



Administrative Bulletin

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Guide to Approving Operational Plans during Substantial Compliance

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 operational plan approvals. 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 (Act), the Forest Act, their associated regulations or in place of advice of your solicitor.

For a copy of the draft Operational Plan Approval Letter (FDP) please see [Appendix 1](#)

Introduction

This guide provides information on evaluating forest development plans (FDP), silviculture prescriptions (SP) and logging plans (LP). It provides details on approval of operational plans during the substantial compliance period. This administrative guide supports the following administrative guides;

[Guide to Administering Logging Plans](#), October 31, 1995

[Guide to Administering Forest Development Plans](#), December 13, 1995.

Evaluation of operational plans under the new statute is a complicated process that requires continual communication between the statutory decision maker and the plan proponent.

While this administrative guide will assist statutory decision makers in making their determinations, it is critical that there is a well-established communications process with the plan proponent throughout all stages of the approval process. Use of round tables and scheduling meetings throughout the plan approval process will greatly assist both the preparer of the plan and the statutory decision maker(s).

Observation

The statutory decision maker may wish to communicate that they, had an open mind throughout the process leading up to plan approval. Varying and contrary points of view are expected and welcomed during the review process for consideration in the plan approval. However, the decision on

plan approvals is the sole responsibility of the statutory decision maker.

Operational Plan Approval Letter

An approval of an operational plan is a determination; the same principles apply that were detailed in the training course Making Effective Determinations (E404). This training material is of particular interest for persons delegated with authority for LP approvals and amendments under section 1(6) or under section 43), of the Act, for minor plan changes. Appendix 1 contains a draft approval letter with key items for developing supporting rationale. This has been prepared by compliance and enforcement branch and will be updated as new information becomes available.

Review and Comment

Substantial compliance does not apply to the requirements for review and comment as detailed in the Operational Planning Regulation (OPR) sections 4 to 7. The advertising, review and comment requirements must be fully met for approvals of FDPs, five-year silviculture plans (FYSP), access management plans (AMP) and range use plans (RUP). There are no mandatory requirements for advertising of LPs, SPs and stand management prescriptions (SMP). However, district managers have the discretion under OPR section 6(l) to require referral of any operational plans to resource agencies or other persons. In addition, the statutory decision maker may decide to make, or require an SP or amendment to an SP available for review and comment if the FDP in effect for the prescription area has not been the subject of review and comment and the district manager (DM) has determined that the public would be affected in a material way.

Observation

In determining if the prescription would affect the public in a material way it is reasonable to consider how the proposed actions would affect them. Examples of persons affected would be: those with a vested interest, such as, use of a road system by a licensed recreation user for cat skiing or when established visual quality objectives are being modified and persons within the viewscape will be affected. The decision on who is affected will vary on a case by case basis and can not be predetermined. It is a real judgement call and should be identified and expressed in the approval rationale.

The legislation obligates the plan proponent to address comments received during the review and comment period. Resource agencies and the public forward their comments to the proponent, who must review and make any revisions to the proposed plan that the person considers appropriate. If comments are provided to the statutory decision maker instead of to the proponent, the comments should be forwarded to the proponent for consideration and possible inclusion into the plan. The proponent must provide to the statutory decision maker copies of all submissions received, and a summary of revisions made to the plan to address comments. For the Small Business Forest Enterprises Program (SBFEP) FDPs, the comments go to the DM or DM designate.

If a comment is received after the review and comment period there are a number of situations that can arise. Consideration should be given to the validity of the concern, and the opportunity to incorporate the concern. For example, if the comment is sent to the proponent, the plan has not been submitted for approval, and the proponent determines it is a valid concern it may be appropriate to incorporate. At the other end of the spectrum, when a comment is received after the plan is approved, it can not be incorporated until the next plan, unless it is important enough to trigger the amendment criteria and internal checks and balances in the code (e.g. section 34-36).

