



**Forest
Practices
Board**

Management of Furbearer Habitat near Windy Mountain

Complaint Investigation #20027

FPB/IRC/241

October 2021

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Board Commentary

The investigation of this complaint involved examining BC Timber Sales' (BCTS) compliance with requirements of the *Forest and Range Practices Act* (FRPA) for the management of furbearer habitat, and examining how BCTS addressed the concerns of the complainant, a trapper.

The investigation found that the approach to managing important furbearer habitat is a good example of continuous improvement of forest practices led by government and implemented by BCTS and forest licensees. The Board commends the Cariboo Region district managers for providing their expectations for addressing wildlife and biodiversity values in forest stewardship plans (FSPs) to area licensees, and for subsequently applying conditions to the approval of extended or new FSPs that did not include the expected content. The Board also commends BCTS for incorporating the conditions of approval into its new FSP, and for actively engaging with the complainant and responding to his concerns.

While significant steps are being taken to manage habitat for furbearers, it remains to be seen how effective these actions will be. This is why it is important for government to ensure a comprehensive monitoring system is in place, along with a process to revise practices as necessary.

Introduction

The Complaint

On August 23, 2020, the Forest Practices Board (the Board) received a complaint from the holder of trapline TR0501T006 (the complainant). The complainant says that timber harvesting in his trapline by BC Timber Sales (BCTS) has impacted habitat for furbearers—especially fishers. He is concerned that harvesting has decreased the population of furbearers, affecting his ability to trap for a living. The complainant wants all harvesting in his trapline to stop. The complainant also says he observed sediment entering a fish-stream from a road recently constructed by BCTS.

Background

The complainant’s trapline is a 13 500 hectare area located on the north side of Highway 24, between Clearwater and 100 Mile House. It is located within the 100 Mile House Natural Resource District (see Figure 1) and BCTS's Kamloops Business Area. The trapline is within the traditional territories of the Canim Lake Band, Neskonlith Indian Band, Northern Secwepemc Nation, Secwepemc Nation and Simpcw First Nation.

