
Land Use Objectives Regulation: Policy and Procedures



**Strategic Land Policy and Legislation Branch and
Integrated Land Management Bureau
Ministry of Agriculture and Lands**

February 14, 2008

Approval and Sign-Off Cover Sheet

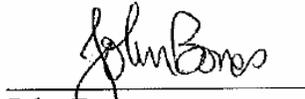
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Date reviewed and endorsed by ADMCILM:

February 14, 2008


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DISCLAIMER

This document contains material to assist those preparing land use objective and orders under the Land Use Objectives Regulation for the purposes of the Forest and Range Practices Act. This document contains a summary of legal requirements and it contains advice or suggestions that are non legal.

In the event of any discrepancy between the information contained in this guide and the Land Act and the Land Use Objectives Regulation, the Act and regulation prevails.

Executive Summary

The Land Use Objectives Regulation: Policy and Procedures has been prepared by Integrated Land Management Bureau (ILMB) and the Ministry of Agriculture and Lands (MAL) to support implementation of the New Direction for Strategic Land Use Planning in BC. It is one of a number of New Direction policies, all of which receive final approval by the Assistant Deputy Ministers Committee on Integrated Land Management.

This document details the requirements that the Minister of Agriculture and Lands or his delegate must follow when establishing land use objectives for the purposes of the Forest and Range Practices Act (FRPA). Land use objectives only have legal effect within FRPA, and are recognized as the highest order of objectives within this legislative framework. Because of the close relationship between land use objectives and FRPA, all Ministries with FRPA responsibilities have had input into the development of this guide. This guide was also reviewed by forest industry.

Staff members of both ILMB and MAL are the primary audience for this document. However, while these policies and procedures focus on articulating the legislative requirements that must be met before a land use order is established, they also recognize the collaborative approach that must be used when developing land use objectives. At various stages, the document outlines where other government agencies, and persons outside of government, may contribute to the process of establishing land use objectives. The document will be posted on ILMB's public website, making it broadly available.

These policy and procedures will ensure the following outcomes:

- A consistent process is used each time a LUOR order is prepared and established
- A consistent look and format of land use order which facilitates ease of use and brand recognition is promoted
- New staff within ILMB/MAL have clear guidance on preparing LUOR orders; and,
- Court challenges are avoided because orders that are established are legally and technically sound.

The document can be read sequentially or each section independently as needed. It is divided into chapters that address the following topic areas.

- assessing the need for an order (chapter 2.0);
- preparing a draft order (chapter 3.0);
- public review and comment (chapter 4.0);
- LUOR tests when making an order (chapter 5.0);
- establishing an order (chapter 6.0); and,
- amending or canceling an order (chapter 7.0).

With the release of this document Integrated Land Management Bureau and the Ministry of Agriculture and Lands also wish to demonstrate their commitment to continuous improvement in the process of establishing land use objectives.

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ABOUT THESE POLICIES AND PROCEDURES

The *Land Use Objectives Regulation* (LUOR), under the *Land Act*, authorizes the Minister of Agriculture and Lands (MAL) to establish legal land use objectives for the purposes of the *Forest and Range Practices Act* (FRPA). This document provides administrative guidance and advice for establishing, amending, or canceling land use objectives through a legal order under the LUOR. It is intended to complement detailed operational procedures that some Integrated Land Management regional offices have developed.

The document provides staff with policy and procedures that constitute reasonable practice in addressing requirements set out in the regulation. The guide is laid out to flow logically from initial contemplation of legal land use objectives to eventual establishment of land use objectives through an order. Please see appendix I, which summarizes steps and activities for completing an order under the LUOR.

This guide addresses the following steps:

- assessing the need for an order (chapter 2.0);
- preparing a proposed order (chapter 3.0);
- review and comment (chapter 4.0);
- LUOR tests when making an order (chapter 5.0);
- establishing an order (chapter 6.0); and
- amending or canceling an order (chapter 7.0).

The guide may also be useful information for stakeholders involved with, or interested in, land use planning and linkages to FRPA. However, the guide does not provide advice to *Forest Act* or *Range Act* agreement holders on achieving any requirements as a consequence of a land use objective established under the LUOR.

Further comments or questions on any content contained within this guide or on the application of the *Land Use Objectives Regulation* should be forwarded to:

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1.0 LAND USE OBJECTIVES REGULATION

1.1 Context

In recent years, provincial policy has shifted towards an objectives and results-based approach to Crown land and resource management. In this new framework, government sets objectives for various resource values and land uses (Objectives Set By Government; OSBG), and forest and range tenure holders develop results and strategies in their operational plans that are consistent with the objectives. In this legislative framework it is the results and strategies in approved operational plans that are subject to compliance and enforcement, not the objectives themselves.

For the purposes of FRPA, government objectives¹ can be established:

- through land use objectives under the *Land Use Objectives Regulation* (LUOR) of the *Land Act* which includes higher level plan(HLP) objectives established under the *Forest Practices Code of BC Act(Code)*;
- in regulations (e.g. *Forest Planning and Practices Regulation*; FPPR) under FRPA;
- through actions under authority of the *Government Actions Regulation* (GAR) under FRPA; and
- through grandparented objectives under section 181 of FRPA.

In 2003, the *Land Act* was amended (*Land Amendment Act 2003*²) to provide the Minister of Agriculture and Lands with the authority to establish legal land use objectives (LUO) under section 93.4. On February 1, 2006, the *Land Use Objectives Regulation* came into force pursuant to section 93.81 of the *Land Act*. The LUOR sets out legal criteria and procedures that the minister must follow to establish, amend or cancel land use objectives.

The LUOR replaces the authority to establish Higher Level Plans (HLPs) formerly set out in the *Strategic Planning Regulation* (now rescinded) under the *Forest Practices Code of British Columbia Act* (Code). However, HLPs established under section 3-5 of the Code continue to have effect under FRPA through grandparenting provisions, and will remain in effect unless amended or cancelled using the LUOR.

The Minister of Agriculture and Lands has other authorities under FRPA, which have been delegated. These authorities include:

- Section 25.2 of the FPPR provides the Minister with the authority to exempt a person from having to write a result or strategy for a land use objective that was in effect on January 31, 2004 (delegated to the Regional Executive Director in ILMB)³

¹ Existing objectives for the purposes of FRPA are referred to as “established objectives” under FRPA.

² Link to Land amendment Act: http://www.leg.bc.ca/37th4th/3rd_read/gov46-3.htm

³ Section 25 (2) was intended to deal with the very early HLPs which may include legal objectives poorly suited for implementing through FRPA. Please refer to the FPPR for the exact wording of this section.

- Section 7(1) of GAR provides the Minister with the authority to establish scenic areas for the purposes of visual management. (minor and technical adjustments to scenic areas have been delegated to the District Manager (DM) of the Ministry of Forests and Range, with Regional Executive Directors of the Integrated Land Management Bureau (ILMB) retaining the authority for scenic areas not delegated to the DMs of MOF)
- Section 8(1) of GAR provides the Minister with the authority to designate community watersheds (delegated to Deputy Minister of the Ministry of Environment)

Additional policy and procedures may be developed as needed for the aforementioned responsibilities.

1.2 Delegation under the LUOR

As stated above, section 93.4 of the *Land Act* authorizes the Minister of Agriculture and Lands to establish LUOs. Section 93.7(1), of the *Land Act* authorizes the minister to:

- *delegate the powers and duties granted under s. 93.4 to a person, designated by name or position and employed in the ministry of the minister or another ministry;*
- *provide directions that are binding on the delegate respecting the exercise of the power or the performance of the duty; and,*
- *vary or revoke the direction.*

In September of 2006 the Minister delegated his authority under section 93.4 to the Regional Executive Directors of ILMB and provided binding direction to the delegates (see Appendix VIII). The authority granted to the delegated person is the same as the minister's authority under the Act, except that the delegated person may not sub-delegate the power or duty to others. The delegated authority includes authority to establish, amend, or cancel an order or parts of an order while adhering to the letter of direction. It should be noted that in making a delegation, the Minister does not relinquish his authority to act, and can at any time establish land use objectives.

Summary of process for establishing objectives under the Land Use Objectives Regulation

Business case for legal objectives approved

Assemble project team

Develop first draft of the order

Develop final draft of the order

Advertise notice inviting the public to review and comment on the order⁴

Review and assess comment received

Apply the LUOR criteria

Revise the order to incorporate applicable comments and reflect criteria (as necessary)

Obtain final legal review of the order by MAG

Present briefing material and final order to appropriate decision maker

File the order with the appropriate MOF regional executive director

Prepare a notice for the Gazette announcing the order as been made. Post on web.

Indicates Minister or delegate involvement or decision

2.0 GETTING STARTED

2.1 Endorsement of the Project

Beginning in FY08/09 ILMB is requiring that all new planning projects, including the establishment of legal land use objectives, be supported by an approved business case. This will ensure that land use objectives are established in the highest priority areas as determined by ILMB's client agencies. The requirements and processes for developing and approval of business cases are provided in the following policy document: *Procedures for Initiating New Planning Projects and Developing a Business Case*.

2.2 Developing a Business Case for Legal Objectives

To support the development of a business case for legal land use objectives the following are questions and assessments that staff should turn their mind to; answering these will determine whether or not legal objectives are needed.

- 1) **Determine if issue identified can be addressed under the FRPA framework.**
Objectives to be implemented within the FRPA framework must speak to forest or range values (section 149 FRPA). Under FRPA and the LUOR, it is not appropriate to establish objectives that attempt to limit the activities permitted or rights granted by tenures issued by other Acts such as the *Mineral Tenures Act* or *Land Act*. However, it is possible to establish objectives for forest management that may have a positive or negative impact on non-timber related activities in the forest. For example, an objective that requires a wilderness experience to be maintained can have a significant positive effect on a wilderness lodge operation.
- 2) **Are LUOs necessary or would policy direction/objectives suffice?**
The following questions should be asked:
 - What is the significance and sensitivity of the resource affected? Does the value of the resource require management or stewardship direction through LUOs?
 - What is the likelihood of forest and range development detrimentally affecting the resource value if no LUOs are in place? What is the risk to the value?
 - Have agreement holders demonstrated a commitment to manage and conserve resource values in the absence of legal objectives?
 - Is there a need for a commitment in an operational plan through results and strategies that are consistent with LUOs?
 - Is there a significant public, First Nations or government expectation to have LUOs reflected in an operational plan?
 - Do existing LUOs pose an administrative risk because of varying interpretation? Is revision to an exiting LUO necessary?

