

XXXXXX **Recreation District**

- #### Keith Avenue,
XXXXX, British Columbia
VXX 1X1

Ph: ##-###-####



**Ministry of Tourism,
CultureSport and the Arts**

Tourism Division
Recreation Sites and Trails Branch

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Ministry of
Tourism, Sport
and the Arts

PROPOSAL FORM FOR TRAILS AND RECREATION

An individual or group may use this form to apply to the **Ministry of Tourism, Culture and Sport** to rehabilitate or maintain a trail or recreation facility. The numbers on this form correspond with the explanations found in the following section titled "Forest & Range Practices Act, S57 and the Application Process Information Package". If required, attach additional pages (Please print or type).

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1. **Name** of individual or group: _____

Address: _____ **Postal Code:** _____

Contact Person: _____

2. Overall **purpose** of the proposed work:

3. Brief **description** of the proposed work:

4. **Location** of the proposed work:

This proposal is for (please check):

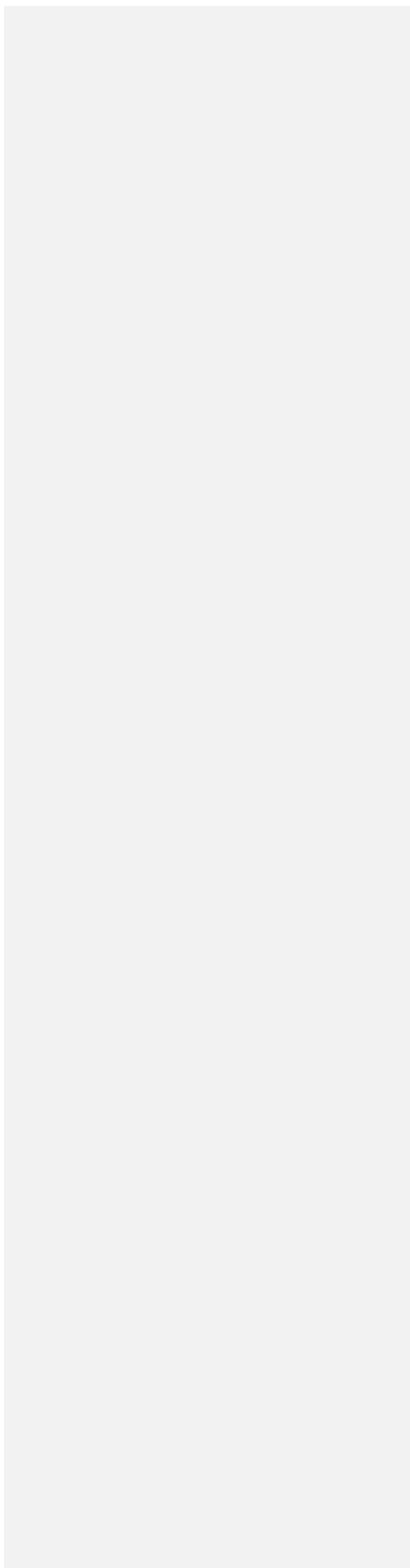
- a **managed** trail or recreation facility
- an **un-managed** trail or recreation facility
- a **new** trail or recreation facility.

Please check if:

- a map showing the project area is attached.

5. Expected **dates** on which the proposed work will begin and finish (month or season, and year):

Signature: _____ **Date:** _____



The Forest & Range Practices Act, Section 57 and the Application Process

Information Package

The purpose of this information package is to assist and provide direction to outdoor recreation groups and MTCSA, Recreation Sites and Trails Branch staff (recreation staff) in meeting the requirements of *Section 57, Unauthorized trail or recreation facility construction, in the Forest and Range Practices Act (FRPA) and Part 3 of the Forest Recreation Regulation*.