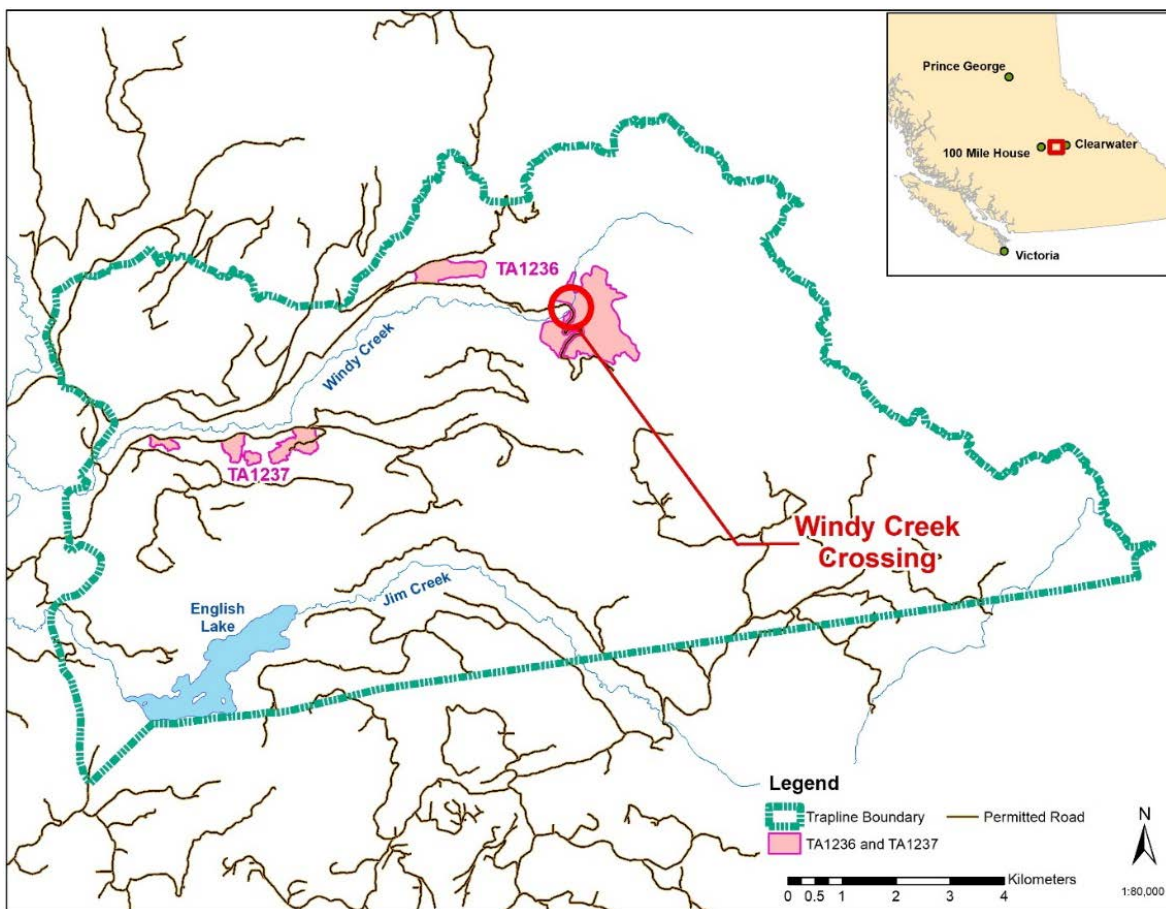


Figure 1. Trapline TR0501T006, timber sales TA1236 and TA1237, and the Windy Creek crossing.

The complainant has held his trapline for 13 years and mainly traps lynx and marten, but occasionally fisher, wolverine, wolf, coyote, fox and mink. BCTS has operated in the area of the complainant's trapline for over 14 years. The complainant has frequently expressed his concerns about the impact of harvesting on his trapline to BCTS and the district manager.

Beginning in 2019, BCTS started developing four cutblocks comprising timber sales licence (TSL) TA1237, located in the lower elevations of the trapline on the south side of Windy Creek.

The timber sales manager issued a TSL and a road permit for TA1237 in late 2020, with road construction and harvesting scheduled to begin in late June 2021. Also in 2020, BCTS extended the Windy Creek forest service road (FSR) to access a previously unharvested area in the headwaters of Windy Creek. The road extension crosses Windy Creek, which supports rainbow trout. BCTS began layout and development of four more cutblocks under TSL TA1236, which are accessed off the new extension of the Windy Creek FSR. At the time of this investigation, a TSL and a road permit for that timber sale have not yet been issued, as plans are still being developed.

In August 2020, after a significant rainfall event, the complainant observed sediment from the Windy Creek FSR crossing entering Windy Creek. The complainant notified BCTS and asked it to look into the situation. Shortly afterwards, he filed this complaint with the Board.

Legislation

Section 5 of the *Forest and Range Practices Act* (FRPA) requires a forest stewardship plan (FSP) to specify intended results or strategies, each in relation to objectives set by government. There are no orders under FRPA (i.e., the *Government Actions Regulation*) establishing objectives or designated areas, such as wildlife habitat areas or wildlife habitat features, for furbearers applicable to the trapline. However, objectives related to furbearers and the interests of backcountry users—including trappers—are contained in the Cariboo-Chilcotin Land Use Plan¹ (CCLUP) 90-Day Implementation Process Final Report (the 90-Day Report).²

Section 21 of FRPA requires the holder of a FSP to ensure that the intended results specified in the plan are achieved and the strategies described in the plan are carried out.

Section 55 of the *Forest Planning and Practices Regulation* (FPPR) requires an authorized person who builds a stream crossing as part of a road, temporary access structure or permanent access structure, to locate, build and use the crossing in a manner that:

- (a) protects the stream channel and stream bank immediately above and below the stream crossing, and
- (b) mitigates disturbance to the stream channel and stream bank at the crossing.

Section 57 of the FPPR requires an authorized person who carries out a primary forest activity to conduct activities at a time and in a manner that is unlikely to harm fish or destroy, damage or harmfully alter fish habitat.

¹ The CCLUP is a legal order under the *Forest Practices Code of British Columbia Act* (now repealed) and carried forward under the *Forest and Range Practices Act*. The CCLUP order includes resource zones and objectives that are included in the 90 Day Report

² The 90 Day Report can be viewed at: https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/natural-resource-use/land-water-use/crown-land/land-use-plans-and-objectives/cariboo-region/cariboochilcotin-rlup/lup_90_day_implementation.pdf

Investigation Results

The investigation considered whether BCTS complied with FRPA requirements for the management of furbearer habitat and fish habitat. It also examined whether BCTS appropriately addressed the concerns of the complainant.