- 3) **Are legal objectives already in place? Is there a risk of duplication? Do existing LUOs need to be amended?** Section 2(2)(a)(i) of the LUOR states, that the minister, before making an order, must be satisfied that the LUOs provides for management and use of forest and range resources in a manner that has not otherwise been provided for under the LUOR or another enactment. A systematic review of existing legal direction and objectives that apply to the area should be undertaken to avoid duplicating existing legal direction. A systematic review will also determine if existing LUOs require revision and amendment. The objectives matrix located on the FRPA website <http://www.for.gov.bc.ca/rco/pfit/> is the logical starting point. In addition staff should contact resource ministries to ensure any recently established objectives are also considered, and to discuss the application of the existing objectives in more detail. See section 5.1 for a longer discussion regarding this assessment.
- 4) **Is the LUOR the appropriate legal tool by which to establish objectives or is another enactment more appropriate?** In some cases, there may be more than one enactment that could be used to give legal effect to the management direction. For example, the Government Actions Regulation or the Land Use Objectives Regulation overlap in their authority to establish objectives. Refer to the companion document entitled *Considerations for the Selection of LUOR and GAR* which offers factors to consider when selecting between these two regulations. Other enactments that should be reviewed are the Heritage Conservation Act, the Forest and Range Practices Act (section 56 and 58 with regard to recreation), the Forest Planning and Practices Regulation, the Range Planning and Practices Regulation and the Woodlot License Planning and Practices Regulation.

A number of the above assessments can be carried out simultaneously and will benefit from discussion with other agency representatives such as MOF, MOE and MOTSA, who each have a significant role and interest in FRPA.

2.3 Developing a work plan

Once the business case has been endorsed by the appropriate manager or executive committee a more detailed workplan should be prepared. The detailed workplan is the responsibility of the ILMB project lead. If beneficial, the work plan may be shared with licensees, First Nations and other affected stakeholders to outline the points of engagement with the ministry project team.

3.0 PREPARING A DRAFT ORDER

This chapter describes the contents of an order as laid out in the LUOR and discusses process steps in preparing a draft order. In this chapter, draft order and proposed order are used interchangeably. The terms final order or established order appear in chapter 6.0. Please note that the steps for preparing an order also apply when significantly amending or cancelling an order, as discussed in Chapter 7.0.

3.1 Collaboration with other agencies

The LUOR is administered solely by MAL, but other government agencies may have an interest in the preparation of an LUOR order. These bodies may also be able to provide valuable input. Agencies who supported or advocated for the business case for legal objectives may be particularly helpful in developing the draft order. For example, MOE may be able to provide valuable input on the wildlife objectives. The same can be said for staff of MOTSA with respect to cultural heritage objectives and recreation objectives. In general, collaboration should begin early in the process of preparing an order, and may vary depending on the scope of the project. Preparing a draft order for a large Strategic Land Use Plan (SLUP) that contains multiple land use objectives will require a higher level of interagency collaboration than preparing an order that solely addresses old growth management objectives at the landscape scale.

Collaboration may include forming an interagency technical team that includes government personnel with expertise in:

- the plan area
- the topic area being considered for objectives (ie cultural and heritage values, wildlife values, old growth management etc);
- legislation (FRPA, Land Act etc);
- writing legal orders;
- data management;
- plan implementation; and/or,
- operations.

Although collaboration is important, the results of interagency deliberations should not fetter the ability of the minister (or delegate) regarding their statutory responsibilities under the LUOR.

3.1.1 Collaboration with Ministry of Attorney General

Another government ministry with whom collaboration on the development of a draft order is essential is the Ministry of the Attorney General (MAG). The Aboriginal Law group and Resource Management Law group are the two main sections in the Legal Service Branch of MAG who work with ILMB/MAL staff. The Resource Management lawyers will be the primary contact for review and advice on draft orders, as the bulk of LUOs deal with resource management issues. Recently there have been a few exceptions, namely the SLUPs being developed in partnership with First Nations and for which ongoing input and advice has been obtained from the Aboriginal Law group.

Where draft orders have a significant First Nations component the Aboriginal Law lawyers will be the first point of contact.

To improve efficiency for both ILMB/MAL and the Ministry of the Attorney General, requests for legal advice related to the drafting of LUOs or the order itself should first be directed to the Strategic Policy and Legislation Branch (contact: angelavonsacken@gov.bc.ca) within MAL. The exception to this rule is where the Aboriginal Law group is required to advise and assist on a more continuous basis. The Strategic Policy Branch maintains a legal advice binder that tracks all legal opinions received from the Ministry of Attorney General and will often have the answer staff is looking for. Otherwise, the request will be forwarded to the resource management law group. Legal opinions received are often used to update policy or training materials.

The Ministry of the Attorney General, Legal Services Branch should review all orders prior to them being made available for public review and comment. A legal review prior to public review and comment ensures that the document being made public is legally sound. This review will be coordinated through Strategic Policy and Legislation Branch.

3.1.2 Collaboration with interests outside of government

It may also be valuable to confer with others at key points in the drafting process specifically, First Nations, forest licensees but also others. Conferring with these groups at various points throughout the drafting process may minimize conflict, improve efficiency and result in the preparation of more effective objectives. How often, or even if, these groups are contacted during the drafting process will vary depending on the project. More complex draft orders may require a higher degree of conference with interest groups than a less complex order. Conferring with the specific interests throughout the drafting process could provide information such as:

- knowledge about resource values based on operational and field experience not previously considered;
- perspectives and input on applicable resource inventory information;
- practicality of a land use objective and the ease in implementing an objective
- specific information regarding adverse impacts on opportunities for timber harvesting or forage use; and
- perspectives regarding an appropriate balance of social, economic and environmental benefits.

Involving interest groups in the development of a draft order does not eliminate the need for public review and comment or consultation with First Nations. However the degree of interaction with these groups during the drafting of the order may possibly allow for a reduced review and comment period and may make up part of the consultation record.

Where a memorandum of understanding, protocol agreement or other formal agreement signed by both the province and First Nations exists then that document can provide additional guidance on how First Nations will be engaged in the drafting process.

3.2 Content requirements of an order

The content requirements described in this section must be included in both a proposed order made available for public review and comment and in the final order made by the Minister or delegate. To view an example of the format of a LUOR order including standard sections, please see Appendix II.

The content requirements of an order are addressed in s. 6 (1) of the LUOR and are as follows.

A section 93.4 order that establishes or amends a land use objective must be in writing and must specify all of the following:

- (a) the land use objective;*
- (b) the geographic location to which the land use objective applies, including a map showing the location of the area to which the land use objective applies (see chapter 3.5);*
- (c) the date on which the land use objective is to take effect if that date is different than the date the order is published in the Gazette;*
- (d) the period that is to apply under s. 8(2)(b) of FRPA if the period is other than 2 years;*
- (e) if section 16(2) of FRPA will be disapplied.*

Each of these content requirements is discussed in detail below.

3.2.1 Land Use Objectives

This section provides guidance on how to structure and write LUOs for implementation through FRPA. LUOs make up the bulk of an LUOR order. Orders will vary with regard to the number and type of objectives they include. In some areas of the province, ILMB is focusing on establishing a limited number of land use objectives, with an emphasis on biodiversity values or First Nations values. In other areas, ILMB is leading a more comprehensive process that will result in multiple LUOs covering a variety of resource values over a large geographic area (ie South Central Coast). In future where and when ILMB undertakes the establishment of legal land use objectives will be guided by an approved business case as discussed in section 2.0.

When writing objectives it is important to keep in mind the connection between LUOs and operational forest planning. Land use objectives oblige a FSP preparer to indicate via a result or strategy what will happen on the ground. Ultimately the ongoing success of land use objectives will depend upon monitoring that leads to continuous improvement.

Guidance on writing sound LUOs is outlined below.

LUOs should be worded in a manner that makes them compatible with the results-based framework of FRPA. Here are some principles to follow:

- Objectives should be clearly worded so that users have a common understanding of government's intended goal. If necessary, include definitions in the order.

- Objectives related to forest management should be written to enable measurable or verifiable results (i.e. outcomes⁴) or strategy to be prepared by forest licensees in Forest Stewardship Plans so that FRPA approval tests can be readily applied.
- Objectives should avoid being overly prescriptive. The methods by which an outcome is achieved or delivered should generally be left to the FSP⁵.
- Objectives should not include background information, detailed procedural requirements, nor should an objective attempt to encompass the rationale for the decision.
- There should be reasonable consistency in the wording of similar types of land use objectives. Reviewing existing applicable orders (i.e., those designed for application to FRPA) can help promote consistency, while respecting opportunity for innovation and creativity in the drafting of proposed orders.
- Objectives should not devolve a decision to a future planning process or subsequent decision maker. Nor should they include provisions for joint decision making.
- Objectives should not duplicate existing legal direction contained either in legislation or in existing orders.
- Objectives should not direct government staff.

Some desired characteristics of LUOs:

- clearly describes the intended goal or desired future condition of the land use values being considered;
- includes a map(s) showing the location of the area to which the land use objective applies;
- enables a measurable or verifiable result or strategy can be written for a forest stewardship plan, woodlot license plan, range use plan or range stewardship plan;
- is reasonably achievable;
- includes a level of detail appropriate to the planning scale and risk.

In those cases where a more detailed objective is appropriate the following caution is provided. Attention should be given to verifying that the detail or prescriptive aspects of the objective are logical, accepted practice and achievable. This is because where detailed objectives are established a FSP preparer is most likely to adopt the objective as a result or strategy as per section 25.1(2) of the FPPR, since it would be difficult to include anything else in their FSP. If the detail or prescriptive aspects of the objective are not well thought out, a FSP preparer could be exempt from having to address the objective at all because it is not practicable to write a result or strategy (or adopt the objective). Please see section 12 (7) of the FPPR regarding exemption provisions.

⁴ Note that a “result” is defined in the *Forest Planning and Practices Regulation* to include a description of a measurable or verifiable outcome. Consequently, it is best to think of an “objective” in the context of FRPA as a goal.

⁵ There will be exceptions to this rule. In some circumstance prescriptive land use objectives may be necessary, where the resource value is highly significant, sensitive or subject to ongoing dispute between interests.

