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#238

CANADIAN ENVIRONMENTAL LAW
ASSOCIATION.
CELA BRIEF NO. 238; Submissions
to Cabinet on behalf of...RN13732

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The Hon. Bud Wildman
Minister of Environment and Energy
135 St. Clair West
Toronto, Ontario
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Dear Mr. Wildman:

RE: Class Environmental Assessment of Timber Management on Crown Lands in Ontario; Decision of the Environmental Assessment Board, April 20, 1994

Attached is a petition to Cabinet, filed on behalf of our clients, Forests for Tomorrow, in relation to this decision.

Forests for Tomorrow (FFT) is a coalition of five environmental groups: the Federation of Ontario Naturalists, the Temiskaming Environmental Action Committee, the Sierra Club, the Wildlands League, and the Botany Conservation Group of the University of Toronto. FFT was a full-time party and participated throughout the hearing.

The appeal relates to six subject areas and the document is organized as follows:

1. Wood Supply
2. Clearcut Size
3. Old Growth
4. Reliance on Artificial Regeneration
5. Integrated Forest Management
6. The Environmental Assessment Process.
7. Appendices.

We will be pleased to provide any further information you may require in your consideration of this appeal.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



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Executive Director

MS/sf

c.c. Mr. Vic Freidin
Mr. Paul Cassidy
Mr. Dennis O'Leary
Mr. David Hunter
Mr. Donald Colborn

IN THE MATTER OF Sections 12(2) and 12(3)
of the Environmental Assessment Act,
R.S.O. 1990, c.E.18, as amended

- and -

IN THE MATTER OF a Notice by the Honourable
Jim Bradley, Minister of the Environment,
requiring the Environmental Assessment Board
to hold a hearing with respect to a Class
Environmental Assessment of an undertaking
by the Ministry of Natural Resources for the
activity of timber management on Crown Lands
in Ontario.

**SUBMISSIONS TO CABINET ON BEHALF OF
FORESTS FOR TOMORROW**

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1. WOOD SUPPLY

In finding that the Ministry of Natural Resource's (MNR) current management of northern forest units is sustainable, the Board made a critical error in interpreting evidence.

Crandall Benson, a professor of forestry at Lakehead University, conducted an audit of 19 management units for Forests for Tomorrow (FFT), and presented his findings to the Board. The audit, to our knowledge, the first independent audit done of actual impacts of forestry in Ontario, included an analysis of wood supply projections produced by MNR for 17 management units.

The MNR sources for the information conveyed by Mr. Benson included the 17 timber management plans, the Forest Resources of Ontario (MNR 1986), MNR Regional growth estimates for 2 units, and yield data from the Northeastern Region (Benson witness statement, Exhibit 1604(b), p.157).

Mr. Benson also testified to the entirely different subject of how to change the present method of calculating the level of cut to arrive at a truly sustainable level of logging, which he described as the Long Term Sustainable Yield (LTSY). The Board upheld MNR's current approach to determining the cut, and rejected Mr. Benson's and FFT's proposal that Ontario use a Long Term Sustainable Yield approach (EAB decision, p.157).

In doing so, the Board rejected Mr. Benson's findings regarding impending wood supply shortages in the 17 units, wrongly assuming that these findings were based on the LTSY approach to calculating the cut. The Board stated:

When Mr. Benson applied the same LTSY method to his audit of 19 management units, he reached the opposite conclusion of wood supply shortages.... (Decision, p.157).

However, as noted above, the Benson evidence from the management units did not flow from the LTSY approach; instead, it merely conveyed the information regarding impending wood shortages that is specified in MNR's own management plans and other named data sources by using the MNR's own allowable cut method.

It is not necessary to repeat here Mr. Benson's extensive analysis of how the MNR approach to calculating the cut levels leads to an unsustainable level of logging. However, FFT contends that this critical error on the part of the Board is the foundation for the Board's erroneous finding that MNR's approach to sustained yield management leads to a level of cutting that our forest can sustain over the long term (Decision, p.6).

Mr. Benson's evidence demonstrated that wood shortages are predicted for various species in all of the 17 units for which he examined MNR's projections. These findings are consistent with other current MNR information sources.

CURRENT INFORMATION REGARDING WOOD SUPPLY

(a) In October of 1992, the Ontario Forest Independent Audit Committee presented its Report on the Status of Forest Regeneration, a study of regeneration results. Despite FFT's requests, the Board declined to consider its findings. With regard to black spruce, the audit Committee found:

The maintenance of black spruce as a major species in boreal forest ecosystems should be a concern as its presence in the boreal forest is decreasing significantly (p.26).

The reduced status of spruce regeneration on cutover sites in comparison with the original forest should be of concern not only because of the economic value of the species but because pure dense stands of spruce have been predominant ecosystems in the boreal forest (p.30).

The MNR has not acted responded to or acted upon the seven recommendations included in the Audit report.

(b) From Central Ontario Wood Study, MNR (1990), p.38:

The Forest Industry within Central Ontario is facing a number of problems that are going to have both short and long term effects on the Industry. In the short term, the problems will result in layoffs at mills and a decline in forest operations. The long term effects will be downsizing in the industry as it adjusts to the available volume of sawlogs.

(c) From Review of Timber Management in Lake Superior Provincial Park, MNR (1989), p.38:

The current status of timber management activities in the park, if continued, will preclude production of the currently marketable products on a sustainable basis.

(d) From Review of Wood Supply and Distribution in the Southern Portion of the Central Region of the Ministry of Natural Resources, (1993) Brown, W. J. (Consultant's report for the MNR):

In recent years, the Ministry of Natural Resources has been faced with a variety of wood supply issues at various locations in the former Algonquin region. In 1989, the Minister of the day made the difficult decision to deny the transfer of Crown wood supply to the prospective purchaser of a sawmill in the Bancroft area. This decision was made on the basis that the required wood supply was no longer sustainable over the long run. The mill ceased to operate.