So, what does a DM do when a comment is given to him or her after a plan has been submitted, but before the approval? The rights of the proponent are affected if the DM considers the submission without advising the proponent or if the DM sends the submission and the plan back to the proponent. The proponent may well be in a position to challenge the DM on the grounds that the DM has exceeded the review and comment provisions of the regulation. However, the DM may be challenged for the person submitting comments has no rights, as such ignoring relevant considerations under section 41 if he/she fails to consider the submission. Basically, in these situations it is advised to work it out with the proponent, if possible. They can not be forced to deal with it.

Observation

The public and resource agencies can be assisted during review and comment by identifying the following categories of cutblocks in the proposed FDP:

- harvesting authorities granted, no opportunity for amending (e.g. years 1-2)
- harvesting authorities may be applied for during term of FDP (e.g. years 1-3)
- harvesting authorities will not be applied for during term of FDP, additional assessments may be required under next FDP (e.g. years 4-5).

By categorizing these cutblocks the review and comments will focus on cutblocks that will have authorities granted during the term of the FDP as well as identify assessments necessary for next FDP submission.

Review and comments apply to the entire plan area of the FDP, except where cutting permits or road permits (harvesting authorities) have been issued. The code itself, does not provide for comments to be addressed through the harvest authority or license document. Deal with the review and comment in the plan.

Observation

It should be recognized that the advertised plan may vary from the approved plan. The plan does not have to go through review and comment for every change. However, any significant change or revision should be based on the comments received. Plans revised as a result of review and comment are not

required to be re-advertised for further comment on the approved changes.

Amendments to FDPs, particularly mapping changes, can be accomplished by clearly identifying changes as an amendment in the written text supported by a highlighted photocopy rather than requiring complete new maps.

Section 40 - Act Giving Effect to Operational Plans Prepared by a DM

Most of the administrative law principles that apply to an approval under section 41 also apply when a DM gives effect to an operational plan under section 40. The wording difference is because in the case of the DM, the same person is preparing and deciding whether to implement the plan. Section 40 does not have a subsection (b) similar to section 41 because section 4 of the, MoF Act already places requirements on the DM to deal with managing the forest resource adequately.

For administrative ease, the DM should provide details to the staff assisting in the preparation of operational plans of what expectations would be regarding giving effect to any plan.

Section 41 - Approvals of Plans by a DM or Designated Environment Official (DEO)

Statutory decision makers approve operational plans under this section for major licensees and woodlot licensees.

Observation

The statutory decision maker only approves the plan, based on his/her determination that the plan meets the Act and regulations and adequately manages and conserves the forest resources. Once approved, it does not become the statutory decision maker's plan. It is the proponents plan and remains their plan to the end.

Section 41(1) - When a DM Must Approve an Operational Plan

The DM must approve an operational plan or amendment submitted under this Part if the two requirements set out in subsection 41 (1)(a) and (b) are met.

Section 41(1)(a) - Operational Plans Prepared and Submitted in Accordance with the Act and Regulations

Subsection 41(1)(a) requires the statutory decision maker to determine if the operational plan was prepared and submitted in accordance with the Act and regulations. The substantial compliance transitional provisions of Part 11, apply to the content requirements of all operational plans except for the LP and SP, which must already be in full compliance. These transitional provisions terminate on:

- December 15, 1996 for SMP and FYSP
- June 15, 1997 for the FDP/AMP, and
- December 15, 1997 for the RUP.

Once applicable Part 11 provisions terminate, the operational plan content must fully comply with the Act and regulations. As mentioned earlier, advertising and review and comment requirements of the legislation must be met now, they are not subject to substantial compliance.

Section 41(1)(b) - Adequately Manage and Conserve

Subsection 41(1)(b) requires the statutory decision maker to determine if the plan will adequately manage and conserve the forest resources. This is an additional requirement over and above the requirement that the plan comply with the Act and regulations.

