



File: 19500-25/A30171 (00004820 00 MEADOW CREEK CEDAR LTD.)

## Registered Mail

December 10, 2012

Forest Practices Board  
PO Box 9905 Stn. Prov. Govt.  
Victoria, BC  
V8X 9R1

**Regarding: District Manager response to Recommendations of Complaint Investigation  
# 110998 Forest Practises Board /IRC/182 dated May, 2012**

The Forest Practises Board (the Board) has conducted an extensive review of the operations of Meadow Creek Cedar Ltd. (MCC) under its forest license A30171. The subsequent report issued in May 2012 identifies many areas of concern and requests that Government advise the Board of steps taken or planned to address the Board's recommendations by December 31, 2012.

I hereby offer Government's response to these recommendations.

### **FPB Recommendation #1**

*"MCC, or the government if MCC's license is still suspended, should employ a qualified professional to review roads where construction did not follow the engineering designs and if necessary, prepare a mitigation strategy for those roads."*

### **Selkirk Response**

I agree with the Board to the extent that legislation provides for such oversight and the development of a mitigation strategy for roads that are not the responsibility of government.

Section 79 of the *Forest Act*, speaks to Continuing Liability which provides direction and states, among other conditions, that *"despite the expiry, surrender, suspension or cancellation of a holder's agreement, the holder is liable to pay fees or penalties and perform all other obligations under the agreement incurred before the action."*

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Therefore, it is the role of the licensee to conduct maintenance and to hire the appropriate qualified professionals to ensure roads are built to the required designs, regardless of the fact that the license is under suspension.

Under the *Forest and Range Practise Act* (FRPA) and the professional reliance model established within the intent of the *Foresters Act*, the licensee and their representative is charged with developing a road design and implementing the works to the extent provided for in legislation and policy.

Under certain circumstances, Government may become involved in the review of roads where construction did not follow the engineering designs. Those circumstances may include: a routine field inspection of the authorization; the report of a landslide; inspecting a change of circumstance declaration; conducting a field review of an approved engineered cost estimate or an inspection under FRPA Section 107 release of obligations request.

Should those circumstances warrant further review, Government staff will conduct an investigation. Should additional qualified assistance be requested, that request will be reviewed and additional resources called upon to provide assistance to the extent practicable.

Consistent with this process, Government engaged the services of a professional engineer to assess the risk on selected high risk roads. Specifically, the engineer inspected instability concerns on the America Creek forest service road and the Healy Creek operational road (see Appendix 1 ).

Compliance and Enforcement (C&E) staff continue to: monitor for alleged non-compliance; take enforcement action when warranted; maintain open communication channels with the licensee's representatives to address concerns in a proactive manner; and, where necessary, follow-up on areas of concern to ensure the works planned for are in fact conducted. (see Appendix 1)

As for preparing mitigation strategy for known problem roads, MCC was reminded of their obligations while under suspension and encouraged to implement a high standard of due diligence in conducting the works required. (see Appendix 3)

The district will continue to monitor those sections of high risk road that we are aware of ( such as Healy and Lendrum Creek) and should further inspections result in investigations, the appropriate information will be gathered and a case prepared under the Administrative Remedies Regulation.

Appendix 1 provides a partial list and copies of the inspections and professional reports conducted during 2012.

### **FPB Recommendation #2**

*“Government should assess the potential environmental risk of the roads in the Healy Creek drainage and coordinate a maintenance/deactivation strategy involving all resource users”*

Selkirk Response:

I agree with the Board to the extent to which the legislation provides.

The Healy Creek drainage has traditionally had road maintenance issues. We are familiar with the drainage and are aware of the sediment problem areas.

Currently, a compliance and enforcement investigation is underway in the Healy Creek drainage, with a determination yet to be rendered.

Related to that investigation, as mentioned in response to Recommendation 1, the district retained the services of a professional engineer to conduct a road assessment on a section of the Healy Creek road. The engineer's report documented recent and ongoing road-related cut and fill slope failures; road related sediment sources into Healy Creek, and provided a preliminary cost estimate for road re-establishment. The report also indicated that there is a risk to public safety if road access remains unrestricted.

The district is in the early stages of developing a maintenance/deactivation strategy for the drainage. Currently, several roads have been inspected and have been converted to non-status roads. Some sections inspected have not been released of obligations due to required remediation works while other sections remain the responsibility of the licensee with further deactivation works still to be completed.

