Therefore, the Non-Spatial Old Growth Order ceased to have effect for the area covered by the SCC and CNC Orders as of August 2, 2007 and January 3, 2008, respectively, when the Orders came into effect.

1.3.4 Relationship to the Heritage Conservation Act

The BC *Heritage Conservation Act* provides for the protection of archaeological resources, covering sites containing evidence of use or habitation predating 1846, burial sites and aboriginal rock art. The *Heritage Conservation Act* prohibits the destruction, excavation or alteration of archaeological sites without a permit.

Section 6 of the *Heritage Conservation Act* specifically states that if there is a conflict between the *Heritage Conservation Act* and another enactment that the *Heritage Conservation Act* prevails over the conflicting legislation, as noted below:

"If, with respect to any matter affecting the conservation of a heritage site or heritage object referred to in section 13 (2), there is a conflict between this Act and any other Act, this Act prevails."

The SCC and CNC Orders provides direction for the management of First Nations heritage features and resources that is intended to supplement direction provided by the *Heritage Conservation Act*. The SCC and CNC Orders include management directions that are locally specific to First Nations values in the SCC and CNC areas, and include a requirement to manage for heritage resources dated after 1846.

1.4 Future Amendments to the SCC and CNC Orders and Background and Intent Document

The preamble to the SCC and CNC Orders states that *"the implementation of ecosystem based management will be monitored and, if monitoring results determine that ecosystem integrity is not being maintained or human well-being improved, this order may be reviewed and amended"*.

Section 18(5) further outlines that the Orders may be amended to implement adaptive management objectives, including ecosystem based management objectives.

Recommendations for such future amendments to the SCC and CNC Orders and/or the update of this Background and Intent Document may result from work that is ongoing within the Land and Resource Forums, the EBM Working Group, and Detailed Strategic Planning processes to further define detailed direction for the implementation of EBM.

The EBM Working Group is developing recommendations for an adaptive management framework that includes: a system for monitoring and evaluating ecological integrity and human well-being; an independent research, inventory and data management system, and; a decision-support/analysis system. Once this framework is completed and approved by the Land and Resource Forums, it may provide further information for the adaptive management requirements noted in the SCC and CNC Orders.

Further support for the management of First Nations values at a territorial level is under development through Detailed Strategic Planning processes. When complete, these plans may provide more detailed and locally specific direction for the management of traditional heritage features, traditional forest resources, culturally modified trees, monumental cedar and other values of interest to each Nation.

2 General Terms and Concepts

This portion of the Background and Intent document provides interpretation for terms and concepts that are used throughout, or in numerous sections of the Orders.

2.1 Information sharing or consultation

Recent court decisions have clarified consultation of aboriginal interests is a legal obligation that rests with the Crown. However, the courts also determined that the Crown can delegate procedural aspects of First Nations consultation to third parties such as licensees. The practical implications of these decisions are explored in the Ministry of Forests and Range FRPA Bulletin #1⁶. The bulletin provides legal references as well as suggested steps and/or approaches for information sharing.

Throughout the SCC and CNC Orders several objectives include a component for information sharing or consultation with First Nations⁷. The intent of these provisions is to identify specific subject areas where a higher standard of information sharing or consultation is required. The reference to both terms - information sharing or consultation - reflects the requirement for licensees to engage in information sharing and for government agencies (e.g. BC Timber Sales) to engage in consultation with First Nations.

It is incumbent upon licensees to ensure they have made all reasonable efforts to share relevant information with First Nations regarding activities affecting the specified subject areas. This may include, for example, developing and implementing strategies to undertake and share information related to watershed assessments or reconnaissance inventories of monumental cedar. Or it may involve sharing detailed information that describes how operational plans have been modified to avoid impacts to values and resources identified in the objectives such as traditional heritage features or culturally modified trees.

⁶ (Implementation Bulletin number 1 is found at:
http://www.for.gov.bc.ca/hth/timten/FRPA_implementation/Bulletins/FRPA%20Admin%20No%201%20FN%20info%20sharing%20June%2009%202005.pdf

⁷ Note the definition for "information sharing or consultation" differs between the two orders and should be referenced specifically for the area covered by each Order.

3 South Central Coast and Central and North Coast Land Use Objectives – Intent and Implementation Guidance

3.2 First Nations Values (Part 2)

3. Objectives for First Nations' traditional forest resources

Objective 3 in the SCC Order:

- (1) Maintain traditional forest resources in a manner that supports First Nations' food, social and ceremonial use of the forest.

Objective 3 in the CNC Order:

- (1) Maintain traditional forest resources in a manner that supports First Nations' food, social, treaty and ceremonial use of the forest.

