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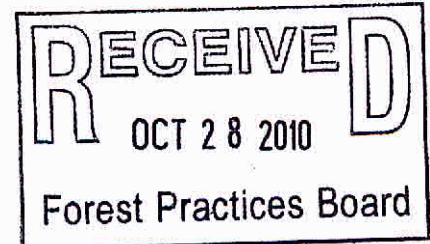
The Best Place on Earth

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OCT 25 2010

Al Gorley, RPF
Chair, Forest Practices Board
P.O. Box 9905, Stn Prov Govt
Victoria, British Columbia
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FOREST PRACTICES BOARD	
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Dear Mr. Gorley:

On behalf of the Ministry of Forests and Range (MFR), the Ministry of Environment (MOE), the Ministry of Agriculture and Lands (MAL), and the Integrated Land Management Bureau (ILMB), please accept this letter as the Government of British Columbia's response to the Forest Practices Board's (the Board) recommendation in its March 2010 complaint investigation report, *Logging and Lakeshore Management near Vanderhoof*. The Board reinforced this recommendation in its April 2010 complaint investigation report: *Beetle Salvage and Water Flows near Williams Lake*.



Board recommendation

The Integrated Land Management Bureau's Board of Directors, within the context of its Resource Management Coordination Project, develop a means to deal with direct overlapping interests of tenured land and forest resource users by a process of mediation in which the interests of the parties are effectively identified and a reasonable balance between all interests is struck, consistent with the law, but also responsive to locally specific circumstances.

Government response

Although this recommendation was directed to the ILMB Board of Directors, that committee does not directly address issues related to FRPA effectiveness and implementation. That committee's role, in the context of Resource Management Coordination, is to facilitate coordinated service delivery across the natural resource ministries in an effort to improve efficiency and effectiveness of our service delivery. This role includes mediation to address conflicts associated with cross-agency coordination. However, given that the Board's recommendation addresses perceived weaknesses in the FRPA framework, and calls for

mediation of conflicts associated with operational planning under FRPA, this response has been prepared by and reflects the position of the four agencies responsible for FRPA.

As background to this recommendation, the Board noted that “FRPA does not provide a mechanism to deal with competing interests of legitimate resource users tenured by Government to use the same Crown land area,” and that “there is a fundamental weakness in the FRPA system that allows one tenure holder to hold the power of decision over another resource user.”

We would like to address these issues in turn by discussing: (a) how the FRPA framework and FSP administration address the competing interests of tenure holders relative to operational plans; and (b) government actions to address issues associated with overlapping tenures through tenure allocation procedures and guidance to tenure holders.

How FRPA addresses competing interests of tenure holders relative to operational plans

FRPA requires public review and comment on Forest Stewardship Plans (FSPs), and review and comment efforts are required to be commensurate with a person’s rights that may be affected. FRPA requires that tenure holders with rights granted by the Crown be given a higher level of attention than other stakeholders or the public. MFR encourages forest licensees to maintain positive relationships and good communication with other tenure holders, to ensure review and comment efforts and solutions to concerns raised by other tenure holders are agreeable to both parties.

As part of an FSP submission to the delegated decision-maker (DDM), a forest licensee must submit a ‘public review and comment package,’ which includes a written description of the licensee’s review and comment efforts with other tenure holders, the tenure holder’s written comments, and any changes made to the FSP based on the review and comment. The DDM then considers whether review and comment efforts were adequate. The DDM has authority to not accept an FSP submission until he/she is satisfied the review and comment obligations have been met.

Although forest licensees are not legally required to carry out review and comment with affected tenure holders on site-level plans, sound business practice (and in many cases forest certification requirements) compels forest licensees to discuss site-level plans with other affected tenure holders, particularly if they raised site-specific concerns at the FSP stage, or if harvesting or road building could affect their tenure rights in a manner not specified or anticipated in the FSP. At this stage, forest licensees would be expected to take reasonable steps to ensure site-level plans would not adversely affect the rights of other tenure holders.

In addition, at the local level, forest districts and other resource agencies take steps, as part of FSP administration, to facilitate relationship-building and information-sharing among licensees and other tenure holders. Here are some examples of that effort:

- **At the FSP preparation stage**, agency staff meet with submitting professionals to discuss district information relevant to preparation of the FSP; this includes available information on the rights and activities of other tenure holders; this preparatory discussion enables both agency staff and submitting professionals to gain a better understanding of concerns or potential issues that may arise during FSP preparation; at

this stage, discussions may include a review of any new scientific or technical knowledge gathered through monitoring or research that could influence the design of forest practices.

