

SUBMISSION TO THE NATURAL RESOURCE ROADS ACT PROJECT

December 2011

Introduction

This paper presents the submission of the Forest Practices Board to the Natural Resource Road Act Project, in response to the Discussion Paper of October 2011. The Board makes submissions on three points:

1. Resource roads legislation is needed.
2. There is a need for a public watchdog.
3. The new legislation must regulate government, not just the private sector.

The Forest Practices Board offers this submission based on its experience and expertise with resource roads in the forestry sector and with the public watchdog model.

The Forest Practices Board is an independent agency of the Government of British Columbia. The Board was created in 1995 under the Forest Practices Code and was continued under the *Forest and Range Practices Act* and the *Wildfire Act*.

The Board operates at arms length from government ministries. It is mandated to carry out periodic independent audits of forest practices, including road construction, maintenance and deactivation. The Board audits the forest practices of forest companies and other resource companies licensed to cut Crown timber. It audits the government, including the BC Timber Sales program. The Board also audits government enforcement, investigates public complaints and matters of public interest, and participates in appeals related to penalties levied by government officials. One of the Board's main responsibilities is to make recommendations for improvement in practices, policies and legislation.

Through this combination of functions, the Board:

- Provides credible, objective information to the public, to government and to resource industries about the state of public lands and resources and how well they are being managed;
- Helps to resolve conflicts; and,
- Contributes to continuous improvement in practices.

The Forest Practices Board is part of how British Columbia presents itself to the world as a leader in sustainable environmental management. This supports a thriving, export-driven resource economy and the jobs that depend on it.

About half of the Board's work relates directly to resource roads. These are predominantly forestry roads but the Board has also examined road practices of oil and gas companies and, recently, an independent power project.

The Board conducts about eight or nine compliance audits each year. It selects its audits randomly. This has two advantages. First, random selection helps to give a good picture, over time, of the state of practices across the Province. Second, random audits help to promote a high level of compliance.

In recent years, the Board has also undertaken two audits at the request of the Oil and Gas Commission. One of these, in 2008, assessed oil and gas activities in the Agricultural Land Reserve, including assessment of access roads.

The Board's complaint investigations, special investigations and special reports have also addressed road issues, including fish passage, landslides following major rainstorms, and domestic water issues.

The Board's work has led to continual improvement in practices. Auditees typically respond to Board findings by addressing identified issues even before the audit report has been finalized. In addition, there are numerous, smaller issues identified during an audit that can be used by auditees to improve their programs of road construction and maintenance.

Surveys have shown that the Board enjoys a high level of trust among stakeholders. A recent survey of key stakeholders found that over 80% support the idea of applying FPB-type oversight to all resource industries operating on Crown land, not just forestry.

The Board publishes public reports on all its work on the Board's website:
<http://www.fpb.gov.bc.ca> .

Consolidated Resource Roads Legislation Is Needed

The Forest Practices Board strongly supports the concept of consolidated resource roads legislation. Resource roads are an important provincial asset, yet the current system lacks integration and coordination. New legislation can create a more consistent and cost-effective regulatory framework which could ensure that roads are built and maintained to a safe standard, protect the environment and improve management of this important asset.

In its 2005 report, *Access Management in British Columbia: Issues and Opportunities*, the Board noted that there were some 400,000 to 550,000 kilometres of resource roads in BC, used for forestry, oil and gas, mining, commercial uses, community access and public recreation. The Board recommended that the government should proceed expeditiously with the ongoing development of legislation to streamline and integrate the resource road use regulatory framework.

The Board supports the principle, included in the Discussion Paper, that roads will be constructed and maintained for their intended use--allowing for operational differences based on scale, frequency and impacts--while ensuring consistent outcomes of safe use and environmental protection. The Board supports having the legislative tools to assign appropriate responsibility as use changes over time. For example, a road originally built for heavy industrial use may no longer be needed for that purpose but it may be desirable to authorize a community group, say, to undertake a basic level of maintenance necessary to maintain ATV access.

The Board also supports the concept that the new legislation will take into account the overall footprint of the road network when approving new roads. Improved ability to manage cumulative effects is definitely needed. The Board's 2005 report noted the lack of effective access management planning and included a recommendation to develop provincial policy on when and how public access restrictions should be imposed on Crown land.

In summary, the Board encourages the government to proceed with new legislation to create a more consistent and cost-effective regulatory framework which could protect the environment, ensure that roads are safe and improve management of this important public asset.

