



FRPA GENERAL BULLETIN

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Strategies to Assist FSP Development and Administration in Areas with Established Land Use Objectives

Introduction

The *Land Act* and the Land Use Objectives Regulation provide for the establishment of new land use objectives under FRPA. To date, there have been few orders made under this new legislation, however, there are number of higher level plans (HLPs) currently in place across the province. These HLPs contain various types of land use objectives that have been grandparented as established objectives under FRPA. Objectives or other directions set in land use plans (e.g. LRMPs, SRMPs) that were not given HLP status under the FPC or established as land use objectives under the *Land Act* do not require results or strategies in forest stewardship plans (FSPs). This bulletin provides some options for assisting FSP development and administration in areas where legal land use objectives are currently in effect.

The information provided in this bulletin does not constitute legal advice. It is not binding on decision-makers and is intended to provide guidance only.

Background

Section 5(1)(b) of FRPA requires FSPs to specify intended results or strategies for “objectives set by government”. Section 1 of FRPA states that “objectives set by government” includes those objectives under Section 93.4 of the *Land Act*. This linkage to the *Land Act* includes any new land use objectives set under the Land Use Objectives Regulation as well as objectives established under Section 3-5 of the *Forest Practices Code of British Columbia Act* for resource management zones, landscape units or sensitive areas. Accordingly, results or strategies must be specified for applicable objectives included in HLPs. The term “land use objectives” in this bulletin includes both HLP and *Land Act* objectives.

The objective hierarchy embedded in FRPA places land use objectives at the top of the hierarchy, signifying the importance of the government and public interest in seeing these objectives achieved. In many areas, agency staff have been working to update HLPs or otherwise establish more current local plans. It is generally recognized that some of these existing HLPs were developed and implemented during the FPC era and are not necessarily a “perfect fit” with the FRPA framework. Nevertheless, there are a number of tools within FRPA that can be used to address most issues with these HLPs. The approaches listed below may be used to guide those involved with FSP preparation and administration until new land use objectives are established.

Which Objectives Apply?

It is important to recognize that only objectives that fall within a forest development unit (FDU) need to be addressed in an FSP. Some land use objectives identify specific areas or resource management zones that may not occur within a FDU. Any supporting information indicating why an objective “does not pertain to the area subject to the FSP” will assist DDMs, future auditors, and those developing FSP amendments, in understanding why the objective did not apply at the time of approval.

Objectives that are “*Adequately Addressed by FRPA*” Requirements

Some land use objectives contain provisions that are addressed, or are overlapped by the various provisions in FRPA, such as practice requirements, or by more current and spatially explicit Government Actions Regulation (GAR) orders. In these situations, rather than restate the relevant FRPA provision in the FSP as a result or strategy (such as writing out a full practice requirement or general wildlife measure), a FSP preparer could provide a result or strategy in relation to the particular objective that used language similar to the following: “*the FSP holder adopts as a result or strategy the general wildlife measures specified in GAR Order U-000, as that order was on the date the FSP was submitted for approval*”. To meet the definition of “result” and “strategy” in Section 1 of the FPPR, the FSP may also need to specify measurable or verifiable outcomes, steps or practices and the situations or circumstances in the FDU where they will be applied, if these details are not self-evident in the measure or provision adopted as a result or strategy. Supporting documentation to the FSP should be used to assist in understanding why this approach was taken and how the specified sections of FRPA relate to the objective (also see FRPA Administration Bulletin 3 for drafting suggestions regarding practice requirements).

It is also important to note that due to the FRPA objectives hierarchy, which places land use objectives at the top, a DDM is not able to substitute an objective (or practice requirement) in the FPPR or GAR for a land use objective even though the subject matter may be very similar [see FPPR, Section 12(5), 12(6)]. However, FPPR, Section 12(4) does provide the FSP preparer with an automatic exemption from preparing results and strategies for an objective set out in Division 1 of the FPPR to the extent that doing so would conflict with a land use objective.