The *Guide to Writing Resource Objectives and Strategies 2nd edition* printed in 2004 provides a comprehensive reference to assist in writing resource management objectives while acknowledging the new legislative framework for forest planning under the *Forest and Range Practices Act*.⁶ It can be viewed at: http://ilmbwww.gov.bc.ca/lup/policies_guides/index.html

Planning tables may arrive at a measurable objective in the land use plan document; however, in the context of FRPA, it may be preferable to give legal effect to the supporting goal statement as the LUO. Forest licensees can then consider, and perhaps adopt, the “measurable” aspects of the land use plan when preparing a result or strategy in their operational plans. That said, in some instances, for example where the risk to a sensitive land use value is high, it may be necessary to provide a more measurable aspect to the LUO. Please refer to Appendix III regarding information to avoid in a land use objective order.

3.2.2 Mapping considerations

As stated in s. 6 (1)(b) of the LUOR, an order must specify the geographic locations to which the LUO or the amendment applies, including a map showing the location of the area to which the land use objective or amendment applies.

The map(s) should be produced at an appropriate scale that corresponds with the management intent being conveyed by the land use objective. The map should include TRIM water lines, gazetted place names, and where not obvious, the location of the areas relative to administrative units such as landscape units, SLUP boundaries, Timber Supply Area and Tree Farm License boundaries. Maps should specify scale of data capture used for the designated areas shown on the map. If the map(s) do not provide enough detail to allow the licensees to accurately write results and strategies then it should be specified that spatial data sets should be referred to for exact boundaries. The location of the maps and files should be provided. Below is an example of a clause that could be included in an order with respect to maps and spatial data sets.

Example of a clause that addresses maps and spatial data sets

Where objectives refer to an area shown both on a map and in a spatial dataset, the boundaries of the area defined by the spatial dataset apply in the event of any inconsistency. A complete list of the spatial datasets is contained in (create a link to the appropriate files)⁷.

⁶ A Guide to Writing Resource Objectives and Strategies 2nd edition provides guidance on writing good management direction irrespective of any one specific legislative regime.

⁷ If this type of clause is included in an order spatial data sets can not be altered arbitrarily as FSP holders may have legal commitments linked to the data set. They should be dated.

3.2.3 Effective date

There are two options with respect to declaring an effective date for an order and land use objectives:

- 1) Specifying an effective date in the order, or
- 2) Having the order come into effect when notice of the order is published in the Gazette.

By and large the latter method of bringing an order into effect should be used. This approach is useful in the following situations:

- Where the timing regarding the effective date is flexible
- Where there is uncertainty about when the order might be signed (and potentially surpassing the effective date specified in the order is a concern).

While not required, it is reasonable to restate within the order that the effective date of the order is when a notice of establishment is published in the Gazette. A sentence like this adds clarity. If the order is altogether silent on an effective date the order and land use objectives will come into effect on date a notice of establishment is published in the Gazette.

There are a number of situations or approvals which if in effect on the day the LUO are established, are not affected by it. For example, a cutting permit, a road permits or a declared area that is in effect on the day the LUO are established will not be affected by the LUOs. LUOR s. 8 (2) specifies the situations where the order does not have effect at the beginning of the day the order takes effect. Section 6(1)(c) of the LUOR should be read for more information on effective dates.

3.2.4 Date of FSP amendment

Within an order there is the option of specifying a timeframe within which a previously approved FSP must be amended to reflect the newly established LUOs. If the order does not specify a timeframe for amendment, the FSP must be amended and submitted for approval to MoFR within 2 years of the land use objectives being established. Please see section 8(2) of FRPA for more detail on amendments.

Specifying a timeframe for mandatory amendments within a LUOR order may be necessary where the resource value is significantly threatened, or where all parties agree that actions need to be taken quickly to implement the LUOs. Before determining a mandatory amendment date, staff should discuss the timing of mandatory amendments with licensees and DDM in MOFR to explore options and to consider timelines for FSP submissions.

3.2.5 Four month rule

Section 6(1)(e) of the LUOR states that the order must specify if section 16(2) of the *Forest and Range Practices Act* will be disapplied. This requirement is commonly referred to as the 4 month rule.

FRPA section 16 clarifies that an FSP or amendment is considered to have conformed with any land use objectives if the FSP or amendment conforms to all land use objectives

as they were **4 months prior** to the FSP being submitted, unless the order states that the 4 month rule is disapplied. The following provides a number of examples as to how the 4 month rule may be applied and how it affects FSPs.

Example 1: LUOs are legally established on January 1st and the order remains silent on the 4 month rule. In this example, FSPs submitted between January and April do not have to be consistent with the newly established LUOs. However, a FSP submitted on May 1st will have to be consistent with the land use objectives established on January 1st.

Example 2: Land use objectives are established on January 1st and the order states that the 4 month rule will be disapplied. In this example, any FSP submitted for approval after January 1st must be consistent with the newly established LUOs. Under this scenario, it must also be noted that a FSP that was submitted in December (or earlier), prior to the land use objectives taking effect, but **not approved before January 1st** will be required to be consistent with the new LUOs. This is a situation that both ILMB and MOFR need to be aware of with regard to the 4 month rule.

Care should be taken when considering disappling the four month rule. If doing so consideration should be given to the operational consequences for forest licensees. As with mandatory amendments, it is prudent to discuss with licensees if the 4 month rule is intended to be disapplied. This will assist licensees in the preparation and the timing of submission of their FSPs.

3.2.6 Urgent orders

An “urgent” order is one in which the minister (or delegate) is of the opinion, that the order is urgently required to protect a resource value and states that opinion in the order. This authority is provided in s. 93.6 (2) of the *Land Act*. Where the minister anticipates making an urgent order to protect a resource value, the minister or delegate must include this information in the order (*Land Act* s. 93.6(2)). This would be a content requirement in addition to the five content requirements discussed above, but would only apply in the case of urgent orders. ILMB anticipates that there will be few circumstances where urgent orders are necessary.

3.3 Other legal requirements related to the draft order

Before the draft order is made available for public review and comment staff must give consideration to the criteria in the LUOR, listed below. For the draft order, the expectation is that staff will have considered each criterion to the extent possible and with the understanding that some criteria can not be fully assessed prior to the review and comment period closing. The criteria are described in detail in section 6, of this document and are simply listed here for quick reference.

The criteria are as follows:

1. Consider land use plan or relevant information: LUOR s. 2 (1) In making the order establishing or significantly amending a land use objective for an area, the minister may consider information in a land use plan that relates to the area and is

- endorsed by Executive Council or other information that is relevant to the management and use of forest and range resources within the area
2. Add value: LUOR s. 2 (2)(a)(i) The minister must be satisfied that the objective will provide for the management and use of forest or range resources in a manner that has not otherwise been provided for under the LUOR or another enactment
 3. Specifying conflicts: LUOR s 5 The minister must determine if the proposed land use objective would conflict with other objectives established under FRPA; and if so, must either amend the order to avoid the conflict or specify the nature and extent of the conflict in the order
 4. Provide balance: LUOR s. 2(2)(a)(ii) The minister must be satisfied that the objective will provide for an appropriate balance of social, economic and environmental benefits
 5. Importance outweighs adverse impacts: LUOR s. 2(2)(b) The minister must be satisfied that the importance of the land use objective outweighs any adverse impact on opportunities for timber harvesting or forage use within or adjacent to the areas that will be affected
 6. Comments considered: LUOR s. 2 (3) The minister must consider any written comments received from review and comment

4.0 REVIEW AND COMMENT

The minister (or delegate) must ensure that appropriate opportunity for review and comment has been provided to the public. Section 3 of the LUOR addresses the review and comment requirements for all orders except urgent orders. Draft orders proceeding to review and comment should be vetted through Strategic Policy and Legislation Branch, whose staff members will coordinate a review by Ministry of Attorney General, Legal Services Branch as required.

4.1 Notification of review and comment

Section 3 (2) of the LUOR states that the minister (or delegate), before making an order, must publish a notice stating that the proposed objectives are available for public review and comment. The notice must be published in the newspaper and in the Gazette. The newspaper⁸ in which the notice is published should be one circulating in the area where the land use objectives are to apply (or the closest newspaper to that area if none circulate in the area). The notice must briefly describe the proposed land use objectives and state that:

- the proposed order is publicly available for review and comment at the ministry's regional office for the area in which the order applies;
- the date at which the land use objective is to take effect;
- the specified period for review and submission of written comments; and,
- the ministry office to which written comments may be sent.

The expectation is that the notices will run only once in each publication. However, for potentially significant land use decisions Executive and/or Public Affairs Bureau should be contacted to discuss if the notice should run consecutive days and if the notice should be published in a major newspaper such as the Vancouver Sun or Province. While not a requirement under the LUOR, posting a notice for review and comment on the ILMB website has become common practice. This accommodates people in remote areas who may have an easier time accessing web information. Currently, all information to be posted on the ILMB website must be routed through both headquarters⁹ and ILMB Web Services group.

Some examples of advertisement inviting the public to review and comment are included in Appendix IV.

4.2 Timelines for review and comment

Section 3 (3) of the LUOR provides discretion regarding the amount of time allowed for review and comment. The default period for review and comment is 60 days beginning

⁸ Newspaper includes both a free newspaper and a newspaper without subscribers

⁹ Raylene McCully, Coordinator, ILMB Web Services Group or Anne Ferdinands Strategic Initiative Division are current contacts.

on the latter date of the notice of review and comment being published in either the newspaper or the Gazette.

The minister (or delegate) may specify a different time period for review and comment as defined in s. 3 (3)(b)(i & ii):

- longer than 60 days: if satisfied a longer period is necessary to provide adequate opportunity for review and comment; or
- shorter than 60 days: if satisfied a shorter period will provide adequate opportunity for review and comment or is necessary to address concerns respecting the protection of resource values.

Unless there is good reason to vary the time frame, 60 days should be allowed for review and comment. Consideration of practices and timetables of specific sectors especially those in remote areas can be a factor in the timing of public review and comment and the duration of the comment period. Trappers, guide outfitters or First Nations may have operational factors or seasonal activities that constrain their ability to receive and respond to requests for comment.

The review and comment period begins on the latter date of the notice of review and comment being published in either the newspaper or the Gazette. Although it is not a requirement for practical reasons it may be useful to include the closing date for receiving comments in the advertisement.

The minister or delegate must consider any written comments received within the specified review period when making an order. Please see section 4.5 and section 5 for more detail on how comments are considered.

4.3 Public and other stakeholder interests

Although not legally required, staff may wish to follow up with individuals, organizations or planning tables and forums who have a keen interest in the area to confirm that the draft order is currently available for public review. Such follow up would be an informal process via e-mail or telephone.

