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*Forest Land Reserve Act*

**PRIVATE LAND FOREST PRACTICES REGULATION**

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### Part 1 — Definitions and Interpretation

#### Definitions

1 (1) In this regulation:

**"Act"** means the *Forest Land Reserve Act*;

**"Coast"** means that geographic area of British Columbia that is contained in

(a) the Vancouver forest region, and

(b) those portions of the Prince Rupert forest region contained in the North Coast forest district and the Kalum forest district;

**"community watershed"** means a community watershed as defined in section 41 (8) of the *Forest Practices Code of British Columbia Act*;

**"crop tree"** means a tree that

(a) is of a commercial species that is consistent with the species of trees specified in the management commitment for use in reforestation, and

(b) is unencumbered by pathogens;

**"designated environment official"** means a person employed in the Ministry of Environment, Lands and Parks who is designated by name or title to be a designated environment official by the minister of that ministry for the purpose of a provision of the Act or this regulation that is set out in the designation;

**"domestic purpose"** has the same meaning as under the *Water Act*;

**"ecoregion"** means a geographical area of British Columbia set out in the Ministry of Environment, Lands and Parks 1996 publication "An Introduction to the Ecoregions of British Columbia";

**"excavated or bladed trail"** means a constructed trail that has

(a) an excavated or bladed width greater than 1.5 m, and

(b) a mineral soil cutbank height greater than 30 cm;

**"fish stream"** means a stream that

(a) is frequented by one or more of the following species of fish:

(i) anadromous salmonids;

(ii) rainbow trout, cutthroat trout, brown trout, bull trout, Dolly Varden char, lake trout, brook trout, kokanee, largemouth bass, smallmouth bass, mountain whitefish, lake whitefish, arctic grayling, burbot, white sturgeon, black crappie, yellow perch, walleye or northern pike;

(iii) identified threatened or endangered fish as classified under section 63, or

(b) has an average slope gradient of less than 20% for each 100 m, unless a fish inventory, carried out in

accordance with methods acceptable to a designated environment official, shows that it is not frequented by any species of fish referred to in paragraph (a),

but does not include any portion of the stream that is located upstream of a proven barrier to fish, if there is no fish habitat beyond that barrier;

**"identified wildlife"** means a species classified as identified wildlife under section 70 of the Operational Planning Regulation, BC Reg 107/98, but does not include a species that is classified as identified wildlife because it is a regionally important species as described in the definition of "species at risk" contained in section 1 of that regulation;

**"Interior"** means that geographic area of British Columbia that is not the Coast;

**"licensed water supply intake"** means a water intake that

(a) is within

(i) a water supply area, or

(ii) a community watershed contiguous to a water supply area,

(b) is to provide water for human consumption, and

(c) is licensed under the *Water Act* for

(i) a waterworks purpose, or

(ii) a domestic purpose, if the licence is held by or is subject to the control of a water users' community incorporated under the *Water Act*;

**"medical health officer"** has the same meaning as under the *Health Act*;

**"restock"** means to establish a stand of trees that contains at least

(a) 400 crop trees per hectare if the stand is on the Coast, and

(b) 600 crop trees per hectare if the stand is in the Interior;

**"road construction"** includes significant structural modification of a road;

**"stream"** means a watercourse flowing perennially or seasonally in a continuous channel or bed that may be locally obscured by overhanging or bridging vegetation or soil mats, and that

(a) has been scoured by water, or

(b) contains any mineral alluvium;

**"stream channel"** means the area between the outermost opposing streambanks measured at the point where rooted terrestrial vegetation begins;

**"successfully regenerated stand"** means a stand of trees

(a) that contains at least

(i) 400 crop trees per hectare if the stand is on the Coast, and

(ii) 600 crop trees per hectare if the stand is in the Interior, and

(b) where the crop trees exceed the height of competing vegetation within 1 m of the crop tree by

(i) 50% if the area is on the Coast, and

(ii) 25% if the area is in the Interior;

**"waterworks purpose"** has the same meaning as under the *Water Act*;

**"water supply area"** means that portion of a community watershed that is on identified land;

**"water users' community"** has the same meaning as under the *Water Act*.

(2) For the purposes of section 1 (1) of the Act, **"critical wildlife habitat"** means critical wildlife habitat established under section 20.

## Interpretation

**2** (1) Nothing in this regulation authorizes an owner of identified land to make changes in and about a stream as defined in the *Water Act*.

(2) Except with respect to timber production, utilization and related purposes, nothing in this regulation limits a use of forest reserve land that is permitted under the Act and regulations.

(3) If there is a conflict between this regulation and the *Workers Compensation Act* or a regulation made under that Act, the *Workers Compensation Act* or the regulation made under that Act prevails.

(4) Distances referred to in this regulation are horizontal distances except for the following references, which are slope distances:

(a) section 1 (1) in the definition of "fish stream", and

(b) sections 11 (1), (2) and (4), 12 (1) and 13 (1) and (2).

(5) Widths of streams are determined as the average distance across the stream measured at right angles to stream flow.

(6) Diameters of trees are measured at a height of 1.3 m above the ground.

(7) Nothing in this regulation restricts a person from carrying out fire suppression activities in accordance with the requirements of the *Forest Practices Code of British Columbia Act* and the regulations under that Act.

## Powers of chief officer, commission and designated environment official

**3** (1) If, under this regulation, the chief officer, commission or designated environment official is empowered to establish an authorization, condition or requirement, the chief officer, commission or designated environment official, as the case may be, is also empowered to establish the manner and timing for carrying out the authorization, condition or requirement.

(2) If the chief officer, commission or designated environment official exempts an owner of identified land from a requirement of this regulation, the chief officer, commission or designated environment official, as the case may be, may make the exemption subject to conditions.

(3) An owner of identified land must ensure that the requirements of this regulation are carried out in a manner consistent with any authorizations, conditions or requirements specified by the chief officer, commission or designated environment official under this regulation.

## Application

**4** This regulation applies to identified land.

## **Part 2 — Management Requirements on Identified Land**

### **Division 1 — Soil Conservation**

#### **Limits on areas that may be occupied by unrehabilitated roads and landings**

**5** (1) An owner of identified land must, for each calendar year, ensure that the area that is occupied by roads and landings that

- (a) are located within cutblocks where timber was harvested during that calendar year,
- (b) were constructed to facilitate the harvesting of the timber from the cutblocks, and
- (c) have not been rehabilitated

does not exceed 7% of the total area harvested within the cutblocks during that calendar year.

(2) For the purposes of subsection (1), the total area harvested is the aggregate of the contiguous areas harvested within all of the cutblocks in

- (a) the land registry parcels identified in the owner's management commitment, or
- (b) a land registry parcel for any identified land that is not managed forest land.

(3) The requirements of subsection (1) do not apply if the total area harvested is less than 5 hectares.

(4) Despite subsection (1), an owner may exceed the area that may be occupied by roads and landings under that subsection if

- (a) during the same calendar year as the timber harvesting, the owner rehabilitated areas occupied by pre-existing roads and landings located within
  - (i) the land registry parcels identified in the owner's management commitment, or
  - (ii) that land registry parcel for identified land that is not managed forest land, and
- (b) the area occupied by roads and landings rehabilitated under paragraph (a) is at least as large as the area by which the owner has exceeded the requirements of subsection (1).

#### **Soil conservation requirements for timber harvesting access structures**

**6** (1) An owner of identified land who carries out timber harvesting activities must ensure that roads, landings and excavated or bladed trails are constructed and maintained or deactivated in a manner that minimizes

- (a) soil erosion, and
- (b) any increase in landslide hazards.

(2) Without limiting subsection (1), the owner who carries out timber harvesting activities must ensure that

- (a) cutslopes and fillslopes remain stable and are not subject to significant slumping or raveling, and
- (b) reasonable measures are taken to mitigate the impacts on soil productivity where soil compaction, soil erosion, landslides or significant slumping or raveling occur.

(3) The owner of identified land who carries out timber harvesting activities must ensure that excavated or bladed trails used to facilitate harvesting timber are rehabilitated to the extent necessary to ensure that any reforestation requirements for the cutblock where the excavated or bladed trails are located are achieved.

(4) This section does not apply to land that is within 10 m of the high water mark of a reservoir used for generating hydroelectric power.

## **Division 2 — General Requirements around Streams and Fish Habitat**

### **Division does not apply to reservoirs**

7 This Division does not apply to land that is within 30 m of the high water mark of a reservoir used for generating hydroelectric power.