(e) From Ontario Forest Products and Timber Resource Analysis , Volumes I and II, MNR (October, 1992), p.5:

Ontario's softwood sawtimber harvest has been held above sustainable levels in the past, and will have to be reduced in the coming decades as sawlog inventories are depleted.

(f) From New Forest Industry/Ontario Government Business Relationship, Treasury Board presentation (1994); presenter Bob Carman:

Mr. Carman discussed the use of a land rent tenure option to encourage intensive silviculture as "a remedy for wood shortages in the 2020-2040 period."

(g) Timber Management Plan for the Superior Forest, MNR (1992) p.5-23:

Volumetric analysis of long-term wood supplies indicate that the present levels of harvest of jack pine and spruce can not likely be sustained beyond twenty years without jeopardizing the long-term level of sustainable wood supply.

The Board's found that MNR's approach to calculating the level of the cut, referred to as Maximum Annual Depletion, is "a practical and sound approach to managing the transition" from the natural forest to a managed one (Decision p.158).

However, in the face of this accumulation of MNR's own evidence of impending wood shortages due to the current level of the cut, the public simply cannot rely on the Board's assurance. Without limiting harvest rates to sustainable levels, wood depletion and future job losses are inevitable.

TIMBER PRODUCTION POLICY

The Board heard extensive evidence about the 1972 Forest Production Policy, which set the provincial target for wood production, and of the need to replace it with a realistic contemporary policy. At this time, MNR is preparing a new Timber Production Policy, and the Board has ordered the Ministry to complete it by December 31, 1994 (Condition 105).

However, Forests for Tomorrow has commented on the approach to production of the Policy, and considers that it will suffer from the same failings as the 1972 policy. To achieve a sustainable target of production, the Timber Production Policy must be based on a unit-by-unit assessment of future wood supply, aggregated "from the bottom up" to a provincial total. Instead, MNR is again preparing a policy using a computer model at the provincial level, without credible data from the units. The Policy is therefore likely to set a non-sustainable level, as did the 1972 version.

REMEDY REQUESTED

The concern for long-term sustained yield and sustainability of the forests is at the heart of public concerns regarding forest use. The public can take no comfort from the Board's erroneous finding on this key issue.

Forests for Tomorrow therefore respectfully requests:

1. that Cabinet vary the Board's decision to order, in accordance with FFT's proposed Condition 36, that logging levels not exceed the maximum sustainable level, based on identification of the Long Term Sustainable Yield and maximum sustainable level for each management unit.
2. that Cabinet vary the Board's Condition 105 regarding the preparation of the Timber Production Policy to require that the policy set timber targets based on biodiversity retention and sustainable, biologically-sound harvest techniques at the management unit level, to be aggregated to a provincial total from all units.
3. FFT further requests that Cabinet order MNR to move immediately to implement the recommendations of the Independent Audit team.

2. CLEARCUT SIZE

The Board has correctly identified this issue as one of the most contentious ones in the hearing and appears to have ordered a change in current practice regarding clearcut sizes. However, in fact, the Decision merely entrenches the status quo, without a logical or ecological rationale to ensure that cuts do not damage the forest environment.

It is particularly unfortunate that the Board's decision fosters an impression of a "North/South" split in Ontario on this issue. Its writing on the issue is frequently more polemical than judicious in tone. The Board has failed to report fully the documented scientific and technical concerns raised during the hearing by a wide range of individuals, from both areas of the province. FFT alone, filed close to one thousand slides of current forest practice with accompanying testimony from Northern residents and experts. Many of the slides and testimony documented the very large clearcuts that exist within the province.

Specifically, the Board has ordered MNR to "implement a restriction on clearcut harvesting requiring a range of sizes of clearcuts not to exceed 260 hectares" and "to develop standards for configuration and contiguity of clearcuts..." (Condition 27).

THE VARIABLE 260 HECTARE LIMIT

In discussing the clearcut size issue, the Board dismissed or disregarded extensive evidence of ecological damage related to clearcut size, and appears to have ordered limits only because of public concerns. It is not necessary to review here that extensive evidence.

However, the Board's selection of a 260 hectare limit is arbitrary. The Board states that it has selected this size because it is satisfied that "The range of up to 260 hectares provided in the Moose Guidelines" addresses the needs of industry for wood, public concerns, and scientific uncertainties (Decision, p.173).

However, MNR's Moose Habitat Guidelines do not establish a range of cuts up to 260 hectares; they recommend a range of 80 to 130 hectare cuts in areas of high moose capability, with no clear limits to sizes in other areas.

The 260 hectare figure was introduced in an Interim Direction to MNR foresters (Exhibit 484), and essentially doubled the permissible size of clearcuts.

Dr. David Euler, MNR wildlife biologist who helped develop the Moose Habitat Guidelines, testified that the optimum size for cuts in areas of moose production is 80 to 130 hectares. He further testified that in his opinion, a clearcut of 130 hectares is large (Transcript Vol. 86, p.14485). The Board found him to be "a particularly credible and authoritative witness" (Decision p.180).

Dr. Euler did not agree with the change to an upper limit of 260 hectares.

Further, as described below, what MNR described as clearcuts of up to 260 hectares are frequently bordered by adjoining cuts of the same or greater size, separated only by narrow corridors of timber. By any reasonable standard, two such cuts should be seen as one clearcut. By failing to appreciate the importance of contiguity of cuts, the Board has failed to prevent the large cuts that are still the norm in Ontario.

CONTIGUITY OF CUTS

The Board has condoned the current MNR and industry practice of large clearcuts by failing to establish requirements for the amount of standing timber to be left between cuts. In brief, adjoining cuts, often separated only by the narrow reserves required by the Moose Habitat Guidelines are treated by MNR and the Board as separate cuts, rather than as one large cutover. This means that in practice, large areas are clearcut, leaving only small corridors or clumps of standing timber (often referred to as "moose motels" by sceptical Northerners.)

Further, contiguous areas may be cut in succeeding years, leading to ever larger areas in

which biodiversity is reduced by the MNR practice of not leaving significant areas of standing timber.