Land use objectives will affect forest and range tenure holders, because LUOs are applicable to operational plans required under FRPA. LUOs do not impose legal obligations on other stakeholders or interests with government granted rights (ie licenses tenures or permits granted under the *Land Act*, License or tenure granted under *Mineral Tenure Act* etc). That said, the activities of these other interests could impact the land use objective or vice versa. Therefore it may be worthwhile to contact other Ministries responsible for issuing approvals, licenses, tenures etc to ensure they are aware of the proposed order and to discuss how LUO could be given due consideration if there has been no previous discussion between agencies.

4.4 Consultation with forest and range agreement holders

4.4.1 Non-urgent orders

For non-urgent orders, s. 3 (4) of the LUOR states that an official of the ministry **must** consult with the holder of a forest stewardship plan, woodlot license plan, range use plan or range stewardship plan if the following **two** conditions are met:

1. *the proposed land use objective or amendment as proposed would have a material adverse impact on the holder¹⁰, in relation to any:*
 - a. *intended result or strategy specified in the plan, or*
 - b. *matters specified in their plan;*
2. *the holder gives written notice to the minister within the specified period referred to section 3(2)(e), requesting the consultation and stating the material adverse impact.*

This provision in the LUOR provides the holder with an opportunity to:

- respond to a proposed order by providing specific written information on how they would be affected by the proposed land use objectives;
- offer information or options to reduce the adverse impacts stemming from the proposed objectives;
- to meet with a representative of the Ministry to further discuss the issue.

Note: the onus is on the holder to provide sufficient detail in writing describing the material adverse impact and requesting the consultation. A consultation, where held, would include discussions on the proposed objective and the specific nature of the potential material adverse impact, and how the impact could be mitigated.

Note: First Nations may be holders under the *Forest Act* or *Range Act*, and may request a consultation regarding adverse impacts. Their interests as affected holders must be documented as with other licensees. A consultation with First Nations as an affected holder is different than consultation with First Nations with respect to rights and title.

4.4.2 Urgent Orders

In the case of urgent orders, public review and comment is not a legal requirement; rather the Ministry must ensure that all agreement holders who **may** be affected by the proposed order are given an opportunity to review and comment. In this case, the onus is on the Ministry to determine all agreement holders who may be affected by the proposed LUOs and to provide them the opportunity to comment through written submissions.

With regard to urgent orders, the LUOR does not provide details on the notification process or the timeline for receiving written submissions from the affected stakeholders. The expectation is that some of the same process steps as outlined in section 4(1) will apply. To date there have been no urgent orders established.

¹⁰ The “holder” in the following sections refers to a holder of a forest stewardship plan, woodlot license plan, range use plan or range stewardship plan.

4.5 First Nations

The Government of BC is working with First Nations to develop the “New Relationship”; a government-to-government relationship based on mutual respect, recognition, and reconciliation. This is an ongoing, evolving process. In time, this document may be revised to reflect developments related to consultation and accommodation.

Ideally, consultation on the proposed order is a continuation of a consultation effort that has already been undertaken with First Nations as a result of a land use planning initiative or as a result of negotiating an agreement.

If memoranda of understanding or other such agreements signed by the province and First Nations are in place, and those agreements outline specific consultation methods, then these agreements will supersede the requirements outlined in this section with respect to consulting on a draft order.

In general, the following steps are suggested when preparing a legal order under the LUOR.

- Prior to advertising for review and comments ILMB staff should send a formal letter to all of the potentially affected First Nations providing background on the proposed order and LUO, as well as a copy of the draft order itself. The letter should also outline that the LUO will also be made available for public review and comment in the near future. The letter should include an offer to discuss the draft order in more detail if so desired. If there has been little contact with First Nations to date such a meeting could also facilitate gaining a better understanding of the nature of the aboriginal interests that may be impacted by the proposed objectives. Follow-up with phone calls to the First Nations to ensure receipt of the information and with an offer to meet to discuss further. Where a meeting is arranged, provide detailed information regarding the proposed objectives, explore how First Nations interests may be impacted, and discuss alternative measures that may reduce impacts and still achieve the intent of the objectives.
- Where appropriate integrate the information brought forth by First Nations by modifying the order to address their interests.
- Following consultation on the draft order, proceed with public review and comment.

Prior to the order being officially made, and a notice of establishment being posted, inform the First Nations in writing of the final decision, provide a copy of the order with an explanation of what has been done, and for what purposes, and summarize the expected effect of the order on forest or range resources in the area.

If there is no response to letters or follow-up phone calls, consider further actions to demonstrate diligence in carrying out the obligations to consult, and to address impacts to aboriginal interests.

The level of consultation required for proposed LUOs under the LUOR depends upon the presence and nature of the aboriginal interests in the area of the proposed order, and the potential impact the objectives may have on those interests. If there are concerns or questions about the impact that an LUOR order may have on First Nation interests, a request for advice from legal counsel is recommended. Factors that may affect the consultation process include:

- the proximity of a First Nation community to the area;
- traditional First Nations use activities at or near the area;
- previous indications that First Nations have interests in the area;
- existing First Nations land use plans and land claims in the area; and,
- the potential for the proposed objective to provide protection for aboriginal interests or a benefit to First Nations.

4.6 Document the review and comment process

The following guidance on documenting the review and comment process provides staff with tips for effectively organizing and analyzing the information received.

It is important to carefully document and retain in an appropriate file, all pertinent records related both to the review and comment process, and to First Nations consultation, including written comments and other feedback. This could include:

- copies of the notification in the local newspaper and Gazette;
- reasons why the time period for review and comment was more or less than 60 days, if applicable;
- copies of any letters or e-mails sent;
- times/dates and notes from phone conversations and meetings with FN including information that was provided and discussed during meetings;
- copies of all written submissions received;
- summary table of adverse impacts as provided by licensees;
- options developed for contentious issues; and,
- summary of key issues by sector.

When assessing the comments it may be useful to develop a two column table that includes all comments by topic area and ILMB recommendations or options for dealing with the comments. The intent of the document is to assist staff in organizing and analyzing the information, and ultimately in determining if changes to the order may be necessary. In some cases ILMB may request staff from other ministries to review and assess specific comments received to help develop options. A second document which organizes comments that are applicable to the criteria listed in section 5 should be assembled. Such a document will assist the decision maker to determine whether the criteria have been met or not prior to establishing the order.

A summary of the results of the consultation process with First Nations should also included with information prepared for the decision maker as well as a summary of the results of consultation with agreement holders (where applicable).

When documenting submissions received, it is important to protect sensitive resource values, including cultural heritage values, where disclosure of their locations could adversely affect the value.

The suggestions outlined above assist those preparing orders that the following two LUOR requirements are met.

- Section 7(2)(e) of the LUOR states that, a summary of any revisions made to the land use objectives as a result of review and comment is available on file. This requirement is further discussed in Chapter 6.
- Under s. 2(3) of the LUOR, the minister (or delegate) **must** consider any written comments received within the specified review period when making an order. This criteria is further discussed in chapter 5.

5.0 CRITERIA FOR ESTABLISHING LAND USE OBJECTIVES

The Land Use Objectives Regulation specifies several criteria that the minister must consider or must be satisfied are met before he can establish or significantly amend a land use objective. There are other requirements in the LUOR, but the factors described in this chapter are considered key criteria to be met when making an order. The outcome of applying these criteria is not stated in the order; however, the deliberations undertaken for each criterion and the result should become part of the record of decision that goes on file.

As mentioned in chapter 3, the criteria will be considered to some degree when developing the draft order. However, full consideration and analysis of the criteria can not be undertaken until the public review and comment period has ended.

5.1 Applying LUOR Criteria

1. Consider Land Use Plan or Relevant Information

Criterion Description (s2(1), LUOR)

To date, most legally established Higher Level Plans (the precursor of LUOs) and LUOs have originated in a land use plan endorsed by Executive Council such as an LRMP or Regional Land Use Plan or from a SRMP endorsed by the minister or the minister's delegate. This criterion is simply reflecting common practice. Recently other information sources such as agreements with First Nations or species at risk reports have been used as a basis for legal land use objectives.

Not just the objectives in a land use plans are considered, but goals, strategies, indicators and targets can be used to craft a 'SMART¹¹' land use objective appropriate for legal establishment

2. Add Value

Criterion Description (s2(2)(a)(i), LUOR)

The minister must be satisfied that the LUO will provide for the management and use of forest or range resources in a manner that has not otherwise been provided for under the LUOR or another enactment. A similar provision exists in the Government Actions Regulation with the intent of ensuring a clear, efficient regulatory framework where duplication is avoided, direction is clear and government investment in developing actions or objectives adds value.

This criterion should be applied in concert with the next criterion – Avoid Conflict

Sources of Information

Staff should review the existing regulatory framework as it applies to management

¹¹ SMART: Specific, Measurable, Achievable, Realistic, Time-Bound

direction for the area in question including the following:

- the *Forest Planning and Practices Regulation* and the *Range Planning and Practices Regulation* of FRPA;
- orders made under the *Government Actions Regulation*;
- orders made previously under the LUOR or continued (i.e., grandparented) from the *Forest Practices Code of BC Act*; and
- other enactments such as the *Drinking Water Protection Act*, *Wildlife Act*, *Heritage Conservation Act*, *Forest Act* and the federal *Fisheries Act*.

Each Forest District has developed an Objectives Matrix:

<http://www.for.gov.bc.ca/rco/pfit/> to identify legally established objectives and related direction that apply for different values in a given area. The matrices can be used to help assess if a proposed new land use objective adds value to existing established objectives.

Consultation

Although the matrices provide a useful consolidation of most pertinent information, staff should also consult colleagues in other ministries, especially MoFR MoTSA and MoE. Staff should also consider comments received during public review and comment as it pertains to this issue.

Analysis

- Organize proposed LUOs by FRPA value
- Compare each value grouping of proposed LUOs against existing objectives and enactments that apply to the area
- Convene a technical team from appropriate agencies (use the same team as discussed in section 3.3 Collaboration with other agencies) to assist if substantive numbers of overlaps arise or if significant uncertainty
- Engage Ministry of Attorney General if technical team flags areas of significant uncertainty with regard to areas of overlap between existing objectives and the proposed LUO.

Response

If proposed land use objectives duplicate other existing legal objectives or provisions already in place under another enactment and add no value, they must be deleted from the proposed order. Alternatively, the existing objective can be rescinded to allow for the “new” land use objective.

