



Proposed Changes In and About a Stream - Notice to Habitat Officer

Re: Thompson Okanagan Regional General Terms and Conditions for Authorized Change under Section 39(1) of the *Water Sustainability Regulation*

The following Terms and Conditions are related to your Notice to a Habitat Officer of the Ministry of Water, Land and Resource Stewardship under the *Water Sustainability Regulation* (Part 3 of the regulation) regarding your proposal to make changes in and about a stream of the kind described in section 39 of the *Water Sustainability Regulation*. Please see Private Moorage Terms and Conditions for applications under Section 39(1)(d) of the regulation.

You may proceed with your proposed works when 45 days from submission has passed, or you have obtained a statement from a habitat officer on which the authorized change can proceed.

Please Note: Only changes in and about a stream of the kind listed in the *Water Sustainability Regulation* (Part 3 "Changes in and About a Stream") can proceed on notice and in accordance with requirements of the regulation including any terms and conditions specified by a Habitat Officer. A Change Approval under the *Water Sustainability Act* is required if the change proposed is not of the kind listed in Section 39 of the regulation.

Under the provisions of the regulation, a person making a change in and about a stream under this regulation, other than under Sections 39(1)(o) to (s), 39(2) or 39(5), must then make that change in accordance with the regulation and any terms and conditions specified in this letter.

General Terms and Conditions

1. Any work associated with the proposed changes in and about a stream must not cause stream channel instability or increase the risk of sedimentation into the stream.
2. During work onsite, erosion and sediment control materials must be available onsite at all times and must be installed if sedimentation is likely to occur into the stream. A contingency plan must be developed outlining the measures to be taken by workers when carrying out any work to control erosion and sediment.
3. Soil disturbance must not occur in heavy rain conditions and any soil removed must be placed in a location that ensures that sediment or debris does not enter the stream.
4. Within a work area, water that contains sediment must be pumped to a vegetated area away from the stream where it can seep into the ground, or to a settling pond that is sufficiently far from the stream to allow sediment to settle out before the water returns to the stream.
5. The disturbance of stream bank vegetation must not occur or be minimized as much as possible.
6. Any areas that are disturbed during the work (such as exposed soil) must be promptly restored at a minimum to the pre-disturbance condition.

Note: Guidance is provided in the Enhancement Section of the Best Management Practices Instream Works

7. Work must be conducted on, and equipment located and operated from, dry land (top of bank) and the worksite must be isolated from flowing water.
8. Equipment used in close proximity to the stream must be free of deleterious material and in good mechanical condition. Measures must be taken to ensure that no harmful material (including fuel, hydrocarbons, soils, sediment, or debris), which could adversely impact the aquatic ecosystem, can enter the stream.
9. The original rate of water flow in the stream (existing prior to commencing work) must be maintained upstream and downstream of the worksite during all phases of instream activity associated with the work.
10. When work requires de-watering or isolation of the worksite in the stream, a permit for the salvage of fish and wildlife must be obtained prior to commencing work. All required salvage permits must be obtained from FrontCounter BC: <http://www.frontcounterbc.gov.bc.ca/>. Any salvage must be carried out by a qualified environmental professional (such as an RP.Bio.).
11. Following de-watering or isolation of the worksite, stream flow must be returned gradually to the de-watered or isolated area to avoid erosion of the stream channel and sediment delivery to the stream.
12. The stream channel width must not change as a result of the work. In fish bearing streams, the permanent removal of stable naturally occurring material from the stream or stream channel is not permitted.
13. Any materials placed within the stream must be clean and not contain substances that could be harmful to fish, wildlife, or the aquatic ecosystem of the stream.
14. Subject to Sections 15 and 16 below, the work must be completed during the timing window for the stream in respect of which the changes are proposed. The applicable timing windows (by region and/or by stream) are specified in the following link (see below) and are designed to protect fish, wildlife or the aquatic ecosystem of a stream.

*Regional Timing Windows - <http://www2.gov.bc.ca/gov/content/environment/air-land-water/water/water-licensing-rights/working-around-water/regional-terms-conditions-timing-windows>

For projects proposed to take place outside these timing windows, please see Sections 15 and 16 below.

15. In addition to the timing windows specified in Section 14 above, work may be carried out during the following times provided these requirements are met when the changes are carried out:
 - i) If the stream channel is naturally dry (no flow) or frozen to the bottom at the worksite and the instream work / activity associated with the proposed change will not adversely impact fish, wildlife or the aquatic ecosystem of the stream (e.g. not result in any substance, sediment, debris or other material entering or leaching into the stream that would adversely affect fish, wildlife or the aquatic ecosystem),
 - ii) In the construction of a winter crossing, the stream channel is frozen to the bottom at the worksite and related work does not adversely impact the stream channel (including stream bed and banks), or fish, wildlife or the aquatic ecosystem of the stream, or impede their passage (in both directions) in the stream.

