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Ministry of Forests, Lands and Natural Resource Operations
PO Box 9049, Stn Prov Govt,
Victoria, BC V8W 9E2

BY MAIL AND EMAIL AT FLNR.MINISTER@GOV.BC.CA

Dear Sirs/Mesdames:

Re: Cherryville Slide Investigations

As you know, on April 25, 2012 a slide occurred in Cherryville, BC, apparently as a result of logging and road building conducted by Tolko Forestry (the “2012 Slide”). I am advised that the Ministry of Forests, Lands and Natural Resource has conducted at least two investigations into the cause of the slide, which have generated at least two reports. However, these reports have not been released to date.

On behalf of Mr. Tim Staker of Cherryville, I write to request the release of the following records under the *Freedom of Information and Protection of Privacy Act*:

- Any reports prepared by the Compliance and Enforcement staff in the Ministry in respect of the 2012 Slide;
- Any reports prepared by Tim Giles, a Geomorphologist working for the Ministry in respect of the 2012 Slide;
- Any other reports prepared by Ministry staff in respect of the 2012 Slide; and
- Any correspondence, emails, memos, reports or other records examining the similarities and differences between the logging and road building that gave rise to the 2012 Slide and logging and road building currently being conducted by BC Timber Sales on Cherry Ridge.

If any of the above reports exist but only in draft form, then I request the most recent draft.

Section 25 Release

I submit that in addition to the general requirements of the Act, section 25 applies in the current situation. Section 25 reads, in part:

25 (1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people or to an applicant, information

(a) about a risk of significant harm to the environment or to the health or safety of the public or a group of people, or

(b) the disclosure of which is, for any other reason, clearly in the public interest.

(2) Subsection (1) applies despite any other provision of this Act.¹

Decisions of the Freedom of Information and Privacy Commissioner have interpreted this section as applying only where there is an “urgent or compelling need” for the disclosure of the documents in question. The current Commissioner describes this body of decisions:

Previous Orders of this office have interpreted the phrase “without delay” in s. 25(1) as requiring an “element of temporal urgency” such that neither ss. 25(1)(a) or (b) is triggered unless there is **an urgent and compelling need for disclosure**. The circumstances must be of **clear gravity and present significance** which compels the need for disclosure without delay. This sets a very high legal threshold before public bodies are required to disclose information under this section.² [Emphasis added]

In addition to this element of urgency, the information must either relate to the tests described in (1)(a) or (b) of section 25.

In the current case, the 2012 Slide is over. Obviously the release of the report will not prevent that particular slide or allow members of the public to mitigate the harm it caused.

However, BC Timber Sales is currently road building and logging on the same ridge, despite considerable public concern about slope stability and the possibility of further landslides. I am advised that the new operations are about 7km away as the crow flies and characterized by a similar history of slides and similar topography.

Certainly Cherryville residents have been negatively affected by slides, not just the 2012 Slide (which came close to destroying a house), but also a 2004 slide which destroyed a road, and a 1999 slide that blocked Cherry Creek.

Under these circumstances, the Reports requested should have been released under section 25 prior to authorizing BC Timber Sales to carry out similar operations near to the site of the 2012 Slide, and should be released as soon as possible in any event. The level of public concern about a similar slide in a community that has already suffered a lot is what gives rise to the urgent and compelling need for disclosure.

Allowing the residents to review and have access to information about what caused the 2012 Slide will help residents to evaluate the true risks of a new slide, and possibly to take action to protect themselves against such a slide.

In my submission, the BC Government cannot sit on reports that address the role of logging in causing a major slide that threatened the safety of Cherryville residents, while simultaneously conducting similar logging nearby.

For this reason, the reports go to the risks of “significant harm to the environment or to the health or safety of ... a group of people,” in relation to current logging, and the disclosure of those reports is also “clearly in the public interest.”

Please note that records under section 25 should be released “without delay.” Given that logging is already occurring, this should mean as soon as possible, and I submit that you need to consider this part of this request immediately on receipt of this letter.

¹ *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165, s. 25.

² E. Denham. *Public body disclosure of information under section 25 of the Freedom of Information and Protection of Privacy Act*. Investigative Report – F – 13 -05 (Officer of the Information and Privacy Commissioner, 2013), p. 9.

Fee waiver request

We request the waiver of fees associated with the above request, if any, on the grounds that the records requested relate “to a matter of public interest, including the environment or public health or safety.”³

Conclusion

I look forward to your prompt reply to my request for a section 25 release of the requested reports. In the alternative, I trust that the reports will be released in accordance with the other requirements of the *Freedom of Information and Protection of Privacy Act*.

Sincerely,

WEST COAST ENVIRONMENTAL LAW



Andrew Gage,
Staff Counsel

cc. Tim Staker (by email)

³ Above, note 1, s. 75(5).