Advise those engaged in putting forward the proposed land use objective why changes will be made.

3. Specify Conflicts

Criterion Description (s5, LUOR)

The minister must determine if the proposed land use objective would conflict with other objectives established under FRPA; and if so, must either amend the order to avoid the conflict or specify the nature and extent of the conflict in the order.

LUOR objectives are the highest order of objective recognized in FRPA. There is no

requirement under FRPA that new LUOR land use objectives must be consistent with established objectives. For the purposes of preparing and adjudicating Forest Stewardship Plan (FSP) content and in the event of a conflict between objectives, the LUOR objectives take precedent to the extent of the conflict. An anomaly can occur where two or more LUOs apply to the same land, since both would be considered the highest order of objectives. The first step in applying this criterion is to determine if there is a conflict or not with an established objective.

Established objectives can include any of the four types: existing land use objectives from the *Land Act*, objectives in FRPA regulations, objectives enabled by regulation (GAR), and objectives grandparented by FRPA.

The LUOR does not define “conflict”. The common dictionary definition should therefore be used such as “showing opposition” to, or “irreconcilability with”, an established objective. A conflict between objectives will occur where it is not possible to comply with one objective without contravening the other objective.

Scale should be considered before assuming that two land use objectives are in conflict. A more general land use objective for a large geographic area is not likely to be in conflict with an established objective over a small portion of the area affected by the more general land use objective. Both objectives, considering scale, are likely attainable.

This criterion should be applied in concert with the previous criterion – Add Value

Sources of Information

As discussed earlier, Forest District Objective Matrices <http://www.for.gov.bc.ca/rco/pfit/> are a tool that identifies objectives that apply for different values in a given area. The tool can be used to help assess if a proposed land use objective could be in conflict with established objectives.

Consultation

Although the matrices provide a useful consolidation of most pertinent information, staff should also consult colleagues in other ministries, especially MOFR and MoE. Staff should review information received during public review and comment as it pertains to specifying conflicts.

Analysis

- Use the same value grouping of objectives as developed to apply the Add Value criterion
- Compare each value grouping of proposed land use objective against existing objectives and enactments that apply to the area
- Convene a technical team from appropriate agencies (use the same team as discussed in section 3.3 Collaboration with other agencies) to assist if substantive numbers of conflicts arise or if significant uncertainty exists
- Engage Ministry of Attorney General if upon discussion with technical team further advice is needed to determine if a conflict between objectives exists or not
- If conflict exists and remains, document the nature and extent of the conflict

Response

If a conflict exists, the next step is to determine if the order should be amended to avoid

the conflict. This should be considered if appropriate protection of resource values can be achieved and the other LUOR criteria can still be met. For example revise the boundaries of the area affected by the objective to avoid a conflicting objective.

Another approach to addressing a conflict is to rescind the existing legal objective that may conflict with the proposed LUO. For example, where the proposed LUO is intended to replace a grandparented HLP objective to make the direction in effect more workable under the FRPA framework. The LUOR order should bring the new LUOs into effect on the same date that the HLP order is cancelled. In other cases to avoid conflict, it may be necessary to defer potentially conflicting objectives to another agency that has the authority to cancel or amend an established objective.

Advise those engaged in putting forward the proposed land use objective why changes will be made.

In the event that the conflict can not be avoided and because the land use objective takes precedence over other objectives in FRPA, the minister **must** specify the nature and extent of the conflict in the order. In specifying the nature and extent of the conflict it is important to address which objectives are in conflict with one another and whether it is a complete or partial conflict. This will help guide the FSP preparer and the SDM of MoFR.

It may be advisable to include a sunset clause in the LUO order, such as:

The conflict will no longer exist if the authority responsible for the conflicting objective amends the objective and clarifies in its order that the conflict has been eliminated

A sunset clause could be used for conflicts between GAR objectives, other LUO objectives and grandparented objectives, but not FPPR objectives which are embedded in regulation (sections 5-10).

Conflicts between FPPR objectives and LUO objectives require special mention. Section 12(4) of the FPPR provides a means of dealing with a conflict between a LUO and a FPPR objective by not requiring any change to the LUO. Section 12(4) states that if a land use objective conflicts with an objective described in the FPPR, the person preparing the forest stewardship is exempt from specifying a result or strategy for the FPPR objective to the extent that doing so would conflict with the land use objective. To invoke section 12(4) of the FPPR, the land use objective order needs to disclose the nature and extent of the conflict.

4. Provide Balance

Criterion Description (s2(2)(a)(ii), LUOR)

The minister (or delegate) must be satisfied that the objective will provide for an appropriate balance of social, economic and environmental benefits (from s. 2(2)(a)(ii) of the LUOR).

The LUOR does not provide specific detail on what is required for the assessment of benefits. Thus, it is at the discretion of the minister to determine if benefits are being balanced fairly.

Sources of Information

An obvious information source is the land use plan that was approved by government for the area covered by the intended order. Government approval of the land use plan always involves balancing the social, economic and environmental benefits.

Formal agreements with First Nations or with other levels of government also reflect decisions that have achieved an appropriate balance for the area affected by the order. Consistency with these agreements is also a strong indication of appropriate balance.

Cabinet endorsed land or resource use decisions are also relevant.

Other sources of information that may be used to assist in determining balance if the above is not sufficient include existing:

- Social, Economic and Environmental Assessments to support land use decisions;
- Timber Supply Review analysis, or other relevant impact studies;
- Supporting documents to major land use or resource allocation decisions

Consultation

Comments and feedback received during the review and comment process may help confirm that balance has been achieved or if, during the drafting of the order, the proposed wording has potentially shifted the balance.

Any feedback on material adverse impacts from the holders of operational plans could also factor into consideration of whether an appropriate balance exists.

Analysis

- The LUOs should be reviewed to see whether they are consistent with the approved land use plan or agreement. As stated above, approved land use plans generally reflect a balancing of the social, economic and environmental benefits.
- If for technical or legal reasons, proposed land use objectives vary from the approved plan or agreement, the technical drafting team should provide a summary of the changes and an assessment of whether the changes are substantive enough to alter the balance of the previous decision.
- The technical team's assessment should be supplemented with any relevant comment received during the public review and comment period.
- Supplemental SEEA work may be appropriate only if the change in balance is potentially substantial

Response

- If the balance has not altered, document in the supporting materials to be sent to the minister for his decision that the existing appropriate balance remains in effect.
- If the balance appears to have changed and supplemental SEEA work is not necessary, document the change; include an assessment of any social, environmental and economic impacts of the change for the Minister to make his

- decision on whether the new balance is appropriate.
- If supplemental SEEA work is necessary, document the results of this supplemental work and include with the package for the minister's decision.

5. Importance Outweighs Adverse Impacts

Criterion Description (s2(2)(b), LUOR)

The minister must be satisfied that the importance of the land use objective outweighs any adverse impact on opportunities for timber harvesting or forage use within or adjacent to the areas that will be affected

The LUOR does not provide specific requirements such as a cost/benefit or multiple accounts analysis or risk assessment. However, if the new order will likely result in adverse impacts on timber harvesting or forage use, the minister **must** attempt to consider the importance (or benefits) of the objective relative to the adverse impacts (or costs). It is important to note that the regulation states that areas adjacent to the area covered by the objective must also be considered.

Conversely if there are no adverse impacts, this criterion has been met and no further analysis is necessary.

Sources of Information

The primary source of information on adverse impacts is under section 3(4) or 4(2) of the LUOR. Holders of operational plans have the opportunity during review and comment to document and submit information on material adverse impacts of land use objectives or amendments.

During the review and comment period, affected forest and range agreement holders should be asked to provide input on:

- whether they believe there would be a material adverse impact on opportunities for timber harvesting or forage use,
- what the impacts are expected to be,
- how the proposed objective would impact these opportunities; and,
- how the proposed order (e.g. objective and/or area covered by the objective) could be modified to reduce impacts.

This input should be evaluated to determine if it is reasonable. One way of to do this is, by obtaining feedback if possible from appropriate MOFR staff.

If no feedback from an operational plan or agreement holders is received, a general review of adverse impacts as documented in the approved land use plan or land use agreement and supporting analysis documents should be sufficient.

Sources of information for describing the importance of the land use objective can include:

- the approved land use plan and supporting documents such as a socio-economic

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| <p>and environmental analysis;</p> <ul style="list-style-type: none"> • comments received through the review and comment and consultation process (see chapter 4.0); • comments received in review of Forest Stewardship Plans; • documents and inventories which may provide information or insight about resource benefits that may be derived from the objective; and • any agency analysis of benefits that may be derived from the objective. |
| <p>Consultation</p> |
| <p>See Sources of Information</p> |
| <p>Analysis</p> |
| <p><u><i>Importance of the objective</i></u></p> <p>The importance of the land use objective can be assessed by addressing its expected benefits. Benefits, including benefits to First Nations, may be social (including cultural), economic and environmental in nature. The benefits may be related to public use of the resource value in question, or related to its non-use values to the public. Benefits may be quantitatively or qualitatively described.</p> <p>Quantification of use benefits may be possible where estimates of public use or user expenditures can be reasonably obtained through existing information or reliably attained through review and comment. It is important to respect that some public benefits cannot be readily quantified and many are related to important non-use values (i.e. option, bequest and existence values). For example, there are public benefits associated with protecting a species at risk, or a cultural heritage value, even where there is no direct public use of the resource.</p> <p>The objective could have positive and negative effects on adjacent areas that are not directly covered by the objective. For example, the resource value protected by the objective could provide significant benefits to areas adjacent to the area covered by the objective.</p> <p><u><i>Adverse impacts on opportunities for timber harvesting or forage use</i></u></p> <p>A land use objective could adversely impact opportunities for timber harvesting and forage use in a variety of ways. The objective could have a direct impact by prohibiting timber harvesting or forage use by tenure holders; for example, by creating reserves where timber harvesting is normally not allowed. An indirect impact may result in the area covered by the objective or in adjacent areas where consistency with the objective is likely to add operational costs to the tenure holder. For example, if the objective restricts access in a given area and alternative modes of access are more expensive; or by restricting the amount of timber that can be harvested thereby increasing harvesting costs per hectare. In areas “on the margin” in terms of economic operability, an impact that may appear small could result in a significant impact by increasing delivered wood costs to the point of where operations are no longer economically viable.</p> <p>If an adverse impact is expected, it may be qualitatively or quantitatively described depending on the nature of licensee feedback or readily available information.</p> |

When assessing this aspect of this test in the context of opportunities for timber harvesting, one should consider whether the proposed order:

- precludes harvesting of merchantable timber in the timber harvesting land base (and in some cases the non contributing land base) and if so, the extent to which the action would require operations to shift to other areas or stands that cost more to log;
- restrains access to merchantable timber in the short-term and requires shifts of operations to other areas;
- restrains access to harvesting of specific timber types required by a specialty operators;
- restrains forest access through timing of access, road standards, or deactivation requirements and, if so, how this might affect logging costs;
- significantly alters use of silviculture systems or harvest methods that may affect variable costs;
- requires licensees to alter or redeploy infrastructure in a manner that affects fixed costs;
- reduces the harvesting of a stand of trees against which fixed costs are amortized; and
- alters the access to the timber profile in a manner that affects variable costs.

