



Administrative Bulletin

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Guide To Administering Logging Plans

*This guide is provided for the information of Forest Service staff primarily district managers. While every effort has been made to ensure accuracy, this guide is only intended to provide an overview of the administrative requirements pertaining to logging 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 logging plan (LP) administration under the *Forest Practices Code of British Columbia Act* (Act) and the *Forest Act*. It focuses on LP 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 LPs that were approved prior to June 15, 1995 (grandparented LPs) and LPs that extend beyond June 15, 1997.

Background

The purpose of the LP is to provide a detailed description on how the specifications in a forest development plan (FDP) and silviculture prescription (SP) will be carried out on a cutblock.

All forest practice provisions of the Act became effective on June 15, 1995. However, many of the code's forest practice requirements are implemented through the operational plans. Therefore, grandparented operational plans, or operational plans approved in the first six-month period, will not necessarily meet all of the code's requirements. Section 228.1 of the Act provides that during the two-year transition period, the provisions stipulated in the operational plans prevail, but after June 15, 1997, the provisions stipulated in the Act prevail.

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

- Act:
 - Section 8 standards for operational plans and forest practices
 - Section 11 content
 - Section 17(1) general planning requirements
 - Section 20 general requirement for the Small Business Forest Enterprise Program (SBFEP)
 - Section 21 general requirement other licenses
 - Section 29 exemptions
 - Section 33 limitation on 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 to LPs prepared by the district manager
 - Section 41 approval by the district manager or designated environment official
 - Section 42 approval in emergency cases
 - Section 43(1) approval of minor changes by the district manager or someone authorized by the district manager
 - Section 68(1) excavated or bladed trails
 - Section 224 grandparented plans
 - Section 225(5) and (6) amending operational plans prepared by major/woodlot licensees
 - Section 226(5), (6) and (7) amending operational plans prepared by government
 - Section 228 amendments to grandparented plans
 - Section 228.1 operational plans prevail
 - Section 230 logging plans approved in the first six month period

- Section 238 cutting permits
- Regulations:
 - Operational Planning, Sections: 6, 11, 12, and Part 4
 - Timber Harvesting Practices
 - Cutblock and Road Review
 - Forest Road
 - Administrative Remedies
- Guidebook: *Logging Plan Guidebook*.

Authorizing a Designated Forest Official

Section 1(6) of the Act provides district managers with broad powers to authorize a designated forest official to act on his or her behalf with respect to logging plans under the Act or regulations.

Observation

Given the varying degree of risk associated with the district manager's decision making powers respecting LPs, he or she may wish to consider limiting the extent of authorization to a designated forest official.

Linkages to the Forest Act and the Act

While the *Forest Act* provides the authority to harvest timber, the Act (Section 20 and 21) requires the approval of a LP before any harvesting operations can occur.

Term of a Logging Plan

LPs approved prior to June 15, 1995, are grandparented operational plans (Section 224). The term of a grandparented LP is until the first of the following occurs:

- the agreement for which the plan was prepared expires and is not replaced or is canceled, surrendered or otherwise terminated
- the forest practices required on the area under the plan are completed to the satisfaction of the district manager, or
- the plan is replaced with a LP prepared in accordance with the Act.

LPs approved after June 15, 1995, will expire after all of the requirements specified in the plan have been completed to the satisfaction of the district manager (the last requirement

generally will be the deactivation of the roads on the cutblock). As the LP and cutting authority are separate entities, LP obligations (other than those related specifically to the harvesting of timber) will remain after the cutting authority has expired.

Observation

Given the intent and legal intricacies around LPs, the district manager may wish to *not* specify expiry dates or terms when approving LPs.

Tenure Holders that Require Logging Plans

Under Sections 20 and 21 of the Act, the holders of following tenures must have an approved LP before harvesting a cutblock:

- timber sale licence (TSL) that is not a major licence
- major licence
- woodlot licence
- licence to cut
- Christmas tree permits.

In addition the holder of a road permit may be required by the district manager to have an approved LP before timber harvesting.

Under Section 20 of the Act, the district manager may relieve the holder of a TSL that is not a major licence of the requirement to prepare a LP. If this authority is exercised then the district manager must prepare the LP and the licensee must follow it.

Approving/Giving Effect

Under Section 41 of the Act, the district manager must approve a LP, or amendment, if:

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

Before giving approval, the district manager may require the proposed LP, or amendment, be referred to other agencies, and for a period of time, as specified by the district manager (Section 39 of the Act and Section 6 of the Operational Planning Regulation).

Observation

As LP requirements are based on the date of approval, it is important to make it known to persons who prepare, review, and approve LPs that if a LP is to be approved in accordance with the rules that exist during the first six months of transition, the LP must be submitted in sufficient time to enable approval by December 15, 1995. For instance, major licence holders

may have to submit a LP by November 15, 1995, in order to be reasonably assured that it will be approved by December 15, 1995.

Section 238 of the Act provides the opportunity to ensure LPs associated with cutting permits issued **before** June 15, 1995, are consistent with the requirements of the Act after June 15, 1997. LPs associated with cutting permits issued **after** June 15, 1995, continue until they expire, and therefore, could extend beyond June 15, 1997, without being consistent with the requirements of the Act at that time.

In deciding whether to refer a LP to other agencies, the district manager may wish to consider the referral conditions under the regional MOU.

