



**Forest
Practices
Board**

Forest Planning and Development Near Begbie Falls

Complaint Investigation #121080

FPB/IRC/189

November 2013

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Board Commentary

In December 2012, the Board received a complaint about proposed harvesting near Revelstoke, BC. The complainant was concerned that harvest plans were not consistent with a local land use plan; that area residents had not had appropriate opportunity to comment on the development; and that harvesting was occurring in an area recently treated to reduce fire hazard.

The land use plan, known as the Begbie Falls Integrated Resources Plan (BFIRP), was written in 1993. It was one of many BC land and resource use plans created in the 1990s as the province tried to determine the best way to use and protect Crown resources to meet a broad spectrum of interests, including employment, recreation, heritage, ecological and First Nations, among others.

The Board strongly supports the concept of local land and resource use plans as a means of clarifying public objectives and priorities and helping to guide operational decisions. The land use planning process is also an effective means to build relationships and common understanding among stakeholders; identify and address conflicts; and enable forest development activities to occur with greater public acceptance.

However, problems arise when land use plans do not keep pace with changes on the land base. This investigation examines just that, raising the question: can we expect forestry licensees to comply with aging local resource use plans, especially in situations where adherence to an outdated plan may be inappropriate or redundant?

An added concern is that stakeholder groups originally established to implement and monitor these plans often have not met for many years, and sometimes no longer fully represent a changed constituency. For example, during this investigation, the Board found that the Revelstoke Cycling Association, which was not a party to the original BFIRP, is now an important recreational user of the area, and was consulted by the licensee.

However, any plan, even if it is out-of-date, creates public expectations and trust about resource management. Changing a previously agreed-upon management approach without engaging the plan participants, even for sound reasons, risks breaking this trust and potentially losing local social licence. Yet if sufficient resources are not put into updating the plans (or updating their direction) they will lose relevance.

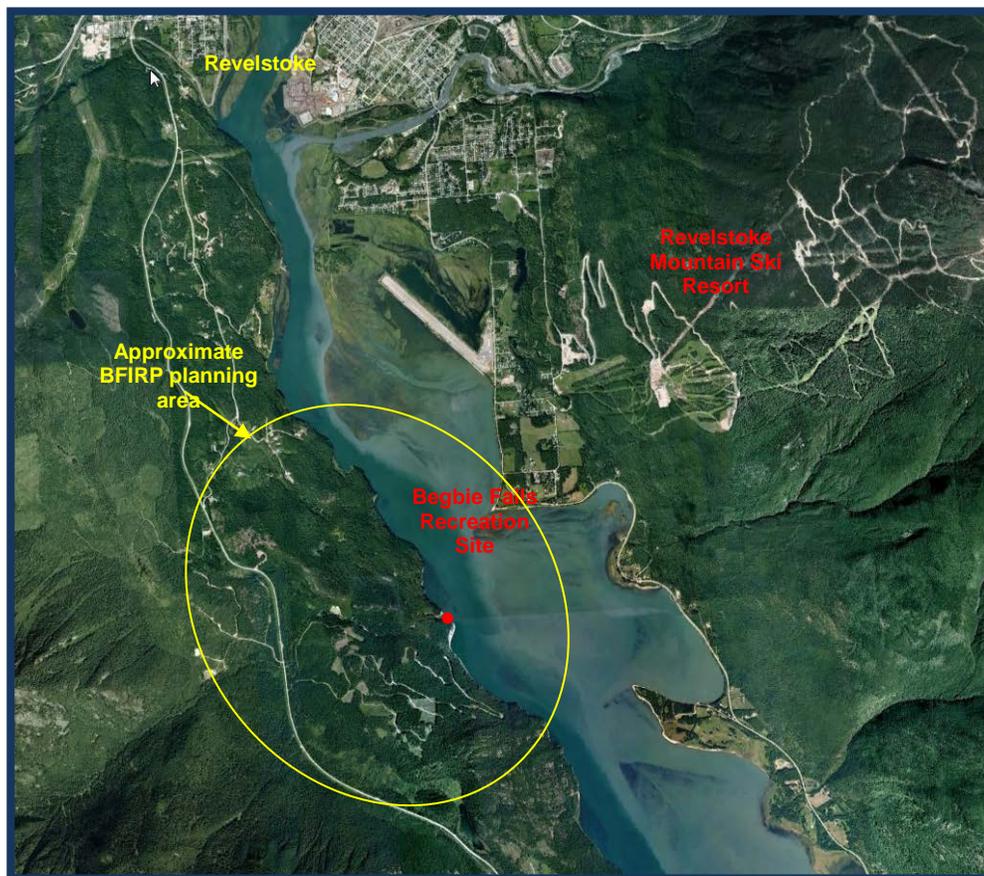
It is the Board's opinion that the Ministry of Forests, Lands and Natural Resource Operations should work with licensees and plan signatories (if they are still interested) to either amend all local land and resource use plans to reflect current management and legislative obligations, or rescind them. This would provide clear direction to licensees, stakeholders and the public on government's objectives and expectations for activities on BC's Crown land.

