

File: 19400-20/New Tenures

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BY EMAIL

To: Assistant Deputy Ministers  
Regional Executive Directors  
District Managers  
Timber Sales Managers  
Director, Forest Tenures Branch  
Director, Aboriginal Affairs Branch

From: Doug Konkin, Deputy Minister

**Re: Principles for Locating New Forest Tenures**

On March 12, 2007, the "Principles to Identify Tenure Areas" document was approved to assist with locating new tenure opportunities made possible by the reallocation of allowable annual cut (AAC) returned to government through the *Forestry Revitalization Act* as specified in the Forest Revitalization Plan.

Since this document was approved, finding suitable operating areas for new tenures has become more challenging than ever due to the effects of the Mountain Pine Beetle, among other factors.

To ensure that government's tenure allocation objectives are implemented in a fair and consistent manner throughout the province, we will now employ the rules, processes and considerations contained in the attached "Principles for Locating New Forest Tenures", which replaces the 2007 document.

If you have any questions, please contact Doug Stewart, Director, Forest Tenures Branch at 250-387-8300.



Doug Konkin  
Deputy Minister

Attachment: Principles for Locating New Forest Tenures

## **Principles for Locating New Forest Tenures – October 27, 2011**

This document is intended to assist ministry staff in locating licence areas for new tenures.

### **1) Assessing Tenure Suitability**

When a choice between tenure types exists, the following considerations should assist in determining the most appropriate tenure:

- 1) Commitments made by government;
- 2) Review of First Nations Direct Award Forest Tenure Opportunity Guidelines;
- 3) The time available for identifying the licence area/operating area (i.e. tenure areas for area-based tenures generally take significant time to identify);
- 4) The flexibility needed to adjust licence area/operating area and operations at some future point to accommodate emerging management priorities (i.e. Mountain Pine Beetle impacts);
- 5) The proponents desire to manage a long term area based tenure and potential interest in managing the associated non-timber values;
- 6) The alignment with First Nation land management objectives;
- 7) The incentive the tenure will provide for the holder to invest beyond base licence obligations;
- 8) Agreement holders administrative workload and capacity to manage;
- 9) Term of the tenure;
- 10) Availability of replaceable and non-replaceable allowable annual cut (AAC);
- 11) The availability of a suitable land base;
- 12) Access requirements and costs; and
- 13) Compensation considerations.

### **2) Tenure Location Principles**

The following general principles should be used to identify licence/operating areas for all types of new tenures:

- Whenever feasible, ensure a continuous flow of fibre to the market place.
- For non-*Forestry Revitalization Act* sourced AACs, the order for identifying new tenure areas is as follows:
  1. Unallocated areas;<sup>1</sup> and then,
  2. All other areas.

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<sup>1</sup> Licence area allocation process in the Interior did not result in specific geographic areas being designated as unallocated.

- For *Forestry Revitalization Act* sourced AACs, the order for identifying new tenure areas is as follows:
  1. *Forestry Revitalization Act* affected licensee's who owe the Crown operating area;
  2. Unallocated areas; and then,
  3. All other areas.
- The District Resource Manager and/or Timber Sales Manager (BCTS impacted) must be consulted when locating a new licence/operating area in a non-*Forestry Revitalization Act* affected licensee's area or BCTS's representative pricing area (RPA).
- When the licence/operating area for a non-*Forestry Revitalization Act* licensee or BCTS RPA is affected, replacement areas shall be located in *Forestry Revitalization Act* affected licensee areas who owe the Crown operating area. Where possible, the replacement areas should be of similar attributes to the areas being displaced.
- If a licensee or BCTS area is displaced and the area has significant unamortized investment costs or depreciated replacement value remaining, a transition plan may be required to mitigate compensable requirements. Transition plan examples may include:
  1. The exiting licensee or BCTS to proceed with CP(s) or TSL(s);
  2. Sell active CP(s) to incoming licensee;
  3. Sell CP(s) or TSL(s) ready work to incoming licensee;
  4. Explore transferring outstanding silviculture and road liabilities to new licence holder within the new tenure area; or,
  5. Remove unnecessary infrastructure (i.e. bridge).
- Potential new tenure areas should be evaluated to ensure there is viable access. For smaller AAC tenures, avoid choosing areas with extensive infrastructure requirements.
- New tenures should ideally be located in areas that reflect the representative timber type, quality, age class, site index and terrain within the management unit (MU) or for a First Nation tenure within their traditional territory.
- The identification of a suitable land base for an area based tenure should generally take the following approach:
  1. Determine the mean annual increment (MAI) of the management unit:
 
$$\text{MAI} = \text{MU AAC} / \text{MU timber harvesting land base (THLB)}^*$$

\* From the most recently approved timber supply analysis.

