Administrative Bulletin

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Guide to Approving Operational Plans after June 15, 1997

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 advise of your solicitor.

Introduction

This guide provides information to evaluate forest development plans (FDP), silviculture prescriptions (SP) and logging plans (LP). It provides details on approval of operational plans after June 15, 1997. This administrative guide replaces Guide to Approving Operational Plans during Substantial Compliance, dated October 25, 1996.

Important legislative amendment: The *Forest Statutes Amendment Act*, 1997 (Bill 47) was proclaimed into law on July 30, 1997. This bill contained key amendments to the *Forest Practices Code of British Columbia Act* (Act) and the *Forest Act*, some of which became effective immediately and others will be brought into effect by regulation.

Section 160 of the bill specifies how the sections will be brought into effect. Further detail is provided on the electronic bulletin under BBLEGIS. This bulletin reflects the current approval requirements for operational plans and will be amended as new requirements are brought into law. For example, the bill eliminates the LP except when required under a "licence to cut" or for road construction covered by a road permit that is not held by a major licensee. This amendment will become effective by regulation early in 1998. The same amendment will substantially change the requirements for the SP and may necessitate changes to some of the road or cutting permit documents.

Evaluation of operational plans to meet legislated requirements is a complicated process requiring 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. Experience has shown that regularly scheduled meetings with resource agencies and the plan

proponent throughout the plan approval process will greatly assist both the proponent of the plan and the statutory decision maker.

> **Observation**
> The statutory decision maker may wish to communicate throughout the process leading up to plan approval that they have an open mind and listen to varying and contrary points of view. These views are expected and welcomed during the review process for consideration in the plan approval. However, the statutory decision maker has the responsibility for approving operational plans.

1.0 Information Needs

The objective is to provide the proponent of the plan with all relevant information to develop an operational plan. If the proponent feels that they are lacking information, they should follow up as needed. Some planning requirements are contingent on government providing information to the proponent within a certain timeline or the district manager (DM) requesting certain assessments.

What is "Known" Information?

A feature, objective or thing becomes "known" information, s.11(2) of the Operational Planning Regulation (OPR), when it is made available by the government at least four months before a FDP is submitted for approval, or if it is identified in a higher level plan (HLP) that is in effect at the time of submission. As a cautionary note, the definition only applies to items referred to in the OPR as being "known".

> **Observation**
> Since the determination of what is "known" is controlled by government, agencies should work together in communicating "known" information. Statutory decision makers are advised to ensure FDP proponents clearly understand their responsibilities under "known" for plans being prepared for approval.

What is "Best Information Available"?

This is all information relevant for consideration by the statutory decision and it is the weighing process used to determine what is "best". For example, two reports on the same topic may be available, however the statutory decision maker decides that only one of the two reports is to be used. "Best information available" is about the choices made for information to be used in the plan preparation and approval process.

> **Observation**
> The statutory decision maker should only have to communicate new information needs as the proponent should know and be responsible for what has been available previously. Communication to the proponent should point this out.

Information needs of the proponent may include, but are not limited to, the following:

1. What is required to meet s.41(1)(a) ?

2. What is required to meet s.41(1)(b) ?
3. The expected timelines, by looking ahead to determine what is required and by when ?
4. What assessments are required ?
5. What does "known" mean ?
6. What is "best information available" ?
7. How is this plan effected by any HLP ?
8. What are the proposed classifications of cutblocks and roads (A or B) ?
9. How are guidebooks used ?
10. Are there any additional requirements for s.41(2) of the Act or OPR s.15(1) ?
11. What constitutes a major amendment and how will it be processed ?
12. How will "consistency" be applied ?
13. Are there any tenure related requirements that need to be communicated at this time ?
14. Is there a strategy for addressing review and comments?

District Manager Required Assessments

Under the OPR, the DM can require archaeological assessments (s.26), watershed assessments (s.32), terrain stability assessments (s.30(1)) and forest health assessments (s.29(2)) for the area under the plan.

> **Observation**
> These types of assessments require sufficient notice to complete field work and may necessitate hiring consultants. It is recommended that a minimum of six months notice be provided prior to review and comment to ensure assessment requests can be satisfied. By providing this information to proponents before they prepare the plan, the requirement for amendments to the FDP can be reduced.

