



## FRPA GENERAL BULLETIN

Number 7

October 25, 2006

### **Interpreting Section 196 of the *Forest and Range Practices Act* (FRPA) For Major Licensees and BC Timber Sales (BCTS)**

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.

#### ***Introduction:***

This bulletin provides guidance to BC Timber Sales (BCTS) staff and major licence holders with respect to the interpretation and application of Section 196 (1) and (2) of the *Forest and Range Practices Act* (FRPA) and its relationship to cut blocks and roads being transitioned from Forest Development Plans (FDP) to Forest Stewardship Plans (FSP)<sup>1</sup>.

#### **Applicable Legislation and Terminology**

##### **Legislation**

- Sections 7 (1), 8, 16, 19 (2), and 196 of the FRPA<sup>2</sup>.
- Sections 16, 17, 36.1 and 37 of the Operational and Site Planning Regulation (OSPR).
- Section 5 of the Forest Road Regulation (FRR).
- Sections 14 (4), 32.1, and 110 of the Forest Planning and Practices Regulation (FPPR)

##### **Terminology**

For the purposes of this bulletin, the terms “*Section 196 (1) cut blocks and roads*” and “*Section 196 (2) cut blocks and roads*” are referring to sections under the FRPA.

“*Declared areas*” are those parts of a FSP that is declared pursuant to Section 14 (4) of the Forest Planning and Practices Regulation (FPPR).

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<sup>1</sup> For strategic FSP planning considerations, refer to General Bulletin No. 2 (*Managing through Transition – FSP Opportunities*<sup>1</sup>) currently in circulation.

<sup>2</sup> Link to Section 196 of FRPA: <http://www.for.gov.bc.ca/tasb/legsregs/frpa/frpa/part11.htm#section196>

## ***Discussion:***

### **Section 196 (1) Cut Blocks and Roads**

Pursuant to Section 196 (1) of the FRPA, those parts of a forest development unit (FDU) in a FSP that contain approved cut blocks or roads from a previously approved FDP where the:

- approved cut blocks had assessments described Sections 16, 17, 36.1 and 37 of the OSPR completed<sup>3</sup> or
- roads had assessments under Section 5 of the FRR of the *Forest Practices Code of British Columbia Act* (the Code) completed<sup>3</sup>

are considered to have received the minister's approval under Section 16 (1) of the FRPA. The approval of Section 196 (1) cut blocks and roads is automatic (through the legislation) with the approval of the overall FSP containing them. There is no DDM determination for the Section 196 (1) cut blocks and roads.

Section 110 of the FPPR extends this deemed approval status further to include cut blocks identified in a FDP for which site plans have been prepared in accordance with Section 21.1 of the Code and meet the assessment requirements described in Section 36.1 of the OSPR.

Section 196 (1) cut blocks and roads do not have to be in a FDP that is in effect in order to be brought into a FSP; rather, they can be brought into an FSP at any time.

### **Section 196 (2) Cut Blocks and Roads**

Pursuant to Section 196 (2) of the FRPA, if a FDP is still in effect at the time of the FSP submission, approved cut blocks and roads for which the assessments described Sections 16, 17, 36.1 and 37 of the OSPR or Section 5 of the FRR of the Code have not been completed are also considered to have received the minister's approval under Section 16 (1) of the FRPA. The approval of Section 196 (2) cut blocks and roads is automatic (through the legislation) with the approval of the overall FSP containing them. There is no DDM determination for the Section 196 (2) cut blocks or roads.

The only exception to this automatic approval occurs when the minister prior to the approval of the overall FSP finds that the Section 196 (2) cut blocks and roads are inconsistent with the specified criteria in Section 196 (2)(a). Section 196 (3) establishes time limits relating to the application of the Section 196 (2) specified criteria.