Required THLB for the new tenure = AAC allocated for the new tenure / MAI
  2. Locate potentially suitable areas within the appropriate MU or traditional territory with the necessary THLB and representative timber profile, as described above.

### 3. Refinement of potential areas of interest:

Once a potentially suitable area is found, then a traditional timber supply analysis is usually completed to size the tenure based on the growing stock and age class distribution. The sizing should use the same assumptions from the most recent timber supply review (TSR) for the management unit. New area based tenures should usually have a timber supply projection that reflects the MUs (i.e. new area based tenures are not required to have a non-declining AAC).

- Locate tenures for First Nations within their traditional territory (preferably core not shared territory), whenever possible and within any areas identified in a Forest Tenure Opportunity Agreement (FTOA). Consider as a priority, areas that contain traditional use and cultural values that provide the First Nation with an opportunity to manage these values. Refer also to the First Nations Direct Award Forest Tenure Opportunity Guidelines.
- Where area-based tenures are to be situated in areas using Bill 28 volume acquired from Tree Farm Licences (TFLs), the area-based volume will not be reduced or increased as a result of any new AAC determinations for the TFL. Rather, the volume will remain constant and an equivalent land area will be removed from the TFL in consultation with the TFL holder.
- Where area-based tenures are to be situated in Timber Supply Areas (TSAs), the original Bill 28 volume may be reduced proportionately to reflect AAC reductions for the TSA. The minister, in his apportionment decision, will determine how much volume in the TSA should be allocated to new FNWLs/CFAs/WLs and will take into account any TSA AAC reductions and impacts to other programs and existing licences when making his decision.

### **3) Working with Licensees and Proponents to Identify Operating Area in TFLs & TSAs**

Communicate with potentially affected licensees and BCTS early in the process, especially when significant challenges in locating new tenures are anticipated. Wherever possible, at the beginning of each new tenuring program initiative, request potential new tenure holders to provide input into the tenure selection process based on specific tenure selection criteria, while ensuring it's recognized that not all areas within the management unit are available. If future tenure holders are unable to be part of licence/area ID process, FLNRO office staff needs to represent their interests (i.e. First Nations, communities, and woodlot holders). Keep revitalization, FNWLs or other relevant initiative objectives at the forefront.

#### **TFLs**

The future tenure holder (i.e. First Nation) and FLNRO staff should meet with the TFL holder to negotiate either 1) suitable cut blocks in the TFL, or 2) area(s) within the TFL for the future tenure holder to operate a forest licence or forestry licences to cut. The cut blocks or licence areas identified should meet the intent of the tenure offer (i.e. Forest Tenure Opportunity Agreement) and the conditions specified in the TFL document. See also Section 4 Landing Area-Based Tenures.

In cases of disagreement between the licensee and the future tenure holder on volume placement, the dispute resolution process outlined in the TFL document should be followed.

### **TSA**

The issuance of new tenures to meet provincial initiatives is a lengthy process and it is preferable that the identification of new tenure areas be done without having to immediately initiate a TSA re-charting process. However, this may be unavoidable in some TSAs due to land use planning or inequities in the current TSA distribution of licence/operating areas and BCTS representative pricing areas. Parties should attempt to reach agreement at the local level on licence/operating areas for the pending tenure. Where possible, partnerships between existing and new tenure holders should be encouraged. In the event that FLNRO staff concludes there are compelling issues preventing confirmation of a licence/operating area, the FLNRO staff will continue to work with key tenure holders and BCTS to resolve those issues.

Where an FNWL is to be located within a BCTS area (no other alternative), the District Manager, Resource Operations on agreement from BCTS can consider an FNWL on the condition that the First Nation (FN) agrees to an FN/BCTS partnership. The partnership agreement would need to be captured within the FTOA.

