General Bulletin

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Amendments to Forest Development Plans

Introduction

The *Forest Practices Code of British Columbia Act* (FPC) authorizes holders of forest development plans (FDPs) to propose amendments to those plans under FPC34. Depending on the nature of the amendment, the proponent should request the district manager (DM) or DM and designated environmental official (DEO), in joint approval areas, to approve the amendment under one of 4 following sections of the FPC:

FPC40 Authorizes statutory decision makers (SDMs)[1] to give effect to FDPs and amendments prepared by the DM. Amendments given effect under this section are considered "major"[2] because they require a 60 day review and comment period prior to submission for approval.

FPC41(1) Authorizes SDMs to approve FDPs and amendments prepared by forest tenure holders. Amendments approved under this section are also considered "major" for the same reason.

FPC42 Authorizes the SDMs to approve or give effect to FDPs and amendments to address an emergency. This section of the FPC is beyond the scope of this bulletin.

FPC43 Authorizes the SDMs to approve or give effect to FDP amendments prepared by the DMs or forest tenure holders without a 60 day review and comment period (if the amendment does not materially change the objectives or results of the plan). This is a minor amendment that can be submitted and approved without providing for review and comment.

[1] The term "SDM" includes the District Manager for the Ministry of Forests, the Designated Environmental Official for the Ministry of Environment, Lands and Parks as well as delegates designated by either of these two positions. SDM only means the District Manager or his/her designate when joint approval is not required.

[2] There is no basis for the terms "minor" and "major" amendments in the legislation (although "minor" is in the title of FPC43), however, they are useful

administrative terms
that are in common use.

When are Amendments Needed?

The FPC does not allow for any changes to be made to an approved FDP unless it is via a formal amendment. Possible exceptions to this would be the correction of obvious spelling, mathematical or grammatical errors.

Proposed Amendments

Amendments can only be proposed by the plan proponent. While the proponent will request approval under FPC40, FPC41(1) or FPC43, it is the SDM that will decide under which section it will be approved or given effect. This decision is expedited if the proponent includes a rationale for the "category" of amendment for consideration by the SDM. For example, the proponent should determine if the 3 tests under FPC43 can be met. If the tests, in the proponent's opinion, can be met, the reasoning should be included in a rationale with the request for the amendment. If the tests cannot be met, the amendment should be proposed as a major amendment. This is a key decision because minor amendments have an expedited approval process compared to major amendments.

Approving a Minor Amendment

The first two tests in FPC43 are similar to those for approving the FDP under FPC41. The last test states "the amendment does not materially change the objectives or results of the plan." For this test, it is recommended that the SDM carry out the following 3 steps:

1. Determine the objectives or anticipated results of the current plan for the portion of the FDP being amended. The term "objectives" is a general expression but the SDM should consider the objectives expressly required in OPR18(1)(u) to (x) as well.

2. Determine what the objectives or anticipated results of the amendment are.

3. Determine or define what constitutes a "material change" (see below).

After this is done, the SDM can then determine if there is or is not a material change to the objectives or results of the FDP as a whole. If there is a material change, the amendment cannot be approved under FPC43 and will need to be advertised.

Defining "Materially Change"

"Material" is defined in the dictionary as substantial or important. Any change in an FDP that changes its tenor or effect can be considered a material change. Something is material if it would cause a reasonable person to change his or her decision.

Making a Decision Regarding "Materially Change"

In order to determine if a change to an FDP materially changes the results or objectives of the FDP, there are a number of factors related to the FDP approval process that may be considered, including, but not limited to, the following:[3]

- Have there been or is there likely to be any contentious issues related to this block or road as a result of the proposed amendment?

- Would the proposed amendment give the public a different opinion about the portion of the FDP being changed?

- Were any comments made about the amendment area during the review and comment period?

- Are any of the requirements in OPR20(1)(b) proposed to be changed? These changes may be considered significant as they affect the Category A status of the cutblock [refer to OPR20(2)].

