

**Interim Guidance for Delegated Decision Makers and licensees:  
FRPA Section 108 amendment roll out –  
Policy and Implementation**

**April 2024**

**DISCLAIMER:**

This document is for both **MoF and Licensee** use and is intended to guide both parties in initial implementation of the new Area of Catastrophic Damage and creating a landscape level reforestation plan. The information in this document reflects interpretive guidance on specific provisions of the FRPA and FPPR and **does not constitute legal advice**. As roll out continues through the summer of 2024 it is expected that the process and policy will be adjusted and improved to best meet the needs of both parties. Updating of FRPA Bulletin 26 will be completed over this period to once again be the definitive version of policy and guidance on implementing Section 108.

All references to legislation and regulations within this document are current as of the date of publication of this document which includes the Bill 23 Regulation Amendments signed on March 11, 2024.

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## **Minister may create an Order for an Area of Catastrophic Damage and a Reforestation Plan.**

### **Introduction**

There have been amendments to the Forest and Range Practices Act (FRPA) and Forest Planning and Practices Regulation (FPPR) to modernize administration of FRPA Section 108 (S.108) and the provision of Relief or Funding for licensees that have had legal obligations burnt by wildfire.

Following the rapid development of landscape level catastrophic fires in British Columbia, FRPA has been amended to provide a new option for dealing with reforestation of these wildfires. The Minister may by Order declare an Area of Catastrophic Damage (ACD) and then create a landscape level reforestation plan to deal with all reforestation within the ACD. The Order and the plan can allow for immediate relief of obligation for the licensee or allow for the movement of obligations to a new location (which is a higher priority for reforestation).

The amendment to FPPR confirms funding is only available for wildfire, landslides and floods and also introduces a time clause requiring licensees to apply for relief or funding within 2 years of the end of the year the fire began.

These amendments now:

- Provide for some fires to be managed under the existing legislation on a block-by-block basis while other fires can be managed through a landscape approach.
- Enable the development of a landscape level plan that can direct investment in the reforestation to the highest priority sites while avoiding areas now identified for other resource values or simply of a lower priority.
- Enable government to collect unused appraisal allowance from areas where the licensee has been provided relief of obligation.
- Enable the minister to impose conditions on the funding provided to bring stands back to the condition/stage they were in before the fire.

### **1. S.108.2 The minister may designate an Area of Catastrophic Damage**

Due to the scale of catastrophic fires since 2017 it has been found that dealing with reforestation of legal obligations through the existing process of S.108 (0.1) in which each individual standard unit has to be submitted for payment of funds or relief is very time consuming and onerous. In order to develop a more efficient and effective landscape approach to reforestation across the whole fire, the minister may now, by order, designate one or several fires as an Area of Catastrophic Damage. This may only be done for an area impacted by wildfire or a prescribed natural event which the Regulation now defines as a landslide or flood. As part of this order the minister may now grant licensees relief from an obligation and may impose conditions in relation to that relief and they may exercise this discretion

differently for different persons or locations. This new ability to provide relief up front can be used to simplify the development of a landscape level plan for reforestation.

### **1.1 An Area of Catastrophic Damage**

An Area of Catastrophic Damage (ACD) may be:

- More than one fire
- More than one district
- May be of any size - a minimum size has not been set so that there is flexibility for all situations.

District and regional staff should meet with First Nations communities and licensees as soon as large wildfires have established and it is appropriate to do so to consider the following criteria:

1. Is there a general interest amongst impacted First Nations communities to take a landscape approach?
2. Is there interest from obligation holders to take a landscape approach?
3. Are other Plans such as Forest Landscape Plans and land use orders completed or in progress? Are non-timber resources a priority? These plans may help identify where there are resources that you want to manage at a landscape level such as:
  - a. Proximity to a community (fire safe a community)
  - b. Indigenous traditional practice
4. Is there is a need to effect change on the regeneration pattern for future long-term resilience through consideration of age class (deferrals) / density / species and to prioritize site index and value (move from low value to higher value sites)?
5. What is the number of obligation holders/ agencies involved and complexity of the process (number of SU's burnt)? A Plan would create the ability to transfer/reduce workload.
6. Do area base tenures overlap the area of catastrophic damage? Area based tenures such Tree Farm Licensees (TFL) and Community Forest Agreements (CFA) may be identified as an ACD to allow for ease of planning due to exclusive nature of the tenure.
7. Although larger fires will often present more complex planning challenges than smaller fires, the size of the fire should not be a stand-alone factor and each fire should be considered on its own basis.
8. Are there any other factors that may contribute to the overall complexity of a landscape level reforestation plan?

