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AUG 29 2008

VIA EMAIL

To: Regional Executive Directors
District Managers
Branch Directors

From: T.R. (Tim) Sheldon
Assistant Deputy Minister
Operations Division

Re: **FRPA Administration Bulletin (Number 12) – Amending Site Level Information
– Ability to Amend Code Site Plans Under FRPA**



A new *Forest and Range Practices Act*, Administration Bulletin (Number 12) “Amending Site Level Information – Ability to Amend Code Site Plans Under FRPA” has just been completed. This bulletin applies to areas where a Forest Stewardship Plan has not specified that FRPA standards be applied to blocks harvested under the Code; therefore, these areas still have Code requirements that have not been met with regard to reforestation obligations.

Electronic copies will be available soon from the Provincial FRPA Implementation Team’s website at the following address:

<http://www.for.gov.bc.ca/rco/pfit/index.htm>

If you have any questions about this bulletin, please contact Allan Powelson, A/Stand Management Officer, Forest Practices Branch at (250) 812-5054, or by email at allan.powelson@gov.bc.ca.

T.R. (Tim) Sheldon
Assistant Deputy Minister
Operations Division

Attachment(s): 1

Regional Executive Directors
District Managers
Branch Directors

pc: Jim Langridge Director, Resource Tenures and Engineering Branch
Les Kiss, Vice President, Forestry, Coast Forest Products Association
Archie MacDonald, General Manager, Forestry, Council of Forest Industries
Rob Bowden, Policy Forester, BC Timber Sales
Charlie Western, Provincial FRPA Implementation Team Chair, Operations Division
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FRPA ADMINISTRATION BULLETIN

Number 12

August 13, 2008

Amending Site Level Information – Ability to Amend Code Site Plans under FRPA

The information contained in this bulletin does not constitute legal advice. Practitioners within government should seek legal advice from the Ministry of Attorney General, while practitioners outside government should seek independent legal advice.

BACKGROUND:

The obligation to reforest harvested area has been a legal obligation since October 1987. Initially, Preharvest Silviculture Prescriptions (PHSPs) listed the standards that were required to be met on areas harvested. Silviculture Prescriptions were introduced with new legislation in 1994 and replaced PHSPs. This change designated PHSPs as Silviculture Prescriptions under the *Forest Practices Code of British Columbia Act* (FPCBCA) and its regulations (hereafter referred to as the Code). Under the Code, the standards applicable to areas with an obligation to reforest were contained within an approved silviculture prescription. Under the transition Code¹, the standards applicable to areas with an obligation to reforest were approved as part of the Forest Development Plan applicable to the area and specified within a site plan.

Under *The Forest and Range Practices Act* (FRPA) the standards applicable to areas with an obligation to reforest are approved as part of the Forest Stewardship Plan (FSP) applicable to the area and specified within a site plan. Transition provisions under FRPA allow for an FSP to specify that FRPA standards be applied to previously harvested areas. If this is not specified in an FSP, then Code and Code regulations are still applicable to those areas until obligations are met. For reforestation obligations, the requirements are applicable until a declaration under FRPA, Section 107 is made that declares the obligations met, as required by the Code.

¹ Forest Practices Code of British Columbia Act (Transition Version) in effect December 17, 2002 to January 30, 2004.

DISCUSSION:

This bulletin applies to areas where an FSP has not specified that FRPA standards be applied to blocks harvested under the Code, and therefore, still have Code requirements that have not been met with regard to reforestation obligations. These obligations could be associated with existing Preharvest Silviculture Prescriptions, Silviculture Prescriptions or Code transition Site Plans that have not had the obligation declared met. The above-mentioned plans are defined as Site Level Plans under the FRPA, Section 177 (1).

In some cases, it may be desirable to change the standards applicable to an area with an outstanding reforestation obligation. Changes to the applicable standards are commonly made to the free growing assessment period, to preferred or acceptable species, or to apply a different set of standards to altered site conditions among other things. FRPA, Section 197 (2) refers to site level information within a Forest Development Plan as:

The ability to use the transition provisions under Section 197(8) is limited to the holder of a FSP.

Any site level information in a forest development plan at the time of its replacement under subsection (1) by a forest stewardship plan continues to be applicable for cut blocks in the forest stewardship plan area that have been harvested or are subject to a cutting permit.

