



MANAGED
FOREST
COUNCIL

Compliance Inspections and Investigations Procedure Manual

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DISCLAIMER

The legislation referred to in this manual is subject to amendment from time to time and to judicial interpretation. The manual may not reflect recent amendments to the legislation and should not be relied upon as an accurate statement of the existing law. It is a guide to the Council's practices and procedures only. An official version of the legislation may be obtained from BC Laws.

ACKNOWLEDGEMENT

Substantial portions of the material in this manual were based on material contained in the Ministry of Forests and Range Compliance and Enforcement Manual (April 2005). The Council would like to thank the Ministry of Forests and Range for making its manual available and for authorizing use of the information when formulating these materials.

1.0 INTRODUCTION

The Private Managed Forest Land Council was established under section 4 of the *Private Managed Forest Land Act* (the Act). As of September 19, 2014, the Private Managed Forest Land Council is known as the Managed Forest Council (Council).

The Council is an independent tribunal with statutory authority to establish regulations in respect of forest management requirements on private managed forest land. In addition, the Council has statutory authority to make administrative and quasi-judicial decisions with respect to a variety of matters regulated by the Act and the regulations made under the Act. These statutory decisions extend from evaluating submissions of management commitments and amendments to adjudicating whether a person has contravened a requirement of the Act and regulations.

The Council is responsible for ensuring that managed forest owners, as well the owners' employees, agents and contractors, comply with the requirements of the Act and the regulations. The Council implements programs to assess compliance, including carrying out periodic audits and an on-going inspection program. Depending on the outcome of a particular audit or inspection, a formal investigation may be required to assess whether or not there was a potential contravention of the Act and regulations. The Act provides several potential compliance remedies including administrative remedies and offences.

The Council has developed policies with respect to many aspects of ensuring compliance. These include policies ranging from the use of stop work orders to the potential for a report to Crown Counsel being made in respect of a possible prosecution for allegedly committing an offence under the Act or regulations. The Council's policies are available for public review on the Council's website.

The Council has developed three manuals to comprehensively describe the procedural framework employed by the Council to ensure compliance with the Act and the regulations:

1. Compliance Audit Manual – describes the Council's audit program objectives and procedures;
2. Compliance Inspections and Investigations Procedure Manual - describes the Council's policies and procedures respecting inspections and investigations and the possible application of stop work orders;
3. Compliance Determinations Manual - describes the entire determination process utilized by the Council when making determinations respecting potential non-compliance with a provision of the Act and regulations.

Each of these manuals is available for public review on the Council's website.

This manual is the second of the three manuals. It is intended to

- provide guidance to Council personnel who undertake inspection and investigation activities on managed forest land, and
- ensure that the data and facts are collected and presented in a consistent manner that is open and understandable to both Council and the owners and their personnel.

The information and reporting provided to Council are used to assess compliance with the requirements of the Act and regulations. Council staff and authorized personnel will generally follow the policies and procedures contained in this manual. Where any matter arises that is not dealt with in this document, the Council will do whatever is necessary to enable it to act fairly and effectively. In addition, the Council may dispense with any part or all of a particular procedure where it determines that it is appropriate to do so in the circumstances.

2.0 INSPECTIONS

INSPECTIONS

Compliance Policy:
CPO-01

Purpose: To ensure that inspections are carried out by qualified persons and scheduled in a manner that addresses risk and the appropriate allocation of available resources.

Policy: It is the policy of council that, in accordance with the procedures:

1. managed forests must be inspected in each of the following circumstances:
 - within 3 years of being classified as managed forest land under the *Assessment Act*;
 - at the request of an owner; and
 - at least once every 5 years, or more frequently for high risk activities.
2. inspections must be carried out by qualified persons who are
 - council members;
 - council staff; or
 - contractors acting as agents of council.

This policy will be considered when determining inspection requirements and allocating inspection resources.

INSPECTIONS

Compliance Procedure:
CPR-01

Purpose:

This procedure outlines the process for undertaking an inspection depending on the inspection type and the terms of reference for the inspection.

Introduction:

The intent of any inspection is to confirm compliance with legislation. The discovery of a potential non-compliance, although not the intent of an inspection, may occur. If a potential non-compliance is discovered, an investigation may follow.

