



File: 10420-20

October 12, 2004

First Nations Chief Councillor and Councillors
South Island Forest District

Dear Chief Councillor and Councillors:

The purpose of this letter is to provide you with some information about the new planning process that guides forest development activities on Crown land under the *Forest and Range Practices Act (FRPA)* and to describe how the consultation process with First Nations in respect of these forestry operational plans will be undertaken.

An Overview of FSPs

The Government of British Columbia recently enacted the *FRPA* and associated regulations that came into effect on January 31, 2004. The new legislation provides a legal framework for the development of a Forest Stewardship Plan (FSP). The FSP is the new operational plan that licensees will develop to guide forest development activities. The FSP is required to identify resultsⁱ and/or strategiesⁱⁱ to address a range of objectives set by governmentⁱⁱⁱ. Objectives may be set through strategic land use planning processes such as the Vancouver Island Land Use Plan Higher Level Plan Order and Landscape Unit Planning processes, by regulation or by Ministerial Orders. Although significantly different in content requirements, the FSP, for practical purposes replaces the forest development plan that you are accustomed to under the *Forest Practices Code of British Columbia Act*.



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Cultural Heritage Objective

A number of key resource management objectives for resource values such as soils, biodiversity, wildlife, and riparian have been identified by government in the *Forest Planning and Practices Regulation*. Licensees must develop results and/or strategies in their FSP that are consistent with the objectives set by government. One key objective that you should be aware of is the objective set by government for cultural heritage resources which is to conserve, or if necessary, protect cultural heritage resources that are:

- (a) the focus of a traditional use by an aboriginal people that is of continuing importance to that people, and
- (b) not regulated under the *Heritage Conservation Act*.

In developing results and/or strategies to address this objective, licensees^{iv} will be seeking information from First Nations regarding cultural heritage resources and aboriginal interests.

The Content of an FSP

The content requirements of an FSP are significantly different from the forest development plan. The FSP provides much less detail as to where actual road or harvesting activities will be conducted by a licensee. Unlike the forest development plan, the licensee is not required to show proposed cutblock^v and road locations within their FSP. The licensee is required to show the general areas where their results or strategies for objectives set by government will apply. These general areas are called forest development units^{vi}. In the South Island Forest District (SIFD), many of the licensees are proposing to describe large areas such as watersheds or a series of watersheds as their forest development units. Within these forest development units, licensees will not be showing any further refinement of proposed timber harvesting or road construction within the FSP. You will not typically see proposed cutblocks or roads and harvest summary tables describing cutblock numbers, cutblock volumes and harvest or silviculture systems as you were accustomed to seeing in a forest development plan. For each forest development unit, the FSP describes the results or strategies that the licensee will implement to meet the objectives set by government for that area. To achieve the objectives set by government for specified resource values, a result or strategy must be verifiable and enforceable.

Multiple licensees within a FSP

Another key change under FRPA is that it provides the opportunity for a FSP to include several licensees within a single forest district or to include several licensees across more than one forest district. In the SIFD, several licensees operating outside of the Tree Farm Licences but within the Arrowsmith Timber Supply Area (TSA) are jointly preparing a FSP that may essentially cover all or a portion of the asserted traditional territory of most, if not all, First Nations in the SIFD. I understand that licensees may be proposing a single FSP for the Clayoquot Sound Land Use Decision area. The reduction in the number of FSPs in the SIFD as compared to forest development plans may reduce the number of operational plan referrals you will receive from the SIFD staff and licensees. The First Nation consultation process will continue to occur with respect to these FSPs and as such, your First Nation will be provided an opportunity to provide information regarding your aboriginal interests and how these interests may be impacted with respect to the FSP.

First Nations Information Sharing and Consultation Process on the FSP

Consultation with First Nations is a continuing obligation of the Crown. The purpose of the consultation process is to provide an opportunity for First Nations to identify their aboriginal interests that may be affected by proposed forestry activities or decisions. In making forest management decisions, the decision maker must ensure that adequate consultation has occurred and seek to accommodate where asserted aboriginal rights or title may be affected by those decisions. The Ministry of Forests (MOF) *Aboriginal Rights and Title Policy* and consultation guidelines will continue to be followed.

A key part of the consultation process involves the information sharing and gathering phase where the licensee must make reasonable efforts to meet and discuss the plan with affected First Nations groups. First Nations are requested to provide information on their aboriginal interests that may be affected in the area where proposed forest development activities will occur. Licensees continue to play a role in gathering information regarding cultural heritage resources in the plan area, identifying results or strategies that meet the government objective for cultural heritage resources and carrying out a review and comment process on their proposed FSP.

FRPA requires the licensee to make reasonable efforts to meet with First Nations affected by the proposed operations under the FSP and to discuss the FSP with the First Nation. To comply with this requirement, licensees will be contacting your First Nation to meet and discuss the FSP during the review and comment period defined in the legislation. However, the SIFD encourages licensees to meet with First Nations prior to or during the preparation of the FSP to assist in development of the results or strategies for the cultural heritage resources objective and to ensure an early opportunity for consideration of your aboriginal interests in the plan. Shortly, you may receive a request from the licensees preparing the joint Arrowsmith TSA FSP to engage in information sharing and gathering during the preparation of the FSP. Over the coming months, other SIFD licensees may make similar requests of your First Nation. I encourage your First Nation to participate in this process.