Once the District / Regional staff have made a decision to create an ACD this should be presented to the Regional Executive Director (RED) for approval. Time is of the essence, the quicker these decisions can be made the sooner the recovery planning can be initiated to allow reforestation to proceed. The target should be to have a decision made by December 31 of the year the fire started.

A decision by the RED to proceed will trigger a Decision Note for FSPPB to prepare an Order for the Minister to sign. The subsequent signing of the Order by the Minister will initiate the 2-year time clause of FPPR S.96(2.5)

## **1.2 Considerations within the Order**

Requests for an Order should include a map with the fire boundary and all legal obligations within it allowing Forest Science, Planning & Practices Branch (FSPPB) to determine the estimated cost to bring all damaged obligations back to the stage they were at prior to the fire. This will allow an estimate of the funds to be allocated to deal with the development of the reforestation plan and the legal obligation blocks.

Under FRPA s111, an order by the minister under this Act must be in writing and given to each person to whom the order pertains and under FRPA S.112 the Minister can impose conditions on this order that are necessary or desirable with respect to the order. The only condition specified in the regulation is that licensees can be required to repay unused appraisal allowance for the blocks relieved.

The Ministerial Order will contain at a minimum the following information:

1. The authority under which the order was made.
2. The name of the ACD:
  - The naming convention should be in the format YearACD# (E.g. 2018ACD01)
3. A list of the blocks with obligations to establish a free growing stand in the ACD that are already identified to be relieved (108.2(2)(a)) (e.g. already identified within a Forest Landscape Plan).
  - An amendment to the order may be used to list additional obligations to be relieved or the obligations may be relieved through a claim (108.3 (1)).
4. The conditions to the relief granted within the order if any.
5. An attached Georeferenced pdf map showing the boundary of the ACD (this can be one or more polygons)
6. As per S.108.5, any conditions the Minister may require related to the funding that is provided.

When would relief of obligation be considered with an Order?

Initial considerations of situations would include where landscape level planning already exists and has identified geographic areas where reforestation is not desirable or where new or existing agreements have been made relating to areas with legal obligations.

Under S.108.2 (3), the minister's discretion under S.108.2 (2) to grant relief or impose conditions may be exercised differently for

- a. different persons or classes of persons, and
- b. different locations within an area of catastrophic damage.

This discretion may be based on performance history, new circumstances or situations that are local in nature (e.g. access issues).

## **2. S.108.3 Relief and funding for areas of catastrophic damage**

The options under the ACD are essentially the same as for an event causing damage in S. 108(0.1); the licensee can be given relief from the obligation or funding to carry out the work to bring the stand back to the condition it was in before the fire. **It is still the ministry's intent that most licensee obligations will be funded, and that relief will only be used to address changed circumstances on the site in terms of growing conditions or new management priorities.** A new possible outcome under this amendment is the ability for the minister to provide relief at some further point in the future after funding has been provided should new information or a change of circumstances occur; this is to recognize that conditions under climate change and within these catastrophic fires can be difficult to predict making reestablishment of forest more challenging than it was before the catastrophic event. At the same time, the minister may now require that funding no longer needed due to granting of relief be repaid to the ministry. This could be appraisal allowance or S.108 funding.

Under the initial S.108 legislation (now covered by S.108.01) for an 'Event Causing Damage' relief of obligation is linked to whether further expenditure on the stand to get to Free (FG) Growing is considered "inconsequential", that is the remaining obligation was so close to FG that there was little consequence or liability to the crown between its current state before the fire and FG had no fire occurred. However, for 'Area of Catastrophic Damage' the legislation considers if the areas are practicable for the obligation holder to regenerate back to the stage it was at prior to the fire. This does not preclude the Minister or Delegated Decision Maker from considering inconsequential costs as a reason for giving relief of obligation and if relieving obligations for areas that are inconsequential fit within the context of the Plan, then this should be considered not practicable (See [FRPA General Bulletin #3 \(June 9, 2005\)](#)) which may be for economic, cultural, wildfire urban interface, social, wildlife, or site degradation reasons.