Procedure:

1. Determination of what type of inspection is to be conducted

It is the responsibility of the executive director to determine which type of inspection (i.e. scheduled, risk-based or ad hoc) is to be conducted, and to assign the inspection to an inspector.

1.1 Procedures for determining whether a *scheduled inspection* is appropriate

The executive director selects a managed forest to be inspected from the managed forest database which maintains inspection records. This selection is to meet the inspection frequency goal of the council that

- managed forests are inspected at least once every five years, and
- new managed forests are inspected within three years of being classified as managed forest land under the *Assessment Act*.

The executive director may vary the inspection frequency for any given managed forest. Circumstances that may impact inspection frequency include

- increasing frequency where the results of one inspection identify that activities on a given managed forest have an increased risk of future non-compliance, and
- reducing frequency where
 - there has been no activity on a managed forest for an extended period of time, or
 - on a small managed forest all harvesting has been completed, all roads have been deactivated and the next reforestation obligation is many years off.

1.2 Procedures for determining whether a *risk-based inspection* is appropriate

The executive director may initiate a risk-based inspection on a managed forest if he or she has information that may increase the risk of non-compliance on that managed forest. This information could be based on:

- knowledge that a high risk activity is being conducted; or
- high values such as high value fish streams are in the immediate area and could be negatively impacted by activities on the managed forest.

In these circumstances the executive director may require inspections at a greater frequency than the 3-year and 5-year frequency for scheduled inspections.

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1.3 Procedures for determining whether an *ad hoc inspection* is appropriate

The executive director may initiate an ad hoc inspection on a managed forest if he or she has information that there is a potential non-compliance on that managed forest. The information may come from a public complaint, a public inquiry, or communication from an owner who believes that an incident impacting the environment has occurred.

Once the executive director has determined that it is appropriate to inspect a particular managed forest and decided on the type of inspection, the executive director may forward an information request to the owner asking for information pertinent to the potential inspection.

For ad hoc inspections, the executive director will

- retain a resource specialist with the appropriate knowledge and skills set to address the type of potential non-compliance that has occurred, and
 - advise the resource specialist as to the type of inspection and outline the terms of reference for the inspection.
-

2. Planning the inspection

An inspector must plan the inspection.

2.1 Contact the owner and get the information required

Regardless of the type of inspection, the inspector will notify the owner of the upcoming inspection. By contacting the owner

- a) the owner's expectation of privacy is addressed by being advising of the intention to conduct the inspection;
- b) the inspector can find out what type of activity is being undertaken;
- c) the likelihood that an owner will be on-site when the inspection is carried is increased (which will improve overall communications).

Scheduled inspections - should be conducted at the convenience of the owner whenever possible, with every opportunity given to the owner or their representative to accompany the inspector.

Risk-based inspections – the specific reasons for a risk-based inspection may mean that delaying the inspection to accommodate the owner's timetable may not be prudent. The inspector should seek direction from the executive director if it is not appropriate to delay the inspection to accommodate the owner.

Ad hoc inspections - need to be conducted as soon as possible, to address any non-compliance if it is identified, to mitigate any negative impacts expediently, and to conduct the inspection while events are still current. The inspector should attempt to contact the owner. If the inspector is unable to contact the owner, the inspector should leave a message informing the owner that the inspection is to be conducted on a certain date.

2.2 Understand what activities are being undertaken on the managed forest

Before conducting an inspection, an inspector must determine

- what activities are ongoing, and
 - whether there are any values that may be at risk as a result of those activities.
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INSPECTIONS

Compliance Procedure:
CPR-01

The owner may provide much of this information. It may need to be determined or confirmed on-site during the inspection.

2.3 Identify any values at risk

An inspector must determine the values at risk on or adjacent to the managed forest land, using maps, photographs, satellite images and other agencies' databases.

2.4 Planning the inspection

Setting priorities

The inspector must plan where and what is to be inspected. This can be done by

- determining what activities are ongoing and analyze the risk associated with each activity,
- looking for the presence of any values (e.g. fish habitat or a licenced waterworks intake) at risk in the proximity of these activities, and
- focusing inspection resources on those issues that have the greatest potential to cause a problem.