When agreement or operational plan holders are presenting information on adverse impacts, the underlining assumptions must be described so that they can be evaluated with respect to any uncertainties. For example, in the absence of the land use objective, what are the realistic “base case” opportunities for timber harvesting and forage use likely to be relative to the expected opportunities with the land use objective.

Does the importance of the objective outweigh adverse impacts?

Determining if the expected importance of the objective outweighs anticipated adverse impacts will ultimately be a qualitative judgment, but should be supported by quantified estimates where reasonable to do so. While it is unlikely that the benefits or impacts will be fully measurable in equivalent units (like dollars), it may be possible to make quantitative estimates for some of the more important factors.

Response

The process of determining adverse impacts may lead to creative or innovative solutions where, for example, the wording of the land use objective could be revised to reduce impacts to tenure holders while still enabling appropriate protection of the resource values addressed in the objective. The revised objective, if adopted, would then become the benchmark for the assessment of this test.

In the absence of any feedback from licensees, a professional judgment of expected impacts should be provided and documented based on available information and expertise.

6. Consider Comments

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| Criterion Description (s2(3), LUOR) |
| The minister must consider any written comments received from review and comment as provided for in LUOR s. 3 for general orders or under LUOR s. 4 for urgent orders. |
| Consultation |
| |
| Analysis |
| Comments received are likely to assist in the assessment of some or all of the above criteria. |
| Response |
| Written comments may have led to changes to the proposed order. A summary of revisions made to objective as a result of the proposed objective having been made available for review and comment must be prepared (due to notice requirements under s. 7(2)(e) of the LUOR). |

6.0 ESTABLISHING AN ORDER

This section discusses the final steps in moving a draft order that has gone through public review and comment through to established order. Note, significant changes should not be made to an order that do not tie back to public comments or applying the criteria. The order should be sent to Ministry of Attorney General for final review before presenting to the decision maker.

6.1 *The briefing package*

Before the minister or delegate makes an order a briefing package should be prepared.

The briefing package should:

- outline the results of applying the criterion as per section 5;
- summarize key findings from the public review and comment process;
- discuss First Nations consultation;
- include where applicable the results of consultation with individual agreement holders; and,
- include a copy of the order ready for signature.

The briefing package should demonstrate what information has been considered and why it is relevant. The level of detail may vary according to the complexity, impacts and scope of the land use objective. There is no standard format for the briefing package; in some cases a briefing note with attachments will suffice while in other cases a series of briefings may need to be scheduled to work through all the material.

It is important to carefully document, and retain in an appropriate file, all pertinent records of the process used for establishing the order. In some cases the statutory or delegated decision maker may wish to document his or her record of decision.

Where appropriate and as coordinated with the Minister's office First Nations may be invited to the signing of the order.

6.2 *Companion Documents*

Some orders have benefited from a companion document being developed; a document that provides important background or context information that may not be appropriate to include in the order but is important nevertheless. When a companion document is developed it should be made available at the same time as the order. This ensures that all materials relevant for those preparing forest stewardship plans are available at the same time.

6.3 *Notice of an order*

Once the order is signed a notice must be published on the ministry website and in the Gazette. Specifically, as per section 7(2) of the LUOR the notice **must:**

- identify that an order has been made that has established LUOs,

- identify where the LUOs apply,
- specify the date on which the LUOs take effect,
- state that the order is filed at the regional office for the forest region to which the order relates, and
- state that there is available a summary, filed with the order, of any revision made to the objective as a result of public review and comment under this regulation.

See appendix VI for examples of Notice of an Order

Note: before the notice of the order is published on the ministry website or in the Gazette, staff must ensure that a copy of the signed order, and the summary of revisions made to the objectives (if applicable), is filed with the appropriate Ministry of Forests and Range regional office. See appendix VII for an example of a letter of filing.

The order and the summary of revisions should be filed with the office of primary responsibility within ILMB/MAL, and copies of all orders should be sent to Strategic Land Policy and Legislation Branch. This will facilitate responding to any public queries to view the order particularly if those parties do not have ready access to the forest regional office.

While not a requirement, it has become common practice to post copies of all legal orders on the ILMB/MAL website. The ILMB website continues to be restructured; however the current address for viewing draft and or legal order is <http://ilmbwww.gov.bc.ca/ilmb/lup/index.html>

In addition to meeting the requirements of s. 7 of the LUOR, it would be good practice to have all government orders that affect forest and range licensees within a forest district made available on the respective forest district website (e.g. in district objective matrices http://www.for.gov.bc.ca/rco/pfit/District_Matrices.htm). In this manner persons required to comply with forest practices legislation can readily obtain information on actions that might affect them at one website.

Where orders are available on the responsible ministry's website, the district objectives matrices should link to the location of the original order rather than posting a copy of the order on the district site. This is particularly important to ensure accuracy and version control, should amendments occur.

6.4 Effective date of an order

LUOR s. 8 (1) states that the order takes effect on the later of:

- the date the notice is published in the Gazette, and,
- the date specified in the order.

Factors to consider when deciding to include an effective date or not are discussed in section 3.2.3 of this document. It is important to remember that even if an effective date is specified in the order, it will only be valid if notice in the Gazette is published at an earlier date than that specified in the order.

There are a number of situations or approvals that if in effect on the day the LUO are established, are not affected by it. For example, a cutting permit, a road permit or a declared area that is in effect on the day the LUO are established will not be affected by the LUOs. LUOR s. 8 (2) specifies the situations where the order does not have effect at the beginning of the day the order takes effect.

7.0 AMENDING OR CANCELING AN ORDER

Four types of situations may arise:

- correcting a minor error in the order;
- minor amendment to the order;
- significant amendment to the order; and
- canceling an order.

The minister responsible for establishing an order is also responsible for amending or canceling the order, unless the authority has been delegated.

7.1 *Correcting a minor error in the order*

Correcting minor errors are not governed by any regulatory provisions. A minor error in the order may include a spelling error or a grammatically confusing statement, or a map that does not provide a sufficiently geo-referenced base to allow for its accurate location on the ground. Where the minister or delegate is satisfied that correcting these minor errors does not change the intent of the original order, or its effect on forest and range tenure holders, the minor error in the order can be corrected without review or consultation, or renewed efforts to demonstrate that the tests in regulation have been met, or the need to re-post notice of the order. Agreement holders in the area affected and the appropriate MOFR DDM should be notified that a minor error has been corrected and the new order is available on the ILMB website. The corrected order should replace the previous one in the file and on websites (see chapter 7.0 above).

7.2 *Minor amendment to the order*

Correcting minor amendments are also not governed by regulatory provisions. Minor amendments to orders may be needed to refine the intent of the original order. For example, improved information may suggest a shift in the boundary area to which the objective applies, or the wording of the objective may be improved without significantly affecting the intent of the original order. Where the minister or delegate is satisfied that a minor amendment does not materially change the original order or its affect on forest and range tenure holders, a short rationale to this effect should be prepared. The rationale can describe the nature of the minor amendment, why it is needed and why no material additional adverse impacts are expected. The rationale can be filed and the amended order can be posted on the applicable website. Agreement holders who must comply with the order and the appropriate MOFR DDM should be notified that a minor amendment has been made and that the new order is available on the ILMB website. The corrected order should replace the previous one in the file and on websites.

7.3 *Significant amendments to the order*

The LUOR treats “significant” amendments similar to establishing a new land use objectives with respect to criteria to be considered (s.2 of the LUOR), review and comment (s. 3 and 4 of the LUOR) and notice of an order (s. 7 of the LUOR). Significant amendments result in consequential or important variations to the order; for example changes that could have a material effect on forest or range tenure holders. This may

include major change to the boundary of the area covered by the LUOs, or changes in wording that substantially changes the management direction of an LUO. Significant amendments include revisions to grandparented HLPs that require amendment for implementation under FRPA, and land use objectives established under the LUOR that may require significant amendments. For significant amendments, it will be necessary to undertake public review and comment, First Nations consultation, and demonstrated achievement of the criteria laid out in regulation. All the information and advice provided in chapters 3.0 to 7.0 applies to significant amendments.

7.4 Canceling an order

While not specifically stated in regulation the process for establishing an LUO is understood to apply likewise to canceling an LUO. For the purposes of this discussion canceling an order assumes canceling the entire order. If cancelling a single LUO or group of LUOs but not the entire order, follow the process outlined above for minor amendments or significant amendments respectively. When canceling an order it will not be possible or practical in all cases to apply the criteria laid out in chapter 5, nor will it be possible to meet the content requirements as discussed in chapter 3.

The significance of the canceling of an order should also be considered. For example, where an order is being cancelled but will be replaced by another order which incorporates new and improved information and greater spatial specificity the significance of the canceling is likely minimal.

The cancelling of an order can piggy back on an order establishing land use objectives, which is administratively efficient. However, it is equally reasonable to create a separate order for canceling which can make it easier to track the path of an objective or order over time.

In general, public review and comment should be undertaken when canceling an order and notice of the canceling should be posted in the Gazette and on the web. Where the decision to cancel an order is made, it would also be good practice to provide notification to potentially interested parties and to forest and range licensees who are no longer affected by the order being cancelled. It is also important to ensure applicable websites and files are updated to show that the previous order has been canceled.

8.0 MONITORING LEGAL ORDERS

Under a “results based model” of forest management, legal objectives drive forest stewardship plans. Forest stewardship plans must include results and strategies that are consistent with legally established objectives. Additionally, neither the environmental conditions nor the social choice decisions made are static; therefore, land use objectives require periodic review and monitoring to ensure that the legal direction established by order is achieving the desired outcomes. Without monitoring land use objectives could become out of date, irrelevant or at worst result in outcomes on the ground that are contrary to good forest management. Review and monitoring are an integral part of successful projects. As part of the commitment to continuous improvement ILMB should undertake periodic reviews of legally established land use objectives.