### **Practices concerning access structures near streams**

8 (1) An owner of identified land who constructs any of the following on the identified land must implement measures to ensure that the construction does not result in soils entering streams:

- (a) borrow pits;
- (b) quarries;
- (c) waste areas;
- (d) end haul disposal sites.

(2) Subject to the *Water Act*, an owner of identified land who constructs, deactivates or rehabilitates a road, landing, excavated or bladed trail or other similar access structure on the identified land must ensure that the construction, deactivation or rehabilitation is carried out so as to meet all the following requirements:

- (a) streams are maintained in their natural or existing courses;
- (b) soil erosion into streams is minimized;
- (c) the structure does not become unstable to the extent that its instability contributes to landslide debris entering fish streams or streams in water supply areas;
- (d) excavated soil does not enter directly into streams.

(3) Subject to the *Water Act*, an owner of identified land who constructs a road, landing, excavated or bladed trail or other similar access structure on the identified land, or who uses any portion of a road referred to in subsection (4), must maintain it so that it meets the requirements of subsection (2) until it is deactivated or rehabilitated.

(4) During the period of time that an owner of identified land

- (a) uses for timber harvesting purposes on identified land a portion of a road that was constructed under another enactment, and
- (b) is the primary user of that portion of the road,

the owner must maintain that portion of the road in accordance with subsection (2).

### **Constraints on activities near streams and other fish habitat**

**9** (1) An owner of identified land who carries out, adjacent to a stream, timber harvesting or related activities, silviculture activities, or road construction or deactivation activities, must ensure that those activities meet all the following requirements:

- (a) stream channels, banks and gully side walls are not destabilized or damaged;
- (b) soil erosion into streams is minimized;
- (c) machine tracks within 5 m of the edge of the stream channel do not result in mineral soil exposure that leads to sedimentation, except at a stream crossing;
- (d) understory vegetation and non-commercial trees within 5 m of the edge of the stream channel are retained to the fullest extent possible except at a stream crossing or planned fire;
- (e) accumulations of woody debris or slash in the stream channels do not result in
  - (i) harm to fish or fish habitat, or
  - (ii) damage to water supply installations.

(2) An owner of identified land who carries out timber harvesting or silviculture activities on an area must ensure that accumulations of woody debris on the site, or physical disturbance to the site, do not result in damage to

- (a) a pond,
- (b) a swamp, or
- (c) a seasonally flooded depression

that is seasonally or permanently occupied by one or more of the species of fish referred to in the definition of "fish stream" in section 1.

### **Division 3 — Specific Requirements for Fish Streams and Water Supply Areas**

#### **Application**

**10** (1) Unless otherwise specified, the requirements of sections 11 to 16 apply to a stream only if the stream is

- (a) a fish stream, or
- (b) in a water supply area.

(2) This Division does not apply to land that is within 30 m of the high water mark of a reservoir used for generating hydroelectric power.

#### **Retention of trees adjacent to large streams**

**11** (1) If an owner of identified land carries out timber harvesting activities in a cutblock adjacent to a stream whose stream channel is at least 3.0 m wide, the owner must, on each side of every 200 m of that stream that is adjacent to the cutblock, retain at least 40 trees that are selected in accordance with subsections (2) and (4).

(2) For the purposes of subsection (1), the owner must select trees sequentially in accordance with the criteria set out in paragraphs (a) to (f), until a total of at least 40 trees have been selected:

- (a) all trees that are
  - (i) within 10 m from the edge of the stream channel,



- (ii) 30 cm or more in diameter,
  - (iii) necessary to maintain the same proportion of coniferous to deciduous trees as in the pre-harvest stand, and
  - (iv) necessary to maintain the same range of sizes, for both coniferous and deciduous trees, as in the pre-harvest stand;
- (b) all trees that are
  - (i) within 10 m from the edge of the stream channel,
  - (ii) 20 cm or more in diameter, and
  - (iii) necessary to maintain the same proportion of coniferous to deciduous trees as in the pre-harvest stand;
- (c) all trees that are
  - (i) within 20 m from the edge of the stream channel,
  - (ii) 30 cm or more in diameter,
  - (iii) necessary to maintain the same proportion of coniferous to deciduous trees as in the pre-harvest stand, and
  - (iv) necessary to maintain the same range of sizes, for both coniferous and deciduous trees, as in the pre-harvest stand;
- (d) all trees that are
  - (i) within 20 m from the edge of the stream channel,
  - (ii) 20 cm or more in diameter, and
  - (iii) necessary to maintain the same proportion of coniferous to deciduous trees as in the pre-harvest stand;
- (e) all trees that are
  - (i) within 30 m from the edge of the stream channel,
  - (ii) 30 cm or more in diameter,
  - (iii) necessary to maintain the same proportion of coniferous to deciduous trees as in the pre-harvest stand, and
  - (iv) necessary to maintain the same range of sizes, for both coniferous and deciduous trees, as in the pre-harvest stand;
- (f) all trees that are
  - (i) within 30 m from the edge of the stream channel,
  - (ii) 20 cm or more in diameter, and
  - (iii) necessary to maintain the same proportion of coniferous to deciduous trees as in the pre-harvest stand.

(3) Despite subsection (1), if fewer than 40 trees meet any of the criteria set out in subsection (2) (a) to (f), the owner of identified land is only required to retain those trees within that area that meet the criteria.

(4) The trees selected under subsection (1) must be distributed as evenly as possible along all of the 200 m length of the stream

(a) unless

(i) the area on the opposite side of that 200 m portion of the stream meets the tree retention requirements of subsection (1), and

(ii) the tree species present on the area to be harvested are not suitable for partial cutting silvicultural systems, or

(b) unless otherwise authorized by a designated environment official who is of the opinion that clearings or groups of trees adjacent to the edge of the stream channel

(i) enhance wildlife values, or

(ii) are consistent with the forest management objectives specified in Schedule A.

(5) A designated environment official may relieve the owner from some or all of the requirements of subsection (1) or (3) if

(a) the owner agrees to place coniferous logs or other material satisfactory to the designated environment official in the stream channel in a manner acceptable to the designated environment official, or

(b) the designated environment official is of the opinion that the modified tree retention is consistent with the forest management objectives specified in Schedule A.

(6) An owner of identified land may remove a tree that is otherwise required to be retained under subsections (1) to (4), if

(a) the tree falls by natural causes outside of the stream channel, or

(b) authorized by a designated environment official.

(7) A designated environment official may authorize an owner under subsection (6) (b) only if

(a) the owner has agreed to conduct in-stream operations to place coniferous logs or other suitable structural material in the stream channel in accordance with any requirements specified by the designated environment official, or

(b) the designated environment official is of the opinion that the modified tree retention is consistent with the forest management objectives specified in Schedule A.

(8) This section does not apply to any plantation of hybrid poplar or cottonwood located on the islands and banks of the Fraser River, downstream of the municipality of Hope.

#### **Retention of trees adjacent to small streams**

**12** (1) If an owner of identified land carries out timber harvesting activities in a cutblock adjacent to a stream whose stream channel is more than 1.5 m but less than 3.0 m wide, the owner must, on each side of every 200 m of that stream that is adjacent to the cutblock, retain at least 20 trees that

(a) are within 10 m of the edge of the stream channel,

(b) are 20 cm or more in diameter, and

(c) maintain

(i) the same proportion of coniferous to deciduous trees as in the pre-harvest stand, and

(ii) the same range of sizes, for both coniferous and deciduous trees, as in the pre-harvest stand, if the gradient of the stream is 8% or less.

(2) Despite subsection (1), if fewer than 20 trees meet the criteria set out in that subsection, the owner of identified land is only required to retain those trees within that area that meet the criteria in that subsection.

(3) A designated environment official may relieve the owner of some or all of the requirements of subsection (1) or (2), if

(a) the owner agrees to place coniferous logs, or other material agreed to by the designated environment official, in the stream channel, in a manner acceptable to the designated environment official, or

(b) the designated environment official is of the opinion that the modified tree retention is consistent with the forest management objectives specified in Schedule A.

(4) If the stream referred to in subsection (1) has a stream gradient of more than 8%, the owner must not harvest a tree selected to be retained under subsection (1) or (2) unless the owner selects and retains in its place another tree that is 20 cm or greater in diameter.

(5) If the stream referred to in subsection (1) has a stream gradient of 8% or less, the owner must not harvest a tree selected to be retained under subsection (1) or (2) unless the tree falls by natural causes outside of the stream channel.