Section 57 of *FRPA* applies to all provincial Crown land outside of parks. It applies to all forested and non-forested provincial forest lands and other provincial Crown lands such as non-municipal and rural settlements. It does not apply to private lands, national parks and other federal Crown lands, provincial parks and other protected areas, regional parks and municipal lands. If you are in doubt as to the status of an area and whether or not this guidebook applies, please contact the nearest Recreation Sites and Trails Branch office.

This information package:

- outlines and clarifies which activities do not or do require consent of the recreation officer,
- provides direction on how an applicant should prepare a proposal (for activities that do require consent),
- explains what the Recreation Sites and Trails Branch does when it receives a proposal,
- identifies the criteria on which a recreation officer must base a determination and how that determination should be communicated to the applicant,
- outlines the enforcement of *FRPA* in the case of unauthorized activities (i.e., non-compliance with Section 57).

Section 57 was established on the grounds of fairness and consistency in regulating forest practices and the need for this authority to ensure public safety, protect the environment and manage resource use conflicts. Section 57 was designed to encourage a more planned approach to trail and recreation facility construction, rehabilitation and maintenance on provincial Crown land. It assists government staff in carrying out this intent by providing them with enforcement authority.

Activities that DO NOT require consent of the Recreation Officer

Section 57 does not apply to basic public access or basic recreational use of Crown land. The following activities are not considered to be trail or recreation facility construction, rehabilitation or maintenance and do not require the consent of the recreation officer before the activity may begin:

- Basic access or travel through the forest or across the land, by individuals or groups, whether on a one-time basis or repetitive use of the same route.
For example: hiking on Crown land and the normal ground disturbance associated with this activity.

- Route finding or route marking using ribbons, cairns or other directional indicators.
For example: marking one's way with cairns in an alpine area or with ribbons in a forest.

Note: the standard practice of nailing route markers to trees is an allowable practice and is not considered tree spiking under Section 55 of the *Act* (Tree Spiking Prohibited).

- Minor, piecemeal or incidental clearing of brush or downed trees either on or off established trails.
For example: bushwhacking, or clearing branches or deadfall that has fallen across an established path or trail.
- Emergency repairs to a trail or recreation facility that is necessary to prevent imminent damage to the environment, the trail or the facility.
For example: repairing a water bar on a section of trail where flooding is occurring and immediate repair is needed.
- Emergency construction or maintenance of a trail when this is the only reasonable way of minimizing risk to personal safety.
For example: placing a log over a stream that is necessary to cross to get out of the woods by dark.
- Basic recreational use of a localized area, by individuals or groups.
For example: camping on Crown land and the normal ground disturbance associated with this activity.
- Construction of small, rustic structures of a temporary nature.
For example: construction of rock fire rings, latrines, etc.

If you are uncertain whether or not your intended activity requires consent, please contact the nearest Recreation Branch office, or use the toll-free Enquiry BC line: (1-800-663-7867).

If your intended activity does not require consent, please proceed and enjoy yourself. Feel free to contact the nearest recreation branch office for information on public recreation opportunities, outdoor recreation etiquette or other assistance.

Activities that DO require consent of the Recreation Officer

Section 57 does apply to “trails” and “recreation facilities” as these terms would reasonably be interpreted and understood. The following activities are considered trail or recreation facility construction, rehabilitation or maintenance and do require the consent of the recreation officer before the activity may begin:

- ground disturbance
 - significant, continuous grubbing of the soil or rocks along a linear route to establish a visible, long-lasting treadway
 - significant ground excavation for the purpose of parking vehicles, launching boats, etc.
 - significant ground or root disturbance associated with corralling horses.
- clearing or cutting of vegetation
 - significant, continuous uprooting of shrubs or understorey plants along a linear route or over an extended area
 - cutting of standing trees.
- construction of structures
 - water bars, stairs, bridges, signs, corrals, technical trail features, poles for hanging game, etc.
 - other significant structures of a long-term or permanent nature.