We have met with MCC and a mineral tenure holder to discuss a possible alternative route that would provide access to the area for all users. We await further information from the mining company before this option can be explored more fully. (see Appendix 2)

As an interim measure, and with the support of all the stake holders in the drainage, the management company for MCC has requested, and I have approved, a closure of the Healy Creek mainline under FRPA Section 22.2(3). The primary purpose of the closure is to restrict public access due to safety concerns noted in the road assessment. (see Appendix 4)

It is important to note that the road is required to be maintained to at least a wilderness standard by the licensee. For government to intervene and take measures to mitigate the environmental risk on a licensee's road must be first carefully considered and sufficiently supported by due process through actions such as a determination under the Administrative Remedies Regulation.

We will continue to monitor the actions, or as the case may be, the inaction of the licensee in the Healy Creek drainage into spring 2013, and will take appropriate steps, if warranted and practicable, to mitigate the environmental risk.

Appendix 2 details our efforts to date to coordinate a maintenance and deactivation strategy for Healy Creek.

**FPB Recommendation #3**

*“Government should examine its policies to ensure it has the ability to act quickly where there is an imminent high risk to the environment or a forest resource, whether or not a negative impact has occurred”*

Selkirk Response

I agree with this statement, recognizing the respective roles of all involved.

Selkirk Resource District is guided by several policies that provide us the ability to act quickly should an event that poses a high risk to public safety or the environment occur. Two such policies are: the Landslide and Erosion Response Plan (LERP) – a district level Standard Operating Procedure and the second is the Engineering Funding Policy (EFP) developed and amended by Engineering Branch.

The LERP Standard Operating Procedure defines the scope, reporting, planning, control, emergency response, and interagency cooperation measures should an event occur in the district. This document is updated from time to time to ensure the reporting structure outlined in the policy is up to date as possible.

The EFP outlines how treatment funds should be allocated based on risks to the public or environment given the forest service road (FSR) classification. In situations where there is an event on a FSR; a treatment plan is prepared and, subject to approval, is implemented to remedy the situation. It is important to note that this policy does not consider operational roads as funding candidates; maintenance on operational roads is an obligation of the road permit holder.

When an event occurs on a road permit, the obligation to act quickly to address any associated public safety and environmental issues is solely that of the licensee. They must implement their contingency plans and conduct their own mitigation measures. For the most part, licensees in the Selkirk Resource District are proactive in addressing problems and carrying out any assessments or works required to address them. If requested, we may provide input and advice to the licensee regarding any further appropriate actions.

In respect to MCC’s liabilities, the district has carried out inspections, issued numerous instruction letters, and met with the licensee’s representative in an effort to remind them of their obligations to ensure actions are taken to mitigate and limit adverse environmental impacts.

I am therefore confident that, given the current legislative framework and to the extent that the event is both predictable and able to be remedied, the district has adequate policies and procedures to respond quickly where there is an imminent high risk to the environment or a forest resource.

Appendix 3 provides an example of Government’s efforts to communicate to Meadow Creek Cedar the obligations to conduct road maintenance while under license suspension.

#### **FPB Recommendations #4**

*“Government should explore its options, including intervention under Section 77 of FRPA, for ensuring outstanding silviculture obligations on FL A30171 are met and free growing is achieved within the timelines specified in MCC’s FSP”*

#### **Selkirk Response**

I agree with this statement to the extent provided in legislation and offer the following background before I address this point.

Government suspended Meadow Creek Cedar (MCC)’s licence on February 6, 2012; five working days after the determination and remediation order DKL # 29436 was issued. This was several months prior to publication of the Board’s report, which negated the need to consider a Section 77 intervention order to address MCC’s non-compliance issues in the short term.

By way of explanation, I offer the following timeline:

- February 23, 2012 Meadow Creek Cedar filed a request for review of the suspension to the Regional Executive Director.
- March 1, 2012, I requested that the licensee provide information in accordance with Clause 9 of the license agreement that pertained to the performance of the license.
- March 2, 2012, Meadow Creek Cedar filed an appeal of the determination and remediation order DKL # 29436 to the Forest Appeals Commission.
- March 9, 2012, the Regional Executive Director extends the submission date for the licensee to supply information for the review of the suspension.
- April 23, 2012 the Regional Executive Director issues his determination that the suspension is upheld in full.
- June 7, 2012 determination and remediation order DKL #29505 relating to MCC’s operations was rendered for non-compliances relating to timber trespass and soil disturbance.
- June 27, 2012 MCC requests a review of the latest determination.
- August 16, 2012 MCC files an appeal of all determinations and the suspension to the Forest Appeals Commission.