- **At the FSP review and comment stage**, agency staff are available to answer questions from forest licensees/submitting professionals about legal requirements, FSP approval tests, and opportunities to address site-specific review and comment issues at the site planning stage; as well, at this stage, agency staff encourage other tenure holders to discuss their rights and activities, and any concerns they have about the FSP, with forest licensees;
- **At the FSP approval stage**, district staff review the public review and comment package submitted by the forest licensee; where uncertainties exist, the DDM is informed and additional information is requested and/or discussions occur with the licensee and submitting professional to gain a better understanding of the licensee's review and comment efforts (e.g., to verify they were commensurate with the rights of other tenure holders), the review comments, and how the review comments have been addressed in the FSP.
- **Post FSP approval**, district staff have ongoing communications with the forest licensee's submitting professional to address any questions or concerns regarding preparation of site plans; at this stage, agency staff also have an opportunity to share any new scientific or technical knowledge to assist the submitting professional in determining suitable site-level forest practices.

Under the FRPA framework, professional foresters and forest licensees that prepare FSPs and site plans address any conflicts that arise with other tenure holders through consideration and reasonable actions to address their feedback through changes to operational plans.

Professional foresters are accountable under the *Foresters Act* and ABCFP Code of Ethics for the quality of operational plans they submit, including any external professional advice incorporated into those plans; and, forest licensees are liable under FRPA for meeting FSP approval tests, achieving FSP results and strategies, and complying with other FRPA requirements. Professional reliance and due diligence are cornerstones of the results-based FRPA framework, and this reliance and diligence is especially relevant to the efforts of professionals and licensees to consider and address specific concerns raised by other tenure holders.

By design, government does not have a role in mediating conflicts between existing tenure holders about operational plans under FRPA. This would not be consistent with FRPA's increased reliance on forest licensees and professionals, and would not necessarily resolve any fundamental differences of opinion between tenure holders about perceived risks and risk tolerances associated with the impacts of forestry operations on other land uses. Having said that, as discussed above, agency staff help facilitate relationship-building and information exchange among tenure holders and the DDM plays an important role by assessing whether review and comment efforts are adequate. As mentioned, the DDM has authority to not accept an FSP submission until he/she is satisfied the review and comment obligations have been met.

MFR provides ongoing guidance to districts, resource professionals, and licensees on its expectations regarding FSP administration, including public review and comment. This

occurs through administrative bulletins, training, and ongoing advice. Of particular note, in March 2010, MFR issued Administrative Bulletin #14 – “FSP Review and Comment Requirements relative to Tenured Commercial Recreation Operations on Crown Land.” This bulletin provides clarity on FSP review and comment obligations relative to commercial recreational operations, such as guide-outfitters. The bulletin sets out the roles and responsibilities of forest licensees and recreation operators with respect to engaging in the review and comment process, and encourages ongoing dialogue and positive relationships between the tenure holders to ensure review and comment efforts and solutions to concerns raised by recreation operators are agreeable to both parties. It is our understanding that the Forest Practices Board has received a copy of this bulletin.

As a closing comment on this topic, the capacity of FRPA to address competing interests among tenure holders is enhanced by land use plans that guide the development of FSPs. The processes used in developing these existing land use plans have inherently addressed the essence of the Board’s recommendation in that they brought multiple resource users together to develop agreements about how multiple land uses would co-exist on the land base. Professionals and licensees are obligated to consider applicable strategic guidance in any existing land use plans when preparing FSPs, and are legally required to implement those aspects of land use plans enshrined in government orders. This helps ensure the broader interests of all land users on the landscape are considered early on in the operational planning process.

Government actions to address the issue of overlapping tenures through tenure allocation procedures and guidance

While administrative processes under FRPA address the competing interests of tenure holders relative to operational plans, the underlying issues associated with overlapping tenures, such as the compatibility of land uses and awareness among tenure holders of each other’s rights, interests and obligations on the land base, are addressed during the tenure allocation process, and are subject to other legislation such as the *Land Act*, the *Forest Act*, the *Range Act*, and other acts that grant tenures on Crown lands.

To aid tenure holders in understanding each other’s rights, interests and obligations early on, MAL (in partnership with MFR, MOE, and ILMB) issued a guide in March 2008 entitled “A Practical Guide to Effective Coordination of Resource Tenures.” This guide provides extensive information and guidance to tenure holders to help them take the steps necessary, early on, to avoid and/or resolve disputes. The guide identifies the importance of early communication, seeking to understand other perspectives, recognizing the balance of responsibility, understanding limitations of the tenures, and the importance of making clear and meaningful agreements that can be monitored and adapted as operations unfold. Here is a link to the guide: http://www.al.gov.bc.ca/clad/land_prog_services/programs.html.

As well, in January 2009, MAL issued a new Land Procedure entitled “Integrating Overlapping Land Uses.” This procedure applies to all staff in MAL, MFR, the Ministry of Energy, Mines and Petroleum Resources, the Environmental Assessment Office, and the Ministry of Tourism, Culture and the Arts. It presents the administrative, application and adjudication processes available to manage the integration of overlapping tenure uses. In particular, it addresses awareness and notification of pre-existing tenures, compatibility of

overlapping land uses, and integration of overlapping land uses through applicant-led adjustments to tenure boundaries, rights and interests, timing of land use, or project plans and designs. The procedure helps agency staff take the necessary steps to facilitate early and ongoing communication and relationship-building among tenure holders that operate on the same land, which enables awareness and compatibility of their respective land uses. Here is a link to the new procedure:

http://icw.agf.gov.bc.ca/g/clad/procedures/overlapping_tenures.pdf.

