



FRPA ADMINISTRATION BULLETIN

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Administration of Declared Areas under Section 14 of the Forest Planning and Practices Regulation

Introduction

FRPA carries forward the concept of full planning protection where an agreement holder has made stand level investments with the concept of a “declared area”.

Section 14 (4) of the Forest Planning and Practices Regulation (FPPR) states:

“A person who prepares an FSP may identify an area as a declared area if, on the date that the area is identified

- *the area is located in a forest development unit(FDU) that is in effect, and*
- *all of the activities and evaluations that are necessary in relation to inclusion of cut blocks and roads in the area have been completed.”*

Note that **both** of the provisions must be in place before an area can be declared.

A declared area offers full planning protection to areas within an FDU, which means that these areas are not subject to mandatory amendments under Section 8 of the *FRPA*. This gives an inventory of areas from which an agreement holder can pick and choose proposed cut blocks and roads when applying for harvest authority, without the risk of change from new government actions. An area having declared status does not have any legal rights beyond the planning protection provisions. Harvest rights are only conferred through the licence agreements and generally exercised with the issuance of a cutting permit (CP), road permit (RP) or timber sale licence (TSL).

An approved FSP must be in place before you can declare areas, and declared areas must located entirely within an FDU in that plan, however, a declared area does not need to be in place prior to issuing a CP, RP or TSL. Areas that meet the declared area definition may be amended into the FSP, but do not require Delegated Decision-Maker (DDM) approval. Declared areas come into effect on the date the amendment is provided to the DDM.

Background

The relative simplicity of the legislative wording around declared areas has the potential to be interpreted in a variety of ways. The intent of declared areas is to generally provide for equivalency to the planning protection for “approved Category. A cut block with all assessments” as provided by the Forest Practices Code (FPC). Under the FPC, a defined level of assessment work was required at a stand level (Code cut block level) as outlined in the Operational Site Planning Regulation (OSPR).

Administration of Declared Areas:

1. Overlapping declared areas
2. Dealing with the interests of other agreement holders
3. Activities and evaluations necessary to identify an area as a declared area
4. Size implications of declared area
5. First Nations consultations at declared area declaration
6. Problems with declared area minor amendments

1. Overlapping declared areas

If two or more agreement holders choose to independently invest in the required assessments, that is a business decision they can make, unrestricted by FRPA. Generally declared areas are not restricted to a cut block, but could be larger to facilitate operational flexibility. So, overlapping declared areas are not an issue. No rights to the timber in these declared areas are granted until either a cutting permit or road permit (harvest authority) is issued. The substantive issue lies with who gets the harvest authority. Subject to the licence agreement, and any restrictions in the applicable FSP, then the first agreement holder who applies for the harvest authority should get the harvesting rights to the timber.

There may be multiple harvest authorities issued to multiple tenure holders in the same area covered by one or more FDUs, but harvest authorities can not overlap.

2. Dealing with the interests of other agreement holders

Harvesting rights are conferred when cutting permits and road permits are issued. These are issued on a first-come, first-served basis. Even if there has been some planning work carried out by an agreement holder, unless a cutting or road permit has been issued, there is nothing stopping another agreement holder whose FDU overlaps the area from applying and receiving a cutting or road permit for that area. The issuance of a CP, RP or TSL is not influenced by the presence or absence of declared areas.

Discussions and interactions between agreement holders should be encouraged throughout all phases of FSP planning, approval and post approval implementation. Venues such as TSA committee meetings or local FRPA Implementation Teams can also play an important role in information transfer amongst agreement holders operating in the same areas. Having a standing agenda item at these forums can provide for information sharing, and assist in minimising potential operational planning issues. Any current or planned declared areas can also serve as information to other agreement holders operating in the same area especially if FDU's overlap and some planning work has been completed by the other agreement holder in that particular area. An understanding that each agreement holder will send any declared area amendment to other agreement holders in the same area is also a useful suggestion. Other options such as the development of joint FSP submissions and the referral of draft FSP's to other agreement holders are examples of how co-ordination/co-operation amongst agreement holders can be achieved.