## **3. S.108.4 Plans for Areas of Catastrophic Damage**

The purpose of creating an ACD is to enable a landscape approach to reforestation rather than a block-by-block approach and the creation of a landscape level reforestation plan (The Plan) is the key component of this new legislation. The Plan will enable identification of priority areas to either reforest, or not, and allow a) Relief of obligation b) funding the relocation of an obligation to a different site or c) funding for the original location (with the same or different standards). The different sites must be similar in cost to the original obligation. The landscape plan enables funding to be directed to the sites most in need of reforestation in collaboration with First Nations, all licensees and the government funded programs. A key component of this legislation is that licensees must agree to the movement of their blocks to a new location.

### **3.1 Principles for developing the Landscape Level Reforestation Plan**

Although legislation states that the Minister *may* establish a plan when declaring an ACD, it will be policy that a reforestation plan (the Plan) must be established. The Plan approval will initiate funding to licensees (or Ministry programs) for the work.

There are five principles for building the Plan:

1. Time is of the essence. Adopt existing planning work where possible ie FLPs or other existing planning frameworks.
2. Funding available for the area of catastrophic damage will be allocated through a ranking process.
3. Where feasible, the goal is maintaining the timber outcome had no catastrophic damage occurred. Replanting the majority of obligation blocks to bring them back to the stage they were in before the fire is the goal / starting point.
4. Plan for stand and landscape resilience including climate adaptation.
5. Although other planning objectives may be identified within the Plan area, S.108 funds can only be used to bring stands back to the stage they were in before the fire. This means silviculture activities related to reforestation and not establishing other types of vegetation or other activities.

A planning committee will be struck including Ministry of Forests operational staff, obligation holders and First Nation communities. The committee may invite other affected parties to the table once initial discussions have identified the need; for example, other funding programs such as Forest Investment Program (FIP) will need to be represented to ensure funding is available for areas identified for government responsibility planting. Where possible, existing local planning structures and committees should carry out this work to avoid redundancy.

Although the District Manager will be signing off on the plan, they will designate a lead person who will be responsible for ensuring the development and implementation of the reforestation plan. This is generally expected to be a district or regional operations staff member who is very familiar with the area, issues and S.108.

The plan will be funded through the S.108 funding collected for burnt obligations and any collected from relieved obligation in the silviculture sub-account (S.108.6). The cost of developing a plan should not exceed 1% of the available funds, however, the Expense Authority for the S.108 program may approve a higher amount but must ensure that sufficient funds are left to carry out the plan without a net loss of reforested area. All costs (development, implementation, administration, and activities) associated with the plan will come from these available funds. Note that funds from other programs such as Forest Investment Program for planting government responsibilities would be additional to the S.108 funding.

The plan should be developed within the first year following the order. This will allow obligation holders to meet the deadline set in regulation FPPR S.96 (2.5). Adopting existing plans and building out from them will be the most efficient; where none exist focus should be



placed on areas with the highest priority for reforestation and issues around long-term suitability for closed canopy forest (whether wildfire or ecologically related).

### **3.2 Content of a Reforestation Plan**

The plan must be developed in a spatial environment. This will allow ease of developing, tracking, reporting, producing maps, and costs. The government's Forest Management System (FMS) is the preferred spatial tool. The ability to create features and attributes for an Area of Catastrophic Damage has already been developed in FMS. A regime, recorded in a spatial planning system must be established for each block including costs. Some costs may be paid in subsequent phases. The phase payments will need to be determined. Any requirement to pay back funds due to a relief of obligation will also need to be determined. It is the intention that the planning group will develop a cost calculator approach with standardized costs (current suggestion is using BCTS averages) for everyone planting under the Plan.

An important first step in developing the Plan will be to carry out a GIS analysis of the forested state of the area pre-fire. This will help with licensee liability funding collection for the S.108 Fund and for directing the government funded work through FIP. This base map in FMS would then be the starting point for the planning process.