2.0 Plan Preparation

Based on communications from the statutory approver(s) provided during the information phase, the proponent should be able to go ahead with some comfort of the scope and requirements for review of the plan as it proceeds through the approval process. The DM should provide details of the expectations regarding giving effect to plans prepared on their behalf to staff assisting in the preparation of operational plans. It is not possible to specify a provincial or regional timeline that would apply to all operational plans, but districts can and should determine critical timelines based on individual FDP replacement dates while recognizing operational logistics in the district.

Plan for Operational Flexibility

Operational planning should reflect the need for operational flexibility in achieving regulated forest practices. This flexibility is important to provide for operational realities while not reducing enforceability of practices. Where plans are too restrictive (e.g. specifying the yarding machine versus detailing the harvesting system), amendments to several plans may be required 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, so as to provide authority for moving the drop area if field related problems occur without amending the FDP.

3.0 Review & Comment

The objective is to obtain a fair and open exchange of relevant information. This is the main opportunity for the public to provide comment on how the forest resources will be managed. Balancing this fairness is a key part of the statutory decision maker's determination. The review and comment phase of the plan approval process has both legislated timelines and policy timelines with resource agencies under the memorandum of understanding (MOU). By gathering detailed information during the "information needs" portion of the planning phase the review and comment should focus on:

1. Have the statutory approver's expectations been captured in the plan ?
2. Have the stakeholders been involved or notified and information solicited ?
3. Is it clear what the reviewer's role is, and how they should respond (e.g. landscape or stand specific) ?

The advertising, review and comment requirements for FDPs and Range Use Plans (RUP) must be met before those plans can be approved. Requests for extensions to the review and comment phase should be carefully evaluated to ensure that an adequate opportunity for public input has been provided.

> **Observation**
> The statutory decision maker should document their decisions regarding requests for extension of the review and comment period. In making this determination, the decision maker may wish to consider opportunities for consultation that may have occurred prior to the statutory requirement and if the requestor will be affected by the proposed operations.

Important legislative amendment: The requirement for Five-Year Silviculture Plans (FYSP) was suspended under B.C. reg. 185/97 until September 15, 1998. There is no requirement for having a FYSP to approve prescriptions or carry out silviculture activities.

Important legislative amendment: Please note that B.C. reg. 187/97 repealed s.4 (6) to (8) of the OPR effective June 9, 1997. The amendment focuses all public review and comment onto the FDP by ensuring that critical site and landscape information is available with the FDP for comment. Amendments to an FDP will be reviewed on the

basis of the need for public comment on assessments and proposed changes (please see section 10.0 — Amendments).

There are no mandatory requirements for advertising LPs, SPs and Stand Management Prescriptions (SMP). However, DMs have discretion (OPR s.6(1)) to require advertising or referral of any operational plans to resource agencies or other persons.

> **Observation**
> Any plan submitted for review and comment must be retained on file in the event that the approval is challenged or complaints are brought forward. It is recommended that a clean file copy be retained and any amendments to the plan be kept in a separate document.

A MOU between the Ministry of Forests, Ministry of Environment, Lands and Parks and the Ministry of Employment and Investment was developed to facilitate inter-ministry communication and co-ordination for the implementation of the Act. One of the key components of this document is the section on Referrals and Approvals and should be consulted at this stage of the plan approval process. This MOU also provides for development of regional and district agreements that further define the commitments contained in the provincial document.

The legislation also obligates the plan proponent to provide copies of comments received during the review and comment period and indicate how concerns were addressed. Once the review and comment phase is completed, all concerns should be identified and there should not be any new surprises at the final submission phase. Resource agencies and the public forward their comments to the proponent. For the Small Business Forest Enterprises Program (SBFEP) FDPs, the comments go to the DM, or the district contact as specified in the review notice.

If comments are provided to the statutory decision maker instead of the proponent, the comments should be forwarded to the proponent for consideration and possible inclusion into the plan. Where comment is received after the review and comment period has ended and the plan has not been submitted for approval, the comments should still be forwarded to the proponent.