The Need For A Public Watchdog

One issue raised in the Discussion Paper is whether there is a need for an independent, public watchdog in the new legislation. Topic 23 of the Discussion Paper reads follows:

23. Public Watchdog: Is there a need for an independent, third party with responsibility for ensuring that appropriate practices are followed in the construction, maintenance and use of resource roads? The Forest Practices Board, Office of the Auditor General and Office of the Ombudsperson are examples of entities that perform this type of function or a similar one. One of these could potentially be utilized to provide a "public watchdog" role in connection with resource roads. Alternatively, an entirely new body could be established to perform this function.

It is important to keep in mind that there currently *is* a public watchdog exercising oversight on natural resource roads: the Forest Practices Board. Since 1996, the Board has audited road practices in the forestry sector and has also audited road practices of oil and gas companies, independent power projects, mining companies and others. Each year, the Board assesses road construction, maintenance and deactivation of thousands of kilometres of roads and hundreds of bridges. The Board's complaint investigations, special investigations and special reports have also addressed road issues.

The true question, therefore, is whether to continue the Board's mandate under the new legislation. This would mean that the Board would have the authority to audit--and investigate complaints about--the road practices of other resource industries, in addition to its current authority to audit and investigate the practices of forest licensees and government. The Board

submits that there are sound reasons--environmental, public safety, economic and good governance reasons--to do so. This would support BC's goal of leadership in sustainable environmental management, provide assurance to markets, support government's new business model for natural resource ministries, help sustain public confidence, support thriving resource industries, and support the New Relationship between government and First Nations.

Because the majority of resource roads under the new legislation would be forestry roads, the incremental increase in cost to government of continuing the Forest Practices Board mandate would be small.

Environmental and Safety Considerations

The main areas of concern noted through Board audits, both historically and in recent years, relates to roads and bridges. Poor construction or maintenance of resource roads can lead to landslides, sedimentation of fish streams or blockage of fish passage. Poorly constructed or maintained roads and bridges can threaten the safety of logging truck drivers and others using the road and, in some situations, of homes.

Building and maintaining forest roads in British Columbia is a challenge due to steep terrain, heavy rainfall and the presence of important resources such as fish streams. Around one in five audits identifies an issue—either a significant non-compliance or area for improvement--with roads and bridges. Five out of 23 audits reported in 2008 – 2010 identified at least one significant issue related to roads and bridges. Many audits identify numerous smaller issues. The Board continues to find situations where licensees or the government do not know what roads they are responsible for or do not have adequate maintenance programs, increasing the risk of problems occurring on the ground.

British Columbia's Reputation and Market Access

One of the BC Government's key goals is to lead the world in sustainable environmental management. This is important to maintaining British Columbia's reputation nationally and internationally, to promote tourism, maintain access to markets for BC resources and products, and attract investment. British Columbia's economy depends heavily on exports, and the global marketplace is increasingly environmentally conscious.

It is important not only to make progress toward this goal of leadership in sustainable environmental management, but also to be able to *demonstrate* progress. Credible, independent audits under the *Natural Resource Roads Act* would be an important external validation of British Columbia's commitment to sustainable resource development.

Conversely, because the Forest Practices Board currently audits forestry roads, which are a significant portion of all resource roads, *not* including a watchdog in the new legislation could be viewed as a step backward.

Supporting Government's Business Model

Natural resource ministries have recently been reorganized to better align government resources and move toward “one land manager.” Consolidated resource roads legislation would be consistent with this new alignment. Continuing the Forest Practices Board mandate would help in the transition to this new business model.

The Board's findings can help with the efficient and effective deployment of government resources, can help to ensure consistency and can provide early warning of emerging issues. The existence of a watchdog also helps to encourage high levels of compliance and continuous improvement.

Finally, continuing the Board's mandate would help to demonstrate the government's commitment to open government.

Public Confidence

Continuing the Board's mandate under the new legislation would provide assurance to British Columbians that the network of resource roads is well-managed, that roads are built and maintained to be safe and to protect the environment.

Ongoing resource development, in combination with the new legislation, is likely to bring greater public scrutiny on the management of resource roads. British Columbia's citizens are interested in the safety of resource roads, protection of the environment, maintaining access and avoiding user conflicts and excessive costs. Public interest can be high and sometimes emotionally charged. The Forest Practices Board's public reports help to maintain public confidence and the Board's complaint mechanism provides a forum to address public concerns. Board reports are generally respected as credible, objective and thorough.

Supporting Thriving Natural Resource Industries

A few poor performers in an industry have the potential to tarnish the reputation of the entire industry. Similarly, poor roads practices by members of one industry have the potential to tarnish the reputation of all road practices. Forest Practices Board audits help to ensure consistent application of legislation – a level playing field – so that the majority of responsible companies do not come under criticism for the actions of a small number of poor performers.