Inspections should focus on activities having the highest risk to cause a material adverse effect to water quality, fish or fish habitat. Planning can prioritize inspection time by:

- a) determining what activities are underway at the present;
- b) analyzing the potential hazard of each activity;
- c) determining the values at risk (consequence) in the proximity of the activity; and
- d) identifying those issues that have the greatest risk (risk = hazard X consequence) to have a problem.

If there is insufficient information to plan before arriving onsite, plan them upon arrival.

Equipment

Assemble all of the equipment needed to conduct the inspection. This includes all of the equipment necessary to

- address personal safety issues (i.e. hardhat and hi vis vest),
- measure anything involved with the inspection, and
- document observations – both in writing and through photography.

In cases of an ad hoc inspection, the inspector should have the legislation relevant to the site of the suspected contravention.

Identification

The inspector must carry appropriate identification, including

- personal identification,
- the letter of authority from the executive director, and

a copy of the inspection terms of reference.

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3. Conducting the inspection

The inspector should look for any values that might be at risk while approaching the inspection site. This is especially important if there is inadequate information available to fully pre-plan the inspection.

Upon arriving onsite, the inspector should visually assess the area to determine what activities are ongoing or have been concluded since the last inspection. These are the activities on which the pending inspection would normally focus. If the terms of reference for the inspection are too specific (e.g. to confirm if there is a successfully regenerated stand established on the area) to allow for this, the inspector should make note of the new activities of concern and continue with the original planned inspection.

If the owner or his representative is onsite, the inspector must

- identify him or herself,
- describe the purpose of the inspection, and
- if requested, provide proof of identification and authority.

Inspections can be conducted to three basic intensities: a *visual assessment*, a *recce-level inspection*, or a *detailed survey*. The level of inspection depends on

- the inspection terms of reference,
- what was determined through the initial visual assessment, and
- whether a non-compliance is suspected.

As it is not possible or cost-effective to inspect everything in a detailed manner, various levels of inspection intensity can be used to determine compliance, and a combination of intensities may be used.

Visual assessments

A visual assessment enables the inspector

- to take an overall view of the area,
- to focus the inspection on those activities which have the highest risk.

Visual estimates provide the broadest coverage of a managed forest, but at a reduced level of detail. Visual assessments could be made

- onsite,
- from a vantage point en-route to the site,
- from the air, or
- using aerial photos and satellite images.

Recce-level inspections

A recce-level inspection provides a good balance of coverage with an adequate assessment of detail, and should be used wherever possible. It is particularly useful when inspecting ongoing activities, or along existing roads to ensure the adequacy and functionality of drainage structures.

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CPR-01

Detailed surveys

Detailed surveys provide accurate information to confirm both compliance and potential non-compliance. While an inspection may identify potential non-compliance, it can often only be confirmed through detailed surveys during an investigation.

The inspector will determine which level of inspection is required on each portion of the managed forest. It may be that most of the area can be assessed visually, but that a portion of the activities (typically active harvesting and recent road construction) require at least a recce-level inspection. The inspector must ensure that inspection time is used to inspect activities having the highest risk at an adequate level of intensity.

When conducting an ad hoc inspection, the inspector will take additional steps to:

- review the specific portion of legislation relevant to the purpose of the inspection and to identify in advance those issues to focus on during the inspection;
 - be aware of the elements of a possible contravention that is to be identified, in order to confirm whether an investigation is required;
 - be aware that while a scheduled or risk-based inspection would look at all activities that are ongoing, an ad hoc inspection normally focuses on the potentially non-compliant activity. If, during an ad hoc inspection, it is determined that there is no potential non-compliance, the inspection may be terminated; and
 - formally identify when a contravention may have occurred and immediately advise the owner and the executive director. In most circumstances, the inspector collects evidence concerning the alleged non-compliance, but is sensitive to the fact that a subsequent investigation may be undertaken.
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4. Discovering non-compliance

An inspector that discovers a potential non-compliance will:

- decide on the severity and impact of the suspected non-compliance (if this is within his or her area of expertise), and determine how to inform the executive director;
- document the potential non-compliance on the appropriate inspection form; and
- prepare to provide recommendations to the executive director as to appropriate actions that may be taken.