If comments are received after the plan has been submitted for approval, but the plan has not yet been approved, the proponent can determine if it is a valid concern and how to incorporate it into the plan. 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. The DM cannot refuse to approve the FDP if late comments are not addressed, unless the concern is a valid one and the DM wishes to exercise his or her discretion by refusing to approve the FDP without more information. Equally, the DM may also be challenged for ignoring relevant considerations under s.41 if he or she fails to consider the submission. However, the proponent can not be forced to deal with the submission of late comments.

> **Observation**
> Any information coming to the statutory decision maker is relevant information that could have a potential impact on the approval. The fact that it comes in late is irrelevant to the fact that it is actual knowledge. But the statutory decision maker has the discretion to determine whether to delay the plan's approval.

Once an operational plan is approved, amendments can only be required through a mandatory amendment under s.35, a voluntary amendment under s.34 or upon replacement of the plan. Further details are provided in the section on amendments. Comments received after approval of the plan should be retained by the proponent for consideration in future plan approvals or amendments.

> **Observation**
> Incorrectly submitted comments or late submissions should be clearly documented, and the rationale should consider how the late or incorrectly submitted comments were incorporated into the approval.

Review and comments apply to the area under the FDP, except where cutting permits or road permits have been issued subject to terms of the licence agreement. The Act does not provide for comments to be addressed through the harvest authority or license document. The purpose of the review and comment phase is to deal with forest planning issues in the FDP.

> **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.

Categories of Cutblocks for Review and Comment

Important legislative amendment: Bill 47 provided for the establishment of gating by regulation. It is anticipated that this legislation will be in effect early in 1998.

To assist the public, resource agencies and the statutory decision maker in approving the FDP, it is recommended that proposed cutblocks and roads be classed according to the following categories:

a. Category "A": proposed cutblocks and roads where landscape level assessments have been completed and the results have been incorporated in the FDP, and permission is being requested to complete more detailed assessments.

b. Category "B": proposed cutblocks and roads where landscape and stand level assessments have been completed and results have been incorporated in the FDP. Approval of a cutblock in this category means that a SP will be approved or a cutting permit (CP) will be issued or a road layout and design will be approved

during the term of the plan, or all of these.

c. Cutblocks and roads classified as approved for harvesting where cutting permits or road permits or TSLs have been issued under a previous FDP. These cutblocks and roads are provided for information purposes only, since issued rights can not be rescinded except where provided for in the licence agreement.

Observation
The licensee should indicate in the FDP what status they expect each block to be at after the approval. The FDP approval letter from the DM can then state the approval category.

Assessments

Important legislative amendment: The requirements for assessments of cutblocks and roads in a FDP has been changed as a result of B.C. reg. 187/97. The following table summarizes the new requirements:

- Landscape level assessments OPR Cutblock class
- Identification of unstable or potentially unstable terrain (25) A
- Streams, wetlands and lakes based on maps (28(a,b)) A
- Lake classification (15(6)(d)) A
- Forest health (29) A
- Watershed assessments in community watersheds (32(1)(a)) A
- Watershed assessments for other areas if required by DM (32(1)(b,c)) A
- Terrain stability assessments in community watersheds (31(1)) A
- General planning requirements (15(1) to (5)(7)) A
- Stand level assessments
- Visual impact assessments for "known" scenic areas (27) B
- Archaeological impact assessments if required by DM (26) B
- Streams, wetlands and lakes based on field sampling (28(c)) B
- Terrain stability field assessments (30) B

Observation
There is no longer a separate requirement to advertise the results of the assessments. The results of the assessments must be incorporated into the FDP, in accordance with the above table.

Additional Assessments at the Discretion of the DM

Some additional 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 classifications, certain terrain stability assessments, watershed assessments and forest health factor evaluations. Notification for these type of assessments is required at an earlier stage, as discussed under section 2.0 — Plan preparation.

> **Observation**
> Discretionary assessments generally require notification to the plan proponent well before a 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.

4.0 Approval of an Operational Plan

Approval of an operational plan is a mandatory determination which is much different than discretionary determinations. Further discussion is provided in s.41(1). In making a mandatory determination, the same principles apply that were detailed in the training course titled Making Effective Determinations (E404). This training material is of particular interest for persons delegated with authority for LP approvals and amendments under s.1(6) or s.43 of the Act, for minor plan changes. Amendments to proposed FDPs, including mapping changes, can be accomplished by clearly identifying changes as amendments in the written text and making mapping changes on a highlighted photocopy rather than preparing completely new maps.