Definitions:

*From the SCC Order – “**traditional forest resources**” means monumental cedar and other wild plant foods, botanical medicines and forest resources that are utilized by a First Nation for food, social or ceremonial purposes, and includes wildlife.*

*From the CNC Order – “**traditional forest resources**” means monumental cedar and other wild plant foods, botanical medicines and forest resources that are utilized by a First Nation for food, social, treaty or ceremonial purposes, and includes wildlife.*

Intent:

The intent of this objective is to provide for the maintenance of traditional forest resources thus allowing for continued use by First Nations.

The objective directs Licensees to seek information from applicable First Nations and from other sources regarding identification of traditional forest resources, and to develop and implement management practices that maintain those resources for food, social and ceremonial use.

Implementation Guidance:

This section provides strategies and suggestions for implementation of the land use objectives. The manner in which the objectives are met is incumbent on the Licensee. Strategies may evolve/adapt over time but the focus remains on a results-based system.

- Approaches for achieving the intent of this objective could include the following:
 - A meeting between Forest Licensees and applicable First Nations to discuss approaches for the sharing of information relating to traditional forest resources. It is recognized however that some resources may be considered by First Nations to be

too sensitive to permit sharing of specific information. Therefore working with the First Nation to develop information sharing agreements and protocols that establish mutually acceptable arrangements for the parties to develop and share confidential and non-confidential information is key.

- In the event applicable First Nations do not provide information on traditional forest resources, undertaking other research to identify potential traditional forest resources.
 - Development of traditional forest resource inventories, by reconnaissance or detailed survey as appropriate, within proposed road layouts and cutblocks.
 - Communication and information sharing between licensees and First Nations regarding site plans for harvesting and road building, and associated strategies and development and implementation of management practices to maintain traditional forest resources.
- While monumental cedar is part of the definition of traditional forest resources, it has unique qualities and management issues. For more detail regarding monumental cedar management see section 6.

4. Objectives for First Nations' traditional heritage features

Objective 4 in the SCC Order:

- (1) Protect traditional heritage features, other than culturally modified trees, and include a management zone of sufficient size to protect the integrity of the traditional heritage feature.
- (2) Despite subsection (1), a traditional heritage feature, other than a culturally modified tree, may be altered or removed after information-sharing or consultation with the applicable First Nation determines whether:
 - (a) the alteration or removal will cause a material adverse impact to the traditional heritage feature that is of continuing importance to the First Nation;
 - (b) the alteration or removal is required for road access, other infrastructure, or to address a safety concern; and
 - (c) there is any practicable alternative to the alteration or removal

Objective 4 in the CNC Order:

- (1) Protect traditional heritage features, other than culturally modified trees, and include a management zone of sufficient size to protect the integrity of the traditional heritage feature.
- (2) Despite subsection (1), a traditional heritage feature, other than a culturally modified tree, may be altered or removed after information-sharing or consultation with the applicable First Nation determines that:
 - (a) the traditional heritage feature is not of continuing importance to the First Nation; or
 - (b) the alteration or removal is required for road access, other infrastructure, or to address a safety concern.
 - (c) Where information-sharing or consultation under subsection (2) with the applicable First Nation identifies a material adverse impact to a traditional heritage feature that is of continuing importance to the applicable First Nation and there is no practicable alternative, identify specific measures to address or seek to accommodate the material adverse impact.

Definitions and Context:

From the Orders – “traditional heritage feature” means culturally modified trees and other archaeological and historical artifacts, sites and locations that are important to the cultural practices, knowledge and heritage of a First Nation but not including traditional forest resources.

Context: This objective provides a more detailed definition for traditional heritage features than the provisions of the Cultural Heritage Resources referred to in section 10 of the FPPR. The objective and the definition of traditional heritage feature does not replace the requirements of the Heritage Conservation Act, rather it extends beyond the scope of the Heritage Conservation Act to consider heritage features dated after 1846.

Intent:

The intent of this objective is to provide for the protection of defined First Nation’s traditional heritage features that are of continuing importance to the First Nation within areas proposed for forest development activities. The objective directs Licensees to share information and work with First Nations to protect traditional heritage features.

Flexibility is provided by allowing alteration or removal of traditional heritage features in situations where the traditional heritage feature is not of continuing importance to the First Nation, or where removal or alteration is required for road access, other infrastructure or to address a safety concern, and there is no practicable alternative.

In all cases, information-sharing or consultation with First Nations must occur before alteration or removal of the traditional heritage feature, Licensees must document the measures or actions they took to mitigate or accommodate any material adverse impacts.