Introduction

The Complaint

On December 20, 2012, a Director of the Regional District of Columbia Shuswap complained to the Forest Practices Board about proposed harvesting in an area covered by the Begbie Falls Integrated Resources Plan (BFIRP).¹

The director was concerned that forestry activities of Stella-Jones (the licensee) were not consistent with the BFIRP; that residents of Revelstoke and the area adjacent to the proposed development did not have adequate opportunity to comment on the harvest proposal; and that the harvesting was proposed within a FireSmart² demonstration area, which had just been treated to reduce wildfire risk.



¹ <http://www.revelstokecurrent.com/wp-content/uploads/2012/11/online-begbie-falls-integrated-resources-plan.pdf>

² FireSmart is a program designed to mitigate the potential impact of forest fires on a community by thinning and removing understory vegetation from adjacent forests.

Background

In 1991, logging was proposed in the area of Begbie Falls, just south of Revelstoke on the west side of the Columbia River. The area has high timber, visual, wildlife and recreational values and is directly across the Columbia River from the Mount Mackenzie Ski Hill.³ The Ministry of Forests⁴ initiated a planning process for a local resource use plan (LRUP) at that time to resolve resource use conflicts in the area.

The planning committee was chaired by the Ministry of Forests and included representatives from the recreational community, government, the forest licensee,⁵ equestrian trail users, logging contractors, local residents, the City of Revelstoke, the Rod and Gun Club and the Columbia Shuswap Regional District.

The LRUP, signed off by committee members in 1993, was called the Begbie Falls Integrated Resource Plan (BFIRP). It covered 650 hectares and established resource emphasis zoning and management guidelines for silviculture systems (small openings and partial-cut harvesting), forest management, visual quality, wildlife, recreation, water and access. Although this plan was not legally enforceable, it was anticipated that all parties would adhere to the intent of the plan. Annual meetings were supposed to be held to review plan content and proposed activities, but the last meeting of the BFIRP planning committee took place in 2002.

Now, over 20 years since the plan was signed off, changes to forest planning processes and legislation have altered the way forests are managed in BC. In the early 1990s, when the BFIRP was drafted, government was the primary body that made or influenced most key forest management planning decisions and, at the time, was trying to involve the public in the planning and decision-making process. Under the 1994 *Forest Practices Code of British Columbia Act* (the Code) a number of specific, prescriptive requirements were specified for forest licensees to adhere to. However, when this was replaced in 2002 by the *Forest and Range Practices Act* (FRPA), which was introduced in an effort to reduce the regulatory burden created by the Code, the province moved to a results-based forest management model (phased in from 2004 to 2007).

Under FRPA, government sets objectives and default practice requirements, leaving licensees discretion on the methods used to achieve them. Forest professionals are retained by licensees to propose ways to achieve these objectives, but it is ultimately up to the licensee to decide whether or not to follow their advice. Consequently, under FRPA a considerable amount of decision-making power has moved to licensees from government, with the expectation that licensees will use professional reliance to manage forest resources and that professionals will employ sound judgment.

³ In 2007, the ski hill opened as the Revelstoke Mountain Resort.

⁴ Now called the Ministry of Forests, Lands and Natural Resource Operations.

⁵ Bell Pole Company Limited was the licensee that signed the plan—this company was later acquired by Stella-Jones, the current licensee.