Observation

Examples of the application of section 41(1)(b) would be:

- where the assessment completed in accordance with the Act and regulation requirements for slope stability fail to account for some soil types where road construction would pose a threat (e.g. slope less than 60%, no instability identified in FDP assessment but the statutory decision maker has some concerns about instability), or
- As a result of a pest incidence survey, a licensee has determined that there is a forest health problem, and has proposed management strategies to reduce risks to timber loss. Although this may meet the requirements of 41(1)(a), if the DM believes that the management measures are inadequate, the DM could not approve the plan under section 41(1)(b).

Information that may be of assistance in determining adequate management and conservation includes review and comments, guidebooks, policy, procedures. However, these inputs must be used in a manner that does not fetter the decision maker. This statutory decision is that of the decision maker alone; the decision maker is not bound by any of the above information. For more information please refer to the section on guidebooks on page nine.

Observation

In granting approval of an operational plan ask yourself "have I fettered myself in this decision by unquestioningly following policy, procedures or the wishes of a resource agency or other person, or the proponent?" Of course, this does not mean you cannot consider advice of your staff. However, the decision cannot be based solely on the fact that your staff or government policy recommend you approve or not approve the plan. You must believe that the recommendations of staff or the government policies are

appropriate in this particular case. If you believe they are not appropriate to this particular case you must not follow them. This exercise may assist in making your determination and development of supporting rationale.

Section 41(2) - Submission of Additional Information

This section provides authority for the DM to request additional information to assist in determining if the operational plan should be approved. Examples include higher resolution maps or more detailed site assessment information.

Section 41(3) - Approval Only if Plan Meets 41(1)

Under this section the statutory decision maker may only approve an operational plan if it meets the requirements of section 41(1).

Section 41(4) - Right to Refuse Approval or Amendments to LP

The section provides the statutory decision maker with authority to withhold approval of an LP or amendment if the applicant has not taken all measures necessary to prevent or minimize the effects of a previous contravention of the Act or regulations. Section 63.1 of the Forest Act provides authority for refusing or placing special conditions on a cutting permit.

Section 41(5) - Approval of FDP Subject to a Condition

The statutory decision maker may approve a FDP or amendment subject to a condition. However, subsection (3) requires that all the requirements of the Act and regulations be met and that the decision maker be satisfied that the plan or amendment adequately manages and conserves forest resources before the conditional approval is issued.

Therefore, the DM may find there are few situations when a conditional approval will be appropriate. This provision does not authorize granting conditional approval on cutblock basis as was a common practice under contractual agreements before the statute came into effect. This should be limited to situations where valid concerns identified during the review and comment process were addressed, but still may require some simple clarification to ensure that the intended action is clearly identified or conveyed.

Observation

An example of an approval with a condition would be: In response to a MELP referral which has identified a trapline in a proposed development area, a licensee has agreed to inform the affected trapper when harvesting activities will take place to allow him sufficient time to remove any equipment that is in place. To add clarity to this matter the following condition was attached to the FDP approval. The FDP is approved with the condition that written notice is to be provided to Mr. Trapper at least 30

days prior to harvesting commencing in the trapline area.

Section 41(6) - Joint Approval

This section requires the approval of the DEO in addition to the approval of the DM for that portion of the FDP that is contained within a community watershed or that meets prescribed requirements as detailed in the OPR. Under section 8 of the OPR, joint approval is required if the requirement is contained in a higher level plan or all or part of a FDP or amendment if the DM and DEO agree that joint approval is appropriate in the circumstances.

Section 41(7)

This section requires the DEO to approve an FDP or amendment under subsection (6) if it meets the requirements of subsection (1) and the DEO is satisfied that it will adequately manage and conserve the forest resources. Like the DM, the DEO can also apply substantial compliance in approval of the FDP or amendment for content, but not review and comment requirements.