The plan should include the following sections:

1. Name of the Area of Catastrophic Damage (ACD #)
2. Areas Burnt – preferably burn severity rating including unburnt.
3. Prioritization of areas including future non-operating areas and links to other existing plans.
4. Prioritization for reforestation
5. Opening ids and Categories of reforestation – see below.
6. Deliverables/Outcomes including all obligations being relieved and all costs of the work.
7. Roles and Responsibilities (government, licensees, FIP)
8. Timelines – duration of the plan
9. Block relocation Agreements / licensee commitments.
10. Authorizations - Access agreements, road maintenance, SUPs etc.
11. Conditions in relation to funding – new stocking standards, alternative species, site prep etc.
12. Monitoring Plan – 108.5 (a)
13. Authorizations – signature and date.

The reforestation can be broken into categories as follows:

- Relief of obligation– no reforestation desired (no silviculture activity)
- Relief of obligation– but future reforestation work potential (FIP)
- Funding - Obligation and activity the same; status quo
- Funding - Obligation moved, same outcome (stocking standard the same)

- Funding - Obligation moved, different outcome (stocking standard changed)
- Funding - Obligation in same location with different stocking standards

As mentioned, the starting point is that the majority of obligations will be replanted as per their original prescription (to bring the stand back to the stage it was in before the fire). For areas where other resource objectives now take precedence, obligations can be relieved with no further work needed or they can be funded with a condition that some alternative reforestation activity is carried out. The other option as per S.108.4(2) is that the obligation can be moved to another location within the fire with a higher priority for reforestation. This could be with the same stocking standard or a different one, but it will need to be a similar overall cost (possibly resulting in less hectares replanted) as per S.108.4(3)(b). Boundaries may also be adjusted to include, for example, the reforestation of wildlife tree patches. A final option could be for the obligation to remain in the same location but be assigned different stocking standards should there be a significant reason to do so.

As a landscape level reforestation plan, it would be practical to include all salvage activity in the plan to ensure that reforested areas are not subsequently harvested. Presumably areas which are not prioritized for reforestation would also be unlikely to get salvaged. However, it is understood that wildfire salvage planning is very time sensitive and including salvage planning in the reforestation plan may not be possible in every case. Despite this, as salvage cutting permits are approved, they should be updated into the Plan as new legal obligations.

Reasons for moving obligations may include a) economics in terms of wood value, cycle time or current access costs (e.g. bridge out to a valley) b) cultural, social (WUI issues) or wildlife c) site degradation or climate change projections make reforesting the original obligation site impossible or undesirable.

Licensees must agree to the movement of any of their blocks within the Reforestation Plan. The intent of the legislation was to develop a collaborative and landscape level approach to reforestation and (after the planning phase) simplify the process for allocating and receiving funding. By building a plan together the objective will be to reduce risk for both parties in relation to the funding and reduce the administrative burden of dealing with every standard unit individually in RESULTS. The intent is that once the plan is finalized and signed off by the DM, that initiates a series of phased payments to the various parties to do the work (this could include FIP who may be taking on some of the relieved obligations).

When an ACD Reforestation Plan is developed, the funding and relief is done through the plan and not block by block individually through RESULTS. This means that obligation holders and those carrying out work can begin as soon as the Plan has been signed off according to the phase payment schedule.

**Although a licensee cannot opt out of the plan, they must agree to the movement of any of their legal obligations.** They may still be relieved of certain obligations that are in areas prioritized for alternative objectives (and no replanting) under the Plan. All unused silviculture allowance would be repaid to the province for use under the Plan as per S.108.3(3). All licensee obligations will still need to be identified under the plan and their choice not to agree to moving blocks will need to be recorded as a condition of the Plan.

This will enable funds to be allocated to another group (District / FIP) to carry out reforestation elsewhere in the plan with those funds.

Another new aspect of the legislation is the ability for the DDM to now under 108.3(5) provide relief of obligation after having already provided funding if it becomes apparent that it is not practicable to complete the obligation. This may be particularly useful in situations where loss of overstory cover, soil organic layers or intensifying climate change related drought is making re-establishment to the stage the stand was at before the fire unlikely.

#### **4. S.108.5 Conditions in relation to funding**

To help with delivering Section 108 funding under either the original Section 108 approval process or the new landscape option of an ACD, the amendment now allows the minister to impose a number of conditions with the funding provided.

