

Further comments on Results Based Pilot Projects

March 8, 2001

VIA EMAIL

Richard Manwaring,
Project Manager, Results Based Code Pilot Projects
Ministry of Forests,

Dear Mr. Manwaring:

Re: BCEN Forest Caucus – Further comments on Results Based Pilot Projects

Further to your telephone conversation with Ms. Jessica Clogg, Co-Chair of the BCEN Forest Caucus, this letter represents further comments by the BCEN Forest Caucus on the development of pilot projects under Part 10.1 of the Forest Practices Code. I understand that the Stillwater Pilot Project Regulation (the “Regulation”) will be considered shortly by the Joint Steering Committee. Please bring this letter to the attention of the JSC and Cabinet in their deliberations on this matter.

The Forest Caucus has, of course, already commented on the Regulation and the proponent of the regulation has responded to them. The Caucus does not wish to focus further on the wording of the Regulation, but instead to place on record its concerns arising from the three pilot projects reviewed to date.

First, the Caucus believes that as a matter of policy the government should be examining new approaches to forest planning and forest practices in B.C. We believe that forest planning must prioritize maintaining forest ecosystem composition, structure, function and resilience, and maintaining options for future generations. Where there is uncertainty or imperfect information, the precautionary principle should be used. We believe that BC must move from volume-driven, timber-based management to ecosystem-based management. Thus, priority should be given to pilot projects which provide for innovative ways of public consultation, planning and on the ground logging. Instead, however, the pilot projects reviewed to date focus almost exclusively on allowing the proponents to reduce or remove the need for public consultation and government involvement; there is little or no changes to the actual practices being carried out.

When the Part 10.1 of the Code was first enacted, the Caucus suggested that the Part was limited to pilot projects which experimented with the “regulatory framework for forest practices” and should be limited to cases where the current legislative framework made the experimentation impossible. Regardless of the correct legal interpretation of the

Part, there are clear policy reasons to require Pilot Projects to represent real experimentation in terms of the forest practices. If the same forest practices can be carried out within the existing legal framework, then there is no need for a pilot project.

The Caucus submits that true experimentation is both desirable and necessary to allow the development of a truly sustainable and community orientated forest economy in British Columbia. However, none of the pilot projects reviewed to date include a departure from conventional forest planning and practices.

Second, the pilot projects reviewed to date have generally delegated the standards and criteria to govern the pilot projects to the proponents or government officials. This means that Cabinet (and the public) are not in a position to evaluate whether the pilot project will meet or exceed the requirements of the Code or will adequately manage and maintain forest resources. This evaluation, under Part 10.1, clearly rests with Cabinet.

Third, the Forest Caucus is of the view that the requirement that Pilot Projects be “consistent” with the Preamble to the Code does elevate the objectives of the preamble to something more than an interpretative aid. While a preamble to an act is not generally part of the legislation, in this case the Legislature has explicitly incorporated the preamble by reference. As such Cabinet must explicitly consider in what way and to what extent the pilot projects are consistent with the five points of the preamble. While it was suggested by Lee Doney, Deputy Minister, in his letter of May 1, 2000, that it is not necessary for the pilot project to actively promote each of the five points, Part 10.1 the requirement of “consistency” seems to suggest that the pilot project should at a minimum be compatible with the points of the preamble. Direction should be taken from the objectives contained in the preamble in deciding whether to enact any given pilot project regulation.

Fourth, the pilot projects, while claiming to be “results based”, have not set out clear standards for evaluating such “results.” None of the pilot projects provide for base-line data to be collected – a basic requirement for any evaluation of the environmental impact of the pilot project. While the pilot projects do provide for audits and other investigations, the regulations are generally vague as to the criteria to be used in assessing the “results.” Clear criteria and standards against which to evaluate performance and determine “success” are essential to any results based approach.

Fifth, two of the three pilot projects (although not the Stillwater pilot project) are put forward by groups of proponents and cover large geographic areas. Although possibly within the literal scope of Part 10.1, it is our position that pilot projects was intended to apply to individual licensees undertaking relatively specific projects. The tendency of proponents towards mass pilot projects runs contrary to the intent of Part 10.1. This is particularly problematic where the intent or result of these large-scale pilots is to further entrench tenure security for major licensees. The citizens of BC, including Forest Caucus members, have consistently indicated that they support greater tenure redistribution to communities and First Nations, not greater rights for major licensees.

Sixth, while Part 10.1 does permit the enactment of pilot project regulations in areas not covered by higher level strategic plans, the Forest Caucus feels that this should be the exception rather than the rule. Stringent requirements for the balancing of non-timber values should be in place, before any regulation under Part 10.1 is deposited, and these should be functionally equivalent to the opportunities stakeholders would have had to protect forest values through strategic level planning.

Seventh, the experience of the Forest Caucus has been that the Forest Practices Code does not adequately protect the forest resources that our constituents care about. Consequently, a requirement that the pilot project “meet or exceed” the requirements of the Code is not adequate from the Caucus’ perspective and should not form the basis of any subsequent legislative change.

Eighth, none of these pilot projects should form the basis for broader legislative change until their performance has been evaluated over a period of time. Clearly it would be necessary to determine whether any model is capable of protecting forest resources in the long term.

You will note from the above that the Forest Caucus of the BCEN continues to have real and substantive concerns about Part 10.1 and the pilot projects developed to date. The Forest Caucus’ hopes that Cabinet will use discretion in exercising the broad powers granted to it under Part 10.1.

Yours truly,

WEST COAST ENVIRONMENTAL LAW

Andrew Gage
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