(6) A designated environment official may authorize the owner to select and retain trees other than as specified under subsections (4) and (5), if the designated environment official is of the opinion that the retention of trees is consistent with the forest management objectives specified in Schedule A.

### Location of roads and access structures

**13** (1) An owner of identified land must not construct, except at a stream crossing, any portion of a road bed of a road with a running surface wider than 5.5 m within 30 m from the edge of a stream channel, if the stream is

(a) a fish stream, or

(b) a stream that is in a water supply area and has a stream channel width of at least 1.5 m.

(2) A designated environment official may authorize an owner to locate a road within 30 m of the edge of a stream channel referred to in subsection (1), if the designated environment official is of the opinion that

(a) there is no other practicable alternative, or

(b) locating the road more than 30 m from the edge of a stream channel would increase the hazard of sediment entering the stream.

(3) The owner of identified land must not construct roads, other than those required to provide access to a licensed water supply intake, within a 100 m radius upslope of the intake, without the agreement of

(a) a designated environment official, or

(b) the holder of the licence for that licensed water supply intake.

(4) A designated environment official may agree to the construction of a road within a 100 m radius upslope of the intake if

(a) there is no other practicable alternative, or

- (b) locating the road there will not result in a significant reduction in water quality.

#### **Yarding activities near streams**

**14** The owner of identified land who yards timber across a stream that, at the time and at the location the yarding is carried out, is

- (a) a fish stream, or
- (b) a stream that is in a water supply area and has a stream channel width of at least 1.5 m

must ensure that the timber is suspended over the stream and the yarding does not result in any of the following:

- (c) damage to the streambank or streambed;
- (d) damage to trees required to be retained under sections 11 or 12;
- (e) accumulation of woody debris or slash that causes damage to
  - (i) fish or fish habitat, or
  - (ii) a licensed water supply intake.

#### **Site rehabilitation near streams**

**15** (1) An owner of identified land must notify the regional office of the Ministry of Environment, Lands and Parks, within 24 hours of becoming aware that a landslide or debris flow has occurred on the owner's identified land, if the owner knows that the landslide or debris flow

- (a) occurred after the coming into force of this regulation, and
- (b) has deposited debris into a stream on the identified land.

(2) The requirements of subsections (3) to (6) apply if the landslide or debris flow referred to in subsection (1)

- (a) begins
  - (i) in a cutblock on the owner's identified land, or
  - (ii) on a road on the owner's identified land, and
- (b) deposits debris into the stream,

unless the owner can prove to the satisfaction of the chief officer that the landslide or debris flow was the result of an activity of another person who was authorized to be on the identified land under an enactment.

(3) The owner and a designated environment official must make their best efforts to reach agreement, within 30 days of the owner's becoming aware of the landslide or debris flow, on a plan to mitigate the damage to the stream and on an implementation schedule for the plan.

(4) The owner must carry out the measures agreed to under subsection (3) to the satisfaction of the designated environment official and in accordance with any implementation schedule agreed to under that subsection.

(5) If the owner and designated environment official are unable to agree on a plan and an implementation schedule to mitigate the damage to the stream, the designated environment official must notify the commission

(a) promptly upon the expiry of the 30 day period referred to in subsection (3), or

(b) at an earlier date if agreed to by the owner.

(6) If the commission has received a notice under subsection (5),

(a) the commission may specify measures and an implementation schedule to mitigate the damage to the stream, and

(b) the owner must carry out the measures in accordance with any implementation schedule to the satisfaction of the commission.

### **Management of fertilizer near streams**

**16** (1) An owner of identified land who broadcasts fertilizer in a water supply area must ensure that

(a) the fertilizer is not applied

(i) within a 100 m radius upslope of any licensed water supply intake, and

(ii) within 10 m of a stream that

(A) is observable from the air, at the height from which the fertilizer will be applied, and

(B) contains flowing water at the time of the application,

unless otherwise authorized by the medical health officer, and

(b) if nitrogen fertilizer is applied, the application does not cause

(i) nitrate levels in a stream to exceed 10 ppm measured immediately downstream of the area where the fertilizer is applied, or

(ii) water quality to fail to meet any water quality objectives or criteria established by the designated environment official.

(2) Without limiting subsection (1), the owner must not apply fertilizers by aerial broadcast within 10 m of a fish stream.

### **Water quality problems identified by a holder of a licence for a water intake**

**17** (1) If a holder of a licence for a licensed water supply intake

(a) can demonstrate that a reduction in water quality has occurred, and

(b) has reasonable cause to believe that the source of the reduction in water quality is on identified land,

the holder may notify the owner of the identified land of the reduction in water quality.

(2) The owner of identified land, upon receiving a notice under subsection (1), must determine if the cause for the reduction in water quality originates on the owner's land.

(3) If the owner of identified land determines that the source of the reduction in water quality is on the owner's land, the owner must

(a) provide to the holder of the licence a description of the source of the problem,

(b) if the problem is the result of the owner's actions, provide to the holder of the licence a description of the measures that will be carried out to address the problem, and an implementation schedule for carrying out those measures, and

(c) carry out the measures in accordance with the implementation schedule referred to in paragraph (b).

(4) If the holder of the licence can demonstrate to a designated environment official that the owner of identified land has failed to adequately address the reduction in water quality that originates on the owner's land and for which the owner was responsible, the designated environment official may enter onto the owner's land to investigate

(a) the sources of water quality problems, and

(b) the adequacy of any measures carried out by the owner.

(5) The owner of identified land must cooperate in any investigation under subsection (4) by making available to the designated environment official, upon request, an existing map or other suitable existing information showing the location of all of the following:

(a) roads constructed or modified by the owner;

(b) cutblocks where harvesting has occurred in the previous 10 years;

(c) landslides.

(6) The owner and the designated environment official must make their best efforts to reach agreement within 14 days of the conclusion of the investigation under subsection (4) on a plan and an implementation schedule to address the water quality problem.

(7) The owner must carry out the measures agreed to under subsection (6) to the satisfaction of the designated environment official and in accordance with any implementation schedule agreed to by the owner and designated environment official under that subsection.

(8) If the owner and the designated environment official are unable to agree on a plan and an implementation schedule to address the water quality problem, the designated environment official must notify the commission

(a) promptly upon the expiry of the 14 day period referred to in subsection (6), or

(b) at an earlier date if agreed to by the owner.

(9) If the commission has received a notice under subsection (8),

(a) the commission may specify measures and an implementation schedule to address the water quality problem, and

(b) the owner must carry out any specified measures in accordance with any implementation schedule to the satisfaction of the commission.

#### **Division 4 - Management Requirements Established by the Chief Officer**

##### **Chief officer may establish requirements**

**18** (1) For an area of identified land the chief officer may substitute a new requirement for a requirement in Divisions (1) to (3) of this Part, if the chief officer determines that the new requirement

(a) is necessary to achieve the forest management objectives specified in Schedule A, and

(b) will not result in material economic hardship to the owner.

(2) Nothing in subsection (1) allows the chief officer to establish a requirement if the requirement

- (a) restricts road construction or timber harvesting and related activities on identified land in a manner that is inconsistent with this regulation,
- (b) precludes all road construction or timber harvesting and related activities on the area of identified land that is subject to the requirement,
- (c) is inconsistent with the objects of the commission contained in section 4 of the Act, or
- (d) is being established to address impacts on the environment caused by persons other than the owner.

(3) Before a requirement may be substituted under subsection (1), the chief officer must, in writing, notify the owner of the identified land of the new requirement and set out all of the following:

(a) a description of the portion of the owner's identified land where the chief officer is of the opinion that the requirements of Division (1) to (3) of this Part may not be sufficient to achieve the forest management objectives specified in Schedule A;

(b) the specific

(i) forest management objective that is of concern, and

(ii) provision of Divisions (1) to (3) of this Part that may not be sufficient to achieve that forest management objective;

(c) whether the requirement is to be established by the chief officer

(i) with the use of an advisory panel, or

(ii) without the use of an advisory panel;

(d) a description of the procedure for establishing the requirement, if the requirement is to be established by the chief officer with the use of an advisory panel;

(e) if the requirement is to be established by the chief officer without the use of an advisory panel, a description of

(i) the new requirement,

(ii) the extent of the area to which the new requirement applies,

(iii) the period during which the new requirement applies, and

(iv) the owner's right, under subsection (4) to request an advisory panel review of the requirement.

(4) If the owner receives a notice under subsection (3) that contains information referred to in subsection (3) (e) respecting a requirement, the owner may, at any time, in a notice given to the chief officer, require that an advisory panel review the requirement.