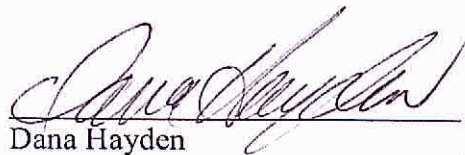
Summary

In summary, it is government's view that the FRPA framework adequately addresses the competing interests of tenure holders relative to operational planning through public review and comment requirements and FSP administrative processes that involve agency staff, resource professionals, forest licensees, and other tenure holders. The underlying issues associated with overlapping tenures, which relate to the compatibility of land uses and users, requires meaningful, upfront communication between tenure holders to ensure all parties understand each other's rights, interests and obligations on the land base. These underlying issues are addressed as part of the tenure allocation process, and guidance exists for both government staff and tenure holders on how to establish meaningful relationships and address compatibility issues.

Accordingly, while we appreciate the Forest Practices Board's recommendation, we believe existing procedures, guidance and administrative processes adequately address conflicts among tenure holders about forestry operations under FRPA, and that a government-led mediation process to resolve disputes is not necessary at this time.

If the Board has any concerns or questions regarding this response, please contact Jim Sutherland, Director, Forest Practices and Investment Branch, MFR (250-387-0088).

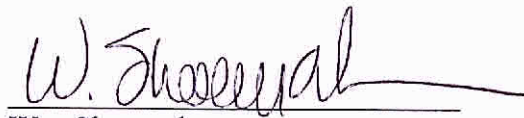
Yours truly,



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Doug Konkin
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Wes Shoemaker
Deputy Minister
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Forest Practices Board

Yours: 280-30/FPBOARD Ref. 125989

Ours: 97250-20/090892

December 1, 2010

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By Email

Re: Response to Recommendation Investigation 090892 – Logging and Lakeshore Management near Vanderhoof

Dear Deputy Ministers:

Thank you for your October 25, 2010 letter in response to the Board's recommendation:

That the Integrated Land Management Bureau's Board of Directors, within the context of its Resource Management Coordination Project, develop a means to deal with direct overlapping interests of tenured land and forest resource users by a process of mediation in which the interests of the parties are effectively identified and a reasonable balance between all interests is struck, consistent with the law, but also responsive to locally specific circumstances.

The Board recognizes that in designing the *Forest and Range Practices Act* (FRPA), the government has attempted to achieve a balance between efficiency and fairness of process, and that this has been done in part by moving much of the discretion previously exercised by government staff to forest licensees. It also

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recognizes the intentional reliance on the training, experience and integrity of professionals to implement both the legal and non-legal aspects of the results-based framework.

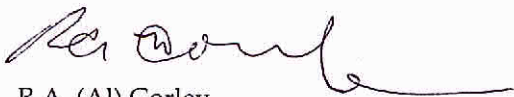
Your response describes at some length the voluntary measures adopted to address competing interests in the tenure allocation and operational planning processes. The Board acknowledges the government's efforts in this regard, including: "A Practical Guide to Effective Coordination of Resource Tenures" which predates the complaint; the procedure entitled "Integrating Overlapping Land Uses" which was issued since the actions leading to the complaint occurred; and FRPA Administration Bulletin #14 which was published about the same time as the release of the complaint investigation report. The Board supports the efforts to clarify and communicate tenure holders' rights and reasonable expectations.

As you have pointed out, the review and comment provisions for licensees' Forest Stewardship Plans are intended to achieve solutions "agreeable to both parties". This may not always be possible, or conflicts may arise at the site-level, where the review and comment process is voluntary and not subject to government approval. Forest licensees are normally motivated to accommodate other tenure holders for business reasons however they ultimately have the say when site-level interests cannot be reconciled. The Board takes no position on whether the best forest management decision was made in this case. Its interest is that decisions balancing practices on Crown land are transparent, fair, and reflect the public's interests in the resources.

You have indicated that land use plans (in this case the Vanderhoof Land and Resource Management Plan) inherently address the Board's recommendation. While this plan provides guidance, the lakeshore management provisions are not a legal requirement. Moreover, in this particular situation, the guidelines were included in the draft Forest Stewardship Plan that was circulated for review and comment, but were not included in the approved version. This created a perception of unfair process with no recourse for the other tenure holder. The Board would hope that such an occurrence is not common.

Based on this investigation and other work, the Board consistently sees a need to ensure operational resource development activities are adequately integrated or coordinated over the forest land-base. We note that on the same date as your letter, the province announced the creation of the Ministry of Natural Resource Operations, founded on a principle of "one land manager". Should this change lead to more efficient and proactive coordination of forest resource uses, the Board may someday agree that an adequate system of managing the many private interests on Crown land has been achieved.

Yours sincerely,



R.A. (Al) Gorley

Chair

Cc: Daniel Brooks, Upper Nechako Wilderness Council
Terry Lazaruk, Canfor Corporation
Kristine Weese, Ministry of Forests, Mines and Lands