Observation

Joint approvals under substantial compliance require additional coordination with the proponent to identify expectations of the two statutory decision makers and ensure assessments are completed in time for making a determination. The letter of approval for portions of an FDP by a DEO may be included in a joint approval document or a separate document. In either case it is still a separate determination. In the event that a joint approval document is issued it is recommended that separate rationale supporting the determinations be provided.

There is always the potential for different decisions. If they continue to disagree the onus is on the proponent of the plan to modify, it to the extent that both approve.

Section 41(8) to (13)

These sections provide administrative details around the definition, designation, cancellation and amending of plans in community watersheds.

Observation

Before the designation of a community watershed is established, varied or cancelled the regional manager must provide for review and comment tender subsection (12).

Section 42 - Approval in Emergency Cases

It is up to the DM to first determine that there is an emergency, this would be a joint decision if it is an area referred to in section 41(6). Once that has been determined, then the FDP is approved without review and comment, the SP and LP can be approved if they comply with the regulations, and the timber should be harvested without delay because it is in imminent danger of being damaged or destroyed.

Observation

The final decision to what constitutes an emergency is up to the DM, but the Act appears to contemplate that it is when the timber is in imminent danger of being damaged or destroyed. This section should not be used to deal with wood supply issues.

Section 43 - Minor Amendments

Delegation of minor changes to operational plans is permitted under section 43 of the Act. The following conditions must be achieved:

- the amendment meets the requirement of the Act and regulations
- adequately manages and conserves the forest resources, and
- does not affect the public in a material way.

If all three conditions are met then the statutory decision maker or designate may approve the amendment without review and comment.

Observation

When the statutory decision maker has delegated authority to a person under this section, then that person becomes the sole statutory decision maker and no one, including the original statutory decision maker, may fetter the decision of the designate. It is recommended that adequate training and support be provided to designated authorities. DMs may de-designate an authority but may not vary or rescind a decision made by the designate.

Higher Level Plans (HLP)

FDPs must be consistent with HLPs in effect when the FDP is approved. During the period to June 15, 1997, substantial compliance can be applied to approvals of FDPs where a higher level plan is in effect. SPs and LPs under full compliance must only be consistent with the HLP when there is no FDP in place. Otherwise they must be consistent with the approved FDP.

In addition there may be phase-in provisions included in the HLP which may temporarily exclude an area under the plan or an objective from coming into effect for a specified period to enable a smooth transition from the pre- to post- HLP requirements. In

considering any HLP the key item for the statutory decision maker is to determine what the plan means in management of forest practices delivered on the ground. Within the HLP and documentation of the declaration there will be clearly defined objectives.

However, there will almost always be areas where **statutory decision makers must interpret** what the plan means. In the absence of a formal declaration as a HLP, the draft or interim plans, may provide reference material for the statutory decision maker to consider in assessing their responsibilities under section 41(1)(b), but should be used with great caution. Higher level plans, by their nature, usually try to accomplish "something more" than adequate management.

Observation

In approving an FDP where a HLP has been declared, DMs and DEO's (where applicable) will need to put their minds to their interpretation of the requirements of the HLP and document what they think the HLP requires in their notice of determination. The statutory decision makers may rely on interpretative documents developed by other staff, but must put their minds to the various resources at their disposal and not let others dictate their decision through any such interpretative documents.

In the absence of a formal declaration, drafts, interim plans and standards have no formal standing in statute and can only be used as reference material for consideration under section 41(1)(b). A process that statutory decision makers may wish to consider to deal with draft, interim plans or guidelines would be to develop district procedures relating to plan approvals. Any district policy should be available to plan proponents with sufficient advanced notice prior to plan preparation and the district should make it clear that the policy will not fetter statutory decision making, (e.g. that the decision maker will ignore the policy if the decision maker considers the policy inappropriate in a particular circumstance).

Guidebooks

Guidebooks should be treated as reference material only. They may assist statutory decision makers in identification of forest management issues affecting operational plans and appropriate ways of addressing these issues.

