

INVESTIGATIONS

Purpose: The purpose of this procedure is to provide guidance to individuals assigned to undertake, or participate in, an investigation of a suspected contravention of the *Private Managed Forest Land Act* (the Act) and its regulations.

Introduction: Every section of the Act and its regulations that places a requirement or a restriction on an owner can be divided into specific elements. The primary elements are the “where”, “when” and “who” and the secondary elements are the “what” related components. Each of the primary and secondary elements must be proven before the council may determine that a contravention has occurred.

The investigator

- identifies the elements of the potential contravention,
- objectively gathers the evidence to support findings of fact in respect of each of the elements, and
- reports the elements and the evidence in respect of those elements to the executive director to enable the executive to decide whether the incident should be brought before the council.

This procedure may be modified by the investigator depending on the complexity of the investigation or the severity of the alleged contravention.

Investigation Procedure: **1. Plan the investigation**

An investigation is usually initiated as a result of the findings of an inspection. The inspection report will identify any specific issues and suggest the type of potential contravention that is to be investigated. The investigator should review available information to determine:

- a) the specific elements of the suspected contravention(s), and how best to collect evidence about each element;
- b) the type of evidence that is needed to prove each element, whether it be physical, documentary or testimonial evidence;
- c) the types of experts (if any) that are needed to give their opinions on certain facets of the evidence, and for what purpose;
- d) the series of tasks to be done during the investigation, and divide them into four categories:
 - i. ‘get’, often relating to maps, aerial photos, documents, etc.;
 - ii. ‘do’, often relating to steps in your actual investigation, such as sketching, photographing, collecting physical evidence, etc.;
 - iii. ‘interview’, including the names of each individual, what questions they need to be asked, plus what evidence to request of them; and
 - iv. ‘analyze’, referring to any specific analysis (scientific or otherwise) that needs to be done to prove an element of the suspected contravention;
- e) what equipment is needed to conduct the investigation – including any required safety equipment.

The investigator should contact the owner to confirm the time and date for being onsite to conduct the investigation.

INVESTIGATIONS

2. Conduct the investigation

Conducting the investigation can be a time consuming and complex process. By following the steps listed below, resources can be focused in a logical manner.

2.1 Determine the location of the activity and confirm the status of the land

The “where” element of any contravention is the managed forest on which the contravening activity occurred in order for the Act and its regulations to apply. To prove the “where” of the contravention, the investigator must

- identify the legal description of the land;
- determine whether or not it is private managed forest land; and
- determine the legal identity of the registered owner.

This can be done by:

- a) confirming the geographic coordinates of the activity, and plotting those coordinates on a map;
- b) searching the BC Assessment Authority property assessment roll to ascertain if the land is classified as managed forest land;
- c) conducting a land title registry search to confirm the legal parcel identifier for the land in question, and the owner of the land; and
- d) confirming that the management commitment of the owner applies to the portion of land on which the potential non compliance may have occurred.

The investigator usually completes step (a) and provides the executive director with the location of the activities at issue. The executive director then undertakes steps (b), (c) and (d) to confirm that the land is administered under the Act and to identify the owner.

2.2 Visit the managed forest

The investigator should visit the managed forest as soon as possible after becoming aware of the possible contravention as some physical evidence could disappear quickly.

2.3. Collect any and all physical evidence

The investigator must collect evidence, whether direct or circumstantial, with respect to each element.

2.3.1 First collect any physical evidence that is time-sensitive.

In some cases, due to temporal issues, the evidence may be impossible or difficult to collect days or weeks after the date of the suspected contravention. Examples include:

- suspended sediment in a fish stream;
- the imminent replacement of a washed out culvert;
- the completing of operations by a activity specific contractor

Promptly identify any evidence that is time-sensitive and collect that evidence as soon as possible.

2.3.2 Actively look for any and all physical evidence.

The investigator should look for any physical evidence relevant to the suspected

INVESTIGATIONS

contravention. With respect to physical evidence, the investigator should:

- a) put an evidence tent or flag next to each piece of evidence;
- b) photograph the evidence and its flag as and where the evidence was found;
- c) note all pertinent information about the photograph and the evidence itself in the investigation notebook; and
- d) record the location of the evidence on the sketch map.