In 2003, a cutting permit was issued within the BFIRP area, and harvesting occurred between 2004 and 2007. As the licensee's planning was still in transition from Code to FRPA requirements, harvest was governed by a forest development plan (FDP) created under the Code, rather than a forest stewardship plan (FSP). Amendments were made to the FDP in 2003 and 2006 respectively, to allow harvesting north of Begbie Creek for bark beetle control and blowdown salvage.



Looking at the ski hill from a recently harvested cutblock in the BFIRP area.

In 2011, the licensee entered into a memorandum of understanding (MOU) with the Revelstoke Cycling Association (RCA) and the Recreation Sites and Trails Branch of the provincial government. The MOU specified joint management of recreation trails in three operating areas—including the Begbie bench—and ensured that timber harvesting rights and RCA recreation values were both recognized and accommodated whenever possible. It also provides a dispute resolution process, but, similar to the BFIRP, it is not legally binding.

No further development activity occurred in the BFIRP area until 2011, when the FireSmart program began looking for demonstration areas. Three areas were identified, including one in the BFIRP area, and FireSmart activities were conducted on the demonstration areas in 2011 and 2012. The intent of the FireSmart program is to modify fuels in forested areas adjacent to municipalities to reduce the risk of forest fires to rural property and communities. These modifications are mostly low thinning treatments that are consistent with the original BFIRP.

In 2012, the licensee advertised and amended its FSP to remove the only commitment it had to follow the BFIRP; a commitment to, "... utilize the silviculture systems agreed upon in the Begbie Falls Integrated Resource Plan ...". In the covering letter submitted with the amendment, the licensee noted that, "... the recreation interests on the BFIRP have changed markedly, with mountain bikers, who were not represented on the BFIRP committee, being the predominant user group today." This fifth amendment was approved on August 22, 2012.

Also in 2012, the licensee again proposed development in the area, meeting with the RCA and a local water user to discuss its plans, but not with the BFIRP planning committee. Planning followed the licensee's FSP and deviated from the BFIRP: for example, cutblocks exceeded size limits specified in the BFIRP and little visual buffering was maintained for approximately 600 metres along the Begbie Falls Forest Service Road. Road construction began in August 2012.

On November 16, 2012, the licensee advertised and held an open house to inform the public of its harvesting and development plans. This was the first time the complainant learned the details of the proposed development.

Government issued a cutting permit in November 2012 and harvesting began in January 2013.

Government and the licensee were aware that the BFIRP was no longer being followed under the FRPA management regime. However, the public, including active members of the original BFIRP planning committee (such as the Regional District, the City of Revelstoke and the Revelstoke Rod and Gun Club), were not notified of this change and the BFIRP was never amended or rescinded.

Discussion

The investigation considered:

- Did the residents of Revelstoke and Area B of the Columbia Shuswap Regional District have a reasonable opportunity to comment on the harvest proposal?
- Should the licensee's activities have been consistent with the BFIRP?
- Should the licensee have harvested in a FireSmart demonstration area?

Did the residents of Revelstoke and Area B of the Columbia Shuswap Regional District have a reasonable opportunity to comment on the harvest proposal?

The investigation considered two aspects of communication:

1. How did the licensee communicate the proposed development?
2. Was communication with the BFIRP participants adequate?

1. How did the licensee communicate the proposed development?

FRPA requires that a licensee advertise its FSP and provide opportunity for public review, which the licensee did prior to the FSP approval in March 2007. Licensees must also advertise an FSP amendment prior to submitting it for approval to notify and allow interested parties to review the amendment and provide comment.

The licensee placed an ad in the local newspaper for the amendment in May 2012. It stated that the licensee was amending the results and strategies used for “managing recreation in the Begbie Falls Recreational Site and along the Begbie Creek Recreation Trails,” and that the licensee was seeking input into “the integration of current recreation values with timber harvesting in these areas.”