Section 197(8) allows the amendment of site level information referred to under FRPA, Section 197 (2). Site level information under the Code can be amended, by the holder of a FSP, in accordance with the FPCBCA and its regulations. This includes the approval at the appropriate level provided the statutory decision maker is satisfied the tests under the Code (FPCBCA 41) have been met.

Different processes apply to amendments depending on the type of site level plan and the type of amendment.

Silviculture Prescriptions and PHSPs

Stocking standards within Silviculture Prescriptions and PHSPs can be amended as per FRPA, Section 189 (2). Amendments can be made within the RESULTS application and requires district manager or delegate approval. The district manager or delegate must approve the amendment if it meets the requirements of FPCBCA 41.

Site Plans under a Forest Development Plan (Code Transition²)

Site level information within a Forest Development Plan can be amended as per FRPA, Section 197 (2) and (8). Typically an amendment to site level information involves creation of a new FDP standard. The amendment to create a new standard can be made within the RESULTS application and requires district manager approval. The district manager must approve the amendment if it meets the requirements of FPCBCA 41. After the amendment is approved, the new standard can be assigned to any standards unit within an existing Code Site Plan where the site conditions are consistent with the requirements and applicability of the standard.

Questions and Answers

1. By what authority does one amend site level information specified in: a) a Silviculture Prescriptions or a PHSPs or b) a Forest Development Plan, for areas that have been harvested or are subject to a cutting permit.
 - a) Silviculture Prescription or PHSP
 - If the associated FDP has not been replaced by a FSP or the site specific requirements [e.g. stocking standards) included as part of the Silviculture Prescription or PHSP are not referenced in the FSP per FRPA, Section 197 (4), (5), or (7) then the amendments to site level information specified within the Silviculture Prescription or PHSP are made under FRPA, Section 189(2)] which specifies that requirements of the Code continue to apply to the area.
 - b) Forest Development Plan
 - If the associated FDP has been replaced by a FSP as per FRPA, Section 197 (1) and (2), and if the site specific requirements (e.g. stocking standards) are not referenced in the FSP as per FRPA, Section 197 (4), (5), or (7), amendments to the site level information may be made under FRPA, Section 197(8) which specifies that amendments are in accordance with the Code.
 - If the associated FDP has not been replaced by an FSP or if the sites included under the FDP are not covered by the FSP then there is no legislative authority to amend site level information.
2. Can the regeneration or Free Growing date on a stocking standard within a Code transition Forest Development Plan be amended?
 - Providing the requirements of FPCBCA, Section 41 are met, the regeneration and free growing date can be changed and submitted for approval.

² Forest Practices Code of British Columbia Act (Transition Version) applies to the period of December 17, 2002 to January 30, 2004

- The new standard can only be applied to an area in which the approved regeneration or free growing date has not passed.
 - A new standard³ specifying a new regeneration delay⁴ unique to the opening may be required if the change does not apply to other Standards Units to which the given Standards ID has been assigned. (Changing an existing standard applies to all Standard Units that have been assigned the given Stocking Standard ID).
3. When can the standards within a FSP be applied to an existing site plan, silviculture prescription, or PHSP?
- If the FDP to which they apply is replaced by the FSP [FRPA, Section 197 (1)], and it is stated within the FSP that the FSP standards apply to the specific opening (or standard unit within that opening) or there is a process outlined in the FSP specifying how FRPA, Section 197 (4) (5) or (7) will be applied. Then the Code no longer applies.
 - If the FDP to which they apply is not replaced by an FSP, FRPA, Section 197 does not apply and the standard must be submitted as an amendment to the applicable operational plan (silviculture prescription) under FRPA, Section 189 (2). Approval of the new standard is subject to the requirements of FPCBCA, Section 41. Standards specified in an FDP cannot be amended if the FDP has not been replaced by an FSP.

Further Information

Forest Practices Code of British Columbia Act –Transition Version
(Pre-January 31, 2004)

<http://www.for.gov.bc.ca/tasb/legsregs/archive/fpc/fpcact/contfpc.htm>

Regulations

<http://www.for.gov.bc.ca/tasb/legsregs/archive/fpc/fpcaregs/fpcaregs.htm>

Contacts:

If there are any questions about this bulletin, please contact:

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³[1] As part of a new Standard ID.

⁴[2] Also known as "offset" in RESULTS.