Guidebooks are never enforceable as a publication. However, there are three ways to potentially incorporate information from guidebooks into binding requirements of the Act and regulations or the harvest authority.

1. The HLP declaration. The HLP declarations may cite specific sections of guidebooks making them binding, and the statutory decision makers will need to ensure they know of any linkage with declared HLP.
2. By reference or regulation (e.g. in definitions or cited in appropriate section). The regulations require certain parts of the following four guidebooks to be binding to the preparer of the plan with respect to specific issues:

- Establishment to Free Growing
 - Hazard Assessment Keys for Evaluating Site Sensitivity to Soil Degrading Process
 - Mapping and Assessing Terrain Stability, and Seed and Vegetation Material
3. Under harvesting authorities where guidebook details are included. It is important to realize that citing a guidebook within a regulation or harvesting authority does not make the entire guidebook legally binding, but only the part that is cited. That part then becomes enforceable not as a guidebook but as part of the regulation or harvest authority. This citing can prove to be problematic unless very careful thought and consideration has been given to its use.

Assessments

Assessments for FDPs can be grouped into the following categories:

- base assessments
- additional assessments required from base assessments
- assessments at the discretion of the DM.

Base assessments

Certain information and assessments are required for all five years of the FDP, including: streams, wetlands, lakes, unstable or potentially unstable terrain, topography, forest cover, greened-up, and operable forest area. During substantial compliance, plans may be approved that do not have all base level information and assessments completed.

Observation

In applying substantial compliance the statutory decision maker may wish to consider if a harvesting authority will be issued during the term of the FDP. Blocks where a harvesting authority is not scheduled for the term of the plan may not need assessments until preparation of a replacement FDP. It is recommended that the proponent identify which cutblocks and roads in the proposed FDP will have authorities submitted for approval during the term. The proponent should also clearly state within the plan if additional assessments will be completed for the next FDP.

Additional Assessments Required from Base Assessments

Some base assessments automatically trigger more detailed assessments, an example is a terrain stability assessment (section 30) where required by identification of unstable or potentially unstable terrain (section 25). Another example of an additional assessment

triggered by a base requirement is a visual impact assessment if required by establishment of a scenic area.

Observation

The statute expresses the areas where these more detailed assessments apply. The area varies depending on the type of assessment. However, like the base assessments, substantial compliance applies to an FDP where the DM deems it appropriate. Statutory decision makers should note the previous observation.

Assessments at the Discretion of the DM

The last group of assessments are at the discretion of the statutory decision maker and imply some advance notification to the plan proponent. Discretionary assessments include: archaeological impact assessment, certain lake classification, certain terrain stability assessments, watershed assessment, forest health factor evaluation.

Observation

Discretionary assessments generally require notification to the plan proponent well before an FDP goes out for review and comment. Statutory decision makers should consider a formal notification process that may include round table discussions with other agencies as well as the proponent to identify assessments required for the next FDP.

Link to Tenure Document

Under sections 18 and 19 of the Act, a major licensee may only apply for a CP, or in the case of the DM, may invite application, or enter into a timber sale licence (TSL), if the FDP identifies the cutblocks to be harvested and the location of existing and proposed roads. The area applied for under CP must be identical to the area shown on the FDP. The actual issuance of the CP is controlled by the licence document and may only be applied for during the term of the plan. The licence document contains a clause requiring approved applicable operational plans before granting harvest rights.

The licence documents for TFLs and FLs are replaced every five years, therefore some are pre-code while others are post-code. Depending, upon which "type" is in effect the licensee is granted a different CP. (e.g. for pre-code licences, there is a "codified" CP)

In approving operational plans the authorities granted by the tenure documents need to be recognized. Licences may have obligations under the Forest Act that could be confused with operational plan approvals under the code. An example is a licence that limits harvesting to a problem forest type. The information provided with the FDP may indicate the harvesting will meet the code. However, the data accompanying a CP submission (e.g. cruise data) may provide new details that prevent issuance of a CP under the licence agreement.