Some other related activities that may be restricted or prohibited, but not under FRPA, Section 57 are:

- uses within parks and other protected areas
- restricted or prohibited public recreation uses of Crown land, and recreation and non-recreation activities that threaten a protected recreation resource
- recreation activities authorized under other enactments, i.e. commercial backcountry recreation guiding under the *Land Act* or vehicle closures under the *Wildlife Act*
- construction or occupation of a building, including lodges, cabins and huts
- construction or modification of a road
- building of an excavated or bladed trail
- cutting of Crown timber

Preparing a proposal

Individuals or groups planning to construct, rehabilitate or maintain a trail or recreation facility must prepare a written proposal and submit it to the recreation officer of the appropriate district. If the proposed activity crosses district boundaries, the proposal should be submitted to the recreation officer of the district in which the largest portion of the proposed activity would take place, who will contact the adjacent districts on your behalf.

Before you begin a proposal please consider if the intended activity or facility is of a “commercial” or “exclusive” nature.

- “commercial” means there are locally recognized business entities using the area for commercial purposes. The businesses are noted as those legal business entities, tenured by and in good standing with, Adventure Tourism Branch.
- “exclusive” means there is a membership requirement for use or a facility is locked with no key available to the public”.

In these cases, please contact Front Counter BC about requirements under various authorities, including the commercial recreation policy.

The standard proposal form assists an applicant in preparing a proposal. The proposal should include:

1. The **name and address** of the individual or group making the proposal.
For example: ABC Nordic Ski Club, Box 555, Snow Valley, B.C., V1A 1A2 Contact person: Sally Skier, phone: 365-5555
2. The overall **purpose** of the proposed trail or recreation facility.
For example: The overall purpose of the proposal is to open up a new area for public recreation opportunities. The trails and/or facilities established will be of a non-commercial, non-exclusive nature.
3. A brief **description** of the proposed work.
For example: Work will consist of constructing 15 km of cross-country ski trails. Existing, abandoned roads will be used for about 10 km, and new trails will be constructed for the remaining 5-km.
4. The **location** of the proposed work.

The most efficient way of establishing the location of the proposed work may depend upon whether the work is on an existing trail or facility, and on how well known the trail or facility is to the recreation branch. Proposals can generally be broken into three categories as follows:

Managed trail or recreation facility

If a trail or recreation facility has undergone a status check (i.e., is on crown land, checked for conflicts and entered in MTCSA records) and is established as a trail or recreation site under Section 56 of *FRPA*, then simply providing the name of the trail or facility may be sufficient to convey its location. The recreation district office may be contacted to find out the extent to which the MTSA knows about a trail or facility and has noted it in their records.

For example: The Alamo Recreation Trail as shown on the Arrow - Kootenay Lake District Brochure.

Un-managed trail or recreation facility

If an existing trail or recreation facility is not formally managed and not in the MTCSA records, a map and brief description will be required to convey its location. The recreation district office may be contacted for information and suggestions.

For example: The Ladybird Creek Trail, located on the west side of Ladybird Creek, commencing at the junction of Koch Creek and Ladybird Creek MTCSA roads at kilometer 16 on the Ladybird Creek FSR (map included).

New trail or recreation facility

If a trail or recreation facility does not exist, a detailed map and description will be required to convey an intended location. The forest district office may be contacted for information and suggestions.

5. Expected **dates** on which the proposed work will begin and finish.
For example: Work is expected to begin in September 2004 and be completed by November 2004.
6. Expected **use**, including:
 - the kind of use (i.e., horse use, hiking, snowmobiling, cross-country skiing, motorized, non-motorized, beginner, advanced, general public, etc.)
 - the season(s) of use (i.e. summer, winter, year round, etc.)
 - the amount of use (i.e., estimated number of users per season or per year).

For example: The proposed ski trails will be developed at a level suitable for the beginner to intermediate cross-country skier. The trails will also be designed for hiking and horse use in the summer. It is estimated that the trails will receive about 3000 visitor days per year.
7. **Standards** or other provisions to ensure that the trail or recreation facility doesn't conflict with other resource values or uses, is safe, environmentally sound, and durable, given the purpose and expected use.

