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August 15, 2019

VIA EMAIL

Honourable Doug Donaldson
Minister of Forests, Lands, Natural Resource Operations and Rural Development
Room 248 Parliament Buildings
Victoria BC V8V 1X4

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Dear Minister Donaldson:

Re: Priorities for strengthening the Forest and Range Practices Act

This letter is in response to your government's initiative to make changes to the *Forest and Range Practices Act* (FRPA) to "strengthen government's oversight of the forest sector and restore public trust in how our forests and range lands are managed." The Forest Practices Board has published several reports identifying opportunities to improve FRPA, of which your ministry is aware. Last month we also published a special report on the need for tactical forest planning to serve as the missing link between strategic planning and operational planning in BC. The Board has also considered the improvements to FRPA represented in Bill 21, 2019 – *Forest and Range Practices Amendment Act, 2019* (Bill 21), which was passed by the Legislature in May. This letter provides the Board's additional thoughts on some key priorities for legislative reform; these are all derived from previous Board work including investigations, appeals and audits.

Three Priority Amendments

Three legislative amendments that the Board considers a key priority are improving district manager authority, strengthening public engagement in relation to planned forestry activities, and restoring the Board's ability to investigate and audit forest practices regulated under *Forest Act* authorizations. The first two were priorities identified in our special report *Opportunities to Improve the Forest and Range Practices Act* and the Board is encouraged that there has been some progress in these two areas in the initial FRPA changes passed in the spring of 2019. However, upon deeper examination, we believe that the full intent of these improvements has not been achieved and further changes are warranted to improve public confidence.

Improving district manager authority and strengthening public engagement are interrelated, as improving district manager authority is needed both to ensure government objectives are met and to be responsive to public review and comment on forest stewardship plans and woodlot licence plans.

1. Improving district manager authority

There are two key ways in which improving district manager authority would enhance the likelihood that government objectives are delivered on the ground.

a) Discretionary authority over plan approvals (section 16)

District manager approval authority needs to be strengthened to ensure that plans are consistent with government objectives and responsive to public review and comment. Currently, limited discretion is implied by the requirements of sections 5 and 13, and by policy guidance that states conditions attached to approval should be limited to relatively minor matters. The Board believes that broader discretionary approval authority should be explicit. Specifically, it is critical that a public official (in this case, the District Manager), should be given authority to respond to public review and comment when making statutory decisions. In the absence of a link to decision making, public review and comment could be used as a process step with no substantive impact. This could be achieved by incorporating an approval test into section 16 of FRPA.

b) District manager authority over approval of roads and cutblocks

The majority of the Board's audits and investigations involve specific roads and cutblocks, rather than forest stewardship plans generally. District managers currently have very limited discretionary authority to refuse road permits or cutting permits because existing policy and advice is that they must be "issued" rather than "approved." This is a highly unusual approach to decision-making that involves public resources and is one of the areas where the Board has expressed long-term concern. The discretion to approve is found in other legislation administered by the province including the *Mines Act*, *Land Act*, *Water Sustainability Act*, *Oil and Gas Activities Act*, and can be effectively and efficiently administered without unduly affecting process timeliness or industrial certainty.

In its 2015 special report entitled *District Managers' Authority Over Forest Operations*, the Board provided several examples in which forestry development was putting local environmental and community values at risk (e.g., community watersheds, visual quality, wildlife habitat and terrain stability), yet district managers could do little to affect the development and protect the public interest. The Board pointed to several possible solutions.

Roads and cutblocks are regulated under both FRPA and the *Forest Act*. FRPA requires that site plans for roads or cutblocks be prepared, but they do not require submission to or approval by government. Instead, authorization is granted under the *Forest Act* via cutting permits and road permits. While there are several possible ways to provide district manager authority over approval of roads and cutblocks, the simplest option may be to amend section 81.1 of the *Forest Act* or pass regulations under that section.

Bill 21 introduced the requirement of a forest operations map that includes the approximate location of roads and cutblocks. While this is very helpful information that will be made available to the public periodically, there is currently no approval mechanism available to respond to that road and cutblock information, or to the public comment received.

