Administrative Bulletin

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Guide to Administering Forest Development Plans

This guide is provided for the information of Forest Service staff primarily district managers. While every effort has been made to ensure accuracy, the guide is only intended to provide an overview of the administrative requirements pertaining to forest development plans. It should ***not*** *be interpreted as ministry policy, or legal advice, and it should* ***not*** *be used in place of the Forest Practices Code of British Columbia Act, the Forest Act, or their associated regulations.*

Introduction

This guide provides information respecting forest development plan (FDP) administration under the *Forest Practices Code of British Columbia Act* (Act) and the *Forest Act*. It focuses on FDP administration during the two-year transition period, i.e. the first six months (the cutblock and road review period) and the next 18 months (the substantial compliance period). The guide also identifies the administrative intricacies of FDPs that were approved prior to June 15, 1995 (grandparented FDPs) and FDPs that extend beyond June 15, 1997.

Background

The purpose of the FDP is to:

- provide a detailed description (e.g. maps and schedules) of the proposed timber harvesting and road activities (building, maintaining and deactivation) over a specified time period - usually five years in length, but may have duration's of 20 year or longer
- enable the licensee to plan operations in a integrated manner
- evaluate impacts of forest development activities on other resource values
- provide for the implementation of goals and objectives of higher level (strategic) plans in effect at the time of approval
- show how the timber supply specific to that tenure will be managed

- allow public, First Nations and other government agencies a formal opportunity to review and provide input respecting the above activities.

FDP administration is governed under the following sections of the Act, regulations and guidebook:

- Act
    - Section 8 standards for operational plans and forest practices
    - Section 10 content
    - Section 17 general planning requirements
    - Section 18 FDPs for SBFEP
    - Section 19 FDPs for major licence or woodlot licence
    - Section 28 exemptions
    - Section 34 voluntary amendments
    - Section 35 amendment or replacement if the plan is unlikely to succeed
    - Section 39 review and comment
    - Section 40 giving effect if the FDP is prepared by the district manager
    - Section 41 approval by district manager or designated environment official
    - Section 42 approval in emergency cases
    - Section 43 approval of minor changes
    - Section 58 authority required to construct of modify a road on Crown land
    - Section 62 road construction and modification must comply with plan
    - Section 63 road maintenance
    - Section 64 road deactivation
    - Section 224 grandparented plans
    - Section 225 (5) and (6) amending plans prepared by major/woodlot licensees
    - Section 226 (5),(6) and (7) amending plans prepared by government
    - Section 228 amendments to grandparented plans
    - Section 228(1) operational plans prevail\

    - Section 229 FDPs approved in the first 6 month period

- Regulations:
    - Operational Planning, Sections 2, 3, 4, 5, 67, 8, 9, 10, 11, 12, and Part 3
    - Timber Harvesting Practices

- Guidebook
    - *Forest Development Plan Guidebook.*

Linkage to the Forest Act

Section 18 of the Act states that the district manager may only invite applications for, or enter into, a timber sale licence that does not provide for cutting permits if a FDP identifies:

- the cutblocks to be harvested under the cutting authority; and
- the existing and proposed roads that provide access to the cutblocks.

Section 18 of the Act also requires that the holder of a timber sale licence that is not a major licence and that provides for cutting permits may only apply for a cutting permit if the FDP identifies:

- the cutblocks to be harvested under the cutting authority; and
- the existing and proposed roads that provide access to the cutblocks.

Section 19 of the Act requires that holders of a major licence, woodlot licence and pulpwood agreement may only apply for a cutting authority if the FDP identifies:

- the cutblocks to be harvested under the cutting authority; and
- the existing and proposed roads that provide access to the cutblocks.

Observation
Given this explicit link between the *Forest Act* and the Act, the cutblock boundaries on the cutting authority Exhibit "A" map must be identified on the FDP. Legal counsel advised that this means the harvesting area boundaries on the cutting authority Exhibit "A" map must be identical to, or wholly within the cutblock boundaries on the FDP. The reason for this explicit link is the FDP is the primary vehicle for the public and other parties to review and provide input to forest development activities. Cutting authority boundaries that extend beyond the cutblock boundaries on the FDP are subject to an FDP amendment.