Once all the evidence has been identified, flagged and photographed, the investigator should:

- a) take a picture of the entire scene, showing all of the evidence tents or flags;
- b) place each piece of evidence in an appropriate container;
- c) seal the container in a manner that ensures that it cannot be tampered with; and
- d) preserve all of the evidence in some manner, for example by signing the seal on the evidence container and ensuring chain of custody.

2.4 Draw a sketch of the incident site

The investigator should prepare a reasonably accurate map of the incident area in order to show

- each piece of evidence and its relevance to the case, and
- any activities relevant to the case, any resources impacted by these activities, and any causative factors that link the two (e.g. landslide between road construction and fish stream, blocked culvert causing water to flow across road, etc.).

2.4.1 Start with a sketch map of the general area.

The inspector should prepare a sketch map of the general area that includes:

- a) north arrow;
- b) boundaries of the managed forest;
- c) location of roads and trails;
- d) location of any and all activities;
- e) location of any resources in or adjacent to managed forest;
- f) location of the incident;
- g) a legend for any symbols being used; and
- h) sufficient bearings and horizontal distances to create a reasonably accurate final map.

As this is a rough sketch map, it will not be exactly to scale. The investigator should print "Not to Scale" right on the map and avoid putting any scale on this map. The investigator should date and sign the completed sketch.

2.4.2 Make a second, more detailed sketch map of the specific area.

The investigator should prepare a sketch map of the specific incident area. This map should address the same items as on the general sketch map, as well as the following items:

- a) any evidence relevant to the investigation – numbered consistent with the evidence tents/flags;
- b) anything that is of relevance (blocked culverts, natural springs, etc.); and
- c) anything that shows linkage between the activity and the impact.

INVESTIGATIONS

Two or more detailed sketch maps may be needed if the activities and impacts are any distance from each other; one of the contravening activities and another of the values impacted.

2.4.3 Measure distances from one control point to enable preparation of an accurate sketch.

Final drawings must be to scale. Slope distances must be converted to horizontal distances for mapping purposes.

2.4.4 Make copies of the sketch maps.

Sketch maps are used to note the location of the identified evidence including the location and direction of each photo taken. Copies should be made of each of the field sketch maps.

2.5 Take photos of the incident

Film or digital images of evidence can assist the decision maker in determining the facts. An investigator should consider the following when taking film or digital images:

- a) take only pictures that are relevant to the case;
- b) take an overview image of the entire site, from long distance;
- c) take a second image from mid-range;
- d) take the main images of the site;
- e) identify and photograph each piece of physical evidence;
- f) include something in the image that gives a feeling of scale;
- g) take a mid-range image of the area, with evidence flags in place;
- h) never delete an image;
- i) keep a photographic log of all images;
- j) note where each image was taken;
- k) make up photo image files;
- l) finalize the photographic log; and
- m) finalize the photographic sketch.

2.6 Identify where an expert may be needed

There may be specific portions of the investigation that require a professional assessment and analysis of certain evidence. Where the investigator identifies that an expert is required, he or she should notify the executive director. A copy of any expert reports should then be given to the investigator, so that he or she can assess whether the elements of the contravention have been met, and include the report's relevance in the final investigative report.

2.7 Address any potential defences

The Act provides that a person may not be found to have contravened a provision if they establish a defence of due diligence, officially induced error, or mistake of fact. While the burden of establishing a defence rests with the alleged contravener, the investigator should always be aware of the potential for such defences and gather and report any evidence with respect to these potential defences.

2.8 Identifying and interview the parties

The "who" element is normally (but not necessarily) the owner of the managed forest on which the contravention allegedly occurred. The investigator needs to prove the identity of all persons involved in a potential contravention, and the degree with which

INVESTIGATIONS

they directed or participated in the contravening activity. This can be accomplished by:

- a) interviewing the owner of the managed forest; the person supervising activities on the managed forest; and perhaps even the various workers involved in the contravening activity; and
- b) determining the legal identities of all parties involved, so that the correct legal entities can be given an opportunity to provide their perspective of the activities potentially in contravention.