(5) Subject to subsection (6), the chief officer must, within 10 days of

(a) notifying the owner under subsection (3) (c), or

(b) receiving a notice from the owner under subsection (4)

establish an advisory panel comprised of the following 3 members:

(c) a person selected by the chief officer;

(d) a person selected by the owner;

(e) a person jointly agreed to by the chief officer and the owner.

(6) If the chief officer is unable to establish the advisory panel in accordance with subsection (5) as a result of

(a) the owner's failing to select a person, or

(b) the chief officer and the owner being unable to jointly select a person,

then the commission will within 20 days after

(c) notice is given under subsection (3) (c) (i), or

(d) notice is received by the chief officer under subsection (4)

select one or more persons as necessary to establish an advisory panel of 3 members.

(7) An advisory panel established under subsection (5) or (6) must within 30 days of being established

(a) consult with the owner who is affected by the potential new requirement,

(b) evaluate whether or not the provisions referred to in subsection (3) (b) (ii) are sufficient to achieve the forest management objectives referred to in subsection (3) (b) (i),

(c) evaluate any economic impact on the owner that may reasonably be expected to occur if a new requirement is established,

(d) evaluate the extent to which the relevant impacts on the environment have been caused by persons other than the owner, and

(e) provide a report to the chief officer that

(i) specifies whether or not a new requirement is necessary to achieve the specified forest management objectives,

(ii) specifies the economic impact on the owner that may reasonably be expected to occur if a new requirement is established,

(iii) specifies the extent to which the relevant impacts on the environment have been caused by persons other than the owner, and

(iv) recommends what the new requirement should be, if any.

(8) Section 36 (2) and (3) apply to the establishment of an advisory panel under this section.

(9) The chief officer must

(a) consider the report of the advisory panel provided under subsection (7) (e), and

(b) within 10 days of receiving that report, provide a notice to the owner setting out all of the following:

(i) whether or not a new requirement is necessary to achieve the specified forest management objectives;

(ii) what the new requirement is, if any;

(iii) the extent of the area to which the new requirement applies;

(iv) the period during which the new requirement applies;



(v) the owner's right of appeal to the commission, including the address where the notice of appeal may be delivered.

(10) The new requirements set out in a notice under subsection (3) (e) or (9) (b) become effective on the date the notice is received by the owner.

(11) The chief officer may, in writing, at any time after issuing a notice under subsection (3) or (9)

(a) amend a new requirement made under this section by following the same procedures as are required for making a new requirement and all the provisions of this section apply as if the change were a new requirement, or

(b) cancel the notice that is in effect.

(12) An amendment or cancellation referred to in subsection (11) becomes effective on the date the notice is received by the owner of identified land, and in the event of a cancellation of a new requirement, any requirement of this regulation that did not apply to the identified land because the new requirement was substituted for it, applies to the identified land on that date.

(13) Subject to section 19 (3), an owner of identified land who is subject to a new or amended requirement under this section must comply with the requirement.

#### **An owner may appeal a requirement established by the chief officer**

**19** (1) An owner who receives a notice under section 18 (9) may appeal to the commission any aspect of the determination set out in the notice by serving on the chief officer, within 3 weeks of receiving that notice, a notice of appeal that meets the requirements of section 43.

(2) Sections 29.7 and 29.71 of the Act are adopted and apply to the appeal under subsection (1) as if the appeal was authorized under section 29.61 (b) of the Act.

(3) An order of the commission confirming, varying or rescinding a new requirement established by the chief officer under section 18, is effective on the date the order is received by the owner.

(4) An owner who is subject to an order referred to in subsection (3) must comply with that order.

### **Division 5 — Critical Wildlife Habitat**

#### **Critical wildlife habitat**

**20** (1) A designated environment official, in accordance with section 23, may

(a) establish an area of identified land as critical wildlife habitat, or vary an area established as critical wildlife habitat, if

(i) the habitat of one or more species of identified wildlife is located on the identified land, and

(ii) the habitat on the identified land is required to support one or more of the species of identified wildlife because there is insufficient suitable habitat available on Crown lands within that ecoregion,  
or

(b) cancel the establishment of an area as critical wildlife habitat.

(2) Within an area of critical wildlife habitat, an owner of identified land must carry out any timber harvesting and related activities, and any road construction, in accordance with the requirements of the notice given or amended under section 23.

**An owner of identified land may be required to provide information concerning potential critical wildlife habitat**

**21** If a designated environment official has reasonable cause to believe that there may be an area of identified land that qualifies for establishment as critical wildlife habitat, the designated environment official may request that the owner of the identified land provide information respecting any road construction and the timing and nature of timber harvesting and related activities that are proposed for that area, and the owner must comply with the request.

**Entry on identified land to evaluate areas that may be classified as critical wildlife habitat**

**22** (1) For the purpose of determining whether to establish an area of identified land as critical wildlife habitat under section 20, if a designated environment official has reasonable cause to believe that there may be critical wildlife habitat on the land, the designated environment official, or a person who is authorized by the designated environment official, may enter on the land to determine the nature and extent of any critical wildlife habitat.

(2) If an area of critical wildlife habitat has been established under section 20, the designated environment official, or a person who is authorized by the designated environment official, may enter on the land to

(a) determine the nature and extent of the critical wildlife habitat, and

(b) evaluate any area referred to in section 23 (1) (b).

(3) Before entering on the identified land under subsection (1) or (2), the designated environment official or person authorized by the designated environment official must notify the owner.

(4) The designated environment official or person who is authorized by the designated environment official may enter on the identified land 14 days after providing the notice under subsection (3).

(5) Despite subsections (3) and (4), the designated environment official or person who is authorized by the designated environment official may, without notice, enter on the identified land at any reasonable time if the reason for entering is a notice received from the owner under section 24.

**Requirements if critical wildlife habitat is determined to be present on identified land**

**23** (1) Before critical wildlife habitat is established or varied under section 20, the designated environment official must give a notice in writing to the owner of the identified land

(a) describing the location, nature and extent of the critical wildlife habitat, and

(b) specifying the area within the critical wildlife habitat where road construction and timber harvesting and related activities must be modified and the extent of that modification.

(2) Unless otherwise agreed to by the owner, an area referred to in subsection (1) (b)

(a) must not have been previously described in a notice under subsection (1) or an amendment under subsection (4),

(b) must not exceed, in combination with any other areas identified in notices under subsection (1) that have been given to the owner,

(i) if the area in the notice is within a land registry parcel identified in the owner's management commitment, 1% of all the land identified in that management commitment, or

(ii) if the area in the notice is within a land registry parcel that is part of the owner's identified land

that is not managed forest land, 1% of the total of the owner's contiguous identified land that is not managed forest land and that contains the area referred to in subsection (1) (b), and

(c) must not be subject to a period of modified operations exceeding 1 year from the date the notice is received by the owner.

(3) The establishment of the area of critical wildlife habitat identified in the notice under subsection (1) and of the area within the critical wildlife habitat where the road construction and timber harvesting and related activities must be modified become effective on the date the notice is received by the owner of identified land.

(4) A designated environment official may, in writing, at any time after issuing a notice under subsection (1),

(a) amend the content of the notice that is in effect provided that the content of the amended notice complies with the requirements of subsection (2), or

(b) cancel the notice that is in effect.

(5) An amendment or cancellation referred to in subsection (4) becomes effective on the date the notice is received by the owner of identified land.

### **Previously unrecognized critical wildlife habitat**

**24** (1) The Ministry of Environment, Lands and Parks may publish, from time to time, a list of species of identified wildlife that specifies, by ecoregion, those species for which there is insufficient suitable habitat on Crown lands within that ecoregion.

(2) If an owner of identified land is of the opinion that there may be, on that land, habitat for a species of identified wildlife specified on the list referred to in subsection (1), the owner must

(a) promptly notify a designated environment official, and

(b) refrain from carrying out any road construction or timber harvesting and related activities that could negatively impact the habitat until the earliest to occur of the following:

(i) the expiry of 7 days from the time the designated environment official receives the notice under paragraph (a);

(ii) being advised by the designated environment official that the activity may be carried out;

(iii) receiving a notice under section 23.

(3) A designated environment official may relieve the owner of a requirement to notify the designated environment official under subsection (2) (a) with respect to one or more species of identified wildlife.