It was the position of Forests for Tomorrow throughout the hearing that the question of contiguity is key to limits on clearcut size. MNR's reliance on narrow corridors of standing timber for separation between large cutovers does not prevent the ecological damage associated with large area clearcutting, including hydrological impacts, destruction of habitat, decrease in biodiversity, site damage, erosion, and damage to the forest floor. Since MNR continually denied that such impacts occur, and continues to approve logging based on cutting large areas, the public cannot rely on MNR to develop standards for contiguity that will adequately protect the forest environment. Therefore, the Board's Condition 27, giving MNR the discretion to develop standards for contiguity, fails to provide adequate ecological protection.

FFT therefore respectfully urges that Cabinet vary the Board's Condition 27 by replacing relevant parts of it with the terms of FFT Condition 29 which provides for:

- a range of cuts up to 100 hectares (with exceptions as required for protection of biodiversity);
- areas of standing timber between cuts approximately equal to the area that has been logged; and
- time restrictions on return cuts, based on protection of biodiversity and regeneration of adjoining areas.

REMEDY REQUESTED

FFT requests that Cabinet vary the Board's Condition 27 in accordance with FFT's proposed Condition 29 (1), (2) and (3), attached.

3. OLD GROWTH

In its decision, the Board properly recognized the need to protect and conserve old growth ecosystems within Ontario:

Old growth ecosystems are important because they are the ultimate expression of the natural processes which define and create our forest environment and the particular ecological characteristics of those species and associated flora and fauna. They are the ultimate expression of the "natural forest". Liquidation of these systems truncates this process and deprives us of what FFT witness Chris Maser described as a "living laboratory"...

During the hearing, we found Mr. Maser's evidence especially persuasive. He compared old growth to "nature's blue print" and said some should be set aside, but he did not try to tell us how much should be saved in Ontario (Decision, pp.385-86).

However, the Board's old growth proposals (Condition 103) are inadequate to ensure the protection and conservation of old growth ecosystems for the following reasons:

- (a) **The MNR's intention to "normalize" Ontario's forest will continue to eliminate old growth ecosystems.**

The Board's decision endorses the MNR's objective of "normalizing" the forest by accelerating the harvest of mature/overmature stands in order to "balance" the age class distribution of the future forest (Decision, p.150). At the present time, a significant proportion of Ontario's forests are in the 101-120 or 121+ age class (Decision, p.152, Figure 5.8); however, by allowing the MNR to overcut these older forests in order to create balanced age classes (i.e. on a 80 year rotation: Decision, p.152, Figure 5.9), the Board's decision will permit the continued loss of old growth forests in all areas except parks or other protected areas (see Appendix 1 of this document). This is particularly true since the Board's decision does not require the MNR to manage some stands on an extended, non-commercial rotation basis so as to protect and conserve old growth values.

- (b) **The MNR's "Area of Concern" (AOC) planning process does not ensure the protection or conservation of old growth ecosystems.**

As an interim measure, the Board has ordered that the AOC planning process must be used where timber management activities are proposed in areas containing old growth red and white pine (Decision, pp.387-88). This requirement is inadequate for several reasons:

- it is inapplicable to old growth ecosystems other than red and white pine;
- there are no provincial standards for identifying or defining what constitutes "old growth" (Decision, p.387);
- the AOC planning process generally relies upon implementation manuals for mitigation prescriptions (i.e. buffer widths); however, no implementation manuals exist to protect old growth; and
- "normal operations", such as clearcutting or road building can still be approved and implemented within AOC's (Transcript, Volume 394, p.67888).

On this latter point, the Board significantly erred in interpreting the evidence respecting the nature and practice of AOC planning. For example, the Board contends that the AOC process "leads to the identification of forest stands restricted or unavailable for harvest where the prescriptions are no-cut reserves or modified operations" (Decision, p.149). In

fact, prescriptions for AOC's can (and often do) result in normal operations, as described above (Transcript, Volume 394, p.67888). In addition, the quality, rigor and completeness of the MNR's AOC documentation is questionable, as reflected in the evidence before the Board (Ex. 893; Transcript, Volume 298, p.53037). Accordingly, requiring old growth stands to be considered as AOC's on Values Maps results in no long-term or substantive protection of old growth values.

- (c) **Focusing on old growth red and white pine leaves other old growth ecosystems at considerable risk.**

Most of the Board's old growth proposals (Condition 103(c), (d) and (e)) specifically address old growth red and white pine. While Ontario's old growth red and white pine are undoubtedly at risk from current timber management practices, the Board's focus on these species ignores the fact that other Ontario species can reach old growth status. Therefore, these additional old growth ecosystems remain at considerable risk since the Board's conditions do not require the MNR to undertake any special measures to identify and protect such old growth.

- (d) **Merely "investigating" old growth or "developing policy" is no substitute for decisive action to protect old growth ecosystems.**

Notwithstanding widespread public concern over the loss of old growth, the MNR still does not have an approved policy requiring the protection or conservation of old growth ecosystems in Ontario (Transcript, Vol. 390, p.67248; Vol. 394, pp.67916-17). In addition, MNR witnesses could not provide an opinion as to when the Policy Advisory Committee's recommendations will be reviewed, approved and implemented in the field (Transcript, Vol. 390, pp. 67247-49). Despite this MNR inertia, the Board has given the MNR up to nine more years (i.e the term of the approval) to "investigate" old growth and "develop policy" on an old growth conservation strategy and old growth definitions (Condition 103(a)). FFT submits that this condition is a recipe for further inaction and delay, and it provides the MNR with an unacceptably lengthy period to undertake work which should have been completed at the present time. In addition, the condition fails to provide any substantive direction to the MNR, although the Board had received evidence on appropriate old growth policies, descriptions, and management prescriptions (Exhibit 1674; Transcript, Vol. 283, p.50646). The Board's "interim measure" of an old growth management direction suffers from a similar lack of substantive direction which unequivocally requires the protection and conservation of old growth.