If it becomes apparent to the investigator that the owner may well have been duly diligent, the investigator must then consider whether or not other persons (e.g. the contractor) may have been the “who” for the purposes of the potential non-compliance.

Evidence as to the “when” element (the date or dates that the contravening activity was being conducted) can be obtained by interviewing the owner and the supervisor of the activity. Various provisions of the Act and regulations came into effect on different dates. In instances where there is some question of dates which may impact on whether or not a specific provision applies, evidence should also be sought from secondary sources. For example, scale records provide an independent source of evidence as to the date before which the timber must have been harvested.

The investigator must identify all persons involved with the incident and report them to the executive director. The executive director may choose to conduct the interviews.

2.9 Communicate often

The investigator must keep the executive director advised as to the progress of the investigation. This includes:

- when the investigator has confirmed where and when the incident happened;
- if the investigator finds evidence that shows any of the elements of the contravention *can not* be proven so that the executive director can determine whether the evidence with respect to that particular element exists elsewhere, or whether the investigation should be discontinued;
- if the investigator identifies the need for an expert to participate in the investigation; and
- when the investigator has confirmed that the evidence shows that all of the elements of the contravention occurred.

2.10 Submit an investigation report

At the end of the investigation, the investigator is responsible for preparing an investigation report that contains everything relevant to the investigation. The executive director uses this report to decide whether the incident should be brought to the attention of the council and also when preparing a submission to the council for determination. While the executive director advises the investigator as to the format of the report, it should contain

- a) an executive summary, outlining why the investigator believes a contravention occurred (or did not occur);
- b) a chronology of events, including dates of activities and dates of subsequent impacts;
- c) a list of potential contraventions, including the actual wording of the legislation. This section should
 - break each piece of contravened legislation down into its individual

INVESTIGATIONS

- elements, and reference evidence that proves each element.
- include images of evidence that is relevant, perhaps enhanced to assist the council in understanding the relevance of the evidence.
 - address any potential defence of due diligence, mistake of fact or officially induced error;
- d) a map or aerial photo/satellite image showing the location of the incident;
 - e) land status maps, if they were provided by the investigator;
 - f) the original of the final sketch made, complete with the sketch made in the field;
 - g) the original of the final sketch of the location of each piece of evidence, complete with the sketch made in the field;
 - h) all digital images taken during the investigation, including
 - a contact sheet,
 - the CD/DVD that the original images were transferred to from the digital camera,
 - the completed photo log for all of the digital images, and
 - both the final map and field sketch of where the images were taken;
 - i) all analogue (film) pictures taken during the investigation, including
 - a contact sheet, the negatives,
 - the completed photo log for each roll of film, and
 - both the final map and field sketch of where the photographs were taken;
 - j) expert opinion reports, if any were prepared;
 - k) list of all witnesses interviewed, complete with the originals of each audio tape recorded during an interview and any transcripts if they were prepared;
 - l) any aerial photos or satellite images that the investigator used;
 - m) a copy of all notes taken during the investigation; and
 - n) all correspondence received by the investigator that are relevant to the investigation.

Opportunity to be heard

3.0 Prepare for Opportunity to be Heard

If the council decides that the investigation should proceed to an opportunity to be heard [OTBH], the executive director is responsible for preparing an investigation summary package/ OTBH binder for submission to council. While the executive director may have the lead investigator prepare the binder, the executive director will review it to ensure that it is appropriate for submission to council.

Once any OTBH has been scheduled, the executive director makes a reasonable effort to contact the owner and attempt to come to an Agreed Statement of Facts for presentation to council at the OTBH. If there is not a complete agreement as to the facts, it may be necessary for the investigator to appear as a witness for the executive director. If this is the case, the investigator would be subject to

- cross examination by the person who is alleged to have committed the contravention, and
- questions from the council.

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Approved: Original signed
Trevor Swan, Chair