## **Division 6 — Reforestation**

### **Reforestation where timber harvested**

**25** (1) An owner who is required under section 17.2 (a) of the Act to reforest an area of identified land that was harvested after the area became identified land must

(a) restock the harvested area within 5 years of the completion of harvesting activity on the area, and

(b) establish a successfully regenerated stand within 15 years of the completion of harvesting activity on the area.

(2) An owner who is required under section 17.2 (a) of the Act to reforest an area of identified land that was harvested by the owner before the area became identified land must

- (a) restock the harvested area within 5 years of the area becoming identified land, and
  - (b) establish a successfully regenerated stand within 15 years of the area becoming identified land.
- (3) An owner who is required under section 17.2 (b) of the Act to reforest an area of land that was harvested by a person other than the owner before the area became identified land must
- (a) restock the harvested area within 10 years of the area becoming identified land, and
  - (b) establish a successfully regenerated stand within 20 years of the area becoming identified land.
- (4) Nothing in this section requires an owner of identified land that is not subject to a management commitment to reforest areas of that land from which timber is harvested.

### **Reforestation where timber destroyed**

**26** (1) An owner of identified land must reforest an area of land where the timber on the area was destroyed after the area became identified land by

- (a) restocking the area within 5 years of the date the timber on the area was destroyed, and
  - (b) establishing a successfully regenerated stand within 15 years of the date the timber on the area was destroyed.
- (2) An owner of identified land must reforest an area of land where the timber on the area was destroyed before the area became identified land by
- (a) restocking the area within 5 years of the area becoming identified land, and
  - (b) establishing a successfully regenerated stand within 15 years of the area becoming identified land.
- (3) Nothing in this section requires a person to reforest an area if the area where the timber was destroyed is less than 1 hectare.
- (4) Nothing in this section requires an owner of identified land that is not subject to a management commitment to reforest areas where the timber was destroyed.
- (5) The chief officer may exempt an owner from the requirements to reforest under subsection (1) or (2) if the chief officer is of the opinion that reforestation is not necessary because of the size or location of the area.

## **Division 7 — Management Commitment**

### **Management commitment**

**27** (1) An owner who under section 17.3 of the Act submits a management commitment to the chief officer must ensure that it contains all of the following:

- (a) the legal description of the parcels of land to which the management commitment applies;
- (b) a commitment to use the land for the production and harvesting of timber;
- (c) the long term forest management objectives for the owner's land;
- (d) the strategies that will be used to attain the long term forest management objectives, including, but not limited to, the following:
  - (i) harvesting;

- (ii) reforestation;
- (iii) forest fire prevention and suppression;
- (iv) pruning;
- (v) spacing;
- (vi) fertilization;
- (vii) tree improvement;
- (viii) forest health and pest management;

- (e) a commitment to harvest trees in accordance with the strategies referred to in paragraph (d) (i);
- (f) a soil quality assessment;
- (g) an inventory of existing roads;
- (h) forest cover;
- (i) the commercial species of trees that will be used during reforestation;
- (j) a commitment to reforest areas, as required under the Act, with the commercial species of trees referred to in paragraph (i) and in accordance with the strategies referred to in paragraph (d) (ii);
- (k) the signature, or with the permission of the chief officer the digital code, of the owner or a person authorized to sign on behalf of the owner.

(2) An owner who submits an amendment to a management commitment to the chief officer must ensure that it contains all of the following:

- (a) a statement of any provision of the existing management commitment to which the proposed amendment applies;
- (b) a statement of the proposed amendment, including information concerning
  - (i) the reason for the amendment,
  - (ii) the impact of the amendment, and
  - (iii) the proposed effective date of the amendment;
- (c) the signature, or with the permission of the chief officer a digital code, of the owner or a person authorized to sign on behalf of the owner.

## **Division 8 — Variances**

### **Types of variances**

**28** For the purposes of section 17.4 (1) of the Act, a variance is one of the following:

- (a) a minor variance, if there is a low risk of the proposed variance resulting in a deleterious impact on
  - (i) the management or conservation of the environment, or
  - (ii) the likelihood of successfully reforesting the area;

- (b) a significant variance, if there is a moderate risk of the proposed variance resulting in a deleterious impact on
  - (i) the management or conservation of the environment, or
  - (ii) the likelihood of successfully reforesting the area;
- (c) a major variance, if there is a high risk of the proposed variance resulting in a deleterious impact on
  - (i) the management or conservation of the environment, or
  - (ii) the likelihood of successfully reforesting the area.

### **Requests for variances**

**29** (1) An owner of identified land who submits a request for a variance from a requirement of section 17.1 or 17.2 of the Act must ensure that the request for a variance is in writing and contains all of the following:

- (a) an identification of the requirement that the request applies to;
  - (b) the proposed variance;
  - (c) a statement of the probable impact of the proposed variance on the management of matters referred to in sections 17.1 and 17.2 of the Act for the area affected by the proposed variance;
  - (d) the signature, or with the permission of the chief officer the digital code, of the owner or a person authorized to sign on behalf of the owner.
- (2) An owner of identified land may not apply for a variance from a requirement
- (a) established by the chief officer under section 18 (1),
  - (b) referred to in an order of the commission under section 19 (3), or
  - (c) in section 8, 9, 11 to 15, 21, 23 or 24, unless the reason for the variance is to ensure the safety of the public.

### **Evaluation of a proposed variance**

**30** (1) Subject to subsection (2), an official, chief officer or the commission, on receiving a request for a variance under section 17.4 (1) of the Act, must determine if the proposed variance is any of the following:

- (a) consistent with the forest management objectives specified in Schedule A;
  - (b) necessary in the interests of public safety;
  - (c) otherwise in the public interest.
- (2) An official may refer a request for a variance to the chief officer, in which case the chief officer must determine the matters referred to in subsection (1).
- (3) The chief officer may refer a request for a variance to the commission in which case the commission must determine the matters referred to in subsection (1).
- (4) A proposed variance may not be granted if the official, chief officer or the commission, as the case may be, determines that the proposed variance does not meet the requirements of subsection (1).

## **Division 9 — Records and Reports**

## **Record and reports**

**31** (1) The owner of identified land must submit to the commission, on or before May 1 of each year, a declaration meeting the requirements of this section.

(2) For the purposes of section 17.5 (3) (c) of the Act, a declaration must

(a) address the previous calendar year, and

(b) contain all of the following:

(i) sufficient maps and supporting documentation to enable the commission to evaluate the declaration;

(ii) the location and size of cutblocks where timber was harvested;

(iii) the location and size of areas where timber was destroyed, and the probable cause of the destruction;

(iv) the location and approximate length of any roads constructed or rehabilitated by the owner of identified land;

(v) the signature, or with the permission of the commission the digital code, of the owner or a person authorized to sign on behalf of the owner.

## **Part 3 — Remedies, Orders and Appeals**

### **Division 1 — Administrative Remedies**

## **Penalties**

**32** (1) Before the chief officer levies a penalty against an owner of identified land under section 29.11 of the Act, he or she must consider all of the following:

(a) any previous contravention of a similar nature by the owner;

(b) the gravity and magnitude of the contravention;

(c) whether the contravention was repeated or continuous;

(d) whether the contravention was deliberate;

(e) any economic benefit derived by the owner from the contravention;

(f) the owner's cooperativeness and efforts to correct the contravention;

(g) the owner's efforts to prevent the contravention;

(h) whether relevant forest management objectives specified in Schedule A are being achieved.

(2) The chief officer who levies a penalty against an owner of identified land under section 29.11 of the Act must give a notice of determination to the owner setting out all of the following:

(a) the nature of the contravention;

(b) the amount of the penalty;

(c) the date by which the penalty must be paid;

(d) the owner's right to an appeal.

(3) A penalty set out in Column 3 of Table A is the maximum penalty, in dollars, which may be levied under section 29.11 of the Act for the contravention of the enactment referred to and described in Columns 1 and 2, opposite the penalty.

(4) For the purposes of section 29.11 of the Act, every word or phrase set out in Column 2 of Table A is authorized to be used on a notice under that section to describe the contravention of the enactment referred to in Column 1, opposite that word or phrase.

