

PROVINCE OF BRITISH COLUMBIA

ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No.

247

, Approved and Ordered

APR - 7 2006



~~Lieutenant Governor~~

Administrator

Executive Council Chambers, Victoria

~~Administrator~~

~~Lieutenant Governor~~

On the recommendation of the undersigned, the ~~Lieutenant Governor~~, by and with the advice and consent of the Executive Council, orders that the Administrative Review and Appeal Regulation, B.C. Reg. 12/2004, is amended as set out in the attached Schedule.



Minister of Forests and Range and
Minister Responsible for Housing



Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section:-

Forest and Range Practices Act, S.B.C 2002, c. 69, ss. 141, 165, 166 and 167;

Forest Practices Code of British Columbia Act, R.S.B.C 1996, c. 159, ss. 198 and 220

Other (specify):-

oic 16/2004

SCHEDULE

1 Section 1 of the Administrative Review and Appeal Procedure Regulation, B.C. Reg. 12/2004, is amended

(a) by repealing the definitions of “appellant” and “requesting person” and substituting the following:

“appellant” means

- (a) for a *Forest Act* appeal, the person that initiates an appeal under section 147 (1) of that Act,
- (b) for a *Range Act* appeal, the person that initiates an appeal under section 70 (1) of that Act,
- (c) for a *Forest and Range Practices Act* appeal, the person that initiates an appeal under section 82 (1) of that Act, and includes the board if the board initiates an appeal under section 83 (1) of that Act, or
- (d) for a *Wildfire Act* appeal, the person that initiates an appeal under section 39 (1) of that Act, and includes the board if the board initiates an appeal under section 40 (1) of that Act;

“requesting person” means a person that requests a review of

- (a) a determination, order or decision referred to in section 143 (1) of the *Forest Act*,
- (b) an order, decision or amendment referred to in section 69 (1) of the *Range Act*,
- (c) a determination referred to in section 80 (1) of the *Forest and Range Practices Act*, or
- (d) an order referred to in section 37 (1) of the *Wildfire Act*, ,

(b) by repealing paragraph (b) of the definition of “reviewer” and substituting the following:

- (b) for a review under the *Range Act*,
 - (i) the person who made the original order or decision or prepared the amendment, or
 - (ii) another person who under section 69 (1) of the *Range Act* is designated by the minister to decide the review, , **and**

(c) by adding “or” at the end of paragraph (c) of the definition of “reviewer” and by adding the following:

- (d) for a review under the *Wildfire Act*,
 - (i) the person who made the original order, or
 - (ii) another person who under section 37 (1) of the *Wildfire Act* is designated by the minister to decide the review.

2 Section 2 is repealed and the following substituted:

Request for review: content requirements

- 2 (1) For
- (a) a review of a determination, order or decision referred to in section 143 (1) of the *Forest Act*,
 - (b) a review of an order, decision or amendment referred to in section 69 (1) of the *Range Act*,
 - (c) a review of a determination referred to in section 80 (1) of the *Forest and Range Practices Act*, or
 - (d) a review of an order referred to in section 37 (1) of the *Wildfire Act*,
- the request for review must be signed by, or on behalf of, the person who is the subject of the determination, order, decision or amendment under review, and must contain all of the following information:
- (e) the name and address of the requesting person;
 - (f) the address for service of the requesting person;
 - (g) except in the case of a review under the *Forest Act*, the new evidence that was not available at the time the determination, order, decision or amendment under review was made;
 - (h) a statement of the relief requested.

- (2) For
- (a) a review of a determination referred to in section 81 (1) of the *Forest and Range Practices Act*,
 - (b) a review, under section 214 (3) of the *Forest and Range Practices Act*, of the approval of, or the giving effect to, a forest development plan or range use plan or an amendment to either, or
 - (c) a review of an order referred to in section 38 (1) of the *Wildfire Act*,
- the requirement for review or request for review must be signed by or on behalf of the chair of the board, and must contain all of the following information:
- (d) in the case of a review referred to in paragraph (a) or (c), written consent of the person who is the subject of the determination or order;
 - (e) the name of the person who made the determination or order, or who approved or gave effect to the plan or amendment;
 - (f) the address for service of the board;
 - (g) the grounds for review;
 - (h) a statement of the relief requested.

- 3 ***The heading for Division 2 and sections 3 to 5 of Part 2 are repealed and the following substituted:***

**Division 2 – Procedures after Receipt of
Request for Review under the *Forest Act***

Reviews conducted under the *Forest Act*

- 3 Sections 4 to 7 apply to reviews under the *Forest Act*.

