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BY EMAIL

To: Regional Executive Directors
District Managers
Branch Directors

From: T.P. (Phil) Zacharatos, R.P.F.
A/Assistant Deputy Minister
Operations Division

Re: **Forest and Range Practices Act, General Bulletin Number 16 –
Application of Forest and Range Practices Act to Independent Power Producers,
Mineral Interests and Other Occupiers of the Land**

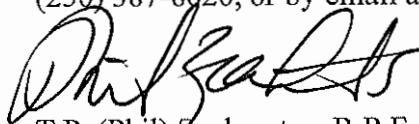


An amendment to the *Forest and Range Practices Act* (FRPA), General Bulletin Number 16, “Application of FRPA to Independent Power Producers, Mineral Interests and Other Occupiers of the Land” has just been completed.

The original bulletin clarified how FRPA applied to any occupier of the land who required an Occupant Licence to Cut (OLTC) to harvest timber on Crown land. It also provided recommendations to staff on how they should respond to referrals from other agencies, where an OLTC was required. This amendment updates the guidance with important information specific to mineral tenure holders.

The bulletin will be available soon from the Provincial FRPA Implementation Team’s website at <http://www.for.gov.bc.ca/rco/pfit/index.htm>.

If you have any questions about this bulletin, please contact Del Williams, Timber Tenures Forester, Resource Tenures and Engineering Branch at (250) 356-9361, or by email at del.williams@gov.bc.ca; or Brian Westgate, Provincial FRPA Implementation Team Chair at (250) 387-8620, or by email at brian.westgate@gov.bc.ca.



T.P. (Phil) Zacharatos, R.P.F.
A/Assistant Deputy Minister
Operations Division

Attachment(s): 1

Due to ongoing regulatory changes as part of the FRPA improvement initiative, this document is outdated, and may not accurately reflect current legal requirements. As soon as the new legal provisions have been finalized, the required changes will be incorporated into an updated version. Readers are advised to refer to the wording of applicable legislation and regulations themselves and obtain their own legal advice. August 2022.

Regional Executive Directors
District Managers
Branch Directors

pc: Les Kiss, Vice President, Forestry, Coast Forest Products Association
Archie MacDonald, General Manager, Forestry, Council of Forest Industries
Bruce Fraser, Board Chair, Forest Practices Board
Jim Langridge Director, Resource Tenures and Engineering Branch
Stewart Guy, Manager, Environment & Economic Initiatives, Ministry of Environment
Brian Westgate, Provincial FRPA Implementation Team Chair, Operations Division
Rob Bowden, Policy Forester, BC Timber Sales
Del Williams, Timber Tenures Forester, Resource Tenures and Engineering Branch
Provincial FRPA Implementation Team



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FRPA GENERAL BULLETIN

Number 16

September 9, 2008

Amended May 15, 2009

Application of FRPA to Independent Power Producers, Mineral Interests and Other Occupiers of the Land

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.

PURPOSE:

The purpose of this bulletin is to provide decision makers clarity on the *Forest and Range Practices Act* (FRPA) values and resources that should be considered when issuing Occupant Licences to Cut (OLTC) to persons occupying the land, such as Independent Power Producers (IPPs) and mineral interests. This bulletin does not address oil and gas interests and requirements related to Master Licences to Cut; nor does it address construction, maintenance, deactivation, and use of roads on Crown land.

INTRODUCTION:

A person who wants to occupy Crown land or conduct mechanical disturbance activities associated with mineral exploration must obtain authorization from the appropriate ministries (generally in the form of a licence, lease or a permit). For example the Ministry of Agriculture and Lands (MAL) may issue Licences of Occupation to Independent Power Producers under the *Land Act*. Prior to harvesting Crown timber in these areas, an OLTC is required and is obtained from the Ministry of Forests and Range (MFR).

An OLTC, a type of licence to cut, is a form of agreement granted under Section 47.4 of the *Forest Act* by a regional or district manager. This section states that the regional or district manager may enter into an OLTC with an owner or occupier of land, authorizing the person to cut Crown timber on the land, remove Crown timber from the land or do both.

Because OLTCs are a form of agreement under the *Forest Act*, it is important to understand that timber harvesting and forest practices conducted under these agreements must be compliant with FRPA, associated regulations, and standards. This is discussed in more detail below.

CONSIDERATIONS:

Does the regional or district manager have to issue an Occupant Licence to Cut to a person occupying land under a tenure granted by another ministry?

The *Forest Act*, Section 47.4 (2) generally provides the regional or district manager discretion by stating that they may enter into an Occupant Licence to Cut (OLTC). However, there are two types of situations enabled by the *Mineral Tenures Act* (MTA) where the regional or district manager must issue an OLTC (or a free use permit):

1. Section 14 (3) of the MTA states that the recorded holder of a mineral title not in production must on request be issued either a free use permit or an OLTC.
2. Section 14 (4) of the MTA states that the recorded holder of a mineral title in production must on request be issued an OLTC.

So, for these two cases, there is little choice on whether to issue or not. However, there may be conditions applied to the OLTC, and in any case prior to issuing an OLTC to an occupier of the land, consideration should be given as to whether the issuance may put the agreement holder in a position of potential non compliance with FRPA or other forestry legislation. Section 47.5 of the *Forest Act* allows for an OLTC to include terms and conditions, as determined by a regional or district manager or a forest officer authorized by either of them, provided they are consistent with the *Forest Act*, FRPA, the *Wildfire Act*, or any regulations or standards made under those acts.