**TABLE A**

Column 1	Column 2	Column 3
<b>Forest Land Reserve Act</b>		
17.1	Failure to meet prescribed requirements in respect of soil conservation, water quality, fish habitat and critical wildlife habitat.	10 000
17.4 (4)	Failure to comply with a variance or condition if the variance or condition does not concern reforestation.	10 000
17.5 (2)	Failure to comply with a request for records.	5 000
17.5 (3)	Failure to submit a declaration with the required content at the required time.	10 000
29.97 (4)	Failure to comply with a notice to prepare and submit an action plan.	10 000
29.97 (5)	Failure to carry out an audit action plan.	50 000
<b>Private Land Forest Practices Regulation</b>		
3 (3)	Failure to ensure compliance with authorizations, conditions, or requirements if those authorizations, conditions, or requirements do not concern reforestation.	10 000
5 (1)	Exceeding 7% of harvested area with roads and landings.	25 000
6 (1)	Failure to construct, maintain or deactivate structures as specified.	20 000
6 (2)	Failure to ensure that reasonable measures were taken to mitigate impacts on soil productivity where required.	25 000
6 (3)	Failure to rehabilitate excavated or bladed trails as required.	20 000
8 (1)	Failure to implement measures to prevent soil from entering streams as required when constructing specified structures.	10 000
8 (2) (a)	Failure to ensure that streams are maintained in their natural courses as required when constructing, deactivating or rehabilitating access structures.	10 000
8 (2) (b)	Failure to ensure that soil erosion into streams is minimized as required when constructing, deactivating or rehabilitating access structures.	5 000
8 (2) (c)	Failure to ensure that an access structure being constructed, deactivated or rehabilitated, does not become unstable to the extent that its instability contributes to landslide debris entering specified streams.	20 000
8 (2) (d)	Failure to ensure that excavated soil does not enter directly into specified streams when constructing, deactivating	20 000



	or rehabilitating access structures.	
8 (3)	Failure to maintain constructed access structures until deactivated or rehabilitated.	20 000
8 (4)	Failure to maintain portion of road constructed under other enactments during specified periods as required.	20 000
9 (1) (a)	Failure to ensure that stream banks or gully sidewalls are not destabilized or damaged when carrying out specified activities.	20 000
9 (1) (b)	Failure to ensure that soil erosion into streams is minimized when carrying out specified activities.	20 000
9 (1) (c)	Failure to ensure that machine tracks do not result in mineral soil exposure that leads to sedimentation when carrying out specified activities.	5 000
9 (1) (d)	Failure to ensure that specified vegetation and trees are retained as required when carrying out specified activities.	20 000
9 (1) (e)	Failure to ensure that woody debris or slash in stream channels does not result in specified damage when carrying out specified activities.	20 000
9 (2)	Failure to ensure that woody debris or physical disturbance of the site do not damage specified areas when carrying out specified activities.	20 000
11 (1)	Failure to retain trees as required.	20 000
11 (2)	Failure to select trees as required.	20 000
11 (6)	Removal of trees other than as permitted.	20 000
12 (1)	Failure to retain trees as required.	20 000
12 (2)	Failure to retain trees as required.	20 000
12 (4)	Failure to retain trees on streams with a gradient of more than 8% as required.	20 000
12 (5)	Removal of trees on streams with a gradient of 8% or less where prohibited.	20 000
13 (1)	Construction of specified road within 30 m of streams where prohibited.	20 000
13 (3)	Construction of road within 100 m radius upslope of water supply intake other than as permitted.	10 000
14	Failure to ensure that cross stream yarding is suspended and does not result in damage to the streambank, streambed or specified trees.	20 000
15 (1)	Failure to notify the Ministry of Environment, Lands and Parks as required when a landslide or debris flow enters specified streams.	1 000
15 (4)	Failure to implement measures agreed on with the designated environment official when a landslide or debris flow enters specified streams.	50 000
15 (6) (b)	Failure to implement measures and any implementation schedule as specified by the commission when a landslide or debris flow enters specified streams.	50 000
16 (1) (a)	Application of fertilizer other than as specified.	20 000

16 (1) (b)	Failure to ensure that nitrogen fertilizer does not cause nitrate levels to exceed specified levels or water quality to fall below established levels.	50 000
16 (2)	Aerially broadcasting fertilizer within 10 m of a fish stream.	20 000
17 (2)	Failure to determine if the cause of the reduction of water quality originates on the owner's land.	2 000
17 (3) (a)	Failure to provide a description of the source of a reduction of water quality if required.	2 000
17 (3) (b)	Failure to provide a description of the remedial measures and timelines for those measures as required.	2 000
17 (3) (c)	Failure to carry out measures as required.	50 000
17 (5)	Failure to provide the specified information to the designated environment official as required.	1 000
17 (7)	Failure to adequately carry out the measures specified in any plan agreed to by the owner and designated environment official.	50 000
17 (9) (b)	Failure to carry out the measures and any implementation schedule specified by the commission to address a water quality problem.	50 000
18 (13)	Failure to comply with a requirement established by the chief officer.	25 000
19 (4)	Failure to comply with an order of the commission.	25 000
20 (2)	Failure to modify specified operations as required in a notice that is in effect.	50 000
21	Failure to provide information within a reasonable time as required.	5 000
24 (2) (a)	Failure to promptly notify the designated environment official as required.	20 000
24 (2) (b)	Failure to refrain from carrying out specified activities that could negatively impact the habitat for a species of identified wildlife.	50 000

### Remediation orders

**33** (1) If the chief officer makes an order under section 29.2 of the Act, the chief officer must give a copy of the order to the person, and the order must set out all of the following that are applicable:

- (a) the nature of the contravention;
- (b) the nature of the work to be done to remedy the contravention;
- (c) the date by which the work must be completed;
- (d) the right of the commission to carry out the work and levy a penalty, if the person fails to comply with the order.

(2) If the chief officer carries out any work under section 29.2 (3) of the Act, the chief officer must, on completion of the work

- (a) provide the person with an accounting of expenditures relating to the work, and
- (b) promptly refund to the person any surplus of funds remaining from the realization of a security under

section 29.2 (3) (b) of the Act after payment of the sum of all direct and indirect costs associated with carrying out the work.

### **Stop work order**

**34** (1) An order to stop work issued by an official under section 29.21 of the Act must be in writing and include all of the following:

- (a) the nature of the contravention;
- (b) the extent to which the contravention must cease;
- (c) the date by which the requirements of paragraph (b) must be met;
- (d) the person's right to a review under section 29.6 (1) of the Act.

(2) Despite subsection (1), if the official is of the opinion that the contravention is of such nature that it is causing, or may imminently cause, serious damage to the environment, the official may order that the contravention cease, or cease to an extent specified, and the order need not be in writing.

(3) Within 96 hours of giving a stop work order under subsection (2), the official must issue that order in writing, as specified in subsection (1), or the order ceases to be effective.

## **Division 2 — Advisory Panels**

### **Advisory panel procedures**

**35** The chief officer may develop procedures for the conduct of advisory panels referred to in

- (a) section 29.31 of the Act, and
- (b) section 18 of this regulation.

### **Establishment of advisory panels**

**36** (1) For the purposes of section 29.31 of the Act, the chief officer may, in accordance with this section, appoint one or more persons to form an advisory panel.

(2) The chief officer must not appoint a person to an advisory panel unless, in the opinion of the chief officer, the person is all of the following:

- (a) familiar with the Act and this regulation;
- (b) capable of assessing the environmental impacts of forest practices;
- (c) capable of carrying out the work in accordance with any procedures developed under section 35;
- (d) independent of the person to which the referral relates.

(3) At least one member of the advisory panel must be an owner of identified land that is managed forest land.

### **Notice to landowner of establishment of an advisory panel**

**37** (1) The chief officer must give notification of the establishment of the panel to the owner of identified land affected by that establishment, and to any other person that the chief officer considers appropriate.

(2) The notice under subsection (1) must be in writing and contain all of the following:

- (a) the names of the members of the advisory panel;
- (b) the nature of matter to be reviewed by the advisory panel;
- (c) the time period under which the advisory panel will be conducting its review;
- (d) the legislative authority for the appointment of the panel;
- (e) the requirement that the advisory panel consult with the owner before the conclusion of the review.

### **Reviews by advisory panels**

**38** (1) The chief officer may require the advisory panel, in the course of its review, to

- (a) examine the conduct of the owner, and
- (b) if the advisory panel concludes from its examination that the owner contravened the Act or this regulation, make recommendations to the chief officer as to how the owner
  - (i) should rectify the contravention, and
  - (ii) should prevent recurrences of similar incidences.

(2) Members of the advisory panel, for any purpose related to carrying out its duties referred to in subsection (1), and with the permission of the owner of identified land, may enter

- (a) on the identified land that is the subject of the review, and
- (b) the premises of the owner of identified land where records are kept, for the purpose of inspecting or copying records that are relevant to the review.