3. Activities and evaluations that may be done to identify an area as a Declared Area:

All the necessary stand level activities and evaluations must be completed before declaring an area (i.e. those necessary to complete final block or road layout). Note that final block or road layout is NOT required at the time of declaration. The agreement holder must have completed these activities and evaluations prior to submitting an amendment (as per Sections 14(4) and 30 (1) of the FPPR) identifying a declared area. The onus and responsibility to ensure the appropriate fieldwork has been completed rests with the plan holder and/or professional(s) who are preparing the amendment.

What constitutes "all the activities and evaluations necessary" may vary across the province, based on the complexity of the area and resources in question. For example, in the Cariboo where there are large contiguous areas of lodgepole pine, a certain level of work would need to be carried out that would likely differ from the level of work may constitute the amount "**necessary**" in a community watershed on the Coast. The list of assessments previously required under the FPC (including stand level assessments under Sections 16, 17, 36.1 and 37 of the OSPR) may form a consideration of the "**activities and evaluations**" required.

4. Size implications of Declared Areas:

There are no legislated size limits on FDU's or declared areas.

The decision by the plan holder or professionals on the types and level of activities and evaluations required may provide a size cap based on the costs of completing the work. Other than this point, if the agreement holder wants to make this investment there is no legislative restriction that prevents them from doing this.

A small FDU could conceivably be a declared area, but generally FDU's in FSP's approved to date appear to be landscape level areas, as opposed to the declared area which are typically envisioned to be stand level areas.

5. Using Declared Area information to assist in First Nations consultation:

Consultation with First Nations (FN) on activities that will happen on Crown land is a Constitutional requirement on government. While consultation is an important component of the approval process of the FSP, it is envisioned that there may be a need to undertake some level of site-specific consultation after FSP approval, specifically prior to CP, RP or TSL issuance. If the available information associated with the declared area has been provided by agreement holders to FNs, this may assist the government when they are conducting any post-FSP approval consultation. It may be in the agreement holders' best interests to provide any more site-specific information that they may have available to FNs at the declared area stage. FRPA General Bulletin #1 (Forest Stewardship Planning - First Nations Information Sharing Bulletin) provides additional advice on post FSP approval consultation.

6. Problems with declared area minor amendments:

The identification of an area as a declared area by the agreement holder constitutes an amendment that does not require the approval of the DDM. FRPA requires that a copy of the amendment be provided to the DDM as soon as practicable after it has been incorporated into the FSP. This minor amendment does not have effect until the notice is received by the district manager. What then happens if the DDM finds a problem with the minor amendment?

The fact that the DDM will not be aware of when an area has been identified as a declared area until after the fact means that the only option for the DDM is to examine the declared area under the provisions of Section 31 of the FPPR. This section states:

Amendment wrongly made

(1) Under Section 20 (3) of the Act, if after giving the holder of a forest stewardship plan who made a determination under Section 20 (1) of the Act an opportunity to be heard, the minister determines that the holder's determination was wrongly made, the minister may

- (a) declare the amendment that was the subject of the holder's determination to be without effect, and
- (b) if the minister considers it appropriate, require the holder to suspend operations that are not authorized in the absence of the amendment.

The criteria that the DDM can look at when challenging the declared area amendment are whether or not the area is in a FDU, and whether the appropriate activities and evaluations have been completed. The DDM must give the agreement holder an opportunity to be heard prior to making any determination that the identification of the declared area was done in error and prior to making use of the authorities offered in Section 31(1) of the FPPR.

Summary

Whereas the structure of FRPA provides agreement holders the flexibility to plan where they want to invest site-specific planning efforts to best suit their operational needs, it does not restrict (beyond the terms and conditions in their licence and approved FSP) where harvest areas take place. Declared areas are a tool for agreement holders to secure a level of planning protection once an initial investment has been made in an area.

Communication is key to resolving, or at least minimising, potential issues and conflicts over planned harvest areas and the declared area stage is one opportunity to lessen any effects of these above issues.

Further Information

Additional information regarding FRPA and declared areas within the context of FSP's may be found in the Administrative Guide to Forest Stewardship Plans (AGFSP) on the Resource Tenures and Engineering website at: <http://www.for.gov.bc.ca/hth/timten/AGFSP/index.htm>

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