While the primary responsibility for monitoring objectives will rest with ILMB, monitoring can be a collaborative process whereby other agencies bring information forward. For example, the Forest and Range Evaluation Program could result in ILMB amending or cancelling land use objectives as required. Similarly compliance and enforcement actions of either the MoE or MOFR could result in changes to land use objectives.

| Appendix I | |
|--|---|
| Steps to completing an order under the LUOR | |
| Steps | Related Activities/Tasks |
| Business case approved | <ul style="list-style-type: none"> • Ensure endorsement has been granted • Include signed off business case in project file • Legal establishment may be part of larger business case submission |
| Set up project team | <ul style="list-style-type: none"> • Project team will depend on scope of project, but most projects will require contacts in other Ministries, particularly MFR, MOE and potentially MOTSA |
| Develop first draft of the order | <ul style="list-style-type: none"> • Discuss with colleagues, project tea and Strategic Land Policy and Legislation Branch (SLPLB) contacts • Review AIP with respect to FN involvement • Consider discussing with licensees • Seek legal advice/clarification as necessary from SLPLB • See appendix I for components of an order |
| Develop final draft of the order | <ul style="list-style-type: none"> • Consider criteria in LUOR to the extent possible • Send to SLPLB for review • SLPLB to coordinate legal review by Ministry of Attorney General • Review with statutory or delegated decision maker |
| Advertise for public review and comment | <ul style="list-style-type: none"> • Ensure appropriate executive members, the Minister and or other MLAs have been briefed prior to advertising (depends on scope). • Obtain statutory or delegated decision makers approval for advertising • Inform affected FN that order is being made available for public review and comment • Work with Public Affairs Bureau to place ad in the Gazette and newspaper • Work with ILMB web staff to get notice posted on ILMB external web • See appendix IV for example |
| Review and assess comments received | <ul style="list-style-type: none"> • Set up meeting with affected licensees who have requested such meetings through review and |

| | |
|---|--|
| | <p>comment</p> <ul style="list-style-type: none"> • Review comments to see where information submitted supports the criteria • Work with other agencies to determine solutions or better understand impacts • Identify areas needing change and develop options for resolving difficult issues |
| Revise order to incorporate applicable comments | <ul style="list-style-type: none"> • Record why changes were made and the affect of changes in separate document • Make sure all criteria in the LUOR are considered and assessed when finalizing order <ul style="list-style-type: none"> ○ is there duplication of objectives ○ is there conflict between objectives ○ do the objectives provide appropriate balance ○ do the benefits outweigh any adverse impacts • Consult with affected FN on the revisions especially where objectives stem from signed AIP • Bring to the attention of the decision maker any issues that remain unresolved |
| Final review by Ministry of Attorney General | <ul style="list-style-type: none"> • Flag any specific or outstanding questions/issues that require further exploration • Send final order to SLPLB to review and to coordinate a final legal review by Ministry of Attorney General |
| Present briefing material and revised order to appropriate decision maker | <ul style="list-style-type: none"> • Prepare briefing note • Suggested presentation material to include: record of consultation with FN: summary of adverse impacts: key issues by stakeholder: colour coded (red, yellow and green) categorization of issues: and summary of social economic and environmental analysis. • If package is accepted, obtain sign off, request FN participation as signing if appropriate • Decision maker to sign record of decision (dependent on scope of project) |
| Letter of Filing | <ul style="list-style-type: none"> • Minister or RED sends letter of filing to appropriate MFR regional executive directors. This can be done through e-mail but should be followed up with hardcopy letter or filing. • Include all appropriate web addresses and or documents with the letter of filing • See appendix VII for example of Letter of Filing |
| Notice of the Order | <ul style="list-style-type: none"> • Notify FN if they are not already aware that order is about to be posted • Notify other agencies and stakeholders that order is about to be posted • Work with Public Affairs Bureau to place notice in the Gazette • Work with ILMB web staff to place all relevant material on the external ILMB website • Work with PAB on press release if required. |

Appendix II

Common components of a Legal Order

There are generally 6 sections that form an order. A number of sections may be expanded to include more or less information.

Section 1:

Title

Order tracking number (*this is a system of storing and tracking that is currently being researched. The intent is to devise a system that will allow for a more efficient system of filing storage and recall of LUOR orders*)

Section 2:

This section may be titled “Interpretation”; however, can include a variety of information. The following are examples of information that is generally found in this section.

- The legislative authority under which the order is being made ie Pursuant of s. 93.4
- The geographic area to which the LUOs apply
- Where the LUOs do not apply ie woodlots, community forests etc
- Specifying conflicts with other existing objectives (section 5 of the LUOR)
- Definitions if necessary

Section 3:

The LUOs – self explanatory. Depending on the number of LUOs, section 3 may have a number of subheadings ie cultural and heritage objectives, biodiversity objectives etc.

Section 4:

This section is often called Transition, but includes a variety of administrative content requirements as per section 6 of the LUOR. The following is information commonly included in this section.

- When do the objectives take effect
- Is the 4 month rule disapplied
- Is the 2 year mandatory amendment in effect or not
- A statement regarding the filing of the order

Section 5

Signature block and date – self explanatory

Section 6

Schedules maps or tables referred to in the order - self explanatory

Appendix III

Information not to be included in an order

Orders should not include:

Footnotes – many of the previous HLPs included footnotes that were important information in completing the objective. Rather than including footnotes in the order, this information should either be included in a section titled definitions (see part 2 above) or be written into the objectives.

Mandatory review dates - a minister may review an order at any point in time. Including a date in the order serves little or no purpose and is not legally enforceable. This type of information, if it is desirable to include should be included in a covering memo that accompanies the order.

Some information to avoid including in land use objectives

Objectives should not be written so as to provide another individual, other than the statutory or delegated decision maker the ability to amend an objective. For example, an objective signed off by the Minister should not say, “*the amount of old growth to be retained is 15% unless alternative figures are provided by the planning manager of Integrated Land Management Bureau*” In this example, the planning manager has in essence received the powers to amend objectives without going through due process. The legislation does not provide for this short circuiting of the process. It is contrary to legislation.

Similarly, objectives should not be written to suggest that policy documents that are subject to change or committees are the ones that determine the objective. For example, it would not be appropriate to write an objective that says “*harvesting can proceed in the areas shown on map 1, as directed by the interagency committee on sustainability who will review requests for harvesting semi annually*”. Or, “*harvesting can proceed in the areas shown on map 1 subject to the sustainability policy that will be reviewed annually*”. The purpose of an objective is to provide certainty.

Objective should not be written in a way that implies there are two decision makers when it comes to determining if a result or strategy is consistent with the objective. For example “*Where there is insufficient old growth to meet the target amount by Biogeoclimatic variant, Licensees must submit a recruitment strategy for approval to ILMB, before including in their FSP*”

Objectives should not be worded to say they replace sections of FRPA or other acts for that matter. The principle under FRPA is that except where a conflict is identified, both FRPA (objectives in regulation) and the land use objectives must be addressed when

writing a result or strategy. In many cases the same result and strategy can be used to address both objectives. In the case of the Heritage Conservation Act, a land use objective that addresses first nations cultural and heritage values can not override the requirements of the HCA, but it can supplement those requirements related to forestry activities.

While many orders have included preambles, Strategic Land Policy and Legislation has consistently advised that context and background information should be explained in a separate covering memo that accompanies the legal order. A preamble should not form part of an order. However, the statutory or delegated decision maker has the final decision in this regard. If a preamble is considered necessary then SLPLB should be consulted.

Appendix IV

Example 1: Advertisement for Review and Comment

Proposed Land Use Objectives Relating to the Central Coast of B.C.

Notice is hereby given that, pursuant to Section 93.4 of the *Land Act*, land use objectives are proposed for establishment by legal order for the Minister of Agriculture and Lands.

The land use objectives proposed for establishment are ecosystem based management objectives for portions of the central coast of BC. The area to which the proposed land use objectives apply is set out in Schedule 1 of the proposed order. The land use objectives are based on stakeholder recommendation from the Central Coast Land and Resource Management Planning tables and Agreements in Principle reached between the Province and First Nations. The proposed land use objectives deal with the following topics, among others: cultural heritage resources, freshwater ecosystems and habitat, landscape and stand level biodiversity and grizzly bear habitat. These objectives will be binding for the purposes of the Forest and Range Practices Act.

The public is invited to comment on the draft order for a 60-day review period, commencing with the date of this advertisement. This order and the land use objective in this order will take effect on the date that the notice of this order is published in the Gazette.

Written comments can be sent to:

xxxxxxxxxxxxxxxxxxx (include persons name)
Integrated Land Management Bureau,
Ministry of Agriculture and Lands, Vancouver Island Services Centre
Suite 142, 2080 Labieux Road, Nanaimo, BC, V9T 6J9
Email: xxxxxxxxxxxx

Copies of the proposed order, containing the full suite of proposed land use objectives and associated maps are available at the Integrated Land Management Bureaus – Front Counter BC office in Nanaimo; Ministry of Environment office in Nanaimo; and, the Ministry of Forests and Range offices at the addresses given below.

Integrated Land Management Bureau
Front Counter BC, Suite 142, 2080 Labieux Road, Nanaimo BC V9T 6J9

Ministry of Forests and Range
Coast Forest Region, 2100 Labieux Road, Nanaimo BC V9T 6J9

Ministry of Environment
Vancouver Island Region 2080 Labieux Road, Nanaimo BC V9T 6J9

Ministry of Forests and Range
North Island – Central Coast district 2217 Mine Road, Port McNeill, BC V0N 2R0

Ministry of Forests and Range
Campbell River Forest District, 370 South Dogwood Street, Campbell River, BC V9W 6Y7

Example 2: Advertisement for Review and Comment

Proposed Land Use Objectives Relating to the Peace Region of B.C.

Notice is hereby given that, pursuant to Section 93.4 of the *Land Act*, land use objectives for old forest retention are proposed for establishment for the Dawson Creek Timber Supply Area portion of the Peace Forest District. These objectives will be binding for the purposes of the *Forest and Range Practices Act*.

A final order and the lands use objective in this order will take effect on the date that the notice of this order is published in the Gazette.