Term of a Forest Development Plan

An FDP takes effect on:

- the effective date specified in the FDP - *if prepared by the government* or;
- the approval date for the FDP - *if prepared by a licence holder.*

Section 9 of the Operational Planning Regulation specifies that, unless otherwise specified by the district manager. an FDP expires:

- One year from the date on which the plan takes effect if the district manager prepares the plan, or, if the holder of a major licence prepares the plan, one year from the date specified on the approval (NOTE: there are provisions where the district manager may specify a period not to exceed two years); and
- Five years from the date on which the plan takes effect if a holder of a timber sale licence that is not a major licence and that provides for cutting permits prepares the plan with the district manager's consent, or, if the holder of a woodlot licence prepares the plan, five years from the date specified on the approval.

Period Covered Under a Forest Development Plan

Regardless of the term above, an FDP must cover a period of at least five years unless, of course, the years of operations remaining under the agreement to which the plan applies is less. Section 15 of the Operational Planning Regulation outlines the content requirements for FDPs showing a period of five years or less.

Section 16 of the Operation Planning Regulation outlines the content requirements for FDPs showing a period greater than five years.

Observation
Generally, FDPs with period longer than five years will be required when there is an identified need in a higher level (or strategic) plan.

Notice, Review and Comment

Subject to the transition provisions under Section 229(3) of the Act, before a person submits an FDP for approval, or before a district manager puts a FDP into effect (or an amendment to any of those plans) the person or district manager must publish a notice in the *Gazette* and in a newspaper circulating nearest to the area of the proposed operations. Refer to Section 39 of the Act and Sections 2 to 6 of the Operational Planning Regulation.

The public must be given a minimum of 60 days from the date of the last advertisement (referred to in the previous paragraph) to comment, and the licensee or district manager must make the plans available for public viewing at locations and times that are convenient to the public and approved by the district manager.

Observation
Concern has been expressed when information divulged from this process may have negative implications on the resource. For example, archaeological finds and guide outfitter information. It is expected that more information will be provided on this subject.

Area Under the FDP

Section 13 of the Operational Planning Regulation requires that the FDP address an area sufficient in size to include all the areas affected by the timber harvesting and road construction operations proposed under the plan.

Approving/Giving Effect

Under Section 40(1) of the Act, the district manager may only give effect to an FDP, or amendment, if the plan or amendment meets the requirements of the Act and regulations.

Under Section 41(1) of the Act, the district manager must approve an FDP, or amendment, if:

- it was prepared in accordance with the Act and regulations; and
- he or she is satisfied that it will adequately manage and conserve the forest resources.

Section 4 1(5) enables the district manager to make his or her approval, or amendment, subject to a condition.

Section 41(6) and (7) requires that the portion of an FDP, or amendment, that covers an area in a community watershed must be approved jointly by the district manager and a designated environment official.

Observation
Before the code came into force it was common practice to approve some of the FDP "in full" (for instance, years one, two and three), and some of that FDP "in principle" (for instance, years four and five). Under the code, however, approval pertains to all the cutblocks proposed in the five year period; i.e. the concept of approving some of the FDP "in principle" is not appropriate. This does not mean that all the cutblocks proposed in the five year period must be ready for cutting permit application before the district manager can approve the FDP.

It should be expected that as a cutblock progresses from year five to year one, the boundaries may be modified as more information becomes "known" and is incorporated into the FDP. It must also be clear that a cutblock approved in an FDP as a year four or five cutblock is not a commitment that the cutblock will eventually be eligible for cutting permit

issuance.

Extensions

Under Sections 18(1) and 19(1) of the Act, the district manager may extend an FDP for a period not exceeding one year. The Act requires that whenever an FDP is extended, it must promptly be amended to the extent necessary to ensure compliance with the **current** requirements of the Act and regulations.

The district manager may approve an extension **before or after** a FDP expires. Please note that this is unlike a cutting permit which can only be extended **before** the authority expires.

When an extension has been approved, Section 10 of the Operational Planning Regulation requires the person responsible for preparing the FDP to publish in a newspaper a statement, approved by the district manager, specifying:

- the agreement to which the extension applies;
- the term of the FDP; and
- the period of extension received.