Additionally, FPPR Section 92.1 provides that where the DDM approves a result or strategy in relation to an established objective, including a land use objective, the DDM must exempt the holder of the plan from any practice requirements that conflict with the objective. It is possible that a land use objective that sets a different standard of achievement than FRPA requirements may be in conflict with some provisions of FRPA, and therefore, the DDM would need to exempt the FSP holder from the specific conflicting provisions. Conditions may be attached to the exemption (FRPA, Section 112) to address the conflict. This section recognizes the importance of the FRPA objective hierarchy and demonstrates the caution that must be taken when developing or adjudicating results or strategies for land use objectives.

Objectives that Contain Multiple Resource Values

Some land use objectives are comprised of multiple resource values (e.g. fish and wildlife) that may be addressed by FRPA requirements, or other objectives. As with the issue noted above, these types of objectives cannot be ignored even though they may be addressed elsewhere in the FSP or legislation. Results or strategies have to be specified in FSPs for *all* of the objectives that pertain to the area covered by the FSP [FRPA, Section 5(1)(b)], as well as be consistent with *all* of those same objectives. Where there is overlap between objectives, an FSP may provide a combination of approaches, including identifying the specific results or strategies in the FSP that also apply to more than one objective.

Example:

- *“results or strategies specified in Sections 4.1 and 6.4 of this FSP also apply to this objective”.*

Objectives that are only Partially Relevant to an FSP

Some land use objectives may only have partial application or relevance to an FSP or FDU. FPPR, Section 25.1(1) provides that results and strategies need only take into account the circumstances or conditions applicable to “that area or that part” that is subject to the FSP. This means that results and strategies need only be specified to the extent that an objective is relevant to the FDU area or part thereof. Due diligence on the part of FSP preparers would likely include contacting the various agencies to clarify the intent of the objective and they may want to include in their FSP supporting information regarding how the objective was interpreted in the context of the FSP result or strategy.

Objectives that Need Interpretation or Completion of other Plans to Develop a Result or Strategy

Some land use objectives have been successfully implemented under the FPC without significant interpretation. However, some of these objectives either need interpretation or completion of lower level plans, objectives or other actions to understand how they are to be effectively implemented under FRPA. In these cases, FSP preparers could work with relevant agency staff in order to arrive at workable and consistent interpretations of the objectives, and identify the need for any relevant guidance documents (such as proposed land use plans, pending GAR actions, or previously developed interpretation guidance) that would assist FSP preparers in developing results or strategies.

Additionally, in situations where objectives are not clear, and/or DDMs are aware of information (e.g. local studies, inventories, maps, plans, etc.) or interpretations that may influence their determinations, it is important that DDMs communicate this information at the earliest possible time. Ideally, FSP preparers will consider this information. However, FSP preparers are able to bring forward any relevant information (or factors) that they considered important in the development of their FSP. Some of this information may be the same information the DDM is using, and/or may include any other information the preparer considers relevant in the support of the FSP.

Objectives that are Considered to be Measurable and Verifiable

Some land use objectives are measurable or verifiable, and effectively function like a result or strategy. In these cases, FPPR, Section 25.1(2) provides that the FSP may simply restate the objective (as a result or strategy) and identify the situations or circumstances in which the result or strategy will be applied. These types of results and strategies are deemed to be consistent with the objectives set by government to the extent practicable.

Another approach to addressing these types of objectives is to clearly identify the objective inside the result or strategy itself. For example: “*Within FDU 1, the result or strategy with respect to (specify the objective and the HLP) is that timber harvesting will be conducted in accordance with the direction in Objective x in HLP order dated ___*”. It is important to tie a date or other relevant points of reference into the result or strategy in order to help understand what relevant objective applies currently and during FSP implementation. This is especially true where land use objectives are expected to be updated over time.