Withholding Approval

Under Section 41(4) of the Act and Section 2 of the Administrative Remedies Regulation, the district manager may withhold approval of a LP, even though it was prepared and submitted in accordance with the Act if the licensee:

- has previously contravened the Act and,
- has not taken all measures necessary to prevent or minimize the effects of the contravention, or rehabilitate the area to which the contravention pertains.

Logging Plan Content Requirements

1. LPs approved before June 15, 1995:

- must meet the requirements specified in the licence agreement to which the LP applies and any applicable operating procedures or policy that may have been required when the LP was approved
- these plans are grandparented and therefore, are subject to amendments, around the five key code standards, under the cut block and road review exercise.

2. LPs approved after June 15th, but before December 15, 1995:

- must, at a minimum, meet the requirements specified in the licence agreement to which the LP applies (Section 230 of the Act)
- must satisfy the district manager that it adequately manages and conserves the forest resource (Section 41(1)(b) of the Act).

3. LPs approved after December 15, 1995:

- must meet the requirements of Act and Regulations in full, subject to the approved FDP or SP.

Observation

For *new cutting authorities* approved during the first six months of transition, it would likely be reasonable in most cases that they contractually require LPs to be done to a standard no less than what grandparented LPs are being amended to in the cutblock and road review process.

LPs approved after December 15, 1995 must meet the requirements of the Act and regulations in full, subject to the approved FDP or SP. However, there are certain LP content requirements that must be included that may not be present on the associated FDP or SP. Generally, this will include site specific matters such as the location of temporary culverts and minor stream crossings.

LPs must contain all the content requirements specified in Section 11 of the Act and Part 4 of the Operational Planning Regulation ***that are applicable*** to the cutblock (i.e., there are no "partial" LPs).

Approval/Giving Effect in Emergency Cases

Under Section 42 (2) of the Act and Section 7 of the Operational Planning Regulation the district manager may approve/give effect to a LP, or approve an amendment to the LP, where the cutblock has not been made available for review and comment (through the FDP review and comment process) if the district manager determines that:

- it meets the requirements of the Act and regulations
- the timber on the cutblock should be harvested without delay because it is in imminent danger of being damaged or destroyed.

Exemptions

Under Section 29 of the Act, the district manager may exempt the holder of a major licence, timber sale licence under the SBFEP, woodlot licence, road permit, Christmas tree permit or licence to cut from the requirement for a LP if the district manager determines that the proposed timber harvesting on the cutblock is limited to one or more of the following:

- harvesting of timber from an area other than a right of way if the volume of timber does not exceed 500m³ or the area does not exceed 1 ha.
- harvesting of damaged timber from along a right of way if the area does not exceed .25 ha.
- harvesting timber to facilitate gravel pit or borrow pit development
- harvesting special forest products.

Under Section 29 of the Act, the district manager may exempt the holder of a major licence, timber sale licence under the SBFEP, woodlot licence, road permit, Christmas tree permit or licence to cut from the requirement of a LP if the district manager determines that the proposed timber harvesting on the cutblock is limited to one or more of the following, and, **no road construction is required to provide access to the proposed timber harvesting under the following conditions:**

- elimination of a safety hazard
- collection of seed and is for an area less than 1 ha.
- removal of trees that have already been felled, from landings and road rights of way
- recreation sites or recreation trails
- facilitating entrapment of pests.

Further to the above, Section 33 of the Act states that a district manager may only exempt a person from requiring a LP if the district manager determines that the requirement is not necessary to adequately manage and conserve the forest resource of British Columbia.

Observation

When exempting the requirement for a LP, careful consideration must be given to how the requirements that are normally covered in the LP will be stipulated and enforced. While one option would be to include clauses in the cutting authority, it must be understood that all such clauses have been removed from the "clause manual", and therefore, they would have to be drafted. Furthermore, with these requirements stipulated in the cutting authority, enforcement of them would shift from the Act to the cutting authority.

Amendments

There are four ways in which LPs can be amended.

1. Amending grandparented LPs:

- Under Section 225 and 226 of the Act, grandparented LPs may have to be amended in order to address any non-conformities that have been determined through the cutblock and road review exercise.

2. Voluntary amendments:

- Under Section 34 of the Act, a person who has a LP may at any time submit an amendment to the district manager for approval. The person may not, however, amend a LP to the detriment of another person who has

relied on the LP.

3. Amendment or replacement of a LP if it is unlikely to succeed:

- Under Section 35 of the Act, the person who has a LP 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 to LPs:

- Under Section 43(1) of the Act, the district manager or a person authorized by the district manager may approve/give effect to an amendment to a LP 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
 - will adequately manage and conserve the forest resource
 - does not affect the public in a material way.

Observation

Policy can be developed only by the statutory decision makers who must determine if the amendment affects the public in a material way.

Like approvals, Section 39 of the Act and Section 6 of the Operational Planning Regulation empowers the district manager to refer the LP to other resource agencies. In deciding whether to refer to a LP to other resource agencies, the district manager may wish to consider the referral conditions under the regional MOU.

When the Associated Cutting Authority is Extended

Cutting authority extensions could result in required changes to the LP. Therefore, when processing a request for an extension to a licence or permit the need to amend the LP should be determined prior to the extension and consider approval simultaneously with the issuance of the extension.

Contacts

Further details and direction are available from:

Jim Gowriluk at ???

Doug Kelly at Doug.Kelly@gems4.gov.bc.ca