(3) Members of the advisory panel who enter on land or premises under subsection (2) on the request of the person who has apparent custody or control of the property or activity being reviewed, must provide proof of identity to that person.

(4) The advisory panel must consult with the owner who is the subject of the review.

(5) At the conclusion of the review, the advisory panel must submit, in writing, a report to the chief officer that meets the requirements of the terms and conditions specified by the chief officer under subsection (1).

## **Division 3 - Administrative Reviews**

### **Submitting a request for a review**

**39** (1) A person who may request a review under section 29.6 of the Act must deliver to the chief officer a written request for a review in accordance with this section.

(2) The person must ensure that the request contains all of the following:

- (a) the name and address of the requesting person, and the name of the person, if any, making the request on the person's behalf;
- (b) the address for service of the requesting person;
- (c) the grounds for review;

(d) the relief requested.

(3) The person must deliver the request for review to the chief officer not later than 3 weeks after the date of

(a) the decision of the official under section 17.4 (2) of the Act, or

(b) the receipt of the stop work order by the person.

(4) Before or after the time limit in subsection (3) expires, the chief officer may extend it.

(5) A person who does not deliver the request for review within the time specified loses the right to review.

#### **Deficient request for review**

**40** (1) If a request for review does not comply with section 39, the chief officer may deliver a written notice of deficiencies to the requesting person, inviting the requesting person, within a period specified in the notice, to submit further material remedying the deficiencies.

(2) If the chief officer delivers a notice under subsection (1), the review may proceed only after the earlier of

(a) the expiry of the period specified in the notice of deficiencies, and

(b) the submission to the chief officer of further material remedying the deficiencies.

#### **Procedure following a request for review**

**41** (1) On receipt of a request for review that meets the requirements of this regulation, the chief officer must do all of the following:

(a) determine whether the review is to be conducted by one or more reviewers;

(b) designate the reviewer or reviewers and, if more than one, appoint one of them as chair;

(c) notify the reviewer or reviewers of the designation and of the appointment, if any, of the chair.

(2) The chief officer may only appoint a person as a reviewer if the person

(a) is employed under the *Public Service Act*, and

(b) in the opinion of the chief officer

(i) is familiar with the Act and this regulation,

(ii) is capable of assessing any environmental impacts of forest practices,

(iii) is independent of the person to which the review relates, and

(iv) did not participate in any investigation that preceded the decision or stop work order to be reviewed, and did not participate in making the decision or issuing the stop work order.

(3) On receiving notification under subsection (1) (c), the single reviewer or the reviewer appointed as chair, as the case may be,

(a) must determine whether to conduct the review on the basis of a hearing, written submissions or both, and

(b) if there is to be a hearing, must set the date, time and location of the hearing.

(4) The single reviewer or the reviewer appointed as chair, as the case may be, must notify the person who made the decision or issued the stop work order, and the person who requested the review, of all of the following:

- (a) that there is to be a review of the decision or stop work order;
- (b) that the review will be carried out by the specified single reviewer or panel of reviewers;
- (c) whether the review will be conducted on the basis of a hearing, written submissions or both;
- (d) if there is to be a hearing, the date, time and location of the hearing.

(5) The single reviewer or the reviewer appointed as chair, as the case may be, must

- (a) conduct the review in accordance with the notice referred to in subsection (4), and
- (b) provide written reasons for the decision respecting the review under section 29.6 (3) of the Act to the following persons:
  - (i) the person who requested the review;
  - (ii) the person who made the original decision or issued the stop work order;
  - (iii) the chief officer.

#### **Division 4 - Administrative Appeals**

##### **Additional rights of appeal**

**42** In addition to the rights of appeal referred to in section 29.61 of the Act, a person who is the subject of

- (a) a determination by the chief officer under section 29.11 of the Act that the person has contravened the Act or this regulation, or
- (b) a remediation order under section 29.2 of the Act

may appeal the determination or the order to the commission, by delivering to the commission a notice of appeal that meets the requirements of section 43.

##### **Submitting a notice of appeal**

**43** (1) The notice of appeal referred to in section 29.61 (1) of the Act or section 19 (1) or 42 of this regulation must be signed by, or on behalf of, the appellant and must contain all of the following:

- (a) the name and address of the appellant, and the name of the person, if any, making the request on the appellant's behalf;
- (b) the address for service of the appellant;
- (c) the grounds for appeal;
- (d) the relief requested.

(2) The appellant must deliver the notice of appeal to the chief officer not later than 3 weeks after the date of

- (a) issuance of the written reasons for the decision referred to in section 41 (5), or
- (b) the order, decision or determination referred to in section 29.61 (1) (b) of the Act.

- (3) Before or after the time limit in subsection (2) expires, the chief officer may extend it.
- (4) A person who does not deliver a notice of appeal within the time specified loses the right to an appeal.

#### **Deficient notice of appeal**

**44** (1) If a notice of appeal does not comply with section 43 the chief officer may deliver a written notice of deficiencies to the appellant, inviting the appellant, within a period specified in the notice, to submit further material remedying the deficiencies.

- (2) If the chief officer delivers a notice under subsection (1), the appeal may proceed only after the earlier of
  - (a) the expiry of the period specified in the notice of deficiencies, and
  - (b) the submission to the chief officer of further material remedying the deficiencies.

#### **Procedure following a notice of appeal**

**45** (1) On receipt of a notice of appeal that meets the requirements of this regulation, the commission must do all of the following:

- (a) determine whether the appeal is to be considered by members of the commission sitting as a commission or by members of the commission sitting as a panel of the commission;
- (b) designate the panel members, if the commission determines that the appeal is to be considered by a panel;
- (c) set the date, time and location of the hearing and deliver notice of the hearing to the members of the commission or of the panel.

(2) For an appeal that is to be considered by a panel of the commission, the panel chair is determined as follows:

- (a) if the chair of the commission is on the panel, he or she must be the panel chair;
- (b) if the chair of the commission is not on the panel but a vice chair of the commission is, the vice chair must be the panel chair;
- (c) if neither the chair nor a vice chair of the commission is on the panel, the commission must designate one of the panel members to be the chair.

#### **Parties and intervenors**

**46** (1) The person who made the original determination, order or decision and the person who is the subject of the determination, order or decision are parties to the appeal.

- (2) At any stage of an appeal the commission may direct that a person who may be affected by the appeal be added as a party to the appeal.
- (3) The commission, after receiving a notice of appeal, must promptly give the parties to an appeal a hearing.
- (4) A party may
  - (a) be represented by counsel,
  - (b) present evidence, and

(c) make submissions as to facts and law.

(5) The commission may invite or permit the following persons to take part in a hearing as an intervenor: a person who is an owner of identified land; a local government; a first nation; a person who may be materially affected by the outcome of the hearing.

(6) An intervenor may take part in a hearing to the extent permitted by the commission.

(7) A person who gives oral evidence may be questioned by the commission or the parties to the appeal.

#### **Order for written submissions**

**47** (1) The commission may order the parties to deliver written submissions.

(2) If the party that initiated the appeal fails to deliver a written submission ordered under subsection (1) within the time specified in the order, the commission may dismiss the appeal.

(3) The commission must ensure that every party to the appeal has the opportunity to

(a) review written submissions from the other parties and intervenors, and

(b) rebut the written submissions.

#### **Interim orders**

**48** The commission may make an interim order in an appeal.

#### **Open hearings**

**49** Appeal hearings of the commission must be open to the public unless the subject matter of appeal is with respect to information that must not be disclosed under section 34.2 of the Act.

#### **Witnesses**

**50** The commission has the same power as the Supreme Court has for the trial of civil actions to do all of the following:

(a) summon and enforce the attendance of witnesses;

(b) compel witnesses to give evidence on oath or in any other manner;

(c) compel witnesses to produce records and things.

#### **Witnesses must comply**

**51** A witness must comply with a requirement of the commission

(a) to attend,

(b) to take an oath,

(c) to answer questions, or

(d) to produce the records or things in his or her custody or possession.



## **Evidence**

**52** (1) The commission may admit as evidence in an appeal, whether or not given or proven under oath or admissible as evidence in a court,

- (a) any oral testimony, or
- (b) any record or other thing

relevant to the subject matter of the appeal, and may act on the evidence.

(2) Nothing is admissible in evidence before the commission or a member of it that is inadmissible in a court by reason of a privilege under the law of evidence.

(3) Subsection (1) does not override an Act expressly limiting the extent to which, or purposes for which, evidence may be admitted or used in any proceeding.

