



General Bulletin

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Use of the Term "Practicable" Under the Forest Practices Code

Over the last several years there have been differing opinions on how to interpret the term "practicable" where it appears in the Forest Practices Code (Code)¹. This term is often confused with the term "practical" so it is important that both be defined and explained in order to allow Statutory Decision Makers (SDMs) to make consistent decisions around these terms.

Generally, according to case law, "**practical**" relates to usefulness and cost while "**practicable**" requires balancing all the relevant circumstances.

Part of the problem is that the meanings overlap so that often the "practical" way of doing something is the same as the practicable way. In other words, often the cheapest and most useful (to the licensee) way of doing something is also acceptable even taking into consideration all the relevant factors (which in the case of the Code includes conservation).

However they are not always the same because the "practicable test" requires that all relevant circumstances be considered - not just usefulness and cost - although those are themselves two of the relevant factors to be considered when using the "practicable" test.

A person who has to determine whether something is the only practicable way of proceeding has to determine whether that is the only feasible way of proceeding bearing in mind all the relevant circumstances. For meeting the test of practicable under the Code, the kind of circumstances that are relevant can be determined by looking at the [preamble](#). The preamble explicitly refers to economic as well as conservation and other values. The SDM's challenge is to balance competing values to come up with a permissible activity.

¹ This term is relatively rare in the Code. Its main use is in the Forest Road Regulation where it appears five times.

Example 1:

Section 4(2) of the Forest Road Regulation states:

"A road must be located outside a riparian management area, except for crossings, unless in the opinion of the district manager,

- a. no other practicable option exists, or
- b. *locating the road outside the riparian management area will create a higher risk of sediment delivery.*

The 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 4(2)(b) in which case it would "create a higher risk of sediment delivery. To determine if the answer is yes, the district manager (DM) would consider the issues and concerns brought to his/her attention and then balance the interests listed in the preamble. 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 question the DM 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 DM would ask, "when balancing conservation, cost and usefulness of all possible locations (as well as any other relevant considerations), is there any other 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 conservation is considered, it may make sense to choose the more expensive or less useful 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 conservation. Finally, if the impact on conservation 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 balanced. Look to the [preamble](#) to determine the relevant factors. It may be that not everything mentioned in the preamble is relevant in a given case, but usually conservation will be relevant.

Example 2:

Section 11(1)(b)(i) of the Forest Road Regulation states:

"A person required to construct or modify a road in compliance with section 62(1) of the Act must do all of the following when clearing the clearing width:

- a. ;*
- b. in areas where felled trees could reach streams or lakes*
 - i. directionally fell trees away from the stream or lake, unless that is the only practicable way the timber can be felled, and"*

This section of the regulation requires the person to consider all relevant factors before felling a tree across or into a stream or lake. One of the more obvious factors to be considered would be the likelihood of damaging the stream or lake in terms of affecting water quality or fish habitat - this again relates to the conservation part of the Code Preamble. Another important factor is worker safety. If the term "practical" had been used, the trees would more likely be felled across or into a lake or stream as the question would be: "What is the cheapest, most efficient and useful way to clear the right-of-way?". However, using the practicable test the question would be: "When balancing conservation as well as cost and usefulness (and any other relevant considerations such as safety), is there any other way the timber can be felled or is felling it into the stream or lake the only way that makes sense?".

The timber may be felled into the stream or lake if that is the only sensible way, after considering all the relevant factors².

² Section 1 of the Timber Harvesting Practices Regulation would also have to be considered - please note that Section 1 also includes the term "practicable".

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Appendix 1 - Preamble to the Code

Preamble

WHEREAS British Columbians desire sustainable use of the forests they hold in trust for future generations;

AND WHEREAS sustainable use includes:

- a. managing forests to meet present needs without compromising the needs of future generations,
- b. providing stewardship of forests based on an ethic of respect for the land,
- c. balancing economic, productive, spiritual, ecological and recreational values of forests to meet the economic, social and cultural needs of peoples and communities, including First Nations,
- d. conserving biological diversity, soil, water, fish, wildlife, scenic diversity and other forest resources, and
- e. restoring damaged ecologies;