16. If your work is proposed outside of the timing window (as described in Section 14 above), you must retain a qualified environmental professional (such as an RP.Bio.). The professional will be responsible for providing a written technical rationale that assesses and addresses the risks of the proposed changes in and about a stream, including proposing site-specific mitigation (e.g., an Erosion Control Plan that identifies contingency measures and emergency procedures related to the proposal) and onsite monitoring of their implementation. This document must be kept onsite during the works. You will be required to have the Qualified Environmental Professional to be onsite during construction to provide environmental monitoring. The Habitat Officer will depend on the professional reliance of the Qualified Environmental Professional.
- i) Works done outside of the timing window must take place within the timeframe identified by the QEP. Further delays will likely result in works being delayed to the next Fisheries timing window.
 - ii) For those exceptions where the project is within a Rocky Mountain Ridge Mussel red zone, and a delay in startup times has resulted in work being undertaken in temperatures less than 16 degrees Celsius the qualified professional must demonstrate that an area large enough to account for movement of mussels into the work area has been accounted for in their original assessment.

In proceeding outside the timing window in accordance with recommendations by your qualified environmental professional, you must comply with any measures specified by that professional to prevent impacts on the stream channel, fish, wildlife or the aquatic ecosystem of the stream, as well as, any additional Habitat Officer terms and conditions specified in the confirmation of receipt of your original Notice.

In summary, you must meet the terms and conditions described above and meet any other requirements of the regulation, as are described in Part 3 of the *Water Sustainability Regulation* (found at <http://www.bclaws.ca/>).

For assistance, the Province has developed Best Management Practices for working around water and for designing and implementing different types of changes in and about a stream. This information in combination with the terms and conditions described above, including any additional Habitat Officer terms and conditions specified will help ensure that your changes in and about a stream will be compliant with the regulation and related legislation, as well as minimizing impacts on the environment. Follow the links and website directions (see below) to review the provincial guidance/practices provided for your proposed works. Please be advised that these documents may contain information which may be the subject of change due to amendments to the federal *Fisheries Act* and/or to related processes by Fisheries and Oceans Canada (DFO). Current up-to-date information on DFO process and legislation can be found at: <http://www.dfo-mpo.gc.ca/pnw-ppe/index-eng.html>

*Requirements and Best Management Practices for Instream Works - [wsa-cias-requirements-bmps.pdf \(gov.bc.ca\)](http://www.wsa-cias-requirements-bmps.pdf)

*A User's Guide for Changes In and About a Stream in British Columbia - [wsa-cias-users_guide.pdf \(gov.bc.ca\)](http://www.wsa-cias-users_guide.pdf)

Final Note: It is the responsibility of persons intending to carry out changes in and about a stream, as described under Part 3 of the *Water Sustainability Regulation*:

- To comply with federal, provincial and municipal enactments, including but not limited to the *Water Sustainability Act* (and its regulations), Fisheries Act (Canada), Wildlife Act (BC) or the Navigation Protection Act (Canada), as well as local government bylaws and regulations, as may be applicable to proposed changes and related works or activities; and
- To obtain the written consent of the landowner for proposed changes and related works or activities intended to take place on private land or premises or to use any privately owned works, before proceeding.
- Please be advised that, in the event of non-compliance with the requirements of the regulation (including habitat officer terms and conditions), it is the responsibility of persons carrying out changes in and about a stream:
- To report non-compliance with the regulation within 72 hours and then to take measures to remedy the non-compliance, as may be specified by a *Water Sustainability Act* Engineer, as well as to comply with any additional terms and conditions specified by the Habitat Officer; and
- To report damage to an aquatic ecosystem within 72 hours to a Habitat Officer and then to restore and repair the habitat to the state that existed before the damage was caused or as directed by the Habitat Officer.

For information, the Ministry may undertake review and inspection of specific changes in and about a stream and related works and activities to confirm compliance with:

- The requirements of the regulation,
- Habitat Officer terms and conditions, including those listed in this document or any later specified by the Habitat Officer,
- Any site-specific measures and mitigations specified by a qualified environmental professional for in-stream projects carried out outside accepted timing windows, and
- Any other applicable enactments.

In cases of demonstrated non-compliance with legal requirements, compliance and enforcement actions may subsequently be undertaken by the Ministry where circumstances warrant.

If you have any questions, please contact a Thompson Okanagan Habitat Officer at TOREcosystemsWSA@gov.bc.ca

On behalf of Thompson Okanagan Habitat Officers,
Thank you.