Term of Operational Plan

The term of a plan is the period for which a plan remains in effect, while the period of the plan is the requirement for planning information to be included in a proposed plan. The term of the FDPs for major licences or for SBFEP is one to two years. For a TSL (not considered a major licence) which provides for CPs and woodlot licence FDP, a term up to five years may be specified. The term starts from the effective date of the plan, identified in the approval letter.

The period covered by a FDP is five years, or 20 years in the case of community watersheds. There are exceptions to the period of the FDP under s.14(3) of the OPR.

The term of a LP is until all harvesting related 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 s.37 and s.38 (outdated prescription).

> **Observation**

Statutory decision makers may wish to use the 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.

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

Most of the administrative law principles that apply to an approval under s.41 also apply when a DM gives effect to an operational plan under s.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) identical to s.41 because s.4 of the Ministry of Forests Act requires the DM to manage the forest resource adequately.

Section 41 — Approvals of Plans by 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 proponent's plan and remains the proponent's plan to the end. Cutblocks or roads that will not form part of the final plan must be deleted from the proponents plan by the proponent and not the statutory decision maker. Such amendments can be accomplished by simple administrative memos from the proponent to the DM to provide notification and documentation on file. Please note that it is very important to be able to distinguish between what was submitted for review from the final plan that was approved.

Important legislative amendment: Bill 47 provided authority for adding a third test that would require the DM to be satisfied that the plan adequately addresses the government's economic objectives including those provided for in a HLP. This third test is not in effect, it is anticipated that changes will be made to the legislation early in 1998.

Important legislative amendment: Bill 47 provided authority for the DM to approve a portion of an FDP if joint approval is not required. This new authority is not in effect, it is anticipated that changes will be made to the legislation early in 1998.

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 s.41(1)(a) and (b) are met. From an administrative law perspective, s.41(1)(a) is a mandatory decision and s.41(1)(b) is discretionary in the first part, then once satisfied becomes a mandatory decision. There is an important cross-reference to s.41(3) that prohibits approval if the plan does not meet standards.

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

Section 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 for RUP, (s.237) remains in effect until December 14, 1997. All other operational plans that are approved after June 15, 1997, must fully comply with the content requirements of the Act and regulations.

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

Section 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 when a DM may refuse approval based on s.41(1)(b) are:

- where a terrain stability assessment completed in accordance with the Act and regulation requirements for slope stability fails 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 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 under OPR s.29(1)(c), to reduce risks of timber loss. Although these strategies may meet the requirements of s.41(1)(a), if the DM believes that the management measures are inadequate, the DM could not approve the plan under s.41(1)(b).

Information that may be of assistance in determining adequate management and conservation includes review and comments, guidebooks, policy and procedures. However, these inputs must be used in a manner that does not fetter the discretion of 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 below.

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 the advice of your staff

However, the decision cannot be based solely on recommendations of staff or government policy. You must believe that recommendations of staff or government policies are appropriate in this particular case. If you strongly believe they are not appropriate to this particular case, you must not follow them. This exercise may assist in making your determination and developing supporting rationale.

Section 41(2) — Submission of Additional Information

If the DM, is not satisfied that he or she has the necessary information to determine if the plan will adequately manage and conserve the forest resources, they may request additional information to assist in their determination under this section. 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 s.41(1) (e.g. nothing more, nothing less).

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

This is a performance based harvesting provision that provides the statutory decision maker with authority to withhold approval of a 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, s.41(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 is appropriate. This provision does not authorize granting conditional approval on a cutblock basis, as was a common practice under contractual agreements before the statute came into effect. This practice 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. Smith 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. In addition, s.8 of the OPR provides that the requirement for joint approval may be established in a higher level plan or if the DM and DEO agree that joint approval is appropriate in the circumstances.

Section 41(7) — DEO Approval

This section requires the DEO to approve a FDP or amendment under s.41(6) if it meets the requirements of s.41(1) and the DEO is satisfied that it will adequately manage and conserve the forest resources.

> **Observation**
> Joint approval requires additional co-ordination with the proponent to identify expectations of the two statutory decision makers and to ensure that assessments are completed in time for making a determination. The letter of approval for portions of a 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 a separate rationale supporting the determinations be provided by each decision maker.

