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SEP 23 2008

VIA EMAIL

To: Regional Executive Directors
District Managers
Branch Directors

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

Re: **FRPA General Bulletin (Number 16) – Application of FRPA to Independent Power Producers, Mineral Interests and Other Occupiers of the Land**



A new *Forest and Range Practices Act*, General Bulletin (Number 16) “Application of FRPA to Independent Power Producers, Mineral Interests and Other Occupiers of the Land” has just been completed. This bulletin clarifies how FRPA applies to any occupier of the land who requires an occupant licence to cut (OLTC) to harvest timber on Crown land. The bulletin also provides recommendations to staff on how they should respond to referrals from other agencies, where an OLTC will be required.

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 Brian Westgate, Senior Timber Tenures Forester, Resource Tenures and Engineering Branch at (250) 387-8620, or by email at brian.westgate@gov.bc.ca.

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

Attachment: 1

**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
Gary Townsend, Assistant Deputy Minister, Regional Client Services Division, ILMB
Jim Langridge Director, Resource Tenures and Engineering Branch (RTEB)
Norman Marcy, Director, Land Use Coordination, Ministry of Energy Mines & Petroleum
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Brian Westgate, Senior Timber Tenures Forester, RTEB
Charlie Western, Provincial FRPA Implementation Team Chair, Operations Division
Rob Bowden, Policy Forester, BC Timber Sales
Provincial FRPA Implementation Team**



FRPA GENERAL BULLETIN

Number 16

September 9, 2008

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 Licence 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.

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 IPPs under the *Land Act*. Prior to harvesting trees on Crown land in these areas, an OLTC may be required and this is obtained from the Ministry of Forests and Range (MFR).

An OLTC, a type of Licence to Cut, is a *Forest Act* 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 OLTC 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 OLTC to a person occupying land under a tenure granted by another ministry?

The *Forest Act*, Section 47.4 (2) provides the regional or district manager discretion by stating that they may enter into an OLTC. 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 authorised 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 or to conduct mechanical disturbance activities 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 OLTC allows an opportunity for the MFR 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 OLTC have to follow FRPA?

An OLTC, a form of Licence to Cut, is an 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 OLTC are not required to prepare Forest Stewardship Plans as specified in FRPA (3) (1) as they are not considered major licences as defined by the *Forest Act*. Therefore, unless exempted, they must follow the applicable practice requirements specified in Part 4 of the 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: OLTC's are defined as minor tenures, and minor tenure holders only have to follow select practice requirements). FRPA allows for the regional or district manager to provide exemptions from FRPA as per Section 91. Under this section, the decision maker has the ability to exempt the holder from practice requirements during timber harvesting or road construction under the licence.

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 turbines may present an obstacle for migrating birds and bats. 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?

IPPs 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. MFR staff should also share this information with other ministries such as Integrated Land Management Bureau (ILMB) when reviewing proposals so that that ministry may inform the proponent of the requirements of this forestry legislation as well. 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

RECOMMENDATIONS:

The issuance of OLTC for persons occupying land is often done at the end of an often long process of investigation and consultation by both the proponent and by agencies such as the ILMB, MAL, Front Counter B.C., Ministry of Environment, and Ministry of Energy 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. 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 the requirements of FRPA.

CONTACTS:

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

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