Notification of parties following receipt of request for review

- 4 The reviewer must acknowledge in writing any request for review.

Deficient request for review

- 5 (1) If a request for review does not comply with section 2 (1), the reviewer may serve 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 reviewer serves a notice of deficiencies under subsection (1), the requested review may proceed only after the submission to the reviewer of further material remedying the deficiencies.
- (3) The reviewer must serve a copy of the request and any notice of deficiency to the person who made the determination, order or decision that is the subject of the request.

4 *The following Division is added after section 7:*

Division 2.1 – Procedures after Receipt of Request for Review under the *Range Act*

Reviews conducted under the *Range Act*

- 7.1 Sections 7.1 to 7.6 apply to reviews under the *Range Act*.

Notification of parties following receipt of a request for review

- 7.2 (1) The minister must acknowledge in writing any request for review.
- (2) The minister must give a copy of the request to the person who made the order or decision or who prepared the amendment, which order, decision or amendment is the subject of the request.

Deficient request for review

- 7.3 (1) If a request for review does not comply with section 2 (1), the minister may give 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 minister gives a notice of deficiencies under subsection (1), the review may proceed only after the submission to the minister of further material remedying the deficiencies.

Designation of reviewer

- 7.4 On receipt of a request for review, the minister must forward the request to
- (a) the person who made the order or decision or who prepared the amendment, which order, decision or amendment is the subject of the request, or
 - (b) another person whom the minister, under section 69 (1) of the *Range Act*, designates to review the order.

Notice of review

- 7.5** (1) The reviewer must give a notice of review to
- (a) the person who requested the review, and
 - (b) the persons referred to in section 7.4.
- (2) If the review is to involve an oral hearing, the notice of review must specify the date, time and location of the hearing.

Review decision

- 7.6** The reviewer must give a written decision to the person who is the subject of the order, decision or amendment.

5 *Section 10 (2) is repealed and the following substituted:*

- (2) If the minister gives a notice of deficiencies under subsection (1), the review may proceed only after the submission to the minister of further material remedying the deficiencies.

6 *Section 11 is amended*

(a) in subsection (1) by striking out “2 (2) (d) to (g)” and substituting “2 (2) (e) to (h)”,

(b) in subsection (2) by striking out “2 (2) (c)” and substituting “2 (2) (d)”, and

(c) by repealing subsection (3) and substituting the following:

- (3) If the minister gives a notice of deficiencies under subsection (1), the review may proceed only after the submission to the minister of further material remedying the deficiencies.

7 *Section 13 (1) (a) and (2) is amended by striking out “the review” and substituting “the request”.*

8 *The following Division is added:*

Division 4 – Procedures after Receipt of Request for Review under the *Wildfire Act*

Reviews conducted under the *Wildfire Act*

- 15.1** Sections 15.2 to 15.7 apply to reviews under the *Wildfire Act*.

Notification of parties following receipt of a request for review

- 15.2** (1) The minister must acknowledge in writing any request for review or requirement for review.
- (2) If a request for review is made under section 37 (1) of the *Wildfire Act*, the minister must give a copy of the request to the person who made the order that is the subject of the request.

- (3) If the board requires a review under section 38 (1) of the *Wildfire Act*, the minister must give a copy of the requirement for review to the following:
 - (a) the person who made the order that is the subject of the requirement;
 - (b) the person who is the subject of the order.

Deficient request for review

- 15.3** (1) If a request for review does not comply with section 2 (1), the minister may give 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 minister gives a notice of deficiencies under subsection (1), the review may proceed only after the submission to the minister of further material remedying the deficiencies.

Board's deficient requirement for review

- 15.4** (1) If the board's requirement for review does not comply with section 2 (2) (e) to (h), the minister may give a written notice of deficiencies to the board, inviting the board, within a period specified in the notice, to submit further material remedying the deficiencies.
- (2) A review may not proceed if the board's requirement for review does not comply with section 2 (2) (d).
- (3) If the minister gives a notice of deficiencies under subsection (1), the review may proceed only after the submission to the minister of further material remedying the deficiencies.

Designation of reviewer

- 15.5** On receipt of a request or requirement for review, the minister must forward the request or requirement to
 - (a) the person who made the order that is the subject of the request, or
 - (b) another person whom the minister, under section 37 (1) of the *Wildfire Act*, designates to review the order.