- (e) **The Board's condition is inconsistent with the Policy Advisory Committee's recommendations concerning red and white pine, and it is out of step with public expectations respecting old growth protection.**

In its decision, the Board refers to the Interim Report of the Old Growth Policy Advisory Committee, (May 1993), although this document was not filed as an exhibit at the hearing

(Decision, p.387). Nevertheless, the Board rejected FFT's old growth proposals, in part because "we believe MNR should consider the report and recommendations of its advisory committee," and because FFT's proposals "would preempt much of what the committee was supposed to consider" (Decision, p.387). The Board also commented that there was "no indication" that the MNR was not going to accept the committee's advice (Decision, p.387). In fact, one year after the release of the Interim Report, the MNR still has not formally accepted or even responded to the Policy Advisory Committee's interim recommendations, which were intended by this specialized committee to be implemented immediately. The Interim Report also documents widespread public support for old growth protection and conservation. Therefore, by giving the MNR approximately another decade to complete a long overdue old growth strategy, and by failing to specify interim management prescriptions to protect old growth, the Board's decision clearly conflicts with the recommendations of the Policy Advisory Committee and the public interest in protecting and conserving old growth.

REMEDY REQUESTED

For the foregoing reasons, FFT respectfully requests:

1. That the Cabinet vary the Board's Condition 103 in accordance with FFT Condition 56, or in the alternative, vary the Board's Condition 103 to:
 - (a) require the MNR to immediately implement the interim recommendations of the Old Growth Policy Advisory Committee; and
 - (b) establish a three month deadline for the MNR to respond to the soon-to-be-released Final Report of the Old Growth Policy Advisory Committee.

4. RELIANCE ON ARTIFICIAL REGENERATION

The Board has accepted the industry and MNR position that reliance on artificial regeneration is required to ensure future supplies of conifer. To do so, the Board has relied extensively on the scanty evidence of short-term results (2 to 5 years) presented by the MNR and the industry.

The Board rejected evidence and analysis from FFT regarding how long term results of plantation growth compare to long term natural regeneration results.

Given the short time period available to prepare this submission, FFT will not review that evidence. However, current policy developments make the Board's decision problematic if not irrelevant.

Clearly, as long as the public bears most of the cost of artificial regeneration, as has been the case under the Forest Management Agreement scheme in effect since 1980, industry will have no reason to change to other techniques. Industry obtains profits from forest exploitation, and the public then pays for regeneration, including the cost of seedlings, herbicides, site preparation, and planting.

THE REPORT OF THE INDEPENDENT FOREST AUDIT COMMITTEE

The Board declined FFT's request that it consider the results of the Ontario Independent Audit Committee, which was scheduled to report and did report in October 1992. Nevertheless, that report has rekindled the debate regarding the merits of natural versus artificial regeneration.

The Audit report includes information on results of both natural and artificial regeneration. Unfortunately, the Audit Committee was not able to specifically report results of artificial and planned natural regeneration. However, even in comparing spruce regeneration by artificial and natural means, much of the natural regeneration being unplanned (cut and walk away) regeneration, it found that in some cases natural regeneration results were superior (Audit Report, Table 2, p.20).

As noted above, the Committee expressed its concern at the overall significant decrease in the presence of black spruce in boreal cutovers (Audit Report, p.26).

The Committee noted that "the trend to increased artificial treatments for the 1970 to 1990 period was not continuing into the 1990s due in part, to the recessed Ontario economy" (Audit Report, p.23).

The Board accepted the position of the industry that committed silvicultural funding is essential to regeneration planning and implementation. The Audit Committee also emphasized the importance of committed funding and knowledge of the funding available prior to harvest (Recommendations 4 and 5, Audit Report, p.30). However, current provincial regeneration funding policies, reducing government subsidies, make reliance on high-priced artificial regeneration unrealistic.

CURRENT REGENERATION POLICY

Clearly, the widespread use of artificial regeneration in Ontario is linked to public funding. However, the level of provincial funding has been decreasing for some years, and provincial facilitator Bob Carman is currently involved in developing changes to policy which will result in the industry absorbing regeneration costs.

Since, as the Audit Committee reported, artificial regeneration has been decreasing with the

decrease in public funds, it is essential that the transfer of regeneration costs to the private sector be accompanied with provincially-set silvicultural standards to prevent widespread reversion to "cut and walk away" forestry. Planned natural regeneration based on required changes in harvest practices will be a necessary significant component of future regeneration approaches.

REMEDY REQUESTED

That Cabinet ensure that the transfer of regeneration funding responsibility from MNR to the industry is based on a legislated set of rules to ensure that the industry meets clear objectives for movement to ecosystem-based management, including site protection, sustainability, and protection of biodiversity.

In the development of these rules, the crucial role of planned natural regeneration in contributing to these objectives shall be recognized, and necessary changes in harvest practices mandated.

The development of these objectives and standards shall occur in an open, public consultative process, and include the following elements:

1. Provincial Standards:
 - (a) The establishment of Forest Ecosystem Classification (FEC) based stocking standards for all forest types. These standards must focus on maintaining the existing species composition (or most probable historic composition where degradation has occurred) and not be focused on commercial tree species.
 - (b) Audit structures and procedures that are defined at the provincial level and are consistently applied at the management unit level. They must provide for detailed on-the-ground monitoring of regeneration success.
2. Planned Regeneration Commitments

Pre-harvest planning must occur before any harvest is allowed to proceed. This planning must include:

- (a) pre- and post-harvest prescriptions for each cut block, consistent with maintaining the existing species composition, represented by FEC types, or restoring natural composition where past degradation has been identified.
- (b) pre-harvest prescriptions that identify the stocking standard and species composition that the post-harvest regenerated forest will be required to

achieve.

