



# FRPA GENERAL BULLETIN

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## Use of the Term "Practicable" Under the Forest and Range Practices Act (FRPA) and Regulations

### **Background:**

The basis for this FRPA bulletin is the FPC General Bulletin #30, "Use of the term "Practicable" under the FPC.

The Forest Planning and Practices Regulation, the Range Planning and Practices Regulation and the Woodlot Licence Planning and Practices Regulation all use the term "practicable" so it is important that it is understood and applied consistently.

The following table lists the sections where "Practicable" is referenced in the Forest Planning and Practices Regulation, similar references are found in the other two regulations:

| FPPR Section   | General Topic Heading  |
|--|--|
| 9  | OSBG wildlife and biodiversity at the landscape level              |
| 12   | Specifying results or strategies                                   |
| 25.1   | Consistency of results and strategies with objectives              |
| 32   | Exemption from review and comment process for mandatory amendments |
| 36   | Permanent access structures  |
| 39   | Natural surface drainage patterns                                  |
| 50   | Restrictions in a riparian management area                         |
| 51   | Restrictions in a riparian reserve zone                            |
| 64   | Maximum cutblock size  |
| 79.1   | Exemptions from 22.1 of the <i>Act</i>                             |
| 91   | Minister may grant exemptions                                      |
| 92   | Exemptions by minister responsible for <i>Wildlife Act</i>         |
| Note: There may be other references to "Practicable" in other pieces of legislation that not referenced in this table. |  |

## **Discussion/Policy Advice**

In FRPA, the word practicable is often used to say that something must be consistent "to the extent practicable" in the circumstances. This acknowledges that results and strategies, for example, sometimes may not be entirely consistent with government objectives; however, they are required to be as consistent as practicable in the circumstances. Practicability should take into account reasonable commercial considerations, amongst other considerations.

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The word "practicable" is sometimes confused with the word "practical".

The following explanation from "Weseen, *Words Confused and Misused*" illustrates the difference between practical and practicable

*Practical*, with its implied antithesis of *theoretical*, means "useful in practice".

*Practicable* means "capable of being carried out in action".

The following example found in the American Heritage Book of English Usage also helps illustrate the difference: If you have a *practical* knowledge of Russian you can order coffee in a café in Russia, though it may not be *practicable* to try to learn the language of every country you visit. The word "practical" in this example relates to the ability to use Russian while "practicable" relates to a host of considerations requiring a balancing of all the relevant circumstances to determine whether or not it would be feasible to learn a host of other languages.

In the forestry context, what may be practical or useful from a licensee's perspective (perhaps the easiest and cheapest way of doing something) might not be "practicable" within the meaning of the legislation unless all relevant considerations are taken into account. For example, to determine whether a proposed result or strategy meets the consistency test for wildlife and biodiversity at the landscape level, a person would have to consider whether the result or strategy is consistent to the extent practicable or feasible bearing in mind all the relevant circumstances.

Adding the phrase "to the extent practicable" to the various sections of the FPPR is designed to:

- recognize the need for flexibility when developing R/S considering local forest conditions,
- to reflect that natural disturbance patterns of some forest ecosystems (single tree replacement) would preclude reasonable use of acceptable silv systems. In these cases, openings of larger than natural patterns might be "practicable", and
- Current conditions of some landscapes are far different than the natural disturbance pattern, and it will take time for timber harvesting (and possibly other forest activities) to emulate the natural disturbance patterns. In these cases, openings that are working toward natural patterns would be "practicable".

Although the meaning of the term “practicable” is consistent throughout the regulation, it arises in different contexts. Section 9 and Section 25.1 use the term “to the extent practicable” while Section 12 uses it in the context “if the minister determines it is not practicable”, Section 91 use it in the context “if the minister is satisfied that it is not practicable”, while most of the practice type references to “no other practicable option” exists. These different usages have no real effect on the meaning of the word.

The way “Practicable” is referenced in the FPPR can be broken down into two general ways, either it is used in a planning sense or with regards to a practice requirement or an exemption to either one.

### **Example 1:**

#### **The use of “Practicable” within the planning framework:**

Under Section 12 (7) of the Forest Planning and Practices Regulation:

*"If the minister determines that it is not practicable, given the circumstances or conditions applicable to a particular area, for the person to specify a result or strategy consistent with an established objective, the minister must exempt the person from the requirement in relation to that area.*

In situations where this exemption power might be used, the DDM would have to determine that it is not feasible to come up with a result or strategy that is consistent with an objective in a particular area. Rather than specifying an *inconsistent* result or strategy, the person is exempted from the requirement of specifying a result or strategy. The exemption need not relate to the entire plan but to a "particular area", given the circumstances or conditions applicable to that area. For that particular area, the person is exempted from specifying a result or strategy only in relation to the objective in question.

### **Example 2:**

#### **The use of “Practicable” with regards to a practice requirement:**

Under Section 50(1) of the Forest Planning and Practices Regulation (paraphrased):

A person must not construct a road in a riparian management area, unless one of the following apply:

- (a) locating the road outside the RMA would create a higher risk of sediment delivery to the stream, wetland or lake;
- (b) there is no other “practicable” option for locating the road
- (c) the road is required as part of a stream crossing.

The FRPA practice requirement question to be answered in this example is: Does a "practicable" option exist? If yes, a road must be built outside of the riparian management area unless it falls under (a) or (c). To determine if the answer is yes, the DDM would consider the issues and concerns brought to his/her attention from the public review and comment process and then balance the social, economic and environmental interests. In this case, conserving the fish and soils resources and meeting the economic needs of people and communities would be primary considerations.

If the test were: Is there any other "practical" location for the road? The next question the DDM would ask is: "is there any other location as cheap and efficient as the one in the riparian management area?". However, since the test is: "is there any other "practicable" location?", the DDM would ask, "when balancing social, economic and environmental factors of all possible locations (as well as any other relevant considerations), is there any other feasible location for the road or is the riparian management area the only location that makes sense?".

The road may be located in the riparian management area (RMA) only if that location is the only one that makes sense when all relevant factors are considered. So, it may be more expensive or less useful to build the road outside the RMA, but when the environment is considered, it may make sense to choose the more expensive or less practical route. On the other hand, it is possible that locating the road outside the RMA would make it so expensive or so useless that locating it in the RMA is the only sensible decision, even considering the impact on the environment. Finally, if the impact on the environment is very significant, for example, if prime wildlife habitat for an endangered species will most likely be significantly damaged, perhaps the road should not be built there no matter what the cost of the alternative.

All relevant factors have to be considered.

### **Example 3:**

#### **The application of "to the extent practicable" under Section 9, objectives set by government for wildlife and biodiversity at the landscape level.**

Under Section 9 of the FPPR, the objective for wildlife and biodiversity at the landscape level:

*The objective set by government for wildlife and biodiversity at the landscape level is, without unduly reducing the supply of timber from British Columbia's forests **and to the extent practicable**, to design areas on which timber harvesting is to be carried out that resemble, both spatially and temporally, the patterns of natural disturbance that occur within the landscape.*

For example, the patterns of natural disturbance on the Coast are typically either:

- disturbances of a single tree to very small groups of trees that occur frequently (typically resulting from mortality, blowdown, disease, or small fires), or
- very large disturbances that occur infrequently, such as large fires.

This natural pattern is not easily replicated by industry forestry operations on BC's coast, so this provision allows for any necessary variation and to continue to provide for the more traditional type/sizes of harvesting be planned and carried out.

## **Contacts**

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