

BC Forestry Revitalization Trust
Replaceable Contractor Mitigation Guidelines

**Guidelines for major licensees and contractors with respect to the loss
of some or all of replaceable contracts as a direct result of
Forestry Revitalization Act Timber Reallocation:**

The Province specifically denies any legal obligation to provide compensation to Contractors affected by the *Forestry Revitalization Act* (FRA) timber reallocation provisions. However, the Province has created the BC Forestry Revitalization Trust (BCFRT) as a matter of policy to consider the potential of providing redress for certain claims of Contractors with replaceable contracts that are directly impacted by the FRA. This policy approach does not extend beyond the BCFRT and does not limit or affect the position that the Province has taken, or may take, in court or any other legal proceeding, or any position that it may take in assessing the impacts of future government decisions on logging Contractors.

The BCFRT is a discretionary trust. No specific person has any right or entitlement to receive any funds from the BCFRT unless and until the BCFRT Trustee decides to make a payment to that specific person. Compliance with the guidelines does not guarantee receipt of any payment from the BCFRT. The guidelines are issued to assist applicants. However, the Trustee reserves the right to consider other factors not mentioned in the guidelines. Those other factors may include the amount of funds available for distribution.

1. Application:

These guidelines are intended to apply to all Contractors who hold or held a replaceable contract as defined in the Timber Harvesting Contract and Subcontract Regulation and who lose some or all of their replaceable contractual rights as a result of timber reallocations resulting from the FRA.

The BCFRT will accept claims for redress received from negatively impacted contractors until March 31, 2008, as those impacts are confirmed through the timber reallocation process. Only replaceable contracts will be considered for mitigation. The BCFRT will not accept applications for mitigation related to non-replaceable contracts.

The following outlines the process:

- Step 1. Licensees directly affected by the *FRA* must use Part 5.1 of the Timber Harvesting Contract and Subcontract Regulation to define what contractors will be affected by the taking of timber harvesting rights and the extent to which those contractors will be affected. The process is clearly explained in a document prepared by Davis & Company which is available by following the links on the BCFRT website at www.bcftr.com.
- Step 2. The Trustee of the BCFRT will address the Contractor's claim for mitigation in accordance with these guidelines and in consultation with the Contractor and the Licensee.

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- Step 3. The Contractor must respond promptly to requests for information from the BCFRT, must allow representatives of the BCFRT reasonable access to sites and equipment which the Contractor claims have been impacted by the FRA, and must allow BCFRT representatives access to (and the right to review and audit) records and source documents maintained by the Contractor to the extent that those documents pertain to the facts surrounding the claim of impact submitted by the Contractor.
- Step 4. The Contractor must provide detailed information relating to employees, if any, that must be severed as a result of the FRA timber reallocation.
- Step 5. The Contractor must disclose any replaceable sub-contracts that he has that are related to the impacted replaceable contract.
- Step 6. The Licensee must confirm the contract information and the reasonableness of Contractor claims of injury or loss. In addition the Licensee must obtain a release from the Contractor regarding the Licensee's obligations to the replaceable Contractor. A sample form of release is attached to these Guidelines.

2. Definitions:

- 2.1 **Average Contract Rate** means the amount calculated by dividing the total contract billings by the total production volume for the Baseline Period, expressed as dollars per standard output unit of measure for that contract.
- 2.2 **Baseline Period** means the portion of the calendar year prior to the Date of Impact, plus the previous two full calendar years.
- 2.3 **Contractor** means a replaceable contractor as defined in the Timber Harvesting Contract and Subcontract Regulation.
- 2.4 **Contribution to Profit** means that portion of the Average Contract Rate assumed to remain after the Contractor pays all direct costs associated with the delivery of a standard unit of work under the contract. For the purposes of these Guidelines, the Contribution to Profit is:
- 2.4.1 10% for a replaceable full phase contract, and
- 2.4.2 7% for a replaceable single phase falling, bucking, skidding, yarding, grading, road building, hauling or booming contract.
- 2.5 **Date of Impact** means the date on which the Contractor was materially affected by a volume reallocation resulting from the FRA.
- 2.6 **Economic Multiple** means the multiple of the annual net cash flow available from the contract used by business evaluators to estimate the economic value of a contract. The

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Economic Multiple is adjusted to reflect perceived business risk. The following Economic Multiples will apply in the calculation of the Impact Payment:

- 2.6.1 With respect to a replaceable full phase contract, 4 years, and
- 2.6.2 With respect to a replaceable single phase contract, 3 years.
- 2.7 **Eligible Impact** means the amount a contract has been reduced, expressed in the units used in the contract, such as cubic metres of wood harvested or handled, or kilometers of road built or maintained.
- 2.8 **Aggregate Impact Payment** means the aggregate of all Impact Payments made by the BCFRT in respect of a single Contractor.
- 2.9 **Impact Payment** means the amount which the BCFRT agrees to pay to a Contractor after applying these Guidelines to the Contractor with respect to the direct impact caused by the FRA on each of the following:
 - 2.9.1 Replaceable full phase contracts,
 - 2.9.2 Replaceable single phase contracts,
 - 2.9.3 Mitigation associated with the disposal of redundant equipment.
- 2.10 **Impacted Volume** means:
 - 2.10.1 With respect to a timber harvesting contract, the reduction in the Nominal Work Volume available under the contract, as notified in writing by the licensee, expressed in cubic meters.
 - 2.10.2 With respect to a road construction contract, the reduction in Nominal Work Volume, expressed in kilometers.
 - 2.10.3 With respect to work performed under an hourly contract, the reduction in Nominal Work Volume expressed in hours of work. This reduction must be reasonably proportional to the AAC reduction experienced by the licensee for whom the work is done, either directly or indirectly.
- 2.11 **Nominal Work Volume** means the work volume available under a contract immediately prior to the Date of Impact.

3. Key Principles:

- 3.1 An Impact Payment is made in the discretion of the Trustee and is not a right set out in legislation. Each Impact Payment will be confirmed in a separate Mitigation Agreement between the Contractor and the BCFRT. The Mitigation Agreement will contain

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clauses that limit the Contractor's right to commence any other proceedings or pursue any other legal remedies that may exist as a result of the FRA timber reallocation.

- 3.2 The BCFRT will consider making an Impact Payment in respect of the direct impact of the FRA on each of the following:
 - 3.2.1 Replaceable full phase timber harvesting contracts,
 - 3.2.2 Replaceable single phase timber harvesting contracts, including contracts for the construction and/or maintenance of logging roads, and
 - 3.2.3 Redundant equipment that is disposed of in an arms length transaction.
- 3.3 The BCFRT will not make any Impact Payment under this Framework with respect to indirect or consequential impacts of the FRA timber reallocation.
- 3.4 As a general principle, the date of valuation for all impacts will be the Date of Impact.
- 3.5 An Impact Payment is separate from any "adjustment assistance" available under other provincial or federal/provincial arrangements and no Impact Payment is available for any claims that have been dealt with under those arrangements. In addition, no adjustment assistance is payable under those arrangements for claims in respect of which an Impact Payment was made under this Framework.
- 3.6 The BCFRT will not make any Impact Payment with respect to any impact that the BCFRT reasonably considers to be a normal business risk of the Contractor.
 - 3.6.1 No Impact Payment will be paid with respect to chattel and immovable assets employed in the delivery of a non-replaceable timber harvesting contract.
- 3.7 An Impact Payment is available only with respect to demonstrated impacts directly attributable to the FRA timber reallocation. In order to pursue the process outlined in these Guidelines, a Contractor must confirm and provide, in a form satisfactory to the BCFRT, written details of the extent to which the FRA timber reallocation was the direct cause of a reduction in a replaceable contract. In most cases, this will require production of at least a copy of the accepted Forestry Revitalization Proposal and may require the production of other relevant documents.
- 3.8 Where subcontractors are used that hold replaceable contracts as defined in the Timber Harvesting Contract and Subcontract Regulation, the Contractor will be responsible for identifying each subcontractor, and allocating among all subcontractors their appropriate share of the proposed Impact Payment. No Impact Payments will be made to the lead Contractor until agreement is made on payments to all replaceable subcontractors.
- 3.9 The Contractor and sub-contractor must identify which of their employees should receive severance, and must confirm this list with the BCFRT and, if appropriate, the

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employee's union. Severance payments will not be subtracted from the Impact Payment. Severance payments are to be made by the employer. The employer may claim mitigation in respect of severance payments under the separate procedure set out in the Employee Mitigation Guidelines.

- 3.10 As described in the Employee Mitigation Guidelines, if employers pay severance to employees and receive mitigation for that severance from the BCFRT, neither they nor any affiliated company can rehire those employees for 6 months in the same or similar capacity and wage unless there is a material change in circumstances, such as access to significantly more fibre subsequent to the severance, or because another employee quits, dies or retires subsequent to the severance being paid, and that employee needs to be replaced. If the employer does rehire a severed employee, and the above conditions do not apply, the employer who paid the severance will be required to reimburse the BCFRT for the entire severance paid to the employee with BCFRT funds.
- 3.11 Contractors and subcontractors may receive mitigation payments even though they find alternate work and therefore do not have to sever any employees.

