



General Bulletin

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Amendments to Range Use Plans

Introduction

Nothing in this bulletin should be taken as a direction to Statutory Decision Makers (SDMs)¹.

The *Forest Practices Code of British Columbia Act* (FPC) authorizes holders of range use plans (RUPs) to propose amendments to those plans under FPC34. Also, under FPC35, the holder of a RUP must submit an amendment or new plan if the current plan is unlikely to succeed.

The district manager (DM) can require an amendment to a RUP or a new plan if they determine that special circumstances (FPC35 (3)) warrant the change or if the plan is found to be inconsistent with new information such as new objectives, strategies or measures (OPR54.1).

Depending on the nature of the amendment, the proponent should request the DM to approve the amendment under one of the following sections of the FPC:

- FPC40 Authorizes SDMs to give effect to RUPs and amendments prepared by the DM.
- FPC41 (1) Authorizes SDMs to approve RUPs and amendments prepared by range agreement holders.
- FPC43 Authorizes SDMs to approve or give effect to RUP amendments without a 30 or 60 day review and comment period. If the amendment does not materially change the objectives or results of the plan, then it is a minor amendment that can be submitted and approved without providing for review and comment.
- FPC44 Authorizes SDMs to approve RUP amendments without a 30 or 60 day review period for an area that is subject to temporary grazing permit or temporary hay cutting permit, if they determine that the amendment meets the requirements of the Act, regulations and standards, and will adequately manage and conserve the forest resources of the area to which it applies.

When are amendments needed?

The FPC does not allow for any changes to be made to an approved RUP unless it is via a formal amendment. Possible exceptions to this would be the correction of obvious spelling, mathematical or grammatical errors.

¹ The term "SDM" means the District Manager or their delegates as designated.

Proposed amendments

The plan proponent or the DM can propose amendments. While the proponent will request approval under FPC40, FPC41 (1) or FPC43, it is the SDM that will decide under which section it will be approved or given effect. This decision is expedited if the proponent includes a rationale for the “category” of amendment for consideration by the SDM. For example, the proponent should determine if the 3 tests under FPC43 could be met. If the tests, in the proponent’s opinion, can be met, the reasoning should be included in a rationale with the request for the amendment. If the tests cannot be met, the amendment should be proposed as a major amendment. This is a key decision because minor amendments have an expedited approval process compared to major amendments.

Approving a minor amendment

The first two tests in FPC43 are similar to those for approving the RUP under FPC41. The last test states “the amendment does not materially change the objectives or results of the plan.” For this test, it is recommended that the SDM carry out the following 3 steps:

- (1) Determine the anticipated results of the current plan for the portion of the RUP being amended. The SDM should consider the strategies expressly required in OPR52.2 and 52.3.
- (2) Determine what the anticipated results of the amendment are.
- (3) Determine or define what constitutes a “material change” (see below).

After this is done, the SDM can then determine if there is, or is not, a material change to the objectives or results of the RUP as a whole. If there is a material change, the amendment cannot be approved under FPC43 and will need to be advertised.

Defining “materially change”

“Material” is defined in the dictionary as substantial or important. Something is material if it would cause a reasonable person to change his or her decision.

Making a decision regarding “materially change”

In order to determine if a change to an RUP materially changes the results or objectives of the RUP, there are a number of factors related to the RUP approval process that may be considered, including, but not limited to, the following:

- Have there been or is there likely to be any contentious issues related to this plan as a result of the proposed amendment?
- Would the proposed amendment affect another resource user?
- Would the proposed amendment give the public a different opinion about the portion of the RUP being changed?
- Were any comments made about the amendment area during the review and comment period?
- Are any of the strategies in OPR52.2 or 52.3 proposed to be changed? These changes might usually be considered significant.

- Does this area in question contain any significant resources not related to livestock grazing or haycutting?
- Is there a precedent? Has a decision comparable to this already been made by the SDM (while not legally bound by previous SDM decisions consistency in decision making has obvious benefits)?

In addition, DM guidance can be produced that gives examples of what constitutes a minor amendment. Each determination is still made on its own merits but RUP holders are given a better idea of the likelihood of approval of specific amendments.

Reducing the need for unnecessary major amendments

Major amendments require more time to administer than minor amendments, however, it is important that they be used when a material change is proposed to the objectives or results of a RUP. It is also equally important to not use limited resources on an FPC40 or 41 amendment when an FPC43 minor amendment is all that is required.

At the beginning of the RUP process, it is recommended that the SDM advise proponents about the types of changes that would, in their opinion, usually constitute a major versus a minor amendment. To avoid fettering the DM should make it clear that they are keeping an open mind until the actual decision is made and the actual circumstances are known, but that as a general rule, these are the types of changes that constitute a major versus minor amendment.

The SDM could also explain how the agreement holder could prepare the RUP in order to increase the probability that changes to the plan may be considered minor amendments. The SDM should consider issuing district policy with the same message in order that all district agreement holders/staff are well informed. This information will assist proponents in preparing a flexible RUP that can address changing circumstances without the need to propose a major amendment.

For example, the RUP could include the location of a planned fence or water development and one or more alternate locations to allow the public and resource agencies to review and provide comments. Then, during the course of operations, if the development has to be constructed in a different location (but one included in the RUP), it may be more likely the SDM would view this as a minor amendment. In taking this approach, it is very important that all viewers of the proposed RUP understand clearly which location is proposed and which locations are only to be considered alternates.

Approval of minor amendments under FPC43 is discretionary

Despite an amendment being proposed as minor, the decision to approve it as a minor amendment is at the discretion of the SDM. However, the SDM must approve all proposed major amendments if they meet the requirements of FPC40 or 41. If the DM receives a major amendment but feels it could be approved as a minor amendment they should contact the proponent and ask that it be proposed as such.

Delegation

The DM may delegate their functions relating to RUP amendments.

Contacts

For further information on amendments to RUPs, please contact the following people.

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