Conversely, companies and industries that seek to perform to a high standard can have their work validated by an independent public watchdog.

When members of the public have concerns, the Forest Practices Board's complaint function provides a forum for companies to tell their side of the story.

First Nations

Continuing the Forest Practices Board mandate in the new legislation would help to support the New Relationship between First Nations and the Government of British Columbia.

Access to communities, safe roads, and environmental protection are all important issues to many of BC's First Nations communities. Board audits and complaint investigations could help to provide assurance to First Nations who want to ensure that resource road development in their traditional territories is meeting legislated rules.

What Would This Mean to Companies That Are Not Currently Subject to Board Audits?

The Board conducts about 8 or 9 audits each year, geographically distributed around the Province. An audit usually deals with only one licensee, although sometimes, several licensees may be included. Once a particular licensee has been audited, the licence is removed from the pool of potential auditees for a period of five years.

When a company is being audited, the Board encourages company staff to participate in field work, alongside Board auditors. Any issues are discussed as they are encountered. Field work is typically completed in a few days.

The Board's audit process is designed with fairness in mind. There is full disclosure of information and the company being audited has numerous opportunities to correct factual errors and to make representations to auditors and the Board concerning the interpretation of the findings.

The Board does not levy penalties. It simply reports on what it finds.

Board audits can be used by companies to improve their policies, practices and procedures.

More information on Board audits can be found in a brochure at:

http://www.fpb.gov.bc.ca/FPB_Brochures.htm .

The Proposed *Natural Resource Roads Act* Must Regulate Government, Not Just the Private Sector

Framework principle (b) in the Discussion Paper states that the regulatory framework will be "impartial regardless of use or sector", and will "treat similar activities in similar circumstances the same, irrespective of who is undertaking the work." Presumably this means that the regulatory framework will regulate road construction, maintenance and deactivation carried out by the government--including the BC Timber Sales Program--and not just activities carried out by the private sector. This is worth mention because Bill 30, the *Resource Road Act*, introduced and later withdrawn in 2008, would not have regulated government road activities.

The provincial government, through its BC Timber Sales Program, is one of the largest builders of new resource roads in British Columbia. In addition, the Provincial government is responsible for a large network of forest service roads. There are currently about 58,000 kilometres of forest service roads, roughly equal to the entire Provincial highway system. Maintenance of about 11,000 km is carried out by government. Maintenance of the remaining 47,000 kilometres has been temporarily delegated to designated industrial users, but remains as a government responsibility.

All of these government road activities—along with over 135,000 kilometres of roads under road permit to forest licensees, which may revert to the Crown—are currently regulated under the *Forest and Range Practices Act*. There are, in addition, many thousands of kilometers of non-status roads that are not covered by any specific legislation.

In other words, a large percentage of all resource road construction, maintenance and deactivation is carried out by the government and is currently regulated. This activity needs to be covered by the new legislation for the following reasons:

- ***Government openness and accountability***

Legislated standards are the most transparent standards. Government road activities are currently regulated. If the government wishes to be open and accountable, it needs to ensure that its resource road activities continue to be subject to legislation.

- ***Level playing field***

The BC Timber Sales program needs to be held to the same legislated standard as its private sector competitors.

- ***Protection of the environment***

Without legislated standards for government resource roads, the risk to the environment could increase.

- ***Safety***

Without legislated standards for government construction and maintenance of resource roads, the risk to the safety of road users could increase.

- ***Practicality***

Responsibility for a road may pass back and forth between the government and the private sector. If an industrial company is going to be required to maintain a road built by the government, the road should be constructed to the same legislated standards as if it had been built by the company in the first place.

Conclusions

The time has come to bring all resource roads into a common regulatory framework. There will be benefits, including greater consistency and improved management of a public asset while maintaining safety and environmental protection.

The role of the Forest Practices Board should be continued under the new legislation and applied to all regulated industries. There would be multiple benefits, while the incremental cost would be small.

Finally, the new legislation needs to regulate government, not just the private sector. Road construction, maintenance and deactivation by government represents a huge portion of all resource road activities. This activity is currently regulated and should continue to be regulated under the new legislation.

The BC Government has an opportunity, with the proposed new legislation, to demonstrate leadership by forging a new approach to resource roads that is both efficient and enlightened. The Discussion Paper and opportunity to provide input represents a valuable early step in the process. Much work remains to be done, and there are many challenges ahead. The Board encourages Government to see this project through to completion and would be pleased to provide input on any issues that arise, based on the Board's experience and expertise with resource roads.