Observation

The code does not obligate the statutory decision maker to approve a CP even if the conditions have been achieved. The Forest Act through section 63.1, provides authority for the DM to refuse issuance of a cutting permit or attached special conditions. (See Performance Based Harvesting Regulation).

It is recommended that the FDP clearly identify authorities already in effect and those scheduled to be approved during the term of the plan. This was a previous requirement of the licence document and is now covered under section 10 (b)(i)(B) of the Act and section 15(1)(b) of the OPR.

Approval of a block for harvesting or a road for construction outside the term of the plan does not give approval for issuance of a harvesting authority. A licensee submitting an application for a harvesting authority where approval for road construction or harvesting is not contained within the term of the plan may be seeking an amendment to the plan under sections 41 or 43 of the Act.

The statutory decision maker may wish to consider separating Forest Act issues from plan approvals under the code versus placing conditional approvals within the operational plan. It is recommended that plan proponents be informed of the linkages between the term of the plan, issuance of harvesting authorities and the DM expectations in regard to CP submissions.

Known

A feature, objective or thing becomes "known" information when it is made available by the government at least four months before an FDP is submitted, or if it is identified in a higher level plan that is in effect at the time of submission. As a cautionary note, the definition only applies to items referred to in the OPR regulation as having to be "known".

Observation

Since the determination of what is "known" is controlled by government, one agency should not attempt to communicate this without the others. Statutory decision makers are advised to ensure FDP proponents clearly understand their responsibilities under "known" for plans being prepared for approval.

Extensions

Under sections 18 and 19 of the Act, the DM may extend an FDP for a period not exceeding one year, either before or after the FDP expires. If the FDP complies with the current requirements of section 41(1) of the Act, then it doesn't need to be amended when

extended. If the DM prepares the plan it is the regional manager who has the authority to extend it.

Sections 18(8) and 19(5) requires that if a plan is extended it must be amended to ensure compliance with current requirements. Since section 41 applies to approvals and amendments under Part 3 of the Act, joint approval would be required if any amendments to the plan effecting a community watershed were necessary under sections 18(8) or 19(5). However, joint approval would not be required for the extension itself

Observation

In determining if a FDP extension should be approved, the statutory decision maker should determine whether or not new higher level plan requirements or new legislated requirements have taken effect since the date of the originally approved FDP.

Term of Operational Plan

The term of the FDPs for major licences or for SBFEP is one to two years. For a TSL (not considered a major license) which provide for CPs and woodlot license FDP, a term of up to five years may be specified. The term starts from the date the plan is approved.

The scope of a FDP is five years or 20 years in the case of community watersheds. There are exceptions to the scope of the FDP under section 14(3) of the OPR.

The term of an LP is until obligations are met, such as, rehabilitation of temporary access structures.

A SP has a term lasting until the free growing obligations are achieved, unless a new prescription is required under sections 37 and 38 (outdated prescription).

Observation

Statutory decision makers may wish to utilize approval of FDP terms to stagger replacement submissions so the approval workload is spread over the entire calendar year. This is highly recommended during this first year of replacement plans. Another method for reducing staff workloads is to approve plans for a two-year term. With woodlot licences, the statutory decision makers may want to consider if shorter terms are more appropriate than the five-year time period available.

Grandparented Plans

On June 15, 1997 grandparented FDPs for major licensees, woodlots and RUPs approved prior to June 15, 1995, will expire.

Grandparented SPs expire when the free growing obligations are achieved or the prescription is replaced.

Grandparented LPs expire when the forest practices are completed, when the agreement expires, or when replaced by a new logging plan.