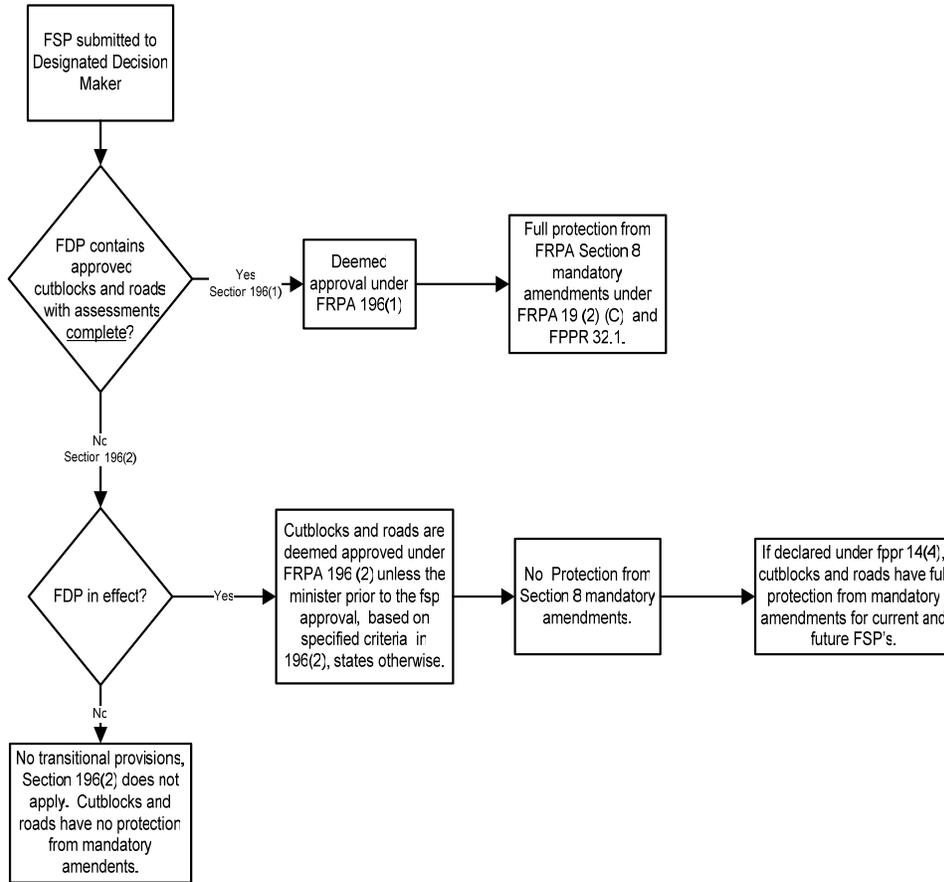
Unlike Section 196 (1) cut blocks and roads, if the FDP has expired at the time of the FSP submission, the transitional measures afforded under Section 196 (2) cannot be applied.

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<sup>3</sup> Merriam-Webster's Collegiate Dictionary (11<sup>th</sup> Ed.) defines "completed" as: 1) to bring to an end and into a perfected state; and 2) to carry out successfully.

Figure 1 further describes the processes described in this bulletin.

**Figure 1:** Process used for Section 196 cut blocks and roads to receive full protection from the FRPA, Section 8 mandatory amendments.



## Interpretations

It is not necessary for a cut block or road to be protected from mandatory amendments in order to obtain a cutting permit, road permit or issue a timber sale licence (TSL) under the *Forest Act*. The protection afforded under Section 19 (2) of the FRPA simply protects the specified portions of a FSP; in this case, Section 196 (1) cut blocks and roads, from potential mandatory amendments that may arise prior to cutting authority issuance.

Section 196 (1) cut blocks and roads have the same protection from the FRPA, Section 8 mandatory amendments as declared areas. As with declared areas, Section 196 (1) cut blocks and roads continue have this protected status through the FRPA, Section 7 (1)(b) and the FPPR, Section 23 when FSPs are subsequently amended or replaced.