4.1 Jurisdiction

The inspector will advise the executive director if potential contraventions of other provincial or federal legislation are identified during an inspection. The executive director will determine whether another agency should be notified.

4.2 Assessing the level of non-compliance

There are three basic levels of non-compliance, based on the degree of impact to the managed forest and surrounding values:

- those having a trivial impact;
- those having a minor impact; and
- those having a major impact.

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Trivial impacts or minor impacts can be cumulative if they occur at multiple sites. The cumulative effect may raise the potential non-compliance into the major category. The executive director determines whether the potential non-compliance is trivial, minor or major in nature. In making the determination, the executive director will consider the input of the inspector and investigator (if any) each of whom observed the situation first hand.

4.3 Actions based on type of inspection conducted

If a potential non-compliance was detected during an inspection the inspector must, as soon as practicable after the conclusion of an inspection,

- notify the executive director of the potential non-compliance, and
- document the non-compliance on the Potential Contravention Advisory form.

When completing the form the inspector must describe the severity of the incident, complete with the rationale for that assessment (if it is within the inspector's area of expertise).

The actions by the inspector who identifies the potential non-compliance could vary, depending on the circumstances. If the potential non-compliance was not particularly serious in nature then the inspector would do each of the following:

- for scheduled or risk-based inspections:
 - not begin an investigation during the same visit;
 - inform the executive director and the owner of the potential non-compliance;
 - collect any time-sensitive evidence; and
 - continue the inspection of the managed forest, and
- for ad hoc inspections:
 - assess whether he or she has the skills necessary to conduct an investigation; and
 - advise the executive director.

Regardless of the type of inspection, if the inspector discovers a serious potential contravention at any point during the inspection, the inspector must

- cease the inspection immediately, and
- give priority to reporting the potential contravention to the executive director.

In order to complete the Potential Contravention Advisory form, the inspector must

- gather enough information and evidence to enable the executive director to determine what the next step should be,
- avoid disturbing any evidence, but takes photos of any evidence, and
- secure any evidence such as water samples, photos or digital images taken and transfers them to the investigator assigned to the case.

INSPECTIONS

Compliance Procedure:
CPR-01

5. Giving advice or opinions to an owner

The owner may ask an inspector for advice on how best to conduct a certain activity, or whether an activity would be acceptable. The inspector may provide advice as long as it is within the inspector's area of expertise. Inspectors must ensure that advice that is given

- Is not construed by the owner as an official sanction of an activity, and
- Is documented, including the context within which the advice was provided.

Inspectors must avoid giving prescriptive instructions on an issue that requires addressing. The inspector may point out the deficiency and suggests that the deficiency be fixed.

6. Completing the inspection report

Inspection reports are to be completed during, or very shortly after, the inspection and forwarded to the executive director. There are three different report forms to be filled out, depending on the type of inspection and its outcome:

- the Site Visit File Note which outlines the specific observations noted during the inspection;
- the Managed Forest Inspection Summary which summarizes the observation of one or more scheduled inspections; and
- the Potential Contravention Advisory form which focuses on potential non-compliance identified during the inspection.

3.0 INVESTIGATIONS

INVESTIGATIONS

Compliance Policy:
CPO-02

Purpose: To provide consistency and timeliness respecting the investigation of suspected contraventions of the *Private Managed Forest Land Act* and its regulations to all employees, contractors and agents of the council who perform investigations.

Policy: It is the policy of council that, in accordance with the procedures:

1. the executive director must determine whether to initiate an investigation; and
2. investigations must be completed in a timely manner and in a period not exceeding 12 months from the date of initiation.

INVESTIGATIONS

Compliance Procedure:
CPR-02

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.
-

INVESTIGATIONS

Compliance Procedure:
CPR-02

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

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.

INVESTIGATIONS

Compliance Procedure:
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2.3.2 Actively look for any and all physical evidence.

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

INVESTIGATIONS

Compliance Procedure:
CPR-02

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.

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.

INVESTIGATIONS

Compliance Procedure:
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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 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.

INVESTIGATIONS

Compliance Procedure:
CPR-02

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 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.

INVESTIGATIONS

Compliance Procedure:
CPR-02

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.

4.0 STOP WORK ORDERS

STOP WORK ORDERS

Compliance Policy:
CPO-03

Purpose: To provide direction on the issuing of stop work orders under section 30 of the *Private Managed Forest Land Act*.