Note: The recreation branch has drawings and specifications for a number of structures that are available upon request and may help an applicant in preparing a proposal. Please contact the nearest recreation branch office.

For example: The proposed ski trails will be two laned to handle the expected traffic. They will be routed around the base of the avalanche run-out zone at km 6, and a footbridge will be built across the narrow V-shaped gully at km 10.

8. Demonstration of **capability and commitment** to provide maintenance over the long term. This information is important, as the recreation branch may have to close, or take over the management of, a trail or recreation facility, in the event that an applicant is unable to follow through. Information about any previous projects or experience may be attached.

For Example: The ABC Nordic Ski Club has worked on many cooperative trail projects with the XYZ district and has actively maintained these trails over the five years since they were developed (see information attached).

9. An identification of the **actions** being requested of the recreation officer. For example, a request for one or more of the following:
- *consent* to proceed with the proposal.
 - *inclusion* of the trail or recreation facility in the recreation inventory, used for various land use planning processes.
 - *creation* of a map notation; This notes the trail or facility on the status maps and assists in identifying a trail or facility in a referral process for resource development.
 - *establishment* of the trail or recreation facility as a recreation trail or site by the Minister under Section 56 of the *Act*. This requires a formal status check, creation of a map notation, and establishment by the Minister. This will enable the Recreation Regulations to apply and or possible objectives to be set. The trail or recreation facility must be constructed to recreation branch standards.
 - *co-operative* management with the recreation branch of the trail or recreation facility; In this case, the trail or recreation facility must be constructed to recreation branch standards and a partnership agreement must be entered into
 - *inclusion* of the trail or recreation facility on MTCSA maps and web sites; In this case, the trail or recreation facility would have to meet recreation branch standards and be intended and suitable for use by a number of recreation users
 - *identification* of the trail or recreation facility as a "Resource Feature" by the minister (or delegate) under Section 2 of the Government Actions Regulation, ensures that forest practices do not damage or render ineffective the trails or recreation facilities.
 - *other* recreation branch assistance (e.g., general information, technical advice, equipment, financial assistance, or staff time).

MTCSA processing of a proposal

Upon receiving a proposal to construct, rehabilitate, or maintain a trail or recreation facility, the recreation branch responds to a proposal as follows:

- 1. Review**
the recreation branch will review the proposal with respect to the requirements in the *Act* and the *Forest Recreation Regulation*, consistent with this information package. The district recreation officer will notify the applicant if the proposal is incomplete.
- 2. Stating**
the recreation branch will carry out a status check to look for any conflicts between the proposed work and resource tenure holders, private landowners, or other rights or interests. This will normally be limited to a preliminary status check carried out within the district office rather than a full status check. A full status check would be required, for example, before a trail or recreation facility could be established as an established recreation trail or site.
- 3. Referral**
the recreation branch may refer the proposal to all affected resource agencies and resource users, including other outdoor recreation groups. In some cases, to expedite the process, the recreation branch may request the applicant carry out the referral process.
- 4. Evaluation**
Based on comments received and other information, the recreation branch will evaluate the proposal with respect to the criteria set out in Section 4(3) of the *Forest Recreation Regulation*. The recreation officer may refuse consent if the proposal will result in one or more of the following:
 - significant risk to public safety

- unacceptable damage to the environment
- Un-resolvable conflict with other resource values or uses.

The recreation officer’s determination

The recreation officer will notify the applicant after making a determination.