The public is invited to comment in writing on the draft order for a 60-day review period commencing November 14, 2006. Written comments may be sent to:

XXXXXXXXXXXX (include persons name)
Integrated Land Management Bureau
Ministry of Agriculture and Lands
Suite 400, 10003 110th Avenue
Fort St John, B.C. V1J 6M7
fax: (250) 787-3490
e-mail: xxxxxxxxxxxxxxxx

Copies of the proposed order are available at the above address and can also be accessed from: <http://ilmbwww.gov.bc.ca/lup/>

Appendix V

Example Order

Ministry of Agriculture and Lands

Ministerial Order

Land Use Objectives for the ABC Sustainable Resource Management Plan (SRMP)

Part 1 – Interpretation

1. Pursuant to section 93.4 of the Land Act, the following objectives are established as land use objectives for the purposes of the Forest and Range Practices Act, and apply within the ABC SRMP area shown on the map attached to this order dated December 15, 2007.
2. A person required to prepare a woodlot licence plan is not required to specify results or strategies for the objectives established in this order for land that is subject to a woodlot licence.
3. Nothing in, under or arising out of this ministerial order abrogates or derogates from any aboriginal rights, aboriginal title or treaty rights of any applicable First Nation and does not relive the Province of any obligations to consult with any applicable First Nation.

Part 2 – Objectives

Objective for old growth management

3. Retain Old Growth Management Areas (OGMAs) shown on map 1 and in the spatial data set except where timber harvesting is required for one of the following purposes:
 - a) road and bridge construction to access resource values beyond or adjacent to OGMA's where there are no other practicable alternatives;
 - b) preventing the spread of insect infestations or disease that poses a significant threat to forested areas outside of the OGMA;
 - c) road maintenance or deactivation, removal of dangerous trees, safety purposes, or brushing and clearing on roads under an authorization from government within the right of way.

Objectives for stand level retention

4. Maintain forest structure and diversity at the stand level:
 - a) by establishing stand retention equal to or greater than 15% of the cutblock; and

b) in cutblocks 15 hectares or greater in size, by distributing 50% of the stand retention within the cutblock, except in second growth stands where a windthrow hazard assessment indicates a high biophysical hazard for windthrow.

5. To the extent practicable, include the following within stand retention:
 - a) habitat elements important for species at risk, ungulate winter range, and regionally important wildlife;
 - b) representation of ecosystems and plant communities that are red-listed or blue-listed in the watershed and landscape;
 - c) functional riparian forest adjacent to active fluvial units, forested swamps, fen and marsh wetlands and upland streams with unique climate and other characteristics;
 - d) Western red cedar and Yellow cedar, in a range of diameters and species representative of the preharvest stand and important for future cultural use; and
 - e) wildlife trees and coarse woody debris.
6. No timber harvesting, including single tree selection is to occur within stand retention areas.

Objectives for First Nations' traditional forest resources

7. Maintain traditional forest resources in a manner that supports First Nations' food, social and ceremonial use of the forest.

Objectives for monumental cedar

8. Maintain a sufficient volume and quality of monumental cedar to support the applicable First Nation's present and future cultural use of monumental cedar, following information-sharing or consultation with the applicable First Nation, and to the extent practicable.

Part 3 – Effective Date and Transition

7. This order and the land use objectives in this order take effect on the date that notice of this order is published in the Gazette.
8. The four month period referred to in section 16(2) of the *Forest and Range Practices Act* applies to the land use objectives in this order.
9. The period of time under section 8(2)(b) of the *Forest and Range Practices Act* is two years.
10. This order replaces objectives established in the by the Order Establishing Provincial Non-Spatial Old Growth Objectives (June 30, 2004) for the area applicable to this order

Signature Block

Date

Appendix VI

Example 1: Notice of an order being made

Notice of Order Establishing Land Use Objectives for the South Central Coast Area

Notice is hereby given that land use objectives have been established by order pursuant to Section 93.4 of the *Land Act*. The order establishes land use objectives for the following topics, among others: cultural heritage resources, freshwater ecosystem habitats, landscape and stand level biodiversity and grizzly bears. These objectives will result in ecosystem based management being applied on the south central coast.

The land use objectives take effect on the date this notice is published in the Gazette, except for the grizzly bear objective which comes into effect on or after September 30th, 2007, when a map of sensitive grizzly bear habitat has been completed to the Minister's satisfaction and is made publicly available.

The order and maps have been filed at the regional office for the Coast Forest Region at 2100 Labieux Road, Nanaimo BC, V9T 6E9.

The order was advertised for public review and comment for a period of 60 days ending December of 2006. A summary of changes made to the order as a result of public review and comment is also available at the above location.

The order is also available on the Ministry of Agriculture and Lands Internet at <http://ilmbwww.gov.bc.ca/lup/>

Example 2: Notice of an order being made

Notice of Order Establishing Land Use Objectives for the Renfrew Area on Southern Vancouver Island

Notice is hereby given in accordance with Section 7 of the *Land Use Objectives Regulation* (LUOR) that an order has been made under Section 93.4 of the *Land Act*.

The order has established land use objectives for old growth and wildlife tree retention in the Renfrew area located on Southern Vancouver Island, in the South Island Forest District, as shown on the map attached to the order.

The land use objectives take effect on the date this notice is published in the Gazette.

The order and attached map have been filed at the regional office for the Coast Forest Region at 2100 Labieux Road, Nanaimo BC, V9T 6E9.

The proposed order was made available for review and comment in April and May 2006. No public comments or written notices were received.

The order is also available on the Ministry of Agriculture and Lands Internet at <http://ilmbwww.gov.bc.ca/lup/>

Appendix VII

Example 1: Letter of Filing with MOFR

Reference: (cliff # of associated briefing note)¹²
File: 17550-50/Okanagan Shuswap Land Use Objectives

February 6, 2007

xxxxxxxxxx
Regional Executive Director, Southern Interior Forest Region
Ministry of Forests and Range
515 Columbia Street
Kamloops, BC V2C 2T7

Re: Filing of the Okanagan Shuswap Land Use Objectives Order with the Regional
Office of the Ministry of Forests and Range

Dear xxxxxxxxxxx:

Please find attached an order establishing land use objectives for the Okanagan Shuswap Land and Resource Management Plan area. The order comes into effect on March 1, 2007.

According to section 6(2) of the Land Use Objectives Regulation, the order must be filed with your office before its effective date. Your receipt of the attached order signifies that it has been filed as per regulation.

The order includes the objectives, a schedule and ten maps. Also attached is a summary of public comments. The summary is not part of the order, but needs to be filed with it.

Please make the order available to district managers in the Southern Interior Region for their use when adjudicating forest stewardship plans.

Sincerely,

xxxxxxxxxx
Regional Executive Director

¹² Not necessary to include reference, but can be helpful for cross referencing against briefing notes on same topic.

Example 2: Letter of Filing with MOFR

Reference: 152129
File: 17550-00/SCCLRMP-MO

Date:

Mr. xxxxxxxx
Regional Executive Director, Coast Forest Region
Ministry of Forests and Range
2100 Labieux Rd
Nanaimo, BC V9T 6E9

Re: Filing of the South Central Coast Plan Area Order with the Regional Office of the
Ministry of Forests and Range

Dear Mr. xxxxxxxx:

Please find attached the order establishing land use objectives for the South Central Coast plan areas. The order comes into effect on the date notice of the order is posted in the Gazette, except for the grizzly bear objective which comes into effect on September 30, 2007.

According to section 6(2) of the Land Use Objectives Regulation, the order must be filed with your office before its effective date. Your receipt of the attached order signifies that it has been filed as per regulation.

The order includes objectives, maps and tables. Also attached is a summary of the revisions made to the order as a result of public comments received. The summary does not form part of the order but is required to be filed with the order.

Please make the order available to district managers in the Coast Forest Region for their use when adjudicating forest stewardship plans.

Sincerely,

XXXXXXXXXX
Minister

pc: xxxxxxxxxxxxxxxx
(include pc's as necessary)

Appendix VIII

Unsigned copy of Delegation Memo to Regional Executive Directors¹³

Regional Executive Directors
Integrated Land Management Bureau
Ministry of Agriculture and Lands

Re: Delegation of Minister's Functions under *Land Act* sections 93.4 – 93.6

Pursuant to sections 93.7(1)(a) of the *Land Act*, I hereby delegate the functions of the Minister under sections 93.4 to 93.6 of the *Land Act* to Regional Executive Directors, Integrated Land Management Bureau, Ministry of Agriculture and Lands.

This delegation includes the authority, provided in section 27(4) of the *Interpretation Act*, to amend or repeal an order made under sections 93.4 to 93.6 of the *Land Act*.

Nothing in this delegation precludes me, or my successors, from exercising the functions of the minister under sections 93.4 to 93.6 of the *Land Act* or section 27(4) of the *Interpretation Act*.

With this delegation all previously made delegations for establishing objectives under the *Forest Practices Code of British Columbia Act* and continued under the *Land Act* are hereby rescinded.

Direction

Pursuant to Section 93.7(1)(b) of the *Land Act* I hereby provide the following direction to the Regional Executive Directors, Integrated Land Management Bureau, Ministry of Agriculture and Lands.

The Regional Executive Directors, Integrated Land Management Bureau, Ministry of Agriculture and Lands must refer the establishment of land use objectives to the Minister¹⁴ for decision when:

- the initial establishment of objectives that have arisen from a Land and Resource Management Plan or Regional Land Use Plan are, in the opinion of the Regional Executive Director, objectives that would have substantial social, environmental or economic implications; or,
- any other actions to establish, amend, or repeal objectives are in the opinion of the Regional Executive Director, likely to have substantial social, environmental or economic implications.

Pat Bell
Minister

Date

¹³ Official document is identical except for Minister's signature and date of September 7 2006

¹⁴ References to the Minister are assumed to include the Deputy Minister or Associate Deputy Minister in their capacity to act as the Minister.

Appendix IX

Additional Reading

1) Administrative Guide to Forest Stewardship Plans

<http://www.for.gov.bc.ca/hth/timten/AGFSP/index.htm>

2) FRPA Bulletins

http://www.for.gov.bc.ca/hth/timten/FRPA_implementation/Bulletins.htm

3) Resource Analysis Guide for Sustainable Resource Management

<http://ilmbwww.gov.bc.ca/lup/srmp/background/rag.html>

4) Principles of Legislative Drafting

<http://www.llbc.leg.bc.ca/Public/PubDocs/bcdocs/376304/>