Bill 21 also introduced a new section 81.2 to the *Forest Act* that would limit refusal of permits to situations in which a road or cutblock does not appear on a forest operations map. On its own, this section does not meet the intent of the Board's recommendations because it does not incorporate district manager approval discretion. For example, it does not allow permits to be refused for reasons relating to government objectives, contravention of legislation, public input, risk to forests resources or values, public health, safety or the interests of other tenure holders. This authority is important because many government objectives require interpretation by licensees and application to operations at the stand or cutblock level.

In summary, we continue to believe that for public resources, a public decision maker must have the ultimate ability to approve an authorization for cutblocks and roads based on provincial objectives and public review and comment.

2. Strengthen Public Engagement Related to Review & Comment on Planned Forestry Activities

a) Responsiveness to Public Review & Comment

In its 2015 special investigation report entitled *Forest Stewardship Plans: Are They Meeting Expectations?*, the Board found that forest stewardship plans were inadequate as tools for public review and comment because they are difficult to understand, do not provide the type of information the public wishes to see, and the time between opportunities for review and comment can be excessive.

The Board is pleased that government has responded to this in Bill 21 by requiring forest stewardship plan holders to prepare forest operations maps that identify the approximate location of proposed roads and cutblocks, and that these maps be made available for public review and comment. Once in effect, this should be a considerable improvement to public engagement. However, neither FRPA nor the Bill 21

amendments provide for a connection between public review and comment and approval of forest operations.

Meaningful public involvement includes the opportunity to have concerns considered in the decision-making process. Comments must be considered by licensees, but there is no authority for district managers to respond to public review and comment if the licensee's proposed response does not resolve the matter. In this respect, FRPA is missing key steps and principles outlined in the Auditor General's 2008 report "Public Participation: Principles and Best Practices for British Columbia." In addition, the BC Ombudsperson's "Fairness in Practice Guide" states, "At a minimum, a person affected by a decision should have an opportunity to be heard in a meaningful way before a final decision is made." This was discussed in 1.a) and 1.b) above, and can be resolved by providing district managers with adequate discretionary authority to respond to public review and comment for both forest stewardship plans and forest operations maps.

b) Access to Professional Documents:

Related to meaningful public review and comment is the issue of access to information that informs decisions. The Board regularly receives concerns and complaints from the public about access to relevant professional reports. Currently, there is inconsistent availability of reports such as hydrological assessments, visual impact assessments, and terrain stability reports. These reports are often prepared due to commitments in an approved forest stewardship plan. If the information is a government record (e.g., held by BC Timber Sales or the ministry), it is subject to freedom of information laws. If not, there is no requirement to make it available, although many licensees do so voluntarily.

The Board believes that more consistent availability of professional reports would increase public confidence in planned forestry operations. We therefore recommend amending section 18 of FRPA, or drafting a new provision, to require professional reports that are prepared to comply with an approved FSP strategy be made available to the public.¹

3. Recommendations relating to Board mandate:

a) Confirm Board authority to audit and investigate forest practices governed by Forest Act authorizations.

The Board's jurisdiction to carry out audits and special investigations is expressed in section 122 of FRPA to include "compliance with the requirements of Parts 2 to 5 and the regulations and standards made in relation to those Parts." The same terminology is used for the Board's complaint investigation mandate in section 5 of the *Forest Practices Board Regulation*. However, for some small tenures, the forest practice requirements are regulated by the terms and conditions of tenure agreements or related authorizations

¹ These could be posted to a site similar to Forest Operations Maps, or made generally available upon request.

rather than by FRPA itself, even though the practice requirements may be the same or similar. In the transition from the Forest Practices Code to FRPA, the Board lost its authority, perhaps inadvertently, to audit and investigate some forest practices that are set out in tenure documents or related authorizations (e.g., cutting permit, road permit). Previously under the Code, the Board could audit or investigate practices under these authorizations because they required an operational plan (such as a logging plan).

The Board recommends that section 122 of FRPA (and section 5 of the *Forest Practices Board Regulation*) be amended to confirm Board authority to address forest practices that are required by *Forest Act* tenures and authorizations. The intent is not to expand the Board's mandate beyond what it has been, nor to change the definition of forest practices, but rather to fill a gap relating to small tenures.