The recreation officer will inform the applicant in writing regarding:

- whether or not the proposal has received consent
- the rationale for the determination

The recreation officer may also inform the applicant that any trail or recreation facility that is constructed, rehabilitated, or maintained under Section 57:

- is a public facility (no exclusivity of use)
- can not be used for commercial purposes without prior consent of the recreation officer
- ~~the proponent may not collect fees for use of the trail without prior consent of the recreation officer (no mandatory fee for use)~~ *Needs some better wording here....any thoughts??*

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The recreation officer’s determination will generally fall into one of four basic categories:

- 1. Consent**
The proposal is given consent and there are no further conditions or requirements that need to be met.
- 2. Consent with conditions**
The proposal is given consent, but there are conditions, warnings or requirements associated with the consent. For example, the applicant is informed that a more thorough status or referral could uncover conflicts that may prevent the project from continuing at that time.
- 3. Refusal as proposed**
The proposal is refused at this time or as it stands, but the applicant is informed that the proposal might be given consent under different circumstances or if it were revised. For example, the proposal is for an area that is currently under a local planning study and should be dealt with by that study or postponed until that study is concluded. Or, for example, the proposal fails to address certain safety or environmental issues, but could be revised and resubmitted.
- 4. Refusal**
The proposal is refused because it is considered to pose, inherently, one or more of the following, as set out in Section 4(3) of the *Forest Recreation Regulation*:
 - significant risk to public safety
 - unacceptable damage to the environment
 - Un-resolvable conflict with other resource values or users.

Response time

The total “response time,” or time between when an applicant mails a written proposal and receives a written response, will be determined by:

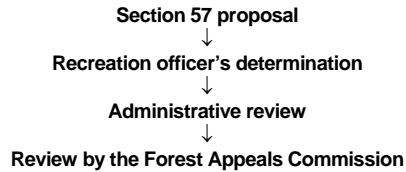
- the mailing time of the proposal to the recreation branch office, plus
- the time for the recreation officer to make a determination, plus
- the time for the district to prepare a written response, plus,
- the mailing time of the response to the applicant (one or more days).

Administrative Review and Appeal of a recreation officer’s determination

Note: This section only summarizes and sketches, for reference purposes, the review and appeal provisions regarding Section 57 that are provided for under the *Act*. This section is neither a complete or official presentation of this broad and complex subject. For more information on review and appeal, please contact the nearest recreation branch office.

Upon receipt of a recreation officer’s determination, the applicant may accept the determination and any conditions that may apply. In this case, the applicant may still want to contact the recreation officer or his staff to discuss the determination or the proposal in order to clarify the determination or gain information to prepare another proposal.

Alternatively, the applicant or any other person may not accept the determination. In this case, the *Act* and regulations provide for a review and appeal process as follows:



Briefly, this process involves:

Administrative review

The applicant must prepare a written request for an administrative review and submit it to the original determination maker within three weeks after the date the notice of determination was given to the applicant. The Act makes provision for the review official to consider only (a) evidence that was not available at the time of the original determination and (b) the record pertaining to the original determination.

Role of the review official

The review official conducting the review has the same discretion to make a decision that the original decision-maker had at the time of the determination under review.

Review by the Forest Appeals Commission (FAC)

The applicant may appeal an administrative review decision to the FAC.

Role of the FAC:

The FAC may consider the findings of the person who made the determination or decision, and either confirm, vary or rescind the determination or decision, or refer the matter back to the person who made the determination or decision for reconsideration.

Investigation by the Forest Practices Board (FPB)

In addition, a person who does not accept a recreation officer's determination may make a complaint to the FPB.

The FPB will investigate a public complaint in accordance with the *Act*. The circumstances in which the board may refuse to investigate or stop investigating include:

- the complainant ought to have known about the matter more than a year before the complaint was received by the FPB
- there are other existing laws or administrative remedies which are adequate that complainant has not used
- the complaint is frivolous, vexatious or trivial
- further investigation is not necessary to consider the complaint
- investigation would not benefit the complainant.

Role of the FPB:

The independent Forest Practices Board investigates third-party complaints on aspects of the *Act* following a regulated process, and will carry out independent audits and special investigations of both licence holders and government agencies.