4. Impact Assessment:

General:

- 4.1 Each Impact Payment is subject to a test of market and economic reasonableness applied by the BCFRT. This test takes various factors into account, including "reasonable expectations" in the ordinary course of business, actual contract terms, Forest Act provisions, and normal business risks. Subject to the application of that test of market and economic reasonableness, however, Contractor mitigation will be calculated as shown in the following section.

Impacts on Work Volumes:

- 4.2 The Impact Payment respecting impacts on work volumes will be calculated as:
- The Impacted Volume, multiplied by
 - The Average Contract Rate, multiplied by
 - The Contribution to Profit, multiplied by
 - The Economic Multiple.

- 4.2.1 The Impact Payment payable and the calculations set out in Article 4.2 are subject to the following maximum caps:

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- 4.2.1.1 With respect to full phase timber harvesting contracts on the Coast, as defined by the Ministry of Forests, \$16.00 per cubic meter of Eligible Impact.
- 4.2.1.2 With respect to full phase timber harvesting contracts in the Interior, as defined by the Ministry of Forests, \$10.00 per cubic meter of Eligible Impact.
- 4.2.1.3 With respect to single phase falling and bucking contracts, \$1.50 per cubic meter of Eligible Impact.
- 4.2.1.4 With respect to single-phase road building contracts, \$30,000 per kilometer of Eligible Impact.

Redundant Assets – General:

- 4.3 The onus is on the Contractor to demonstrate to the BCFRT's satisfaction that an asset is redundant, and that the redundancy was caused directly by work volume reductions resulting from the FRA Timber Reallocation.

Impacts on Chattel Assets:

- 4.4 The BCFRT will not provide mitigation for moveable redundant equipment that is retained by the Contractor.
- 4.5 When a Contractor can demonstrate the equipment was made redundant because of work reduction caused by the FRA, and the Contractor sells that equipment and does not replace it with similar equipment, the BCFRT will provide mitigation to the contractor equal to 25% of the gross selling price of the redundant equipment to an arms length purchaser.
 - 4.5.1 In order to receive mitigation for redundant equipment as described above, the equipment must be sold within 6 months of the later of the Date of Impact or the signing of the Mitigation Agreement between the Contractor and the Trustee. In the event that market conditions are such that equipment cannot be sold within 6 months, an extension of no more than 6 months may be granted if it can be demonstrated that the equipment is actively for sale and is not in use in other operations. This could be substantiated by having the equipment on display in a used equipment lot, or scheduled for sale at an auction.

Impacts on Immovable Assets:

- 4.6 The BCFRT will not provide mitigation for immoveable redundant assets that belong to the Contractor.

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5. Aggregate Impact Payment

- 5.1 Where the BCFRT and the Contractor agree on an Impact Payment with respect to any discrete claim of impact, the BCFRT may document and pay out such claim.
- 5.2 Subject to Article 3.5, the early payment of an Impact Payment may be made without limiting the Contractor's ability to continue with negotiations with respect to other claimed impacts. (For example, the BCFRT may pay out an agreed settlement with respect to a replaceable contract or sub-contract, while claims for other replaceable contracts with the same Contractor or redundant assets remain under negotiation.)
- 5.3 The Contractor may request that the BCFRT process an interim payment respecting the Aggregate Impact Payment.
 - 5.3.1 In cases of financial distress, the Contractor may request an interim payment at any time after the provision of information required under Article 1.
 - 5.3.2 The request for an interim payment must include a statement from the Contractor confirming the Contractor has applied commercial diligence in the presentation of all information to the BCFRT, and believes the information provided represents a complete and accurate representation of the facts surrounding the impact of the FRA timber reallocation on the Contractor.
 - 5.3.3 An interim payment will be treated as an advance. As Impact Payments are confirmed they will be applied first toward repayment of the interim payment.
 - 5.3.3.1 Once Impact Payments at least equal to the interim payment have been confirmed, all future Impact Payments, or portions of Impact Payments, will be paid to the Contractor.
 - 5.3.3.2 Should the actual Aggregate Impact Payment due the Contractor be less than the interim payment received by the Contractor, an overpayment situation shall exist and the Contractor will be liable for the repayment of any such overpayment.
 - 5.3.3.3 The Contractor will be required to undertake to repay any overpayment within 10 business days of notice from the BCFRT that such an overpayment exists. Should the overpayment not be repaid by the Contractor within 10 days of notice, the amount owing will bear interest from the tenth day at the rate prescribed in the *Court Order Interest Act*.

- 6. In the event that a replaceable contractor can demonstrate a serious inequity resulting from the application of these guidelines, the Trustee may consider his arguments and suggest to the BCFRT Advisory Board that a modified payment be made.