- (c) cost of all silvicultural treatments aggregated by FEC treatment unit.
- (d) amounts to be contributed to a silvicultural trust fund, consisting of the cost of treatments and an insurance amount to pay for failed regeneration efforts and audit costs.
- (e) post-harvest evaluation to confirm pre-harvest assessments.
- (f) documentation in a consistent format of the pre- and post-harvest prescriptions.
- (g) a penalty scale to discourage non-performance, and denial of trust monies where failures are caused by negligence.

3. Audits of Results

Regular audits, to monitor both wood replacement and biodiversity maintenance, shall include:

- (a) audit at the free-to-grow stage by an external independent audit team, comprised of individuals not connected to MNR or industry, and reporting to the Legislature.
- (b) audits shall compare the pre-harvest silvicultural prescriptions with the results obtained on the ground at the free-to-grow stage.

5. INTEGRATED FOREST MANAGEMENT

In its decision, the Board found that it would be desirable for the MNR to move beyond mere "timber management" to more holistic "integrated forest management":

[The intervenors] criticized the undertaking for lacking a holistic approach to managing for a complex range of resource values from the forest estate; timber being only one of them. We observe that MNR itself presented evidence on the desirability of a more integrated method of managing the forests in order to achieve its stated purpose...

We are convinced that as a general proposition the trend toward an integrated forest resource management approach is laudable and likely inevitable (Decision, p.68).

In addition, the Board purported to endorse the MNR's recent commitments to implement integrated forest management:

We support MNR's recent management changes and their definition of these as "pursuing a policy agenda which is more holistic in outlook and recognizes a greater range of resource values (Decision, p.124).

However, rather than order the MNR to develop and phase-in ecosystem-based integrated forest management over a specified period of time (as FFT and others had proposed), the Board simply requires the MNR to "investigate" and "research" various aspects of integrated forest management (Conditions 100-109). Therefore, instead of imposing an enforceable condition which holds the MNR accountable on this matter, the Board has simply chosen to rely upon "public and political scrutiny" to ensure that progress is made with respect to this critically important issue (Decision, p.381).

It is submitted that the Board's laissez-faire approach to this matter is inadequate because the Board's findings and recommendations are: contrary to the evidence; contrary to MNR's policy commitments; and contrary to other recent developments and public demands with respect to integrated forest management, as described below:

(a) **The Board's findings and recommendations are contrary to the evidence.**

The Board states that:

It is clear that contained in the proponent's own proposed method of carrying out this undertaking is a considerable element of "integration" of their various management activities (Decision, p.68).

In fact, there was a considerable consensus of expert evidence on the lack of integration of non-timber values within the MNR's timber management planning process. This evidence came from numerous witnesses called by FFT, the Ontario Federation of Anglers and Hunters, and other parties (Exhibit 1591, p.44; Exhibit 1604(a), pp.52-53; Exhibit 1749, pp.44-45; and Exhibit 2099, pp.20-23). Even the Board's own witness, Dr. Gordon Baskerville, stated that the MNR lacked a technically sound approach to integrating non-timber values in the timber management planning process (Exhibit 16, pp.11-12; Exhibit 970, p.75). Although the Board qualified these witnesses as experts, the Board's decision fails to cite or assess this important evidence; moreover, the decision inexplicably disregards this evidence without reasons or adverse findings of credibility.

The Board also contends that although integrated forest management is "laudable", the tools necessary for such management remain largely undeveloped, meaning that the MNR should undertake more studies, research and investigations. Again, such a finding is contrary to considerable expert evidence from FFT and other parties that many of the necessary tools are either available now or will be shortly (Exhibit 1711, pp.55-59). This finding is also

contrary to considerable expert evidence from FFT and other parties on how other agencies, such as the U.S. Forest Service, have been practicing forest management rather than timber management for a lengthy period of time (Exhibit 1716; Exhibit 1749). In fact, these experts properly cautioned against continuing to practice timber management:

The premise in the question is not valid... the process should not be a timber management planning exercise. The forest management planning process is a more appropriate planning process. Timber management is only one aspect of forest management... The U.S. Forest Service had to learn this lesson the hard way (Exhibit 2099, pp.20-21).

Again, the testimony from these experts is not referenced in the Board decision, and the decision disregards this evidence without reasons or adverse findings of credibility. More importantly, the decision merely requires further investigation, not implementation, of integrated forest management by the MNR. In FFT's submission, the Board's decision will likely result in more intense, expensive and adversarial land use conflicts (i.e. appeals, bump up requests, and litigation) because non-timber values will still not be properly integrated in the timber management planning process as prescribed by the Board. In short, the need for integrated forest management, and the MNR's capacity to commence implementation of integrated forest management, was demonstrated at the hearing, and FFT submits that Cabinet must ensure that the MNR actually undertakes the transition to forest management in an expeditious manner.

(b) The Board's findings and recommendations are contrary to MNR's policy commitments.

The MNR has committed itself to an integrated approach to resource management in a number of recent policy pronouncements, including Direction 90s (Exhibit 2200(a), Attachment 3, p.7) and Sustainable Forestry (Exhibit 2315, pp.1-2). Dr. David Balsillie, the Assistant Deputy Minister of the MNR's Policy Division, also testified late in the hearing that the MNR was moving to forest management, and that the MNR expects to be "a long way down that road" by 1995-96 (Transcript, Vol. 394, pp.67893-97). However, by firmly entrenching the status quo of timber management planning, the Board's decision lags significantly behind the MNR's policy commitments. Moreover, by requiring the MNR to merely "investigate" the matter, and by failing to impose any deadlines for implementation, the Board's decision will slow down if not terminate any impetus for reform.

Protection of biological diversity is an important component of integrated forest management (Transcript, Vol. 297, p.52878). In particular, considerable expert evidence from FFT and other parties established that unless carefully planned and implemented, logging operations can (and often do) reduce biological diversity, particularly at the community level (Exhibit 1749, pp.46-47; Exhibit 2239(a), p.6; Exhibit 2240, p.2; Transcript, Vol.283, pp.50608-10). Again, however, the Board's decision on this issue is seriously out of step with the Ontario government's policy commitments respecting the protection of biodiversity (i.e. Direction

90s, p.7; Exhibit 2063; Exhibit 2295, Tab 3, p.20).