Generally, the consultation on a specific FSP will commence with the start of the legislated review and comment period for the FSP. The review and comment period for an FSP is initiated by a newspaper advertisement and typically extends for a 60 day period unless otherwise provided for by the legislation. SIFD will send a letter requesting your First Nation to participate in consultation on the FSP. Consultation and where appropriate, efforts to seek to accommodate the aboriginal interests relevant to the operational plan will take place prior to the decision on the FSP. When the FSP is submitted to the Delegated Decision Maker^{viii} for a determination, First Nations will be advised in writing of the earliest date that the Delegated Decision Maker may make a determination on a FSP. The Delegated Decision Maker will consider aboriginal interest information provided by a First Nation regarding the FSP prior to the completion of the determination on the plan. A Forest and Range Agreement or other written agreement entered into between the SIFD and your First Nation will continue to be in effect and will guide consultation on the FSP.

Information from First Nations

It is important for First Nations to participate and provide site specific information regarding their asserted aboriginal interests that may be affected by proposed forest operations. Where a First Nation does not provide specific aboriginal interest information within a reasonable time frame, the Delegated Decision Maker will continue in the decision making process on a FSP. The Delegated Decision Maker will consider the aboriginal interests information that he/she has up to the time of concluding a FSP determination.

Post FSP Approval

After the FSP is approved, there are no further operational plans submitted by the licensee for determination by the Delegated Decision Maker. The licensee continues to gather information and develop road and harvesting plans for their operations throughout the term of a FSP. In most instances the licensee must prepare a site plan that provides the approximate locations of cutblocks and roads and identifies how the results or strategies described in the FSP apply to the site. The licensee must make the site plan available to the public and First Nations on request. Major licensees must have a road permit and/or cutting permit issued by the Delegated Decision Maker prior to commencing operations. Licensees may find value in continued information sharing with First Nations while developing site plans and prior to the submission of the cutting permit or road permit to ensure that they have a satisfactory understanding of potential impacts of proposed cutblocks and roads on aboriginal interests. The Delegated Decision Maker will consider all new aboriginal interests information made available to him/her following a FSP approval and will consider whether there is an unjustifiable infringement of an aboriginal interest when considering whether to issue a road permit or cutting permit. The Delegated Decision Maker may determine that further consultation with First Nations is required prior to the issuance of the cutting permit or road permit.

The Transition

While the *FRPA* came into effect on January 31, 2004, we are currently within a transition period from the *Forest Practices Code of British Columbia Act* and its regulations to *FRPA*. The transition period ends when a FSP is approved and no later than December 31, 2005. As FSPs are prepared during this period, I encourage your First Nation to actively participate in licensee requests for information sharing and gathering and discussion on the FSP during the review and comment period. As well, I encourage your First Nation to participate in consultation on FSPs with SIFD staff.

If your First Nation wishes to discuss or requests additional information regarding the FSP content requirements, the FSP consultation process or the FSP determination process, I invite you to contact David Cruickshank, Tenures Forester at 250-731-3065 or by e-mail at Dave.Cruickshank@gems3.gov.bc.ca in the near future.

Yours truly,



Jack Dryburgh
District Manager
South Island Forest District

pc: South Island Forest District Major Licensees
BCTS Strait of Georgia Business Area, Timber Sale Manager
Coast Forest Region, Aboriginal Affairs Manager

ⁱ “result” means a description of

(a) measurable or verifiable outcomes in respect of a particular established objective, and

- (b) the situations or circumstances that determine where in a forest development unit the outcomes under paragraph (a) will be applied;
- ii “**strategy**” means a description of
- (a) measurable or verifiable steps or practices that will be carried out in order to meet a particular established objective, and
 - (b) the situations or circumstances that determine where in a forest development unit the steps or practices will be applied;
- iii “**objectives set by government**” means
- (a) objectives prescribed under section 149 (1) of *FRPA*, or
 - (c) objectives established or continued under sections 3 to 5 of the *Forest Practices Code of British Columbia Act* by a person or persons under those sections;
- iv “**licensees**” means for the purpose of this letter major licenses and BC Timber Sales within the South Island Forest District
- v “**cutblock**” means an area within which an agreement holder is authorized to harvest timber, as identified in
- (a) a cutting permit, or
 - (b) the agreement, if the agreement does not provide for cutting permits;
- vi “**forest development unit**” (FDU) means an area identified in a forest stewardship plan
- (a) where forest development may occur during the term of the plan, and
 - (b) within which, during the term of the plan, timber to be harvested or roads to be constructed are entirely located;
- vii “**Delegated Decision Maker**” – for the purposes of this letter a person authorized by the Forest Minister to make a decision under forestry legislation or a person authorized by forestry legislation to make a decision. Normally this will be the District Manager.

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