However, the advertisement was not consistent with the review and comment provisions of the *Forest Planning and Practices Regulation* (FPPR). The FPPR requires a 60-day review and written comment period for proposed changes to an FSP and that the amendment be made available for review and comment at the person's place of business, or at another place, during business hours. The advertisement placed by the licensee provided for a 30-day review and comment period and did not specify that the amendment was available at the licensee's place of business during business hours. But, the Ministry of Forests, Lands and Natural Resource Operations' (MFLNRO) District Manager cannot refuse to approve an FSP on the basis that review and

comment has not taken place or has not been done correctly.⁶ The only recourse the government has is enforcement action. MFLNRO investigated this issue, but as of September 2013, no determination had been made.

The licensee met with the RCA on May 7, 2012, to review its proposed development, which resulted in changes to the plan. A portion of one block straddling a highly valued bike trail called the Hemlock Groove was removed and spur roads were used to move landing and debris accumulations approximately 100 metres from the Begbie Falls Forest Service Road. The licensee also met with a potentially affected water user in the course of its planning. However, the licensee did not directly notify or meet with the BFIRP planning committee to review the proposed development.

The licensee advertised and held an open house on November 16, 2012, in response to public concern over the development. The purpose of the meeting was to inform the public of the licensee's plans prior to the start of harvesting and not to solicit additional input into the development.

Findings

- The licensee advertised the proposed development in the local newspaper and highlighted that it was in the Begbie Falls area.
- The licensee did not meet legislative requirements for advertising its FSP amendment.
- The licensee met with the RCA, the primary tenured resource user in the area, but not with the BFIRP planning committee.
- The licensee later advertised an open house to review the proposed development, which a BFIRP planning committee member attended.

2. Was communication with the BFIRP participants adequate?

Effective public consultation is important for achieving transparency and accountability in forest practices, which in turn helps maintain public confidence. Public consultation benefits the forest industry by identifying important resources and community values so forest companies can address them during the planning and implementation of forestry operations.⁷ However, final operational decisions are still the licensee's to make. Nevertheless, the Board believes that effective consultation allows British Columbians to find out what is happening in their forests and to express their views and have them seriously considered by licensee decision makers.⁶ As well, all parties need to be willing to accept and recognize each other's rights and interests, and engage in respectful dialogue for communication to be effective.

FRPA allows licensees and forest professionals to use their discretion when managing provincial forests and this discretion extends to decisions about how best to communicate with the public and other resource users. The Board believes that licensees should use this flexibility to tailor public consultation to each unique situation and, in order to maintain public confidence, should

⁶ FRPA section 16.

⁷ [Board Bulletin, Volume 3 – Opportunity for Public Consultation under FRPA.](#)

exceed the minimum legal requirements where required to properly address stakeholder or public interests.

The licensee was aware of the BFIRP and the sensitivity of developing the area, since it had committed to aspects of the BFIRP in the previous iteration of the FSP and a member of its staff had participated in the BFIRP process under Stella-Jones' predecessor. It is reasonable that the BFIRP planning participants would expect the licensee to notify them directly of the proposed amendment to the FSP and the intent to harvest in the area in a manner not consistent with it. Though there may have been some opposition to the licensee's proposed FSP amendment and its intent to develop, the licensee could have listened to the concerns and explained how its obligations and strategies to address resource values have changed over time, and perhaps it may have been able to address or accommodate some or all of the concerns. This would also have been a logical opportunity to examine the BFIRP content and propose to MFLNRO that the plan be updated or rescinded.

The other signatories to the BFIRP (including the provincial government) also missed an opportunity to promote an ongoing dialogue about the evolving values and potential management in the Begbie Falls area. There was a long period of inactivity, during which there were changes in legislation, new land use plans, new emerging recreational uses, and a change in the licensee responsible for management in the area. This situation should have raised questions about the relevance and status of the BFIRP among the various participants, who could have initiated a dialogue to clarify its status before the licensee scheduled harvesting.

Findings

- The Board determined that communication was not adequate in this situation.
 - The licensee did not meet the legislative requirement for review and comment on the proposed FSP amendment.
 - The licensee relied on a single newspaper advertisement to notify the public, including the BFIRP planning committee. As the BFIRP was a signed agreement on resources management in the area, the licensee could have made a concerted effort to directly notify and meet with the BFIRP planning committee when it dropped its commitment to the BFIRP silviculture systems (harvesting with small openings or partial-cutting) from the FSP. This would have allowed the licensee to clarify to the committee how changes in legislation have affected resource management since the plan was developed, and would have helped maintain the trust established through the BFIRP planning process.
 - Through more than a decade of inactivity of the BFIRP planning committee, government (as the convener) and the public (as participants and signatories) also have some responsibility for the communication inadequacy apparent in this complaint.