Key is the confirmation that the funding can be paid in instalments and not all up front allowing for less risk to both parties. Along with this is a clear link to the planning of activities, through reference to specific requirements or criteria that must be met and preparation and submission of plans. Similarly, the minister can designate a person (licensee, government or contractor) to provide surveys, analyses or audits which will help in understanding progress towards bringing stands back to the state they were in prior to the fire. Importantly, and linked to the increased level of focus on directing funds to the highest priority locations, the minister may take court proceedings to reclaim funding related to conditions that were not met.

A key aspect of the new legislation is FPPR S.96(2.2) which requires application for funding within 2 years of December 31<sup>st</sup> in the year the fire began or since these regulations came into force. Those included in an ACD working under a Reforestation Plan will have their reforestation plan already identified and approved by the DDM and so should not have any issues. For those not working under a Reforestation Plan there is now a need to start creating their own timetable for addressing reforestation and preferably applying for funding or relief on those higher priority blocks. For those areas seen as a lower priority or being managed on a natural regeneration regime FPPR S.96.1 allows for a submission plan to be provided before the 2-year time limit laying out the proposed reforestation schedule that the remaining blocks will be managed under.

#### **5. S.108.6 Payment of money into the silviculture payments sub-account**

This clause was introduced to confirm that funds collected from licensees due to provision of relief or due to a condition imposed will be placed in this account and can only be used for reforestation under FRPA requirements.

**6. Amended sections of the Forest and Range Practices Act and Forest Planning and Practices Regulations**

**Repealed:**

- **FRPA S.108(0.1) (7)**
- **FPPR S.96(1.1) (b)** (removing *Dothistroma* as an event causing damage)
- **FPPR S.96 (2)** (removing existing process for applying so it can be updated)

**Amended:**

**FRPA**

- **S.108(0.1)(3)(4)(5)(6)** (updates language confirming what relief or funding relates to)
- **S.108.1** (funding for road deactivation)
- **S.108.2** (creation of an area of catastrophic disturbance)
- **S.108.3** (Providing relief or funding for an area of catastrophic damage)
- **S.108.4** (Plans for areas of catastrophic damage)
- **S.108.5** (Conditions in relation to funding)
- **S.108.6** (Payment of monies into the Silviculture Payments Sub-account)

**FPPR**

- **S.96.1** Application submission plans
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**7. Appendix:**

**The following page contains an approximate timeline for developing an ACD and the reforestation plan to provide some indication of the process.**

Event	Year 00												Year 01												Year 02												Year 03											
	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D
<b>Licensee Triggered (Event Causing Damage)</b>																																																
Wildfire of Note develops																																																
2 year clock starts ticking (December 31st of the year the wildfire started FPPR 96(2.2) .											31 <sup>st</sup>																																					
Licensees begin to prepare claims / District Approval																																																
Licensees begin to prepare reforestation projects - surveys, sowing etc																																																
Reforestation begins																																																
Last day to put in an application submission plan (90 days before end of 2 year period FPPR 96.1 (3) )																																															90 days	
two year period ends																																																31 <sup>st</sup>

Event	Year 00												Year 01												Year 02												Year 03											
	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D
<b>Ministerial Order (Area of Catastrophic Damage)</b>																																																
Wildfire of Note develops																																																
District / Regional Mof staff begin discussion with licensees and First Nations on requesting an Order to create an ACD.																																																
Recommendation provided to the RED to proceed with creating an Order.																																																
Approved request sent to FSPPB for development of Order to go to the minister.																																																
ACD created by ministerial order.																																																
2 year clock starts ticking (December 31st of the year this Order signed FPPR 96(2.5) .																																																31 <sup>st</sup>
Planning committee created to develop a landscape level reforestation plan (the Plan) for the ACD. District makes application to S.108 fund for money to develop the Plan.																																																
Planning committee begins to assemble spatial and aspatial data and then prioritize areas for reforestation.																																																
Reforestation plan finalized, cost tables created and initial work schedule confirmed.																																																
Plan signed by DDM, S.96(2) requirement met and phased payments begin																																																
Licensees and districts begin to prepare reforestation projects surveys, sowing etc																																																
Reforestation begins																																																
Phased payments are made																																																
Reforestation continues																																																
two year period ends after order for an ACD signed ( already met)																																																31 <sup>st</sup>