Enforcement of FRPA and regulations when unauthorized activities take place

Note: This section only summarizes and sketches, for reference purposes, the enforcement provisions regarding Section 57 that are provided for under the *Act*. This section is neither a complete or official presentation of this broad and complex subject. For more information on enforcement, please contact the nearest recreation officer office.

Experience has shown that information, education, and voluntary compliance is the most effective means of managing recreation activities and enforcing recreation management rules and objectives. This can be expected to be the case with Section 57 and its intent to bring about a more planned approach to trail and recreation facility management in British Columbia.

This section deals with regulatory, as opposed to voluntary, enforcement of Section 57 as set out in the *Act* and regulations. It outlines the actions an official may take if he or she believes a person is illegally constructing, rehabilitating, or maintaining a trail or recreation facility on Crown land. In summary, the actions that may be carried out, either individually or in various combinations, are as follows:

Written warning

If an official believes that a person(s) is contravening Section 57 he or she may inform them through a written notice of the apparent contravention. The notice should contain information pertaining to the alleged contravention, including the name and phone number of the official. Failure to heed the warning may lead to penalties.

Stop work order

If an official believes that a person(s) is contravening Section 57 he or she may order the contravention to stop, or to stop to the extent required for the person(s) to get the required consent. Such a stop work order may or may not name, or apply to, specified persons. The minister may apply to the courts for an order for compliance if the minister considers that a person(s) is not complying with a stop work order.

Violation ticket (specified penalty ticket)

If an official believes that a person(s) is contravening Section 57, a ticket may be issued under the authority of the *Offence Act*. A person may appeal a ticket issued under the *Offence Act*.

Remediation order

A senior official may order a person(s) to remedy a contravention of Section 57 by requiring them to repair any damage caused by the contravention.

Such a remediation order must set out all information required by the *Act* and regulations, including:

- the nature of the contravention
- the nature of the work to be done to remedy the contravention
- the date by which the work must be completed
- the person's right to a review or an appeal
- the right of the government to carry out the work and levy a penalty if the person fails to comply with the order.

Prosecution

If an official believes that a person(s) is contravening Section 57, he or she may prosecute. A person(s) prosecuted by the Crown for contravening Section 57 is subject to a maximum penalty of \$5,000 in fines and six months in jail.

References

Forest and Range Practices Act
Forest Recreation Regulations

Glossary

“**determination**” means an act, decision, procedure, levy, order, or other determination made under the *Act*, or the regulations by an official or a senior official.

“**establishment**” means the legal declaration of an area covered by a recreation map notation as a recreation site or trail and the public notification of that declaration via a notice in the *British Columbia Gazette*.

“**facility**” means any area or portion of a recreation site, recreation trail, or interpretive forest site that serves as or provides for a day use area, boat launch area, trail head, or other similar functions.

“**map notation**” means an administrative label on maps and records to indicate an interest in an area (in this case an interest in an area for its recreation values).

“**minister**” means the Minister of Forests or the Minister of Tourism Sport and the Arts, depending on the section of the *Act*. Either Minister may delegate his authority under the *Act* and the *Recreation Regulation*.

“**official**” means a designated forest official.

“**established recreation site**” or **established recreation trail**, means a recreation site or recreation trail:

- designated under the *Forest Act*, or,
- established under Section 6 of the *Forest Practices Code of BC Act* or,
- established under Section 56 of the *Forest and Range Practices Act*.

“**standards**” are recommended design and construction specifications for recreation structures.

“**status check**” means the process of determining rights, titles, or interests in a particular area or parcel of land by searching records, maps, and other documents for jurisdictions, tenures, or expressed interests by other agencies or parties in the area in question. Status checking means “checking the status of” an area with respect to existing reports, titles, or interests.

“**structure**” means any improvement of a long-term or permanent nature that is fixed to the ground or permanently secured in a fixed location and includes cabins, bridges, litter barrels, shelters, signs, corrals, etc.

“**technical trail feature**” an obstacle on the trail requiring negotiation, the feature can either be man made or natural, such as an elevated bridge or a rock face respectively.