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

Section 41(8) to (13)

These sections provide administrative details around the definition, designation, cancellation and amendment 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 under s. 41(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 with the DEO if it is an area referred to in s.41(6). Once it has been determined that there is an emergency, the FDP may be approved without review and comment the SP and LP can be approved if they comply with the regulations and standards, and the timber should be harvested without delay because it is in danger of being damaged, significantly reduced in value, lost or destroyed. Please note, some review and comment provisions may still apply subject to the DMs determination.

> **Observation**
> The final decision as to what constitutes an emergency is up to the DM, but

the Act appears to contemplate that an emergency exits when the timber is in danger of being damaged, significantly reduced in value, lost or destroyed. This section should not be used to deal with wood supply issues resulting from inadequate or late submission of plans.

Section 43 — Minor Amendments

Minor changes to operational plans are permitted under s.43 of the Act. The amendment must achieve all of the following conditions:

- 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.

Observation
The decision on who is affected will vary case to case and cannot be predetermined. In determining if the operational plan would affect the public in a material way, it is reasonable to consider how the proposed actions would affect them. This is meant to be a block-specific decision. 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 approval rationale should identify how the test for "material way" was determined.

If all three conditions are met, then the statutory decision maker or designate may approve the amendment without review and comment. While the process for determining a minor amendment does not vary, the decision must be made based on the particular set of circumstances for the request.

Important legislative amendment: Bill 47 provided authority for the third part of this test to be amended. This amendment to the third test is not in effect, it is anticipated that changes will be made to the legislation early in 1998

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. The DM may revoke the delegation of a decision-making authority but may not vary or rescind a decision made by the designate.

Observation
Amendments should only be considered when changes will occur on the ground. For example, there would not be an amendment considered for improvements in information such as a higher standard of accuracy

measurement in the cutblock area as a result of a re-calculation using GPS.

5.0 Higher Level Plans (HLP)

FDPs must be consistent with HLPs in effect four months before the date the plan is submitted for approval, unless the HLP or the Act specify otherwise. SPs and LPs 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. The HLP document, including terms in the declaration, will provide 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 statutory decision makers to consider in assessing their responsibilities under section 41(1)(b), but these should be used with great caution. A HLP, by its very nature, usually tries to accomplish "something more" than adequate management.

Observation
In approving a FDP where a HLP has been declared, DMs, and DEOs where applicable, will need to put their minds to the interpretation of the requirements of the HLP and document what they think the HLP requires in their notice of determination. The proponent of the plan should be made aware of this interpretation as early as possible in the process (see point #7 in the Information needs table, page 3). 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 interpretative documents.

Draft or interim plans or standards have no formal standing under the statute and have **limited use as reference material** for consideration under s.41(1)(b). Statutory decision makers may wish to develop district procedures relating to the use of draft or interim plans or guidelines. 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. In other words, the decision maker will ignore the policy if the decision maker considers the policy inappropriate in a particular circumstance.

6.0 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. Cited guidebooks can prove to be

problematic unless very careful thought and consideration has been given to what the specific application of the citation means to forestry practices.

Guidebooks are never enforceable as stand alone guidebooks, even when they are mentioned in a general way. However, the following are three ways to potentially incorporate information from guidebooks into binding requirements of the Act and regulations or the harvest authority:

1. **Higher Level Plans**
   A HLP declaration may cite specific sections of guidebooks, and thereby making them binding. Statutory decision makers will need to ensure they know of any linkage between the HLP and the sections of guidebooks incorporated by reference.

2. **Regulation**
   The regulations cite the following four guidebooks. Portions of these guidebooks are binding on the proponent of the plan with respect to specific definitions:

   - 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. **Harvest Authority**
   Harvesting authorities may also incorporate portions of guidebooks. 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.

7.0 Policy

"Policies" are the general principles that guide government administration in the management of public affairs, which do not have the force of law. Policy can not restrict the statutory decision makers discretion unless clearly provided for in either the Act or regulations. Where a statutory decision maker must repeatedly make complex decisions weighing a range of facts, the statutory decision maker may create their own policy to communicate their expectations or limitations that would apply to approvals of operational plans. A DM’s policy is a very useful tool to communicate the DMs expectations for plan approvals where interpretations and application of standards are clear. However, a DMs policy must allow for consideration of new information that may not have been available when the DM approved the policy.