Should licensee activities be consistent with the BFIRP?

The investigation considered two aspects of planning within the BFIRP area:

1. Did the licensee have a legal obligation to follow the BFIRP?
2. Should licensee activities be consistent with the BFIRP?

1. Did the licensee have a legal obligation to follow the BFIRP?

In the 1990s, when the BFIRP was written, land use plans were guidance documents only and were not legally enforceable. However, subsequent to the development of the BFIRP, the Revelstoke Higher Level Plan Order (RHLPO), which is legally binding, took effect for all of the Revelstoke Timber Supply Area, including the BFIRP plan area. The RHLPO overlapped and in some cases made the BFIRP requirements redundant. So while not legally required to follow the BFIRP, the licensee *was* legally required to follow the RHLPO. As well, government objectives and numerous regulations ushered in under FRPA created other legal obligations, to which the licensee was expected to adhere.

Under FRPA, licensees are required to submit only one forestry plan to government for approval—an FSP. In an FSP, licensees identify results and strategies consistent with government objectives for values such as water, wildlife and soils. The results and strategies, along with practice requirements found in regulations, become legal obligations for licensees under FRPA.

The FSP covering the BFIRP area was approved in March 2007. In the original FSP, the licensee committed to using silvicultural systems agreed to in the BFIRP, which legally obligated them to harvest using small openings and partial cutting or selection systems. The silviculture systems allowed the licensee to address silviculture, recreation, wildlife and visual objectives in the BFIRP. Since 2007, the licensee amended the FSP five times. The fifth amendment, approved on August 22, 2012, reflected that mountain biking is now the predominant recreational activity in the area. This amendment also removed the commitment to follow the silviculture systems agreed to in the BFIRP.

With specific relevance to the BFIRP area, the current FSP now includes the following:

- a commitment to consult with government and with groups holding trail maintenance agreements if they are operating within 25 metres of Begbie Creek Trails.
- a commitment to consult with government and with groups responsible for recreation infrastructure maintenance if timber harvesting or access construction is anticipated within the Begbie Falls Recreation Site.
- no commitment regarding silvicultural systems.

Findings

- There were no legal obligations for the licensee to follow the planning requirements in the original BIFRP planning agreement until the licensee incorporated the BFIRP requirements for silvicultural systems into its original FSP in 2007.
- Since the FSP was amended in 2012, the licensee is not legally obligated to consult with the BFIRP planning committee or to follow any aspect of the BFIRP.

2. Should licensee activities be consistent with the BFIRP?

Because the BFIRP is non-statutory, consistency with its prescribed practices is up to the licensee and its professionals. The licensee could include BFIRP practices in its FSP and they would become legal commitments. Alternatively, BFIRP practices may be ignored in the FSP but implemented on the ground, with no legal commitment. The question of whether licensee activities should be consistent with BFIRP depends on whether the original BFIRP practices are still appropriate to meet current local values and objectives and whether they still fit with current knowledge about best practices.

Generally, the BFIRP can be considered out-of-date since:

- Many of the values and objectives addressed in the BFIRP were subsequently addressed in the land use planning and provincial orders that succeeded it, some of which are legal requirements.
- Current practice requirements in legislation directly address some specific requirements of the BFIRP, making them redundant. An example is the requirements for riparian protection.
- Some of the prescribed practices in the BFIRP are outdated in terms of their grounding in current scientific knowledge, such as management practices around heron nesting sites.
- Over 20 years, the resource values and use of the area have changed, such as the rise in popularity of mountain biking.
- The BFIRP has not been updated to reflect current conditions.

Findings

- The BFIRP is out-of-date since it includes requirements that may no longer be relevant under current legislation and it has not been updated to reflect local values and objectives, nor current knowledge about best practices. The licensee has the discretion to determine how much, if any, of the BFIRP to incorporate into its FSP or other plans and practices.

Should the licensee have harvested in a FireSmart demonstration area?