It is recognized that by the time a proponent has applied for an OLTC to harvest trees on an area of occupation, there may have been significant effort invested and that other agencies may have provided approval to proceed. In addition to reviewing draft applications during the referral process, the regional or district manager or their staff should look at what other ministries have done in the way of review of the applicant's proposed work and its impact on the land and resources. The issuance of OLTCs allows an opportunity for the MOFR to work cooperatively with other agencies to support the success of independent power producers, mineral interests and other occupiers of the land.

Why do holders of Occupant Licences to Cut have to follow FRPA?

An OLTC is a type of licence to cut, and a licence to cut is a form of agreement under Section 12 of the *Forest Act*. The Forest Planning and Practices Regulation (FPPR) defines an 'agreement holder' as "...a holder of an agreement under the *Forest Act*, other than a woodlot licence"; and defines an 'authorized person' as "...a person who is an agreement holder...". The terms 'agreement holder' and 'authorized person' are used throughout the FPPR to indicate which practice requirements apply to holders of agreements under the *Forest Act*.

Holders of OLTCs are not required to prepare Forest Stewardship Plans under FRPA, Section 3 (1). Therefore, unless exempted, they must follow the applicable practice requirements specified in Part 4 of the FPPR (Sections 35-70 inclusive). FPPR, Part 4 provides detailed practice requirements related to the protection of soils, timber and forest health, riparian areas, watersheds and biodiversity, general wildlife measures, resource features, and wildlife habitat features. (Note: OLTCs are defined as minor tenures under the FPPR, Section 1, and minor tenure holders only have to follow select practice requirements). FPPR, Section 91 may allow for exemptions from specified practice requirements when not “practicable”¹.

The requirements in FRPA only apply to how timber harvesting or associated forest practices will impact forest values. It is recognized that some IPP related installations may have impacts on certain values that do not result from the timber harvesting or forest practices. For example, towers on wind farms may impact visual quality values or the noise from wind farms may impact migration patterns of ungulate species or birds. FRPA does not address these potential impacts because they do not result from timber harvesting or forest practices, rather they relate to the structure and operation of facilities dealt with in the lease/permit issued by other ministries.

Are there values that are not addressed in the FPPR that should be considered? How should these be dealt with when issuing an OLTC?

There are certain values and resources that are not addressed in Part 4 of the FPPR. They may have objectives written for them, but they do not have practice requirements associated with them. These values include, but are not limited to, the objective set by government for visuals and cultural heritage resources and to the measures for natural range barriers and invasive plants. In addition to these values and resources, there may be legal objectives in Land and Resource Management Plans or other plans that the regional or district manager considers should receive protection (if these have not already been considered by the other agencies when granting the right to occupy). For values that are not addressed by the FPPR, the regional or district manager may wish to include conditions in the OLTC to address these values in accordance with *Forest Act*, Section 47.5. Prescriptive conditions should be avoided. Wherever possible conditions should be written in a similar way as results and strategies, approved Forest Stewardship Plans may include results and strategies that could provide examples of how to address values that are not addressed by the FPPR.

What needs to be communicated to proponents who receive an OLTC?

Independent Power Producers and other proponents may be inexperienced with forestry legislation; therefore, it is important that regional or district managers and their staff effectively communicate to these parties how the requirements of the *Forest Act*, FRPA, FPPR, Government Actions Regulation (GAR) and any terms or conditions included in the OLTC apply to them. In addition to complying with the terms and conditions of the OLTC, there is also an expectation that agreement holder will exercise professional judgement, due diligence, and good communication in achieving the applicable FRPA requirements. District staff may choose to make use of the presentation package prepared by the Provincial FRPA Implementation Team, entitled “Quick Start to the *Forest and Range Practices Act* (FRPA)” to communicate FRPA requirements to proponents. The training package is located at the following website: http://www.for.gov.bc.ca/code/training/frpa/Quick_Start_to_FRPA.pdf

¹ Information on “practicable” is available in FRPA General Bulletin Number 3 - Use of the Term "Practicable" under the *Forest and Range Practices Act* (FRPA) and Regulations available at http://www.for.gov.bc.ca/hth/timten/FRPA_implementation/Bulletins.htm.

RECOMMENDATIONS:

The issuance of OLTCs for persons occupying land is done at the end of an often long process of investigation and consultation by both the proponent and by agencies such as the Integrated Land Management Bureau, Front Counter BC, and the Ministries of Agriculture and Lands, Environment, and Energy and Mines and Petroleum Resources. It is important that the MFR establishes relationships with the other agencies and establishes opportunities to provide input early in the development process and at key stages throughout the development process to ensure that the proponent effectively addresses forest values. When MFR staff are provided the opportunity to review documents related to rights to occupy land, they should do so with an understanding that eventually an OLTC may be requested by the proponent and that in the case of mineral tenures, there may be little choice on whether or not to issue. During the referral stage, MFR staff should identify all information that may be relevant to the referring agency's decision making process. This may include: timber supply impacts, tenure conflicts, known First Nation issues, range impacts, etc. Any issues that arise should preferably be resolved prior to the proponent applying for an OLTC. Staff are encouraged to inform the other agencies of anything that may impede the issuance of an OLTC or may result in the proponent being unable to meet legislative requirements.

CONTACTS:

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

Brian Westgate
Del Williams

(250) 387-8620
(250) 356-9361

Brian.Westgate@gov.bc.ca
Del.Williams@gov.bc.ca