If a policy is developed and used by the statutory decision maker, it must be communicated to other parties to which the standard would apply. Extreme caution is required in drafting any DM policy. The following reminders may be helpful:

- A statutory decision maker is not bound to policy that is not provided for in legislation. At best, it may be a tool for the decision maker to use in exercising his or her discretion in addition to other types of information available.
- Policy drafted by statutory decision makers that does not provide adequate consideration of the particular facts in an individual plan approval would not be viewed by the courts as fair policy and the statutory decision maker may be found to have abrogated their statutory authority.
- Policy must be made public if it is to be considered as a factor in the approval process.
- Policy should be distinguished from procedures. It is important to remember that the law treats policy and procedures very differently. While a policy cannot bind the ability of the statutory decision maker to exercise discretion, a procedure is binding upon the DM with respect to the steps required prior to the DM making the decision (e.g. before this FDP can be submitted for approval a copy must be made available to the following persons).

The Act provides authority for two policies. The first policy is one that DMs must follow in exercising their statutory obligations, this authority is provided to the chief forester under s.1(1), s.4(1&4), and s.5(1&4) of the Act. This policy is in the Higher Level Plans: Policy and Procedures document dated June 15, 1996, as amended by the chief forester on December 1, 1996. Directions of the chief forester contained in this policy must be followed by the DM pursuant to their responsibilities under Part 2.0 — Strategic Planning, Objectives and Standards. A second policy is provided for under s.122 of the Act, this is a policy that must be considered by the DM in exercising his or her authority. At the present time there is no policy approved under s.122.

Section 105(1) of the Forest Act provides authority for the appraisal policy set by the minister that statutory decision makers must follow.

8.0 Linkage to Approvals under the Forest Act

Under s.18 and s.19 of the Forest Practices Code of British Columbia Act, a major licensee may only apply for a CP, or in the case of the DM, may invite application or enter into a TSL if the FDP identifies the cutblocks to be harvested and the location of existing and proposed roads. There must be an approved FDP in place when a CP application is submitted and issued. Once a CP is issued the overlying FDP can expire. The FDP does not have to be in effect for the life of the CP, only at the time of issuance. The area applied for under the CP must be identical to the area shown on the FDP. Therefore, for cutblocks approved as "B" cutblocks, the FDP must provide sufficient detail regarding the boundary location so that a CP can be issued and the area can be clearly identified. 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. It is important to note that even if all approved operational plans are in place, actual harvesting cannot occur until the CP is issued.

Observation
While a CP or RP can remain in effect even if the FDP expires, it may be worthwhile to extend the FDP in order to provide authority for amendments such as salvage operations that may be required.

The licence documents for tree farm licences and forest licences 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. For example, for pre-code licences, there is a "codified" CP. In approving operational plans, the authorities granted by the tenure documents need to be recognized. Licensees may have obligations under the Forest Act that could be confused with operational plan approvals under the Act. 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 application (e.g. cruise data) may provide new details that prevent issuance of a CP under the licence agreement. The licence document and the harvest authority are the key documents for administering the allowable annual cut (AAC) and the management of standing timber inventory (STI).

Observation
The Act does not obligate the statutory decision maker to approve a CP, even if the planning requirements have been achieved. The licence provision will govern issuance of a CP, for example a CP can not be issued if it interferes with aboriginal rights. Section 63.1 of the Forest Act provides authority for the DM to refuse issuance of a cutting permit or attach special conditions (See Performance Based Harvesting Regulation). It is recommended that multi-block CPs proceed through the categories as the same status. This is particularly the case for the "B" cutblock where detailed information should be contained before the issuance of the CP.

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 schedule would also include a breakdown by category "A" and "B" and thus avoid the need for doing so in the approval letter. Including a schedule was previously required by the licence document, but is now covered under s.10 (b)(i)(B) of the Act and s.15(1)(b)and (4)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 should seek an amendment to the FDP under s.41 or s.43 of the Act.