As outlined above, MCC filed an appeal of the decisions to the Forest Appeals Commission, which effectively stayed the determination decisions and the suspension until the case could be heard. The suspension, however, remains in effect. After several procedural delays instigated by MCC, the final hearing was scheduled for January 2013.

In October 2012, local efforts resulted in a third party agreement between MCC and an independent management company. The agreement provided that the independent company would assume operations of the license. As a result of further discussions with the parties involved, the appeal was abandoned on November 2, 2012, enabling the original determination and remediation orders to proceed.

During the period in which the appeal stayed the determinations, Selkirk explored the use of Section

77 of FRPA and is still exploring the application and implications of using this section for potential future use. The reality is that Section 77 has not been widely applied, nor are the ramifications of intervening well understood by those who may be tasked with implementing the legislation.

In respect to ensuring outstanding silviculture obligations on the license are met, the management company's professional forester has committed in writing to reporting on the openings identified in the determinations every three months for the next five years.

In addition, we are working with MCC's management company representative to explore options within the Forest Stewardship Plan legislative framework to monitor those openings and to ensure that past Board recommendations are incorporated into the plan.


Meanwhile, investigations continue by C&E staff with potential cases being brought forward for determination and remediation under the Administrative Remedies Regulation.

Appendix 4 details the districts application of Section 77 of FRPA to the extent that was operationally feasible given the short time left in the 2012 field season. The measure that resulted was the closure of the Healy Creek road to reduce the risk to the public.

The district recognizes that additional mitigative measure may be required and will continue to investigate the use of Section 77.

In closing, I trust that this letter fully addresses the Forest Practices Board's recommendations, and invite the Board to contact me directly if you have any remaining questions or would like more information.

Yours truly,



Garth Wiggill, District Manager  
Kootenay Lake Forest District  
Selkirk Resource District

Cc:

Tony Wideski, RPF Regional Executive Director, Kootenay Boundary Region  
Dan Barron, RPF Regional Manager, Compliance and Enforcement, Kootenay Boundary Region

Attachments: Appendices 1 – 4

**Appendix 1 Inspections Conducted in 2012**

Appendix 1 details Qualified Registered Professional (QRP) inspections conducted during the 2012 field season. This includes:

1. Copy of an email entitled “Engineering review of fill failure- American Creek @ 4.6 km” by Tina Zimmerman, dated February 1, 2012 5:00PM which is an inspection on obligations of MCC during industrial hauling operations on the American Creek FSR under a Road Use Permit.
2. Copy of the report entitled “Healy Creek Road R07582 Section A, Road Assessment” dated September 2012 by Doug Nicol, P.Eng, SNT Engineering Ltd. which is an assessment that is part of the ongoing investigation in Healy Creek. (Doug Nicol has agreed that this report may be sent to the Board for the purposes of this letter)
3. Selkirk has also included periodic road maintenance/harvesting inspections conducted by engineering and C&E staff on this licensee during 2012. Inspections conducted on FSRs are under the respective road use permit, the rest unless indicated are inspections conducted on road permit obligations. Several inspections are at a draft stage pending completion. The one harvesting inspection in this list was completed on one of the permits (CP 279 and CP 293) within the suspension that were granted an exemption to complete harvesting operations.

Selkirk has included a copy of the following inspection reports:

Road Inspection #	Date of Inspection	Author
FSR 0077 Sec 01	2012-05-07	T. Zimmerman
FSR 0077 various sections	2012-05-10	T. Zimmerman
FSR 0077 Sec 01	2012-06-21	T. Zimmerman
FSR 0077 Sec 05	2012-07-11	T. Zimmerman
FSR 0185 Sec 01	2012-05-13	T. Zimmerman
FSR 0185 Sec 01	2012-07-05	T. Zimmerman
FSR 0198 Sec 01	2012-05-03	T. Zimmerman
FSR 0198 Sec 01	2012-05-12	T. Zimmerman
FSR 0198 Sec 01	2012-06-14	T. Zimmerman
FSR 0321 Sec 03	2012-02-17	I. Hartley
FSR 0321 Sec 01	2012-05-03	I. Hartley
R07745 Branch 6	2012-05-03	I. Hartley
R04954 Sec BB Lendrum Creek	2012-05-10 (under investigation)	H. Biallas
R04954 Sec E	2012-06-14	K. Upward
R07582 various (Healy Creek)	2012-06-20-27 (5 draft reports)	H. Biallas
R07582 Sec A,L+O (Healy Creek)	2012-07-10	I. Hartley
R07582 Sec V (Healy Creek)	2012-07-11	I. Hartley
R06468 Sec A	2012-08-15	K.Upward
Harvest Inspection CP 293 block 1	2012-10-25	I. Hartley

## **Appendix 2 Maintenance/Deactivation Strategy for Healy Creek**

Appendix 2 is a copy of an email entitled : “Healy Creek By-Pass Options and Next Steps Meeting, Kootenay Lake Forest District Office, Nelson, BC” dated November 9, 2012 @ 12:00PM which details the efforts and outlines the next steps to seek a resolution to the ongoing maintenance issues in Healy Creek. Local resource users in the drainage were consulted and this meeting was held between the interested parties.