### **4) Landing Area-Based Tenures – Community Forest Agreements, Woodlots, and First Nations Woodlands Licences**

Two separate management units (MUs) are created when converting a portion of the allowable annual cut (AAC) of a management unit (MU) to an area-based licence. The sum of the AACs of the two new MUs will not necessarily equal that of the prior larger MU. To precisely match the AAC commitment to a land base capable of supporting the AAC is not always possible. For this reason, the selection of a suitable tenure should be focused on the location and attributes of the area (timber type, age class, site index, access, etc.) and the proponent's objectives and less on the AAC target. The AAC commitment should be used as a guide, not a fixed target.

For Community Forest Agreements (CFAs), Woodlots (WLs), and First Nations Woodland Licences (FNWLs), the proponent, FLNRO staff and affected licensee(s) should meet to discuss suitable areas for the tenure within the MU. The following procedure is recommended for locating area-based tenures:

1. Clarify the MU and available AAC for the tenure;
2. The parties should agree on the relevant, quantifiable attributes that are important for the tenure;
3. Determine potentially suitable tenure areas using available information and field reviews. The evaluation should consider timber type, quality, age class distribution, access requirements, haul distances, terrain types, slope, proponent key attributes, etc.;
4. Once suitable areas are determined, FLNRO will calculate the contribution of the candidate area(s) using the procedure outlined in Section 2 above;
5. The final area and AAC will be agreed to by all parties; and,
6. Area(s) and corresponding AACs will be deleted from the current MU and a starting AAC will be set for the new area-based tenure.

#### **CFA – specific location considerations**

- As close to the proponent community as feasible and wherever possible in areas generally more socially acceptable to small scale forestry operations.

#### **WL – specific location considerations**

- Locate close to areas of perceived demand and wherever possible in areas generally more socially acceptable to small scale forestry operations.

#### **FNWL – specific location considerations**

- Refer to the First Nations Direct Award Forest Tenure Opportunity Guidelines.

### **5) Compensation Considerations**

Compensation may be triggered when landing a new area-based tenure if it impacts an existing licensee's harvest operations (i.e. unamortized improvements). Prior to any decision being made to land a new area-based tenure, if there is any doubt or possibility that compensation may be triggered, it is advised that regional and/or district staff contact the ministry's Business Analysis and Compensation Branch in Victoria. Compensation questions and issues need to be addressed at the start of the planning process.

### **6) Planning/Implementation Summary**

#### **Internal Scoping**

Prior to engaging external stakeholders, FLNRO staff should undergo an internal scoping exercise to determine:

- First Nations to engage and potential tenure type(s);
- Volume source(s), MU(s) and impacted licensee(s);
- Potential areas for placing volume-based and area-based tenures with consideration to land base constraints;
- Rough AAC calculation for area-based tenures;
- Compensation issues evident and potential mitigation strategies (same for BCTS);
- Assessment of overall road, silviculture and other liabilities in the potential selection areas;
- Impacts to licensees and BCTS and engagement strategy; and,
- First Nations consultation issues and engagement strategy.

The redistribution of operating areas in a MU is an inherently disruptive process. To accommodate new tenure holders requires all parties to work cooperatively in seeking solutions. One way to ensure a positive outcome and help navigate the many issues posed by these tenure challenges is to articulate the entire disposition plan to licensees, First Nations and BCTS for the MU at one time (i.e. roll-up all volume-based tenures, area-based tenures and small tenure takings in one consolidated planning and consultation process).

#### **External Scoping – Preliminary Discussions**

- Review and discussion of general MU strategy;
- Review of First Nation tenure options and potential tenure locations with impacted licensee(s), First Nation(s) and BCTS (as required);
- Negotiate and identify priority area locations and compensation mitigation strategy;
- Determine overall strategy for MU and location of tenures, considering stakeholder input;
- Conduct priority area analysis; and,
- Review plan with impacted licensee(s), First Nation(s) and BCTS (as required).

#### **Mandate Request**

- Review First Nations Direct Award Forest Tenure Opportunity Guidelines;
- Seek mandate request highlighting potential impediments (i.e. compensation funds required for the purchase of unamortized assets).

#### **Formal Process**

- As required, purchase assets and transfer liabilities;
- Area finalization and Administration – Exhibit ‘A’ maps, area deletions, apportionments and systems updates.