Notice of review

- 15.6** (1) The reviewer must give a notice of review to
 - (a) the person who requested the review, or to the board if the board required the review, and
 - (b) the persons referred to in section 15.2 (2) or (3).
- (2) If the review is to involve an oral hearing, the notice of review must specify the date, time and location of the hearing.

Review decision

- 15.7** The reviewer must give a written decision to
 - (a) the person who is the subject of the order, and
 - (b) the board.

9 Section 16 is amended by renumbering the section as section 16 (1) and by adding the following subsections:

(2) In respect of an appeal under section 40 of the *Wildfire Act*, the board is exempt from the requirement under section 131 of the *Forest Practices Code of British Columbia Act* to deliver to the commission

- (a) a notice of appeal,
- (b) a copy of the original decision, and
- (c) a copy of any decision respecting a correction or review

no later than 3 weeks after the latest to occur of

- (d) the original decision,
- (e) any correction under section 35 of the *Wildfire Act*, and
- (f) any review under section 37 or 38 of the *Wildfire Act*

if the board delivers to the commission the documents described in paragraphs (a) to (c) within 60 days after the latest to occur of the events described in paragraphs (d) to (f).

(3) In respect of an appeal under section 70 (1) of the *Range Act*, section 82 (1) of the *Forest and Range Practices Act* or section 39 (1) of the *Wildfire Act*, a person whose request for a review is denied by the reviewer for the reason described in subsection (4) is exempt from the requirement under section 131 of the *Forest Practices Code of British Columbia Act* to deliver to the commission

- (a) a notice of appeal,
- (b) a copy of the original decision, and
- (c) a copy of any decision respecting a correction or review

no later than 3 weeks after the latest to occur of

- (d) the original decision, or
- (e) any correction under the *Range Act*, the *Forest and Range Practices Act* or the *Wildfire Act*

if the appellant delivers to the commission the documents described in paragraphs (a) to (c) within 21 days after the appellant is given notice by the reviewer that the appellant's request for the review is denied for the reason described in subsection (4).

(4) The reason referred to in subsection (3) is that the reviewer is not satisfied as to the existence of evidence not available at the time of the original determination, order, decision or amendment.

10 Section 18 is amended by striking out “, and the notice of appeal for an appeal under section 41 of the *Range Act*,”.

11 Section 19 is amended

(a) in subsection (1) by repealing paragraphs (a) and (b) and substituting the following:

- (a) serving the written notice of deficiencies on the appellant, if the appeal is under the *Forest Act*, or
- (b) giving the written notice of deficiencies to the appellant, if the appeal is under the *Range Act*, *Forest and Range Practices Act* or the *Wildfire Act*, , **and**

(b) by repealing subsection (2) and substituting the following:

- (2) If the commission serves or gives a notice of deficiencies under subsection (1), the appeal that is the subject of the notice of appeal may proceed only after the submission to the commission of further material remedying the deficiencies.

12 Section 20 is amended

(a) by repealing paragraph (a) and substituting the following:

- (a) in the case of an appeal under the *Forest Act*, serve a copy of the notice of appeal on the deputy minister of the minister responsible for the *Forest Act*,
- (a.1) in the case of an appeal under the *Range Act*, give a copy of the notice of appeal to the minister, , **and**

(b) by adding “and” at the end of paragraph (b) (ii) (B) and by adding the following paragraph:

- (c) in the case of an appeal under the *Wildfire Act*, give a copy of the notice of appeal to
 - (i) the minister, and
 - (ii) either
 - (A) the board, if the notice was delivered by the person who is the subject of the order, or
 - (B) the person who is the subject of the order, if the notice was delivered by the board.

13 Section 21 is repealed and the following substituted:

Procedure following receipt of notice of appeal

- 21** Within 30 days after receipt of the notice of appeal, the commission must
- (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
 - (d) give notice of hearing to the parties if the appeal is under the *Range Act*, *Forest and Range Practices Act* or the *Wildfire Act*, or serve notice of hearing on the parties if the appeal is under the *Forest Act*.

14 Section 27 (2) is amended by repealing paragraphs (a) and (b) and substituting the following:

- (a) the number of appeals initiated under the *Forest Act*, the *Range Act*, the *Forest and Range Practices Act* or the *Wildfire Act*, during the year,
- (b) the number of appeals completed under the *Forest Act*, the *Range Act*, the *Forest and Range Practices Act* or the *Wildfire Act*, during the year, .