MFLNRO's Wildfire Management Branch wanted to demonstrate the FireSmart program and had three objectives: to keep the fire suppression crews busy in a time of low wildfire fire activity; to create some areas where the public could see what treated stands looks like; and to obtain data on operational logistics and costs. Three areas suitable for the FireSmart program were identified, including one in the BFIRP area.

The Wildfire Management Branch forwarded the proposed areas to the MFLNRO district office, who then forwarded them to the licensee, but not to the BFIRP plan participants. The licensee said it had no issues with the proposal, but that government should be aware that the area was within its operating area and would be logged at some point. The district considered the licensee's comments and conveyed them back to the FireSmart program. Wildfire Management Branch then authorized the FireSmart program to conduct activities, but stipulated that no

merchantable timber was to be removed, since the licensee would be developing the area at some future date. The FireSmart demonstration project went ahead in 2011.

Crews treated a portion of the BFIRP demonstration area in 2011, but could only remove trees less than six inches diameter. Consequently, there was limited crown thinning so the FireSmart demonstration was not fully effective. When crews went back the following year to continue their work, they found that the licensee had laid out a portion of the area for harvesting. As a result, the crews cleaned up the areas treated in 2011 and then pulled out.

Finding

- It was appropriate for the licensee to harvest in the demonstration area.
- The Wildfire Management Branch was aware that the demonstration area was on operable forest landbase and knew it would be harvested at some point when it chose the area for the FireSmart demonstration.

FireSmart

Whenever residential, industrial, or agricultural developments are located within or near wildland settings with natural vegetation, they are at risk from wildfire. These areas are called the wildland/urban interface, or interface for short. Fires that have the potential to involve buildings and wildland fuels or vegetation simultaneously are known as interface fires. An interface fire can ignite within a building and spread to nearby forests or, more commonly, spread from burning vegetation to engulf homes, farms, or industrial installations.

FireSmart activities are carried out to mitigate the impacts of wildfire on values at risk and to make communities, especially the interface areas, safer. Treatments used can include removing fuels that will allow the fire to spread from the ground to the tree crowns, and thinning forests to reduce the density of the stand (create a space between the tree crowns) so that the flames will not spread from crown to crown. When FireSmart activities are conducted in the operable forest the intent is to reduce the likelihood of fire, not to reduce or restrict

Conclusions

The licensee's communication regarding its planned harvesting activities was inadequate. The forest licensee provided only a limited opportunity for the residents of Revelstoke and Area B of the Columbia Shushwap Regional District to comment on the proposed 2012 FSP amendment that removed the only legal commitment it had to meet BFIRP requirements. As well, the forest licensee did not meet the legal requirements for advertising its amendment.

The licensee held a meeting with the Revelstoke Cycling Association to solicit feedback on the proposed development in the Begbie Falls area, which met its FSP commitment to consult with those who hold a trail maintenance agreement in the area. However, the licensee did not go beyond the minimum legal requirements or FSP commitments and did not directly notify or meet with the remaining BFIRP planning committee participants to review the proposed development or the FSP amendment.

The licensee did meet the legal requirements for its current harvesting and management activities, including harvesting in the FireSmart demonstration area. Under current legislation, the licensee was obligated to follow those aspects of the BFIRP that were included in its FSP until its 2012 amendment. Once the FSP was amended the commitment to the BFIRP was removed and the licensee was under no legal obligation to conform to it.

The BFIRP is a dated plan, with many prescribed practices that have been superseded over the past 20 years by other land use plans, legal orders, and regulations. Because no attempt has been made by government to update or officially rescind or amend the plan, it does not necessarily provide good planning guidance.

Nevertheless, the BFIRP represents considerable effort and was relevant when created for a relatively small area. While non-legal in nature, the engagement of the planning group and the signatures of participants—including the MFLNRO, local governments, stakeholders and licensees—invokes an expectation about the manner in which this area should be managed.

This area is locally sensitive and there was a reasonable expectation on the part of the plan participants that licensees would respect the BFIRP. It follows that members of the original BFIRP planning committee would expect any changes to the plan's intent, as expressed in licensee planning and practices in the area, to be transparent and discussed with them prior to making those changes.



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