Board, BCTS and trapper discussing furbearer habitat on trapline.

In addition to reviewing all relevant documents and conducting interviews, Board staff visited the trapline with the complainant and BCTS staff on October 20, 2020. The focus of this field review was to discuss issues of concern to the complainant, strategies to mitigate the impacts of forest harvesting on furbearers, and to gather evidence of any impacts to fish habitat at the crossing of Windy Creek.

Did BCTS comply with FRPA’s requirements for the management of furbearer habitat?

Section 5 FRPA – FSPs must specify intended results or strategies

In 2016 and 2017, the three district managers in the Cariboo Region set expectations for the content of FSP results and strategies, including for wildlife and biodiversity values.³ The expectations were aligned with, and also clarified, government objectives, including those contained in the 90-Day Report. However, despite the district manager’s expectations, many of the FSPs prepared by licensees within the region did not include sufficient results or strategies to address various objectives. In order to address these deficiencies, the district managers subsequently approved new FSPs, and extensions to existing FSPs, with conditions for the management of various values.

In April 2019, the district manager approved a BCTS FSP extension for the 100 Mile House TSA with conditions, including the management of fisher habitat. The conditions required BCTS to apply the spatial fisher habitat tool to all TSLs and road permit developments, and to have a qualified professional

³ District manager expectations provide information about resource values and engagement with First Nations and stakeholders that licensees are to consider when preparing a FSP. The expectations are not a legal document, but set the district managers expectations to help ensure results and strategies are consistent with legal objectives.

field-verify habitat attributes. The guidance document that accompanies the spatial fisher habitat tool describes the type and amount of habitat to be retained.

In October 2019, BCTS received approval for a new FSP (without conditions), having adopted the furbearer-related conditions of its April 2019 FSP extension approval. The furbearer-related results and strategies in BCTS’s FSP are described in Table 1 below.

Table 1. Results or Strategies in BCTS’s FSP for the Management of Furbearer Habitat

FSP Section	Results or Strategies (paraphrased)
Species at risk - General	<ul style="list-style-type: none"> • Record and report (if requested) sightings of fisher and wolverine including dens. • If evidence (e.g., tracks, droppings, den, etc.) of fisher or wolverine is identified in areas planned for harvesting, retain a qualified registered professional (QRP) to prepare a mitigation plan.
Furbearers - Fisher	<ul style="list-style-type: none"> • Apply the spatial fisher habitat tool to determine presence of type I and type II fisher habitat.⁴ • If present, field verification by a QRP. Prepare and implement a mitigation plan. • Apply harvest and timing restrictions if an active fisher den or active resting tree is identified in the areas planned for harvesting.
Furbearers - Wolverine	<ul style="list-style-type: none"> • Apply harvest and timing restrictions if an active wolverine den or tunnel is identified in the areas planned for harvesting.
Furbearers – General and Backcountry	<ul style="list-style-type: none"> • Consult with the registered trapper and prepare a mitigation plan to address the trapper’s concerns. • Apply conflict resolution process if agreement cannot be reached between BCTS and the trapper regarding mitigation measures. • Retain a specified number of unburnt debris piles following harvesting.

Section 21 FRPA – Licensees must implement FSP results and strategies

The following section examines how BCTS implemented the results and strategies in its FSP for the management of furbearer habitat.

Species at Risk – General

This section of BCTS’s FSP includes four strategies, three of which take effect if a species at risk, or evidence of tracks or droppings, is observed within areas planned for harvesting. Part of one strategy includes the identification of ‘key habitat’ for species at risk. In terms of furbearers of interest to the complainant, the FSP identifies fisher or wolverine as a species at risk.

BCTS told investigators that it has not seen fisher or wolverine or observed evidence of tracks and droppings in the areas of TSL TA1237 or TSL TA1236 and has not heard from the complainant about any sightings or observations of tracks/droppings of these species. BCTS has, however, identified ‘key habitat’ as a result of applying the spatial fisher habitat tool and habitat identified by the complainant. This is discussed in more detail below.