Section 196 (2) cut blocks and roads do not receive full protection from mandatory amendments under Section 8 of the FRPA. In order to receive full protection from mandatory amendments, the FRPA, Section 196 (2) cut blocks and roads or new cut blocks and roads to a FSP must be declared using Section 14 (4) of the FPPR. Once declared, Section 19 (2) of the FRPA and Section 32.1 of the FPPR provides full protection from mandatory amendments.

Once brought into a FSP, the approval of Section 196 cut blocks and roads are automatic. There is no determination for the portion of the plan containing Section 196 cut blocks and roads as they are deemed to have received the minister's approval (i.e. those portions of the plan are deemed to be approved). The only exception to this automatic approval is noted in the discussion under Section 196 (2) cut blocks and roads. The Transition FSP "Approval Test" section of *General Bulletin #2* contains greater detail regarding the process for handling Section 196 cut block and road FSP submissions.

There is no requirement to create separate FDUs for each Section 196 cut block and road. Section 196 cut blocks and roads may be contained within a larger FDU or may be a unique forest development unit by themselves. When contained within a larger FDU, unless other parts of the FDU have been declared, it is only the area occupied by the Section 196 cut blocks and roads that are protected from mandatory amendments. It is only the portion of the FDU not containing Section 196 cut blocks and roads that is subject to determination by the minister.

Where there is a time gap between when a FDP expires and is subsequently replaced by a FSP, major licence holders are prevented from obtaining cutting authority and timber sales managers may not invite applications for a TSL, grant a road permit in respect of a TSL, or construct a forest road. *General Bulletin #2* speaks to an interim strategy to manage this situation through the creation of a *Transition FSP* that includes Section 196 cut blocks and roads. Major licensees and timber sales managers choosing to avail themselves of this option should note that:

- if the transition FSP is limited to Section 196 (1) cut blocks and roads, then the transition FSP can be put in place before or after their FDP expires;
- if the transition FSP contains Section 196 (1) and (2) cut blocks and roads or just Section 196 (2) cut blocks and roads, then it must be put in place prior to their FDP expiring.

There are situations where Section 196 (1) cut blocks and roads may expand beyond the “footprint” of the cut block or road such that portions now fall outside the original area coming over from the FDP. In this circumstance, the original area would retain its protected status; however, the newly added area falling outside the protected footprint would be subject to FRPA requirements. If the increased area outside the footprint was within an approved FDU, it would have to be declared under the Section 14 (4) of the FPPR to receive full protection from mandatory amendments. If the increased area outside the footprint was outside of an approved FDU, then the FDU would have to be amended to include it and then the increased area declared under the Section 14 (4) of the FPPR in order to achieve full protection.

If it is discovered after the approval of an FSP that the required assessments for Section 196 (1) cut blocks or roads have not been completed, the plan holder may amend their FSP to remove the Section 196 (1) cut blocks and roads to correct the error. Depending on the circumstances, appropriate enforcement action may also be taken.

**Comment [BB1]:** This is the wording that I arrived at after discussing with Mike Pankhurst.

Prior to inviting applications for a TSL or issuing a cutting permit or road permit, the timber sales manager or major licence holder may become aware of information or circumstances associated with a Section 196 (1) cut block or road which indicates the need for new or updated assessments. Within the original Section 196 (1) cut block or road area, the act of updating the assessment would not change the protected status of the cut block or road. Once a Section 196 (1) cut block or road is deemed approved, because of the application of the FRPA, Section 19 (2) and the FPPR, Section 32.1, even in this circumstance, the protected status does not change.

## **Case Studies**

Note that unless otherwise stated, the following case studies apply equally to major licences and BCTS business areas.

### **Example 1:**

A BCTS Business Area allows their FDP to expire on December 31, 2006. The business area has not yet submitted a replacement FSP for review and approval but anticipates doing so by February 15, 2007.