Significantly, the Board's response to biodiversity concerns of FFT and other parties was to order the MNR to "investigate" various methodologies for habitat and landscape management (Condition 107). The Board also ordered the MNR to use two more "featured species" (i.e. pileated woodpecker and pine marten) for planning the cutting or creation of forest cover, despite overwhelming evidence that:

- the MNR's present featured species approach leaves 99% of wildlife (i.e. all flora and fauna) unaccounted for and unprotected in the planning process, including species which require snags or downed woody material (Exhibit 1711, p.9 and p.31);
- the MNR's present featured species approach is outdated, fundamentally deficient and scientifically unproven (Exhibit 1711, pp.8-9, pp.30-31; Transcript, Vol.88, p.14719; Vol. 160, p.28025);
- the MNR's present featured species approach is not sufficient to maintain biodiversity (Transcript, Vol. 390, p.67218); and
- the MNR itself has acknowledged the fundamental problems with the featured species approach (Exhibit 2089, p.4), and has committed to "moving from a wildlife management approach which focuses primarily on individual species to one which strives more explicitly to conserve biodiversity" (Exhibit 2272, p.36).

Once again, by merely requiring the MNR to "investigate" this matter without imposing any deadlines for implementation, and by further entrenching and expanding the obsolete and flawed "featured species" approach, the Board's decision conflicts with the MNR's policy commitments respecting biological diversity, and it will seriously hinder any effort to reform the MNR's present approach to wildlife habitat management.

With respect to wildlife, it is noteworthy that the Board rejected as "impossible to achieve" FFT's proposal that no wildlife populations decline at the provincial level or in the long-term as a result of timber management (Decision, p.380). In fact, this objective is the official policy of the MNR at the present time (MNR Policy 6.04.01).

(c) **The Board's findings and recommendations are contrary to other recent developments and public demands.**

During and after the hearing, a number of other policy development and reform exercises have clearly identified the need for the MNR to move well beyond timber management to more holistic, ecosystem-based integrated forest management. For example, the Ontario Wildlife Working Group has reiterated the importance of maintaining biodiversity and

recommended that the MNR adopt a holistic ecosystem approach to management (Exhibit 2065, p.33).

Similarly, Diversity: Report of the Forest Policy Panel (June 1993) made a number of recommendations on implementing the paramount objective of ensuring forest sustainability. In particular, after extensive public consultation with thousands of Ontarians, the Forest Policy Panel confirmed the need to conserve biological diversity and stated that: "For all public forest lands, Ontario must develop and adopt a policy of Adaptive Ecosystem Management, not timber management, or management for other individual resources" (p.xiii, emphasis added). The Forest Policy Panel's report was adopted as government policy in April 1994.

REMEDY REQUESTED

For the foregoing reasons, FFT submits that the Board's decision respecting integrated forest management is not supported by the evidence, and further submits that the decision has been superseded by more recent developments and policy commitments by the MNR. Accordingly, FFT respectfully requests:

1. That the Cabinet vary the Board's decision by adding an additional condition which requires the MNR to:
 - (a) by May, 1999, develop and implement integrated forest management planning; and
 - (b) by May, 1996, develop and implement policies and management prescriptions intended to conserve biological diversity, maintain essential ecological processes, and emulate natural disturbance and landscape patterns within Ontario's forests.

6. THE ENVIRONMENTAL ASSESSMENT PROCESS

As intervenors who committed six years of intense work to the largest environmental assessment hearing done in Ontario, FFT is deeply concerned by a number of the Board's approaches to decision-making.

Application of the law of evidence.

The Decision demonstrates that the Board relied extensively on three types of information, all generated by the Board itself, that put intervenors at a disadvantage: responses to interrogatories posed by the Board to the MNR and the industry; a report on silvicultural costs and results; and four site visits.

- (a) The voluminous interrogatories (passed to MNR and the industry and not to

any intervenors) were merely filed with the Board, without the writers being called to be cross-examined on the contents. They were required by the Board near the end of the hearings, when intervenors' cases were completed, so contesting evidence could not be presented. The subjects covered by the interrogatories were extremely wide-ranging, but no opportunity for a full response was provided to other parties.

Our concern regarding this "evidence" is not academic. The Board's decision suggests that much of the information provided in the interrogatories was relied on at face value by the Board in arriving at its decision.

- (b) The report on silvicultural costs and techniques was prepared by a group of foresters, representing various parties, on order from the Board. FFT never agreed with the methodology, data bases, or results of this exercise, but was not able to do more than cross-examine the MNR witness who was called to testify to the report. Despite all the scientific and technical papers at the hearing, and FFT's own voluminous evidence on the questions of silvicultural costs and techniques, the Board, again, appears to have accepted this very dubious information at face value.
- (c) FFT and other intervenors were particularly prejudiced by the Board's treatment of information received on "site visits".

Early in the hearing, the Board determined that site visits would not be considered to be evidence, and this ruling was reiterated later in the hearing. FFT applied its resources to the preparation of evidence, and of course, could not equal MNR and the industry in providing tours of various sites for the Board.

Nor was FFT aware that the Board members had the expectation that they "would see the worst and the best examples of timber management practices"(Decision, p.19) on their visits. Rather, FFT believed the site visits were for the purposes stated: to assist the Board in understanding information properly put before them, not to supplant that evidence. FFT therefore provided information current to the time of testimony, on timber management practices, good and bad, including almost one thousand slides, and volumes of witness statements. This evidence was dismissed by the Board as out-dated, while the Decision reflects no apparent recognition that there was any bias in the site viewing process.

The Board even criticizes FFT for cancelling a proposed site visit (Decision p.414). FFT had proposed the tour with the explicit purpose of making it part of the evidence of FFT's case. When that was denied, FFT cancelled the visit in order to apply its resources to the preparation of evidence.