⁴ Type I fisher habitats are forested stands that usually support at least 75 percent of fishers’ use for a given life activity (i.e., denning, resting, foraging, movement). Type II stands do not meet the minimum targets identified for type I stands, but still support use by fishers and are important for fisher survival and reproduction. Source: www.bcfisherhabitat.ca

Furbearers – Fisher

This section of the FSP includes a commitment to implement the spatial fisher habitat tool. If fisher habitat (type I or II) is identified, then BCTS is required to prepare a plan to mitigate potential impacts. The FSP commits BCTS to take additional steps to manage areas surrounding an active den or resting tree if they are identified at any time during cutblock and road planning or harvesting.

BCTS staff told investigators that only type II fisher habitat has been identified in TSL TA1237 and TA1236. For TSL TA1236, two of the three planned cutblocks were identified as type II habitat. The newly constructed Windy FSR extension that will be used to access TSL TA1236, as well as other future planned harvesting, is outside the area identified as type II habitat.

As stated in its FSP, BCTS is required to field verify the presence of type I and II ecological attributes, trees used for denning and resting, and coarse woody debris. For its operations in the 100 Mile House Natural Resource District, BCTS retained a registered professional biologist to prepare a fisher habitat mitigation plan that it applies to all areas proposed for harvesting. The mitigation plan directs stand-level retention of fisher habitat attributes (for denning and resting) consistent with the guidance provided in the spatial fisher habitat tool.

For TSLs TA1236 and TA1237, BCTS told investigators that no active fisher den or resting trees had been identified. However, further fieldwork is required in 2021 for TSL TA1236 to verify the presence or absence of these features. BCTS also provided Board investigators with the spatial fisher habitat tool output tables for TSLs TA1236 and TA1237, showing the amount of fisher habitat attributes to be retained for resting and denning.

Furbearers – General

This section of the FSP requires BCTS to gather input from trappers about harvesting impacts to furbearers and to prepare a plan to mitigate potential impacts. The plan is then shared with the trappers. This section of the FSP also requires the retention of a specified number of unburnt debris piles following harvesting.

BCTS and the complainant told Board investigators that they have been communicating about planned harvesting in the Windy Creek drainage since about February 2020. While maintaining that his position is there should be no further harvesting in his trapline, the complainant acknowledges that BCTS considered his suggestions to mitigate the impacts of harvesting on furbearers, specifically fisher. BCTS told investigators it has implemented the following measures, suggested by the complainant, to mitigate impacts to furbearer habitat in the trapline including the planned cutblocks:

1. *Establishment of a wildlife corridor through the Windy Creek drainage anchored on Windy and Jim Creeks.* The original corridor was 50 metres on either side of the stream and was designed by BCTS using information provided by the Canim Lake Indian Band. At the complainant's request, BCTS increased the corridor width to 100 metres on either side of the stream and occasionally extended it to 300 metres near wetland complexes, in consideration of other values.

OLD GROWTH MANAGEMENT AREAS (OGMAS)

The CCLUP includes objectives for OGMAs, including 10 OGMA patches within the complainant's trapline. These areas are primarily intended to protect representative old growth patches across the region but also provide important habitat for wildlife, including furbearers.

2. *Riparian reserves that exceed requirements of the FPPR.* Enhanced reserves for TSL TA1237 include 20 metres adjacent to S6 streams and between 30-80 metres adjacent to S4 streams.⁵ In addition, BCTS has implemented an enhanced 100-metre reserve adjacent to W5 wetlands.⁶ BCTS told investigators that some of the enhanced riparian reserves have been incorporated into wildlife tree retention areas. The total wildlife tree retention areas is 15.5 percent of the area to be harvested, which exceeds the 7 percent required in the FPPR. Enhanced reserves for TSL TA1236 have yet to be defined.
3. The complainant has identified important, but not legally established, access trails within the trapline. BCTS told Board investigators that, where possible, it attempts to mitigate impacts to the trail network, by locating cutblocks away from the trail or removing harvest-related debris on the trail, to ensure that the complainant has unimpeded ATV access.
4. The complainant requested a 200-metre no-harvest reserve around bait stations and a 50-metre no-harvest reserve around trap boxes. For TSL TA1236, BCTS will be requesting the location of any bait stations or trap boxes from the complainant during development planning. For TSL TA1237, one bait station and three trap boxes were identified. With the agreement of the complainant, one bait station was moved, as the 200-metre reserve overlapped a cutblock. The 3 trap boxes were incorporated into wildlife tree retention areas with reserve widths ranging from 75 to 175 metres.