### **Analysis**

The business area is unable to invite applications for any new TSLs, issue related road permits, or undertake any new road construction until a replacement FSP is in place. In the event that the business area had any cut blocks or roads that met the Section 196 (1) FRPA tests at the time the FDP expired, the business area could prepare a *Transition FSP* to enable business continuity until the larger FSP was in effect. It is important to note, however, that because the FDP has expired, any Category A cut blocks in the expired FDP that did not have all their assessments complete, do not meet the criterion of Section 196 (2) and could not be included under the transition FSP. Any cut blocks meeting the Section 196(1) criterion may be brought into the FSP at any time.

### **Example 2:**

In September 2006, a BCTS business area has submitted a replacement FSP for their FDP which is scheduled to expire on December 31, 2006. Substantial amounts of planning have been done on 12 cut blocks and related roads. The business area would like to protect them if at all possible. Of the 12, 7 cut blocks are Category A on the FDP and have assessments completed for them as required under Section 196 (1) (i.e. Sections 16, 17, 36.1 and 37 of the OSPR). Of the remaining 5 cut blocks, 4 are Category A cut blocks and have terrain stability or visual impact assessments outstanding and the remaining cut block is a Category I cut block.

### **Analysis**

With the exception of the one Category I cut block, all of the cut blocks will be deemed approved with the approval of the overall FSP. The Category I cut block does not have any protected status in the FSP. The deemed approval for the Section 196 (2) cut blocks will only change if the minister, prior to the approval of the overall FSP, finds that they are inconsistent with the specified criteria in Section 196 (2)(a). The Section 196 (1) cut blocks will have full protection from mandatory amendments for the term of the FSP, while the Section 196 (2) cut blocks will only have full protection if they are subsequently declared.

### **Example 3**

A major licence holder submits an FSP in October 2006 to replace their existing FDP which expires on December 31, 2006. The FDP that is being replaced contains 4 Category A cut blocks for which assessments have not been completed. Five months prior to the submission of the FSP, the 4 Category A cut blocks from the FDP were catastrophically impacted by a major windthrow.

#### **Analysis**

The catastrophic windthrow event occurred within the timeframe specified in Section 196 (3). In this circumstance, if the minister decides that the windthrow damage is severe enough such that the forest development unit containing these four cut blocks is inconsistent with the event, then prior to approval of the overall FSP submission, the minister may specify in writing that the cut blocks are not approved. This over-rides the automatic approval provision of the FRPA, Section 196 (2).

### **Example 4**

A major licence holder has a road permit approved in the FDP era containing an un-built section of road for which all the assessments have been completed. The section of road is deemed [under FRPA, Section 196 (1)] approved when it is rolled into an FSP). Subsequent to the deemed approval, tension cracks start to show on the area. Construction of the road is not planned for a couple of years. The major licence holder completes a second set of terrain assessments which changes the design but leaves the location as it was in the original FDP.

#### **Analysis**

The revised terrain assessment results do not change the protected status of the Section 196 (1) road. If the revised assessments had changed the location of the road such that it was now in a completely different location than what was deemed approved, then the new location would have to be declared to retain its protected status.

### **Example 5**

A major licence holder submits an FSP for approval on November 30, 2006 with a variety of Section 196 (1) and (2) cut blocks and roads. Their existing FDP is still in effect on November 30, 2006. During the FSP review process, the FDP expires on December 31, 2006. The FSP is subsequently approved on January 30, 2007.

## **Analysis**

Because the FSP was submitted while the FDP is in effect, when the FSP is approved, both the Section 196 (1) and (2) cut blocks and roads are deemed approved when the overall FSP is approved. The only exception would be where prior to the overall FSP approval, the minister did not accept the Section 196 (2) cut blocks and roads based on the specified criteria in Section 196 (2)(a). In the period between December 31, 2006 and January 30, 2007, the licensee may continue to operate under existing approved cutting permits and roads permits, but, there is no ability to amend the existing permits or apply for new ones. If the major licence holder had waited until January 1, 2007 to submit their FSP, then the Section 196 (2) cut blocks would not have met the criteria of Section 196 (2) and as such, could not have been approved with the overall FSP approval.

## **Contacts for More Information**

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