

APPEAL PROCESS

Appeals under the *Forest Practices Code of British Columbia Act*

The *Forest and Range Practices Amendment Act, 2003*, S.B.C. 2003, c. 55 was brought into force by regulation on January 31, 2004, and amends the *Code*. Section 92 of the *Amendment Act* repealed several sections of the *Code*, including sections 127 and 128.

Prior to the amendments, the determinations that could be appealed under the *Code* were set out in sections 127 and 128, and included the following:

- the approval of an operational plan or an amendment;
- orders to abate or remove a fire hazard;
- determinations regarding fire control or suppression;
- orders regarding unauthorized construction or occupation of a building in a Provincial forest;
- orders regarding the unauthorized storage of hay on a Crown range, or range development;
- orders regarding unauthorized construction of trail or recreation facilities on Crown land;
- orders relating to the control of insects, disease, etc.;
- penalties for contravention of the *Code*, regulations, standards or an operational plan;
- remediation orders and stop work orders; and,
- notices of determination that a person contributed to fire.

Determinations could not be appealed to the Commission unless a reviewer first reviewed them. The review and appeal of certain specified determinations could be initiated by the Forest Practices Board or by a person subject to the determination, or both.

Appeals respecting these sections of the *Code* may still be accepted by the Commission if the contravention or administrative action took place prior to January 31, 2004.

Appeals under the *Forest and Range Practices Act*

The *Forest and Range Practices Act* was brought into force by regulation on January 31, 2004. The *Forest and Range Practices Act* states that the Commission is continued under section 194 of the *Code*, and it incorporates many of the powers and procedures set out in the *Code*.

The formal requirements of the appeal process for appeals under the *Forest and Range Practices Act* are set out in Part 6 of the that *Act*, in Part 6 of the *Code*, and in Part 3 of the *Administrative Review and Appeal Procedure Regulation*. Appealable decisions under the

Forest and Range Practices Act, other than a determination under section 77.1, are set out in sections 80 and 81 of that *Act*. These include the following:

- approval of a forest stewardship plan, woodlot licence plan or an amendment;
- authorizations regarding range stewardship plans;
- approvals, orders, and determinations regarding range use plans, range stewardship plans or an amendment;
- suspensions and cancellations regarding forest stewardship plans, woodlot licence plans, range use plans or range stewardship plans, and permits under this *Act*;
- orders regarding range developments;
- orders relating to the control of insects, disease, etc.;
- orders regarding unauthorized construction or occupation of a building on Crown land in a Provincial forest;
- orders regarding unauthorized construction of trail or recreation facilities on Crown land;
- determinations regarding administrative penalties;
- remediation orders and stop work orders;
- orders regarding forest health emergencies;
- orders relating to the general intervention power of the minister;
- orders regarding declarations limiting liability of persons to government;
- relief granted to a person with an obligation under this *Act*, the regulations, standards or operational plan;
- conditions imposed in respect of an order, exemption, consent or approval; and,
- exemptions, conditions, and alternative requirements regarding roads and rights of way.

Reviews must be conducted at the request of the person subject to certain determinations listed under the *Forest and Range Practices Act*. The Forest Practices Board may also require a review of specified determinations listed under the *Forest and Range Practices Act*, if it receives consent from the person who is the subject of the determination. Either the determination, or a decision made after completion of a review of the determination, may be appealed to the Commission by the Forest Practices Board or by a person subject to the determination.

Appeals under the *Forest Act*

Appealable decisions under the *Forest Act* are set out in section 146 of that *Act* and include certain determinations, orders and decisions made by district or regional managers, timber sales managers, employees of the Ministry of Forests, and the Chief Forester. Appealable decisions include matters such as the determination of stumpage and the suspension of rights under a licence or agreement.

Certain decisions of the Chief Forester or an employee of the Ministry of Forests may be appealed to the Commission without prior review. However, determinations, orders or decisions made by a district or regional manager, or timber sales manager, must be reviewed by a reviewer before they may be appealed. If the person who is subject to the decision, or the

person in respect of whose agreement a decision is made, disagrees with the review decision, that person may appeal the review decision to the Commission.

Appeals under the *Range Act*

The following determinations, orders and decisions under the *Range Act* are appealable to the Commission:

- determinations, orders and decisions by a forest officer or district manager relating to the suspension of all or some of the rights granted under a licence or permit;
- determinations, orders and decisions by a district manager relating to the reinstatement of suspended rights; and,
- determinations, orders and decisions by a district manager relating to the cancellation of suspended rights or the cancellation of a licence or permit where rights were under suspension.

These determinations, orders or decisions cannot be appealed to the Commission unless they have first been reviewed by a reviewer. If the person subject to the decision, or the person in respect of whose agreement a decision is made, disagrees with the review decision, that person may appeal the review decision to the Commission.

Appeals under the *Private Managed Forest Land Act*

Since August 3, 2004, the Commission has been given jurisdiction to hear appeals from certain decisions made under the *Private Managed Forest Land Act*. The formal requirements for appeals under the *Private Managed Forest Land Act* are set out in section 33 of that Act. That section creates a right of appeal to the Commission for persons who are subject to certain orders, decisions or determinations of the Private Managed Forest Land Council, and include the following:

- determinations regarding penalties and remediation orders;
- determinations regarding contraventions of this *Act* or the regulations;
- stop work orders;
- notifications to the assessor regarding contraventions; and,
- requests of the council to rescind or vary orders, decisions or determinations.

Appeals under the *Wildfire Act*

As of March 31, 2005, certain orders made under the *Wildfire Act* may be appealed to the Commission. Part 3, Division 3 of the *Wildfire Act* sets out the orders that may be appealed to the Commission. The orders that may be appealed are as follows:

- orders to abate a fire hazard;
- orders refusing compensation to persons carrying out fire control on the grounds that the person caused or contributed to the fire or to the spread of the fire;

- orders requiring a person to pay the government's costs for fire control and the costs related to the loss of Crown resources as a result of the fire, as determined by the minister;
- contravention orders;
- administrative penalties and cost recovery orders;
- remediation orders and administrative penalties resulting from a failure to comply with a remediation order; and,
- stop work orders.

A person who is subject to any those orders may appeal either the order, or the decision made after the completion of a review of the order, to the Commission. The Forest Practices Board may also request a review of those same orders, provided that it receives consent from the person who is the subject of the order. Further, it may appeal the order, or the decision made after the completion of the review of the order, to the Commission.