Important legislation amendment: Bill 47 amends the Forest Act to permit the delegation of issuance of CPs to a forest officer authorized by the DM which would make the forest officer the statutory decision maker.

> **Observation**
> The statutory decision maker may wish to separate a Forest Act issue from plan approvals under the Act by placing conditional approvals in the operational plan. An example of this would be the STI agreements DMs have with the various licensees. It is recommended that plan proponents be informed of the links between the term of the plan, issuance of harvesting authorities and the DM's expectations in regard to operational plan and CP submissions.

9.0 Exemptions

Exemptions from the operational planning requirements are contained in s.28 to s.32 of the Act. The DM may only exempt a person from a requirement if the DM determines that the requirement is not necessary to adequately manage and conserve the forest resources. Exemptions can only be provided where a request for a CP is submitted, or an exemption from planning requirements associated with a FDP, SP or LP is requested.

Exemptions for an SP or LP may be provided for individual areas up to one hectare or 500m3 under the Act. These exemptions may be grouped in the licence document under the Forest Act to reduce the administrative workload.

> **Observation**
> This decision is a determination under the code and as such, reasons should be documented in writing and supported with reasons for the purpose of defending the determination if it is challenged . The DM may also find it useful to express to the proponents what he or she considers important in assessing whether the exemption adequately manages and conserves the forest resources.

10.0 Amendments

There are two ways operational plans are amended under the Act:

1. Voluntary amendments requested by the licensee (s.34).
2. Where a person knows that operations specified in the plan will not succeed (s.35).

It is important to note that consistency does not mean "identical to" with respect to any provision that refers to a higher level plan or an operational plan being consistent or inconsistent and whether an amendment is required or not.

Important legislative amendment: Bill 47 added a definition to attempt to deal with unnecessary amendments. This section will be brought into effect by regulation in 1998.

Amendments to operational plans are approved under s.41(approval), s.42 (emergency) or s.43 (minor changes). Amendments under s.43 are for minor changes and do not require additional review and comment. Section 42 provides authority for FDP approvals 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. Amendments may be needed to address a newly declared HLP.

Amendments are provided for under s.34 (voluntary amendments), s.35 (when it is known the plan is unlikely to succeed), s.36 (if the desired results of the SP are not possible) and s.37 to s.38 (in the event of an outdated SP).

In the event an area outside the cutblock is to be harvested, there must be an amendment to the approved operational plans to reflect the new cutblock boundaries before harvesting can commence. If the area to be harvested is smaller than, and contained within, the cutblock boundary shown in the FDP, amendments are not required. However, the data management system will require updating to reflect the actual harvested area on the ground.

> **Observation**
> Amendments under s.34 to s 38 cannot be required, they must be proposed by the proponent of the plan. However, failure to propose amendments when amendments are required by the Act is a contravention of the Act.

11.0 Extensions

Under s.18 and s.19 of the Act, the DM may extend a FDP for a period not exceeding one year, either before or after the FDP expires. If the FDP complies with the current requirements of s.41(1) of the Act, then it does not need to be amended when extended. If the DM prepares the plan, only the regional manager has the authority to extend it. Regional managers will require documentation on the original plan approval rationale as well as details on the specific request for extension.

Sections 18(8) and 19(5) require that if a plan is extended it must be amended to ensure compliance with current requirements. Since s.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 joint approval area were necessary under s.18(8) or s.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 FDP originally approved (while the onus is on the proponent to propose the required amendment, the approval lies with the statutory decision maker).

12.0 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 exempt. Section 17 does not contemplate automatic waiver of all requirements referenced in that section.

13.0 Woodlot Program

Important legislative amendment: Bill 47 provides for key changes to the planning requirements for woodlot licences that work to streamline the administration while maintaining on-the-ground forest practice performances and protecting the environment. The legislation enables the development of a new comprehensive regulation specific to woodlot licence holders. The current Act requirement to prepare a FDP, SP, LP and SMP are replaced with the requirement to prepare a FDP and SMP, as well as the optional requirement to produce a "site plan" at the request of the DM (or when initiated by the licensee).

The new site plan will contain only information the DM needs to address a specific matter. The current Forest Act requirement to produce a management plan (MP) and a CP will be maintained, however it is anticipated that the MP will focus on AAC related matters. This amendment will be brought into effect in 1998.

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