- Does this block contain any significant resources not related to timber extraction such as a riparian management area, old growth management area or ungulate winter range?

- Was the cutblock or road included in any assessments required as a result of the planning process?

- Is there a precedent? Has a decision comparable to this already been made by the SDM (while not legally bound by previous decisions an SDM should strive for consistency in decision making).

In addition, DM guidance can be produced that gives examples of what constitutes a minor amendment. Each determination is still made on its own merits but FDP holders are given a better idea of the likelihood of approval of specific amendments.

[3] Amendments including new proposed Category A cutblocks typically are not considered "minor".

Reducing the Need for Unnecessary Major Amendments

Major amendments require more time to administer than minor amendments, however, it is important that they be used when a material change is proposed to the objectives or results of an FDP. It is also equally important to not use limited resources on an FPC40 or 41 amendment when an FPC43 minor amendment is all that is required.

At the beginning of the FDP process, it is recommended that the DM advise proponents about the types of changes that would, in his or her opinion, constitute a major versus a minor amendment. He or she could also explain how the licence holder could prepare the FDP in order to increase the probability that changes to the plan may be considered minor amendments. The DM should consider issuing district policy with the same message in order that all district licensees/staff are well informed. That information will assist proponents in preparing a flexible FDP that can address changing circumstances without the need to propose a major amendment. For example, stream crossings. The FDP could include a planned stream crossing and one or more alternate crossings to allow the public and resource agencies to review and provide comments. Then, during the course of operations, if the stream crossing has to be moved to a different location (but one included in the FDP), it may be more likely the SDM would view this as a minor amendment. In taking this approach, it is very important that all viewers of the proposed FDP understand clearly which crossing is proposed and which crossings are only to be considered alternates. It would also be good communication for the FDP to indicate that the alternates could be utilized as crossing locations during the term of the plan without the need for further public review or notice.

Approval of Minor Amendments Under FPC43 is Discretionary

Despite an amendment being proposed as minor, the decision to approve it as a minor amendment is at the discretion of the SDM. For major amendments, the SDM must approve all proposed major amendments if they meet the requirements of FPC40 or 41. However, if the DM receives a major amendment but feels it could be approved as a minor amendment he or she should contact the proponent and ask that it be proposed as such.

Joint Approval Areas

Despite a proposed amendment being submitted as minor or major, all amendments for areas referred to in FPC41(6) must be approved by the DEO in addition to the DM. Also, OPR2(2) allows the DM and DEO to agree to jointly approve all or any part of an FDP if they agree that joint approval is appropriate in the circumstances.

Delegation

Under FPC43, approval or giving effect to minor amendments can be delegated unless they are in joint approval areas. In that case the DM must approve them jointly with the respective DEO. Currently, major amendments cannot be delegated under FPC40 or 41.

When do Changes to the SP Result in an Amendment to the FDP?

As with the FDP, most changes to an approved SP must be made via an amendment. However, this does not mean all changes to the SP require a corresponding amendment to the FDP. An amendment is only required for an FDP if the SP changes in such a way that makes the SP "materially conflict" with the FDP. In this case the FPC requirement for the SP to be consistent with the FDP [FPC12(b)] is not met unless the FDP is amended[4]. For example, if the shape of the SP area changes such that new area is added and old area deleted, the FDP would have to be amended given the significant difference between the

cutblock shape on the SP and that on the FDP. If the cutblock shape and location stayed the same but the area estimate changed, it is unlikely the FDP would have to be amended.

[4] The amendment to the FDP must be approved before the SP can be approved.

Cutting Permits

Most tenure agreements require cutting permits issued under the agreement to be consistent with the FDP. As with SPs, this does not mean the cutblocks on the CP have to be identical to the cutblocks on the FDP, however, if the cutting permit is not consistent with the FDP, as defined by the DM, the FDP would have to be amended before the cutting permit is issued. While there is room for differences between the FDP and SP-CP, the cutblocks on the SP and the CP should be identical.

Contacts

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