Observation
Although the Act does not require FDP extensions to be approved by a designated environment official when the subject plan covers an area in a community watershed, the district manager may wish to consult the joint approval conditions under the regional/district MOU.

Content Requirements

1. FDPs approved before June 15, 1995:
    - must meet the requirements specified in the licence agreements to which the FDP applies and any applicable operating procedure or policy that may have been required when the FDP was approved; and
    - it is important to note that these FDPs are grandparented and therefore, are subject to amendments, pertaining to the five key code standards, under the cutblock and road review exercise.

2. FDPs, or amendments, approved/given effect after June 15th, but before December 15, 1995.
    - Section 229(1) of the Act requires that FDPs approved or given effect during this period:

- need not comply with the content and review and comment requirements of the Act and regulations;
- must meet the requirements specified in the licence agreements to which the FDP applies and any applicable operating procedure or policy that may have been required when the FDP was approved: and
- despite the above, Section 229(2) requires that if the district manager determines that the FDP, or amendment, does not conform to the five key code standards, the district manager may amend the plan, or amendment, to the extend necessary to satisfy him/herself that the cutblocks and roads will be consistent with conservation and good management of the forest resources.

3. FDPs, or amendments, approved/given effect after December 15, 1995, but before June 15, 1997.
   - Section 229(3) of the Act requires that FDPs approved or given effect during this period must:
     - meet the review and comment requirements of the Act and regulations;
     - substantially meet the other requirements of the Act and regulations; and
     - meet the requirements of the agreement for which it was prepared, to the extent the agreement is consistent with this Act and regulations.

Observation
The intent of the transitional provisions of the Act is to facilitate a "ramping-up" to full code compliance and therefore, it would be logical that FDPs approved in the period June 15 to December 15, 1995, (see 2 above) would be to standards that are at least equal to those that are being incorporated in the cutblock and road review exercise.

Approval/Giving Effect in Emergency Cases

Under Section 42(1) of the Act and Section 7 of the Operational Planning Regulation, the district manager may approve/give effect to a FDP or amendment without the plan or amendment having been made available for review and comment if the district manager determines that the plan or amendment:

- otherwise meets the requirements of the Act and regulations; and

- the timber on the area should be harvested without delay because it is in imminent danger of being damaged or destroyed.

Exemptions

Under Section 28 of the Act, the district manager may exempt the requirement for an FDP under:

- a TSL that does not provide for cutting permits;
- a TSL that is not a major licence that does provide for cutting permits;
- a major licence;
- a woodlot licence; and
- If the district manager determines that the only timber harvesting that will take place on the area is:
    - to eliminate a safety hazard;
    - facilitate the collection of seed and the harvesting area will not exceed one ha;
    - removal of trees already felled from landings and road rights of way;
    - removal of trees from recreation sites or trails; or
    - harvesting of trees to facilitate the entrapment of pests; and
    - there is no road construction required to access the timber harvesting listed above.

Amendments

There are four ways that FDPs can be amended:

1. Amending grandparented plans.
   Under Sections 225 and 226 of the Act, grandparented FDPs may have to be amended in order to address any non-conformities that a district manager decides to take action on under the cutblock and road exercise.

2. Voluntary amendments.
   Under Section 34(1) of the Act, a person who has an FDP may at any time submit an amendment to it to the district manager for approval. The person may not, however, amend an FDP to the detriment of another person who relied on the FDP.

3. Amendment or replacement of an FDP if it is unlikely to succeed.
   Under Section 35(1) of the Act, the person who has an FDP must submit to the district manager an amendment to the plan if that person knows, or reasonably ought to know, that performing the operations specified in the plan will not achieve the results specified in the plan.

4. Approval/giving effect to minor changes.
   Under Section 43(1) of the Act, a district manager or a person authorized by the district manager may approve/give effect to an amendment to an FDP where the amendment has not been made available for public review and comment if the district manager or person authorized determines that the amendment:

   - otherwise meets the requirements of the Act and regulations;
   - will adequately manage and conserve the forest resources; and
   - does not affect the public in a material way.

Observation
Persons exercising this authority must have a good understanding of the potential implications of "does not affect the public in a material way". Although some information may be provided, the final determination rests with the statutory decision maker in whether a minor amendment to an FDP will affect the public in a material way.

Contacts

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