Selkirk awaits the requested information from the mining company which will set all the other actions outlined in the meeting into motion.

In the meantime, the district will await outcome of the pending investigation.

Should the requested works not be done and an agreement not materialize by Spring 2013, Selkirk will evaluate the available options and take the appropriate steps to implement mitigative measures to the extent practicable. This may include taking further action under Section 77 of the FRPA.



### **Appendix 3 Government Policies in place to responded in a timely manner**

Appendix 3 contains the following:

- A copy of a landslide report for R04954 Section BB, dated May 7, 2012
- An email dated May 8, 2012 @ 10:55AM entitled “Lendrum Creek Landslide- R04954 Section BB, Section CC, CP289 Block 1”
- A letter entitled “Meadow Creek Cedar’s obligations while under License Suspension” dated May 9, 2012 that identifies the Lendrum Creek landslide; reminds the licensee of their obligations under Section 79 of the *Forest Act* and also provides a copy of the LERP Standard Operating Procedure.
- Excerpts from the Ministry of Forests, Lands and Natural Resource Operations (FLNRO) Engineering Funding Policy (Fiscal 2012/13).

It is important to note that clause 1.1.4 of this policy indicates that FLNR may only consider funding road maintenance on an operational road that has been identified as a high public use/recreational value road.

The Healy Creek road has not been identified as such even though the area has a high use from all terrain vehicles.

The only portion of the Healy Creek road that is still designated as an FSR is the segment beyond the private land at the head of the valley, with all the lower sections under road permit to MCC.

#### **Appendix 4 Application of the Use of Section 77 of FRPA**

Appendix 4 details the districts direction to the licensee under Section 77 of FRPA to the extent that was operationally feasible given the short time left in the 2012 field season.

The appendix includes the following:

- Copy of the September 19, 2012 letter entitled “Requirement to conduct road maintenance in Healy Creek” and
- Copy of the letter entitled “Approval to CLOSE Healy Creek Section A from 7.4 km-8.5km” dated October 22, 2012 and an application email dated the same date by Rodney Arnold, RPF.

The measure that resulted was the closure of the road to reduce the risk to the public.

The district recognizes that additional mitigative measure may be required and will continue to investigate the use of Section 77.

**End of Response to the FPB.**



File: 97150-20/110998

February 12, 2013

Garth Wiggill, District Manager  
Ministry of Forests, Lands and Natural Resource Operations  
1907 Ridgewood Road  
Nelson, BC, V1L 6K1

**Re: Response to Recommendations of Complaint Investigation # 110998 dated December 10, 2012**

Dear Garth Wiggill:

Thank you for your letter of December 10, 2012, responding to the Board's recommendations presented in our complaint investigation report FPB/IRC/182, regarding Meadow Creek Cedar Ltd.

The Board acknowledges your agreement with and support of our recommendations, and we understand the limitations that legislation puts on your ability to address them in full. The Board also appreciates the careful and detailed response to each of our recommendations, and the appendices provided for context. The District has undertaken as much work as it considered possible within its role to implement mitigation strategies recommended in our report. We also recognize your efforts to ensure that silviculture obligations on FLA30171 are met and free growing is achieved within the specified timelines.

However the Board is concerned that legislation and government policy does not afford a district manager sufficient ability to proactively address situations where an imminent risk to the environment or a forest resource is apparent. We understand you have district policies in place that allow you to react if an event does occur. The Board's opinion is that government, as the trustee of public lands, needs to assess forest practices and be prepared to take action when harm to the environment or forest resource is likely to occur, rather than as reaction to an event. The concept of government as proactive instead of reactive to risks to the forest resource or environment is a theme the Board will continue to follow.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Al Gorley", with a long, sweeping horizontal line extending to the right.

Al Gorley,  
Chair, Forest Practices Board

cc: Tony Wideski  
Dan Barron  
Deputy Minister Doug Konkin