The Board's defence of its use of site visits (Decision, p.418) confirms, in FFT's opinion, that the Board did not distinguish between information obtained on these limited visits and evidence properly led before it. Had FFT known the Board's views on this subject during the hearing, views which appear to contrast with the rulings made by the Board, FFT would have placed an emphasis on the visits equal to that placed by the Board, and would have sought clarification of their evidentiary status.

- (d) The Board's decision refers to at least three documents which were completed after the hearings ended in November 1992. These documents include a report on EA reform from the MOEE dated July 19, 1993 (Decision p.47), a report on old growth received by MNR in May 1993 (Decision 387), and a report on EA "mega-hearings" provided to the full Environmental Assessment Board in 1993 (Decision p.413). FFT contests the comments made in the Decision regarding the mega-hearings report.

More importantly, since quasi-judicial tribunals, like other judicial bodies, normally do not and should not consider material not filed before them in arriving at their decisions, readers are left to wonder whether these or other non-evidentiary documents played a role in the Board's decision-making.

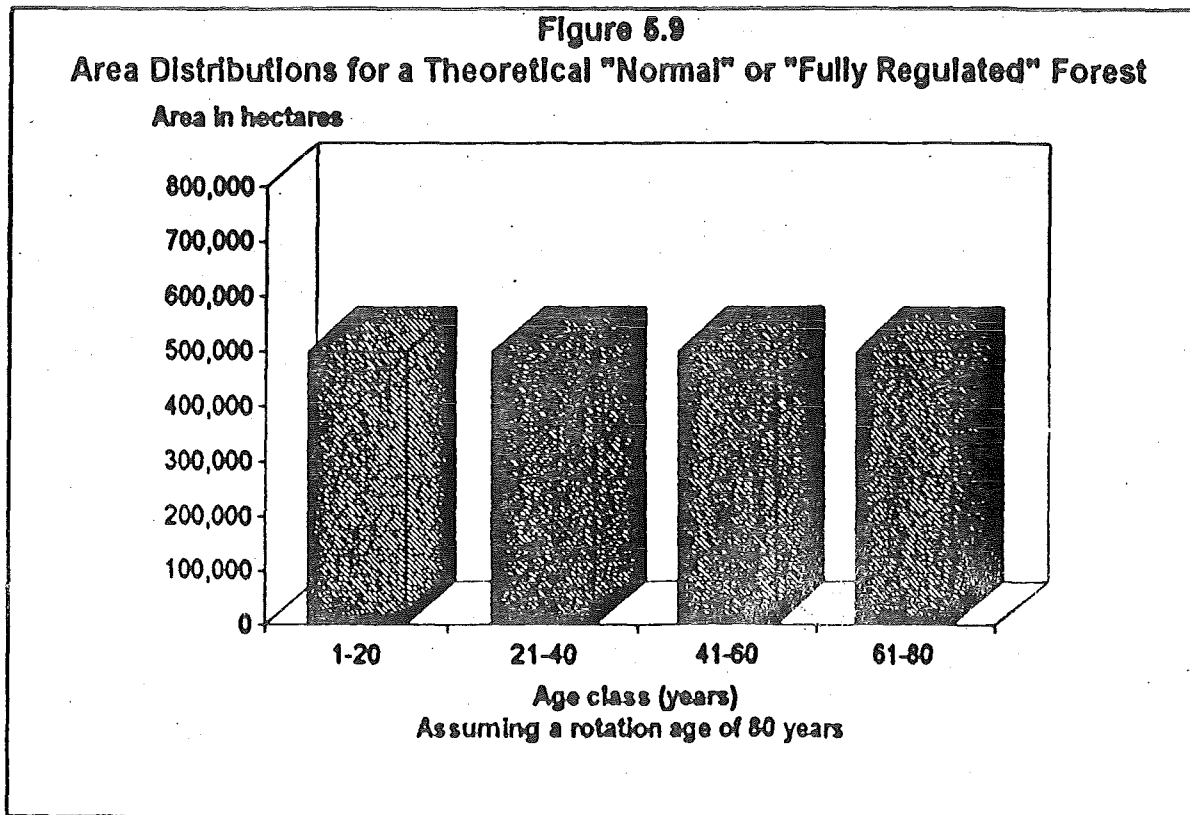
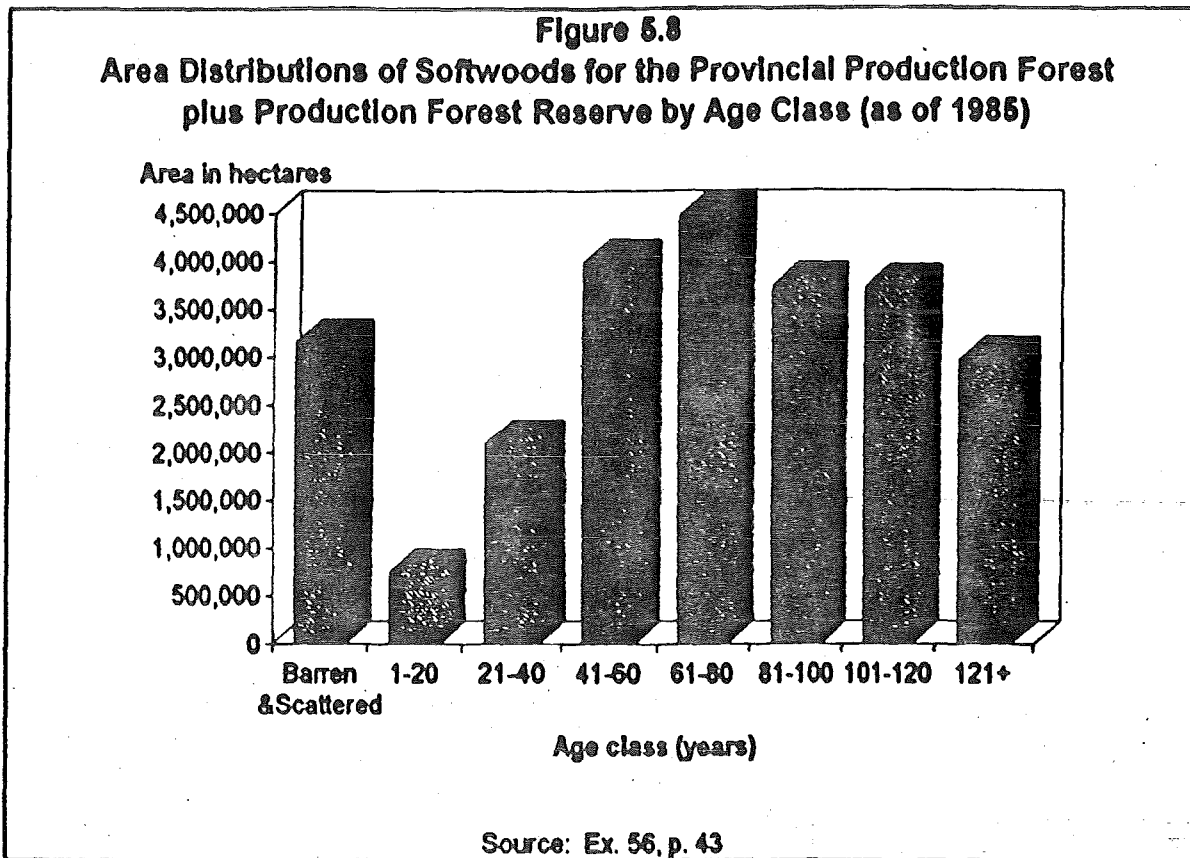
REMEDY REQUESTED