Plan Operational Flexibility

Operational planning should reflect the need for flexibility in achieving regulated forest practices. Where plans are too restrictive (e.g. specifying the yarding machine versus detailing the harvesting system), there may be future amendments to several plans to reflect the machine available at the time of harvesting. An example of providing some flexibility within the operational plan would be to identify alternative log drop areas for helicopter harvesting in the FDP to providing authority for moving if there are field related problems with the preferred drop site. Another example would be to provide historical and anticipated harvesting for beetle infestation.

Amendments

There are three ways FDP's are amended under the Act:

1. Grandparented plans as a result of the cutblock and road review (section 225/226).
2. Voluntary amendments requested by the licensee,(section 34).
3. Where a person knows that operations specified in the plan will not succeed, (sec. 35).

Amendments to operational plans are approved under section 41 (approval), section 42 (emergency) or section 43 (minor changes). Amendments under section 43 are for minor changes and do not require additional review and comment. Section 42 provides authority for FDP approval in emergency cases if the statutory decision maker determines the plan meets the requirements of the Act and regulations and is necessary to address an emergency. In addition, amendments need to address newly declared HLP under section 41(1)(a).

Observation

Amendments can not be required, they must come from the proponent of the plan.

Minor Salvage Operations

Section 17 of the OPR provides the statutory decision maker with the power to waive many of the content requirements for the FDP for minor salvage operations as defined.

Observation

The DM should turn his or her mind to the wisdom of waiving a requirement before doing so. There should be a clear rationale for the decision to waive. Section 17 does not contemplate automatic waiver of all

requirements referenced in that section.

Contacts

For any questions regarding the above, please contact your **regional timber officer**, or

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

Charlie Western at Charlie.Western@gems4.gov.bc.ca.

Draft Operational Plan Approval Letter (FDP)

For a copy of the draft Operational Plan Approval Letter (FDP) please see [Appendix 1](#)

Guide to Approving Operational Plans during Substantial Compliance

Appendix 1

Draft operational plan approval letter (FDP)

revised Oct. 24, 1996

file :

To: licensee

Your forest development plan (FDP) submission of *(date)* for the years *(1996-2000)* for *(forest licence ____)* in the _____ timber supply area has now been fully reviewed.

Determination

I am satisfied that the proposed plan has been prepared and submitted in accordance with the *Forest Practices Code of British Columbia Act* (Act) and regulations under section 41(1)(a). I am also satisfied that the plan will adequately manage and conserve the forest resources to which it applies under section 41(1)(b) of the Act.

Accordingly, as the statutory decision maker under section 41 of the Act, I hereby approve your FDP.

The term of the plan is _____ *(up to two years from the date of approval)*.

Further development taking place under *(forest licence ____)* must be done in accordance with the approved FDP. Expectations regarding this development are attached or will be communicated via separate cover.

If you need clarification on any aspect of this determination, please contact _____.

Yours truly,

District Manager,
_____ Forest District

Rationale

Having reviewed the material submitted to me, which included _____, the comments from the public and other resource agencies, my reasons for approving your plan are as follows:

Statements in the rationale would be along the lines of " I am aware of..... (the issue), and have resolved it in favour of approval, (how you resolved in order for granting approval).

Points to consider

1. This letter is a determination on the approval of this plan. It should be clear that you are making the decision, you are not being fettered and you are being fair and reasonable. Therefore, you should include what information you considered relevant/ not relevant.

Observation

The operational plan approval process has actually got the plan to where it is now and the rules, or test of approval, should not change part way through. Therefore, encourage an efficient process and deal with its effectiveness outside this approval letter.

This template letter has used a forest licence as an example, but this could be easily modified for tree farm licences as well. In that case, you could add slightly more of a descriptor to include a block number and/or geographic descriptor.

- 2.
3. The approval is for the whole plan. There are two tests that the approval must pass and it is recommended that the rationale deal with issues that relate to them separately. Under section 41 1 (a), the plan or amendment must be prepared and submitted in accordance with the Act and regulations. In addition, under section 41 1 (b) the plan must satisfy you that it will adequately manage and conserve the forest resources.