Additional Housekeeping Amendments

The recommendations discussed above represent FRPA amendments that the Board considers to be a priority to meet the government's stated goals. In addition, we have identified a series of additional "housekeeping" amendments that would improve the day-to-day operation of FRPA, and changes that could be addressed through regulation. We have included them as an Appendix to this letter.

In summary, the Board believes that further amendments are required to return public confidence to decisions made under FRPA.

If you have any questions about purpose of these proposed amendments, please feel free to contact me. If your staff have any questions about further details, they should feel free to contact Mark Haddock, General Counsel, by phone at 250-231-4721.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Kevin Kriese', followed by a horizontal line.

Kevin Kriese
Chair

cc: John Allan, Deputy Minister

Appendix: Additional Housekeeping Amendments to improve FRPA

1. Authority to require information

Government sometimes needs the authority to require additional information in order to confirm that plans are consistent with objectives set by government and other factors relevant to plan approval. This is authorized in section 16 (2.1), but constrained by section 24 of the *Forest Planning and Practices Regulation*, which limits the information that may be requested to what is available to the person or in their control or possession. This limitation can be resolved by amending the regulation.

2. Ability to respond to new information

Another important element of district manager authority is the ability to require amendments if new information is brought to the district manager's attention that was not available at the time of plan approval. This could include information that was the result of error, or new information indicating that objectives set by government will not be met.

Bill 21 included new sections 8 and 15 in FRPA that will address mandatory amendments to forest stewardship plans and woodlot licence plans. However, they do not address this situation because new information is not included as a triggering event for mandatory amendment. The Board believes that licensees should be afforded a fair process for this type of post-approval plan amendment, similar to that currently found in section 16(4). The Board is aware that sometimes, even if due to innocent mistake, plans do not correctly interpret objectives set by government. Plans that do not meet required objectives should not continue in that state until expiry of the term.

3. Broaden intervention authority

Ideally, government intervention to remedy, mitigate or stop operations should be a last resort. However, it is an important tool where government does not approve the activity that requires remedy, or when government is limited in its ability to provide proactive oversight of activities and operations.

In section 77 of FRPA, government's authority to intervene is limited in several ways. For activities that are not contraventions, it is limited to "catastrophic impact on public health or safety," or prescribed events. The *Administrative Orders and Remedies Regulation* is currently limited to substantial non-conformance with or significant delays in meeting stocking standards, and events that will result in "fundamental and adverse alteration of an ecosystem." Section 77 is also limited to tenure holders under the *Forest Act* and *Range Act*, even though FRPA regulates practices by others.

Expanding the scope of intervention authority beyond tenure holders requires FRPA amendment. The other limitations can be addressed by amending either section 7 of FRPA, or section 6 of the *Administrative Orders and Remedies Regulation*.

4. Improve Reporting Requirements

Consider revising the reporting duty in section 46 (2) of FRPA to “promptly notify the district manager” to focus on factual events and circumstances rather than a person’s opinion on whether they have contravened the legislation. Consider also a broader reporting duty than events that fall within the meaning of section 46. The scope of what constitutes “damage to the environment” may be improved through regulatory reform to section 3 of the *Forest Planning and Practices Regulation*.

5. Complete and Accurate Information

FRPA should include an obligation to ensure that information required to be submitted is complete and accurate, similar to section 105.1 of the *Forest Act*. Government resources are limited, so successful implementation of professional reliance requires full and fair disclosure of damage to the environment and Crown resources.

6. Allow Remediation Orders to apply to BCTS

Consider amending section 74 of FRPA to allow timber sales managers to be subject to remediation orders. The intent is to address situations that timber sales managers are responsible for, not the contraventions that BCTS registrants are responsible for under timber sale licences.

7. Improving FRPA’s Regulations

Finally, the Board notes that while the focus this letter is the *Forest and Range Practices Act*, in the past the Board has made several additional recommendations that lend themselves to regulatory reform. The Board is aware that the ministry will be developing regulatory reforms in the future, and is willing to engage further with the ministry respecting those details. In particular, the Board has recommended regulatory reforms that address the following:

- strengthening requirements to protect drinking water;
- improving tools, objectives and information relating to resource roads;
- improving objectives and practice requirements for FRPA values; and
- making contravention and penalty determinations public.