Backcountry

In its FSP, BCTS commits to providing at least 60 days' notice to backcountry operators—including trappers—before submitting a cutting permit or road permit, to allow them to identify issues of concern. If concerns are identified, then BCTS will prepare a mitigation plan and share it with the backcountry operator. This section of the FSP also includes a mechanism for the district manager to resolve disputes if an agreement on mitigation cannot be reached.

Consistent with commitments in FSP section 5.5.2.9, BCTS told investigators that it held multiple meetings and phone calls with the complainant to determine his concerns and to mitigate potential impacts on furbearers, including fisher. While the complainant acknowledges that BCTS has implemented the mitigation measures that he requested, he maintained his position that no further harvesting should be undertaken within his trapline. As a result, in November 2020, BCTS requested that the district manager intervene in an attempt to resolve the dispute. The district manager subsequently met with the complainant to discuss his concerns.

In examining the elements of the dispute, the district manager considered the concerns about harvesting impacts on furbearers brought forward by the complainant, the communication between the complainant and BCTS and the strategies that BCTS has implemented to mitigate impacts to furbearers. During the meeting, the district manager informed the complainant that he could not stop harvesting, as the area is within the timber harvesting landbase. He also noted that BCTS has taken reasonable steps to accommodate the complainant's concerns.

In summary, BCTS has fully implemented the commitments made in its FSP in relation to planning for the management of furbearer habitat and has accommodated the complainant's interests. These actions include the retention of important habitat features for furbearers, such as dens and resting trees, no-

⁵ Section 47, FPPR defines a 'S4' as a fish-bearing stream with a channel width less than 1.5 metres, and a 'S6' as a non-fish bearing stream with a channel width less than 3 metres. A reserve zone is not required adjacent to S4 and S6 streams.

⁶ A 'W5' wetland is a 'wetland complex' (i.e., two or more adjoining wetlands separated by a narrow forest stand with a combined area of greater than 5 hectares). Section 48 of the FPPR requires this class of wetland to have a 10-metre reserve zone and a 40-metre management zone.

harvest reserves around bait stations and trap boxes, application of the spatial fisher habitat tool and retention of stand-level fisher habitat attributes.

Finding

BCTS specified results and strategies in its FSP for the management of furbearer habitat and ensured that the commitments were carried out. BCTS complied with sections 5 and 21 of FRPA.

Did BCTS take appropriate steps to accommodate the interests of the complainant?

BCTS consistently engaged with the complainant to obtain his input on strategies to mitigate impacts to furbearers within the trapline. Engagement occurred in various ways, including by email, face-to-face meetings and on-site visits to the trapline.

Although the complainant told BCTS and the ministry (via the district manager) that he does not want any more harvesting in his trapline, he has actively responded to BCTS's requests for input. In turn, BCTS has implemented many of the complainant's suggestions, including increasing the width of the wildlife corridor through the trapline, enhancing riparian reserves and creating no-harvest reserves around trap sites and bait stations. Further, BCTS has applied the spatial fisher habitat tool to TSLs TA1237 and TA1236 and retained a professional biologist to provide guidance on stand-level habitat attributes that should be retained. Before harvesting, BCTS staff or contractors examine cutblocks for the presence of active dens and rest trees.

Finding

BCTS took appropriate steps to accommodate the interests of the complainant. It engaged with the complainant in a number of ways and implemented many of his suggestions to manage furbearer habitat. In addition, BCTS engaged professionals and used the available tools to identify and manage fisher and other furbearer habitat.

Did BCTS comply with FRPA's requirements for the protection of stream channels?

Sections 55 and 57 FPPR – Protect stream channels and banks and do not harm fish or fish habitat

The complainant alleged that the Windy Creek FSR contributed sediment to Windy Creek, causing damage to fish habitat. Section 55 of the FPPR requires licensees to protect a stream channel and stream banks immediately above and below a crossing. Section 57 requires licensees to conduct activities at a time and in a manner that is unlikely to harm fish or destroy, damage or harmfully alter fish habitat. In the Board's opinion, section 57 does not specifically prohibit the deposition of sediment from roads into streams through the course of road maintenance (see Appendix 1 for more information).