(4) The commission may retain, call and hear an expert witness.

## **Awarding costs**

**53** The commission may order that a party or intervenor pay another party or intervenor any or all of the costs in respect of the appeal.

## **Decision of commission**

**54** (1) The commission must make a decision promptly after the hearing, and serve copies of the decision on the parties and any intervenors.

(2) On the request of a party, the commission must provide written reasons for the decision.

## **Appeal to court**

**55** (1) In addition to the rights of appeal referred to in section 29.71 of the Act, a person who is the subject of a determination by the commission with respect to an appeal under section 42 of this regulation may appeal the determination or the order of the commission on a question of law or jurisdiction in accordance with subsection (2).

(2) The time limit for appealing under section 29.71 (1) of the Act or subsection (1) is 3 weeks after the appellant is served with the decision of the commission.

(3) After an application for leave to appeal is brought to the Supreme Court, a judge may, on terms he or she considers appropriate, order that the order of the commission be stayed in whole or in part.

## **Division 5 — Offences**

### **Offences**

**56** (1) A person who contravenes sections 15 (4) or (6) (b), 16 (1) (b), 17 (3) (c), (7) or (9) (b), 20 (2) or 24 (2) (b) commits an offence and is liable, on conviction, to a fine not exceeding \$1 000 000 or to imprisonment for not more than 6 months or to both.

(2) A person who contravenes sections 5 (1), 6 (1), (2) or (3), 11 (1), 12 (1), (2), (4) or (5), 13 (1), 14, 16 (1) (a) or (2), 18 (13), 19 (4), 24 (2) (a) or (b) (iii) or 51 commits an offence and is liable, on conviction, to a fine not exceeding \$100 000 or to imprisonment for not more than 6 months or to both.

(3) A person who contravenes sections 8 (1), (2) (a) or (b), 9 (1) (c) or 13 (1) (b) or (3) commits an offence and is liable, on conviction, to a fine not exceeding \$5 000 or to imprisonment for not more than 6 months or to both.

## **Part 4 — Audits**

### **Audit standards**

**57** The commission may establish standards for the purpose of the conduct of audits referred to in section 29.97 of the Act.

### **Appointment of auditors**

**58** (1) In accordance with this section, the commission may appoint one or more auditors under section 29.97 of the Act to carry out audits to determine compliance with the Act and this regulation by an owner of identified land.

(2) The commission must not retain or engage an auditor unless, in the opinion of the commission, the auditor is all of the following:

- (a) familiar with the Act and this regulation;
- (b) capable of assessing the environmental impacts of forest practices;
- (c) capable of carrying out the work in accordance with the standards established under section 57;
- (d) independent of the person to which the audit relates.

(3) If an audit is to be carried out

- (a) by a single auditor, the auditor must be a member in good standing of an accredited professional body approved by the commission, and
- (b) by a team of auditors, at least one person on the team must be a member in good standing of an accredited professional body approved by the commission.

(4) The commission may determine the remuneration, reimbursement of expenses and other conditions of appointment of auditors.

### **Notice to owner of appointment of auditors**

**59** (1) The commission must notify the owner of identified land who is the subject of the audit of the appointment of any auditors.

(2) The notice under subsection (1) must be in writing and contain all of the following:

- (a) the name of the auditor or, if there is an audit team, the names of the members of the audit team;
- (b) the scope of the audit;
- (c) the time period during which the audit will occur;
- (d) the legislative authority for the appointment of the auditors and the auditors' right to enter on the owner's land to carry out the duties specified by the chief officer;
- (e) the right of the owner to comment on the draft audit report under section 60 (2) and the final audit report under section 60 (5) and (6).

## Audits

**60** (1) If the auditors make a finding that an owner has contravened a requirement of the Act or this regulation, the auditors must assess whether the actual performance is consistent with the forest management objectives specified in Schedule A.

(2) Before an audit report is finalized, the auditors must provide a copy of the draft audit report to the owner who is being audited and provide the owner with a reasonable opportunity to review and comment on the report.

(3) The auditors must

(a) consider any written comments received from the owner as a result of a review under subsection (2), and

(b) append to the audit report a summary of how the written comments were addressed in the audit report.

(4) The auditors must submit in writing to the commission an audit report that meets the requirements of the scope of the audit specified by the commission under section 59 (2).

(5) Before making an audit report public, the commission must provide a copy of the audit report to the owner who is being audited and provide the owner with a reasonable opportunity to review and comment on the report.

(6) If the owner, as a result of a review under subsection (5), provides to the commission a written response to the audit report, the commission must ensure that the written response is made available to the public at substantially the same time as the audit report.

## Part 5 — Miscellaneous

### Confidentiality and disclosure

**61** Effective April 1, 2000 section 34.2 (1) of the Act is amended from the coming into force of this section until January 1, 2002, by adding the following paragraph:

(b.1) a specialist or consultant retained by the government for the purposes of the Act or this regulation;.

### Confidentiality and disclosure - transitional

**62** Effective from April 1, 2000 until January 1, 2002, section 34.2 (2) of the Act is replaced by the following:

(2) A person referred to in subsection (1) must not disclose any information or record created or obtained in exercising or performing a power, duty or function under this Act or the regulations to any other person, including any other agency of the government, except

(a) as required under the *Freedom of Information and Protection of Privacy Act* and the regulations under that Act,

(b) as required for the performance of his or her powers, duties or functions under this Act or the regulations,

(c) in any of the following proceedings:

(i) a trial of a person for perjury;

(ii) a proceeding to enforce powers of investigation under this Act or the regulations;

(iii) a prosecution for an offence under section 29.91;

(iv) a review or appeal under this Act, or

(d) in accordance with subsection (3).

(3) A person referred to in subsection (1) may disclose to the agent of a property owner confidential information relating to the property, if the disclosure has been authorized in writing by the owner.

(4) An agent must not use information disclosed under subsection (3) except for the purposes authorized by the owner in writing referred to in that subsection.

### **Identified threatened or endangered fish**

**63** (1) If the Deputy Minister of Environment, Lands and Parks, or a designated environment official, is of the opinion that a species of fish is threatened or endangered,

(a) the deputy minister or designated environment official, and

(b) the chief forester,

may jointly, by written order, classify a species of fish as identified threatened or endangered fish for the purposes of the definition of "fish stream" in section 1.

(2) An order made under subsection (1) is effective when a notice that the order has been made, and the locations where the details of the order may be obtained, are published in the Gazette.

## **Schedule A**

### **Forest Management Objectives**

#### **Soil conservation**

**1** The forest management objectives with respect to conservation of soil, for areas where harvesting has been carried out, are

(a) to retain the organic floor to the fullest extent possible if disturbance to the organic forest floor is likely to result in erosion of mineral soil from the area, if that erosion presents a significant risk of damage to human drinking water supplies or to aquatic habitats,

(b) to restrict the amount of productive forest land that is converted to permanent roads, landings and excavated or bladed trails to the minimum necessary to safely and efficiently conduct forest practices, and

(c) to protect soil productivity on areas other than those referred to in paragraph (b).

#### **Water quality and fish habitat**

**2** The forest management objective with respect to protecting human drinking water quality and fish habitat, both during and after harvesting, is to retain sufficient streamside mature trees and understory vegetation to sustain all of the following:

(a) a natural variation in water temperatures;

(b) cover for fish;

(c) a continual source of large woody debris for stream channel stability purposes;

- (d) a vigorous mass of roots capable of controlling stream bank erosion;
- (e) a filter to prevent the transport of sediment into stream channels;
- (f) woody debris sufficient for in-stream habitat;
- (g) a source of nutrients to the stream through litter fall.

### **Critical wildlife habitat**

**3** The forest management objective with respect to critical wildlife habitat is to facilitate the long term protection of that habitat by

- (a) providing an opportunity for the Ministry of Environment, Lands and Parks to reasonably assess whether critical wildlife habitat is present on identified land, and
- (b) enabling agreements to be entered into to protect that habitat.

### **Reforestation**

**4** The forest management objective with respect to reforestation of areas where timber has been harvested or destroyed is to promptly regenerate the areas with a healthy, commercially valuable stand of trees that is unimpeded by competition from plants or shrubs.

***Note:** this regulation repeals B.C. Reg. 349/87*

[Provisions of the *Forest Land Reserve Act*, R.S.B.C. 1996, c. 158, relevant to the enactment of this regulation: section 37 (2) (e.1) to (e.5), (m) and (n) and (4) to (9)]