Objectives that are not Directed at Forest Operational Plans or are Not “Implementable”

Some higher level plans contain objectives that were not intended to direct forest operational planning or practices, but rather were intended to set over-arching social goals or expectations for the land base. Other HLP objectives were clearly direction to government agencies and regulators. It is important that these types of objectives not be ignored as they can easily be interpreted (or mis-interpreted) as applying to an FSP. Therefore, FSP preparers and DDMs should develop a common understanding of whether any of these types of objectives apply, and if they do not apply, how they might be addressed.

The most logical course of action for these types of objectives is to exempt the licensee from preparing a result or strategy in relation to any “non-implementable” objective. FPPR, Section 12(7) and Section 25(2) provide the basis for these types of exemptions.

FPPR, Section 25(2) provides the minister responsible for the *Land Act* (i.e. the Ministry of Agriculture and Lands via the Integrated Land Management Bureau) to authorize the exemption for land use objectives that were in effect on or before January 31, 2004 (i.e. grandparented HLPs). This exemption is subject to the minister determining that a material adverse impact (on delivered wood costs) and undue constraint on the agreement holder's rights together outweigh the public benefits that would be achieved by requiring the result or strategy to be consistent with the objective. It is expected that in order for this section to work, a licensee would have to provide the relevant information (on costs and constraints) and make an application to the minister. It appears that the underlying intent of this section is to provide an exemption for those more specific land use objectives that set a very high standard of achievement. Use of this section would require discussion with ILMB staff in order to determine what information would be required. A part of the discussion might well include why the flexibility provided to the FSP preparer under FPPR, Section 25.1(1) could not be used.

FPPR, Section 12(7) provides DDMs discretion to exempt FSP preparers from specifying results or strategies for objectives, including land use objectives. This section provides that where the DDM determines it is "not practicable" to specify a result or strategy given the circumstances or conditions applicable to a particular area, the DDM must exempt the person from the requirement to specify a result or strategy. Judicious consideration needs to be applied in the use of this section when exempting in relation to land use objectives and it is important to ensure that exemptions provided under this section are not more appropriately handled by the minister responsible for the *Land Act* under FPPR, Section 25(2). If use of this section is being contemplated, it might be helpful to have an inter-agency team identify and assess those land use objectives that may fit into this "not practicable" category. Criteria should be developed to ensure that it is not practicable to specify a result or strategy in relation to the objective on the basis of circumstances or conditions applicable to an area covered by the plan. Some of these "filtering" criteria may include determining that the land use objectives:

- are not directed at forest practices or forest operational plans;
- are no longer relevant;
- are not able to be reasonably interpreted or implemented; and
- are not feasible given a type of licence that applies the area (e.g. where a licence is limited to a specific area or timber profile).

This list is not exhaustive and any one of the above criteria might provide the DDM with an adequate basis for exempting results or strategies for the HLP objective under Section 12(7) using the "not practicable" provision. It should be noted that Section 12(7) exemptions are situation specific (i.e. no ability to provide blanket exemptions for all persons in all situations) and need to be granted based on the "circumstances or conditions" that apply to the particular area. Requests for exemptions using Section 12(7) with a rationale may be submitted to DDMs from FSP preparers, however, any exemption granted is at the discretion of the DDM.

It is also important to remember that where exemptions under Section 12(7) or Section 25(2) are granted, the land use objectives still exist and may need to be considered in cases of DDM “balancing objectives” or when undertaking new GAR actions. The exemption simply negates the requirement for an FSP preparer to specify a result or strategy. However, the same rationale used for exempting the person from the requirement to specify a result or strategy would also operate to diminish the weight of the HLP objectives in any balancing exercise. Where exemptions are granted, a rationale for granting the exemption should be maintained on file. It is preferable to have these exemptions in place prior to submitting the FSP for approval.

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Useful related information links:

Administrative Guide to Forest Stewardship Plans
<http://www.for.gov.bc.ca/hth/timten/AGFSP/index.htm>

FRPA Bulletins:
<http://www.for.gov.bc.ca/RCO/PFIT/Bulletins.htm>

Provincial FRPA Implementation Team:
<http://www.for.gov.bc.ca/rco/frpa/implementation/>