On July 30, 2020, BCTS inspected the Windy Creek FSR. The inspection identified minor ditch erosion and ditch infilling, but no direct impacts to fish habitat in Windy Creek. At around the same time, the complainant observed sediment from the road entering Windy Creek and informed BCTS. BCTS's inspection of the Windy Creek crossing revealed a missing ditch block, resulting in water being diverted down the ditch line towards Windy Creek. However, the ditch line was clogged with debris, which led to water being diverted back onto the road surface and flowing towards the Windy Creek crossing. In

August and September 2020, BCTS addressed the issues identified in the inspections. BCTS inspected the road again in October, after the road maintenance was completed.

After completing the initial inspections, BCTS established proper drainage control on the road approaches to the stream crossing. On October 15, 2020, Board investigators examined the condition of the Windy Creek channel, both upstream and downstream of the crossing, and did not identify any issues. Board investigators did not observe any indicators that sediment had been deposited into the stream from the road and found no evidence of harm to fish habitat. However, BCTS acknowledged that sediment likely did enter the stream before the remediation works were completed in September 2020.

Finding

BCTS complied with sections 55 and 57 of FPRA. It carried out inspections and implemented the work necessary to protect stream crossings on the Windy Creek FSR. In relation to the deposition of sediment, it is likely that poor drainage control on the approach to the Windy Creek crossing led to some amount of sediment being deposited into Windy Creek. The amount of sediment was likely not significant, and Board investigators found no evidence of sediment or of harm to fish habitat.

Conclusions

The complaint from a registered trapper is about the impact of forest harvesting by BCTS on furbearer habitat within his trapline and the impact of road construction on fish habitat. To investigate the complaint, the Board considered three questions and reaches the following conclusions:

1. Did BCTS comply with FRPA's requirements for the management of furbearer habitat?

BCTS specified results and strategies for the management of furbearer habitat in its FSP and ensured that the commitments were carried out. The Board concludes that BCTS complied with the requirements of the *Forest and Range Practices Act*.

2. Did BCTS take appropriate steps to accommodate the interests of the trapper?

BCTS provided the trapper with early and frequent opportunities to comment on its stand-level and landscape-level strategies to provide for the management of furbearer habitat. BCTS will implement the majority of the trapper's requests for specific stand-level and landscape-level strategies to manage furbearer habitat. The Board concludes that BCTS took appropriate steps to accommodate the interests of the trapper.

3. Did BCTS comply with FRPA's requirements for the protection of stream channels?

BCTS completed inspections of the road approaches to the Windy Creek crossing and identified road surface erosion and drainage issues that likely led to deposit of sediment into Windy Creek. BCTS then repaired the road approaches and established proper drainage controls. The Board found no evidence of sediment or of harm to fish habitat.

The Board concludes that, although some sediment was likely deposited into Windy Creek, BCTS met the requirements of the *Forest and Range Practices Act* for the protection of stream channels and fish habitat at the Windy Creek stream crossing.

Appendix 1: Limitations of FPPR's Section 57

The following is the Board's assessment of the limitations of section 57 of the *Forest Planning and Practices Regulation* (FPPR), as stated in its 2020 report titled: '*Conserving Fish Habitat under the Forest and Range Practices Act*'. PART 2: *An Evaluation of Forest and Range Practices on the Ground*' (available for download at: <https://www.bcfpb.ca/wp-content/uploads/2020/05/SIR52-Fish-Habitat-Conservation-Part2.pdf>)

Section 57 of the FPPR suggests that likely harm to fish or fish habitat must be avoided when carrying out a primary forest activity, which includes road construction, maintenance and deactivation. The Board found that avoidable harm is frequently the result of the failure to carry out adequate road maintenance, rather than the act of carrying out maintenance activities. Sedimentation from roads into fish habitat occurs at any time, particularly during and after inclement weather. Therefore, much of the harmful result that section 57 seeks to avoid is not necessarily related to when or how a person is carrying out a primary forest activity. The harm is the result of acts of omission rather than commission. With respect to sediment, the legislation does not create a positive duty to carry out the maintenance activities that are necessary to minimize sediment from roads into streams. This is in contrast with FRPA's requirements for fish passage (section 56 of the FPPR). In this section, FRPA requires fish passage to be provided at the time the stream crossing structure is installed (section 56[1]) and fish passage must be maintained on an on-going basis (section 56[2]).



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