This Environmental Assessment decision should reflect a balanced consideration of the evidence placed before the hearing board. FFT respectfully requests that the Cabinet be mindful of both the errors in fact and interpretation that have been discussed throughout this submission and the inconsistent approach to the hearing and weighting of evidence here described before reaching a decision to accept, amend or reject this decision.

Dated at Toronto on this 17th day of May, 1994.

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29. (1) When developing silvicultural prescriptions, the planning team shall have regard for the principles set out in Conditions 27-28.

(2) In order to emulate the patterns and processes of the natural forest as specified in Condition 54, the NNR shall, in consultation with interested members of the public, develop guidelines specifying:

(a) A range of acceptable clearcut sizes and contiguous clearcut sizes.

(1) In recognition of the historic pattern of the contiguous cuts over large area, NNR shall implement a range of smaller cuts up to 100 hectares to the extent compatible with the protection of biodiversity. Where individual or contiguous clearcuts exceed 100 ha, they shall be identified in the Timber Management Plan, with a rationale provided for the size of the cut.

(11) A clear cut is a harvested area that has the majority of the merchantable trees removed. Areas cut in the same year and not separated by a distance that approximates the size of an annual average cut block in that area in terms of diameter, length, width, general shape will be considered one clearcut. Return clearcuts that occur before the specified time limits will be considered a contiguous clearcut.

An area cut by selection cutting will not be considered a clearcut.

(3) Timing of cuts

(a) The guidelines shall specify time limits for return cuts, based on the height and age of regenerating adjacent stands and the goal of protecting and enhancing biodiversity.

APPENDIX 2

36. Each timber management plan shall contain the calculation of Maximum Sustainable Harvest (MSH) by volume for each forest unit or working group. The methodology for the calculations shall be based upon the Long-Term Sustainable Yield (LTSY), and the results of the calculations shall be portrayed graphically. The rationales for the chosen MSH shall be provided. At a minimum, calculations shall be performed for the entire rotation period for each forest unit or working group. [N/A]

Old-Growth Forest Ecosystems

56. (1) Within two years of this approval, for each working group species, the MNR shall develop a description of "old growth", which shall be included within the ELC system escribed above, and which shall be based on the following structural, functional and compositional attributes:
- (a) age class, tree size, and developmental stage;
 - (b) type and extent of canopy layers;
 - (c) presence and size of snags;
 - (d) size and diameter of fallen logs and woody debris;
 - (e) soil and forest floor;
 - (f) plant, animal, fungi and micro-organism associations;
 - (g) above-ground and below-ground ecological processes;
 - (h) biological diversity, as defined in Condition 53.
- (2) Within two years of this approval, within forests that are eligible for harvest, the MNR shall conduct field surveys to identify and evaluate old-growth stands in order to determine their ecological significance. "Ecological significance" shall be based on:
- (a) the stand's old-growth features and characteristics, and relationship with other stands within the regional ecosystems;
 - (b) the stand's potential value as a functioning old-growth ecosystem;
 - (c) the stand's potential value as habitat and/or as a connective corridor facilitating the movement of animals or genetic material between old-growth stands; and
 - (d) the stand's potential research, scientific or recreational value if it is protected and allowed to continue functioning.
- (3) The MNR shall not permit any timber management activities to occur within ecologically significant old-growth stands, and shall ensure that timber management activities occurring in adjoining allocated areas do not adversely affect ecologically significant old-growth stands.

- (4) As an interim measure, pending the completion of the requirements of subsections (1) and (2), the MNR shall ensure that no timber management activities are planned or permitted in old growth ecosystems which meet the provincial criteria for old growth forest communities.
- (5) Wilderness areas, roadless areas, ANSIs, provincial parks, ecological reserves and other protected areas shall be evaluated by the MNR to determine their status and suitability as "ecologically significant" old-growth forest ecosystems.
- (6) In order to fulfill its obligations under this Condition, the MNR shall review and, where necessary, revise stand allocations and silvicultural packages in draft and approved timber management plans, to ensure that:
 - (a) no timber management activities occur within ecologically significant old growth stands;
 - (b) only compatible timber management activities occur within lands adjacent to ecologically significant old growth stands or within other old growth stands; and
 - (c) a sufficient number of younger stands are managed on an extended, non-commercial rotation in order to ensure a sustainable supply of old growth stands.