With respect to the requirements under section 41 1 (a), it would be reasonable to use a check-list of what the statute and the regulations require to be satisfied. If the proposed plan doesn't satisfy a requirement of the statute or regulation the letter must say so and why (make the specific reference).

Note The use of substantial compliance applies only to the section 41(1)(a) approval test and not to the test of adequately managing.

With respect to the requirements of section 41(1)(b), identify any aspects that don't satisfy you and indicate why.

4. While the legislation doesn't specifically state that reasons for your approval must be given in your letter, you should recognize and address the issues that you have considered during your approval process.

The approval letter can be written to include the rationale within the body of the letter, or in the case of approvals, which are usually fairly complex, the rationale would be more likely attached.

The rationale should show the reasoning behind your decision and be complete enough that, should it be challenged, there will be enough substance that it can be defended. The amount of rationale expressed will be along a continuum from "no reason expressed" (when no issues exist and none were raised), "to all reasons expressed". It will depend on the circumstance of each case. It is anticipated that FDPs will be complex when compared to SPs and LPs.

Consequently when an issue comes up from the approval process it should be dealt with fight up front. You may wish to reference another document and attach it or otherwise make it available, rather than include it in the body of the letter. Work on the philosophy of a few well chosen words, focusing on the significant, rather than trying to express everything. If you have specific concerns about how these are best expressed, it may be appropriate to discuss them with your regional solicitor before sending this letter to the licensee.

5. With respect to approval subject to a condition, the condition should not be something that brings the operational plan up to satisfying the requirements of section 41(1). If the condition is a red light indicator, then the plan really doesn't meet section 41(1) and should not be approved. Section 41(1)) states that the first thing you do is approve the plan only if it meets the requirements of section 41. Then section 41(5) says you can make that approval subject to a condition.

An example of a condition would be the plan is approved subject to the removal of a shake wacker's trailer before the commencement of falling operations.

Observation

Many of the conditions we previously attached to a plan approval letter are no longer considered conditions. Actual conditions are expected to be minimal

6. Some operational plan approval letters written to date have included a short description of subsequent actions or expectations relevant to this plan being approved. These are essential messages the preparer of the plan requires to proceed. For example:
 - the following CPs may be applied for, but are not part of the approval test under section 41 of the code,

- SPs and LPs must be consistent with this FDP, or
- future FDPs will be expected to deal with a particular phase-in provision of the code or a phase-in provision of a declared higher level plan.

You don't want to put yourself in difficulty later with these, so generally what is in the approval letter should be only relevant to the approval itself. Be cautious about putting in anything else in. It would be better to put them in as an attachment or use a separate letter to deal with subsequent expectations and include only a reference to the fact these expectations will be expressed under separate cover.

7. The review and appeal of this determination is unique. Only the Forest Practices Board (Board) has that right to request a review and appeal of an approval of either a FDP or a Range Use Plan under section 128(1)(c). There is no requirement of the code that a DM notify the Board of a determination under section 41 of the code. While the Board under Part 8 of the code has the power to obtain information, unless the Board uses this authority, there is no requirement that a DM provide a copy of a determination to the Board. In other words, the Board need not be given a copy of a determination unless they ask for it.
8. An issue that came up in the workshops was the need for letters of approval for other operational plans, silvicultural prescriptions and logging plans. Keep the bureaucracy to the minimum. As is mentioned in the draft letter, it depends on the issues to be dealt with and when they arise. Clearly if the SP is the best place to deal with an issue then the approval should speak specifically to it. These approvals should normally be fairly straight forward and should not be overly bureaucratic. We do need to document approval and be prepared to defend it should it be called into question as part of a challenge.

This template can be used for any of the plans approvals. Some districts have licensee's submitting FDPs, SPs, LPs and CPs at one time to make the process more efficient.

Contacts

For any questions regarding the above, please contact Charlie Western at Charlie.Western@gems4.gov.bc.ca.