

File: 135-40/Part 10.1 – Fort St. John

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Dear James Stephenson:

The Joint Steering Committee (JSC) would like to acknowledge the work that the participants have done in developing the Fort St. John Results Based Forest Practices Pilot Project. The JSC is encouraged by the steps you have taken to consult with the various stakeholders, including the British Columbia Environmental Network (BCEN) and the formulation of a Public Advisory Group (PAG). The JSC has completed a review of the BCEN comments and your response to those comments. I am responding to you on behalf of the JSC using the major headings utilised by the BCEN in its comments to you and in your response.



Overarching Issues

The BCEN disagrees that the pilot can form a template for future tenure. The JSC notes that your summary comments of concern to the BCEN were not intended to limit the authority of government, but rather intended to point out the unique opportunities the pilot may develop.

BCEN is concerned that the intent of the proposal involves participants gaining control over decisions around where and when harvesting and road construction will occur. The JSC recognises that while consolidation of development planning is an objective, the approval for Forest Development Plans (FDP) and thus the approval for the location of roads and cut blocks is proposed to remain with the District Manager (DM).

The JSC also recognises the BCEN's disagreement with the proponent's choice to use Canadian Standards Association (CSA) as the certification process. The government of British Columbia has no policy regarding certification preference.

Issues Related to Approvals and Authorisations

The BCEN is concerned the Sustainable Forest Management Plan (SFMP) will not achieve equivalency to the *Forest Practices Code of British Columbia Act* (FPC) if it is limited to the 'area to which it applies'. The JSC notes that your revised proposal more clearly identifies that the FDP has not been replaced and remains subject to the manage and conserve tests for the area under the plan currently required under the FPC. The issue of equivalency as it pertains to the new SFMP is a discretionary decision of Cabinet in determining if the pilot meets the tests in Section 221.1 of the FPC.

Issues Related to Content of Plans

The BCEN is concerned that the SFMP appears to be legally sufficient if it contains only objectives and strategies related to one value such as timber. The JSC recognises that the SFMP is intended as a strategic plan subject to higher level planning direction and is intended to enable forest management strategies as they develop. The issue is whether this framework will achieve equivalency. This decision lies with Cabinet's discretion to determine if the pilot meets the tests in Section 221.1 of the FPC.

Issues Related to Exemptions

The BCEN is concerned that the exemption of Section 45 of the FPC is not replaced with provisions to protect the environment from forest practices or see mitigative measures taken when the environment is damaged by participants. The JSC is also concerned that removing Section 45 of the FPC may be perceived as diminishing the direct accountability of participants for forest practices. We do however recognises the participants assertion that the new combination of proposed regulations and the remaining FPC provide equal or better provisional protection of the environment. However, the decision on equivalency of the combination of proposed provisions lies with Cabinets discretion in determining if the pilot meets the tests in Section 221.1 of the FPC.

Issues Related to Notification

The BCEN has concern that while the proposed regulations exempt Silviculture Prescriptions (SP), Stand Management Prescriptions (SMP), road layout and designs, and road deactivation prescriptions from approval, replacement by notification provisions under Section 11 do not adequately manage and conserve. The JSC recognises that the participants' response clarifies that FDP requirements for notification of timing and

location of activities remain as under the FPC. The DM has the option under the Proposed Pilot Regulation (PPR) to risk assess and request further notification for specific site plans.

Issues Related to First Nations Consultation

The BCEN suggests the replacement of site level approvals by a system of notification will compromise the Ministry of Forests (MOF) ability to achieve fiduciary responsibilities to First Nation (FN) peoples. The JSC accepts your assertion that the FDP has historically been the primary consultation document and that the new consolidated framework under the SFMP may provide enhanced consultation and opportunities for FN involvement in planning. The JSC reserves additional comment on how the PPR addresses the need for site specific information following FDP approval for consultation purposes until after the public advertisement period.

Issues Related to Monitoring and Evaluation

The BCEN has an overarching concern that the draft PPR does not require benchmarks to allow monitoring of results based performance, or allow for modification of plans in response to monitoring. The JSC recognises the transitional reliance on provisions under the FPC until resource value benchmarks are developed under the SFMP. The JSC also understands that the requirement for resource value benchmarks is inherent to the certification model proposed in the pilot and that regular evaluation against the benchmarks for improvement is also integral to the certification process. However, the JSC reserves final comment on the proposal for monitoring and evaluation by independent auditors, or by government until after the public advertisement period.

The BCEN also has issue with the requirement to retain records, and the notification of completed obligations proposed under the PPR. The JSC agrees with the participants reply that continuing liability under the *Forest Act* and individual tenure agreements continue to apply and that the DM is not compelled to relieve participants of their obligations. However; issue of whether the certification standards achieve equivalent protection in records retention concerns the basic regulatory framework and will be left to the discretion of Cabinet.

The BCEN are concerned that the PPR attempts to reduce the administrative penalties provided under the FPC. The JSC recognises that the PPR proposes a substantive overall increase in maximum penalty provisions to \$50,000 while reducing some specific provisions down to \$50,000.

Issues Related to Public Oversight

The BCEN is concerned that notification to the DM and the public for annual schedules should be included in the regulation. The BCEN also wishes to see all relevant planning

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documents and assessments be made publicly available at all times. The JSC accepts that all information currently made available to the public through the FDP public review process will continue to be made available under the pilot.

Issues Related to Transition

The BCEN has concerns that the PPR does not clearly describe planning, site plan, FDP, and SFMP transitional requirements. The JSC accepts the intent of the draft PPR on transitional items and reserves additional comment until after viewing the results of the public advertisement exercise.

The JSC acknowledges that your proposal substantially meets the intent of Section 221.1 of the FPC and is sufficiently developed to advance to public advertising. The JSC also acknowledges your intent to assemble a Public Advisory Group (PAG) to report to government on the public acceptability of the proposed pilot project. Please submit the list of persons and interests represented on your PAG to JSC for review at least 2 weeks before the end of the advertisement period.

The JSC requests you now make your proposal, draft regulation, the BCEN comments and your response, along with this letter available to the public for a period of not less than 60 days. Following the public advertisement period you are asked to resubmit your proposal, along with public comments and your response to those comments to the JSC prior to final drafting of the regulation.

The JSC encourages you to continue dialogue with the BCEN and the public advisory group during the advertising period on matters of disagreement.

Yours truly,

Rick Manwaring, R.P.F.
Project Manager
Results Based Forest Practices Code Pilots

p.c.: BC Environmental Network – Jessica Clogg
Regional Manager, MoF – Ray Schultz
Regional Director, MELP – Wally Eamer
District Manager, MoF – Dave Lawson
Joint Steering Committee – c/o Shirley Turcotte, Forest Practices Branch
Ralph Archibald, Director, Forest Practices Branch - MoF
Rod Davis, Director, Habitat Branch - MELP