Policy: It is the policy of council that, in accordance with the procedures, stop work orders must only be issued by a member of the council or the executive director where:

1. council or the executive director has reasonable grounds to believe a person is **currently** contravening the legislation; and
 2. there is imminent or ongoing material adverse effect to
 - fish or fish habitat;
 - water quality, or
 - critical wildlife habitat.
-

STOP WORK ORDERS

Compliance Procedure:
CPR-03

Purpose:

This procedure outlines the process for identifying the circumstances under which a stop work order is issued and when it would be rescinded.

Introduction:

Section 30 of the *Private Managed Forest Land Act* (the Act) provides authority for the council or a person authorized by council to issue an order that an activity being conducted on land administered under the Act ceases.

Procedure

I. Prerequisites

1. Confirm that there is, in fact, a contravention
 2. Determine that the contravention is ongoing and is resulting or likely to result in a significant material adverse effect to
 - fish and fish habitat,
 - drinking water quality, and
 - critical wildlife habitat
 3. Determine that the owner is not intending to voluntarily cease the contravening activity
 4. Determine the most appropriate time to cause the contravening activity to cease having regard to
 - operational considerations such as whether it may be appropriate to let some partially completed operations conclude, or
 - whether existing site conditions or deteriorating weather may dictate that the activity be shut down immediately.
 5. Determine what is required to be remedied in order for the contravention to cease and for the stop work order to be extinguished
-

II. Communication

1. For potential written stop work orders, the auditor/inspector/investigator must
 - advise the executive director as soon as practicable of the findings with respect to the issue, and
 - provide the executive director with all of the information needed to determine whether to issue a stop work order and how to word the order.
 2. For potential verbal stop work orders (in cases where the contravention is resulting in or is about to result in serious damage to the environment), the auditor/inspector/investigator must
 - immediately contact the executive director and, in the event the executive director cannot be contacted, a member of the council, and
 - if the executive director or a council member cannot be reached, advise the owner that the issue is going to council with a recommendation that a stop work order be issued.
-

STOP WORK ORDERS

Compliance Procedure:
CPR-03

III. Decision

Stop work orders are extremely powerful, in that they can stop operations on an entire parcel of land, cause significant financial hardship for the land owner, and can result in a loss of work. For this reason, stop work orders should be used in a judicious fashion to deal with specific serious contraventions, rather than in a broad manner that may cause disruption to other, compliant operations.

The executive director determines each of the following:

- whether a stop work order is possible and if it is, whether it is appropriate (see Appendix 1);
- whether a verbal stop work order is required, or if a written stop work order is adequate;
- when the stop work order becomes effective; and
- what is required for the stop work order to be extinguished.

IV. Issuance

1. For written stop work orders, the executive director must
 - complete the stop work order form
 - not be too prescriptive in outlining what is required to have the order lifted or extinguished.
 - Provide the stop work order to the owner by
 - Promptly emailing or faxing, and
 - Mailing the original via registered mail.
2. For verbal stop work orders, the executive director must
 - Provide the verbal stop work order
 - directly to the owner or on-site representative
 - State that it is in effect immediately
 - Require that the contravening activity to cease immediately.
 - Provide a written stop work order within 96 hours of issuing the verbal stop work order.

V. Extinguishment

The manner in which a stop work order is extinguished depends on how the stop work order is written.

1. Type A - Upon the Council being satisfied
 - By the Council authorizing an inspection is required, or
 - By requiring the person who was issued the order to provide a report prepared by a qualified professional
2. Type B – Self-extinguishing
 - By having in the order that it extinguishes when the specified steps have been taken to address the contravention.

STOP WORK ORDERS

Compliance Procedure:
CPR-03

VI. Rescission and variance

1. Rescission

- The person who issued the stop work order has the authority to rescind the order if, on new evidence, it is subsequently determined that there
 - was no need to issue the order, or
 - were insufficient grounds for issuing the order.
- the council also has the authority under section 30 (6) and 32 of the Act to re-visit the situation in light of new information, and rescind the order
- The rescission has the effect of making the stop work order go away, and of removing the order from the owner's record.

2. Variance

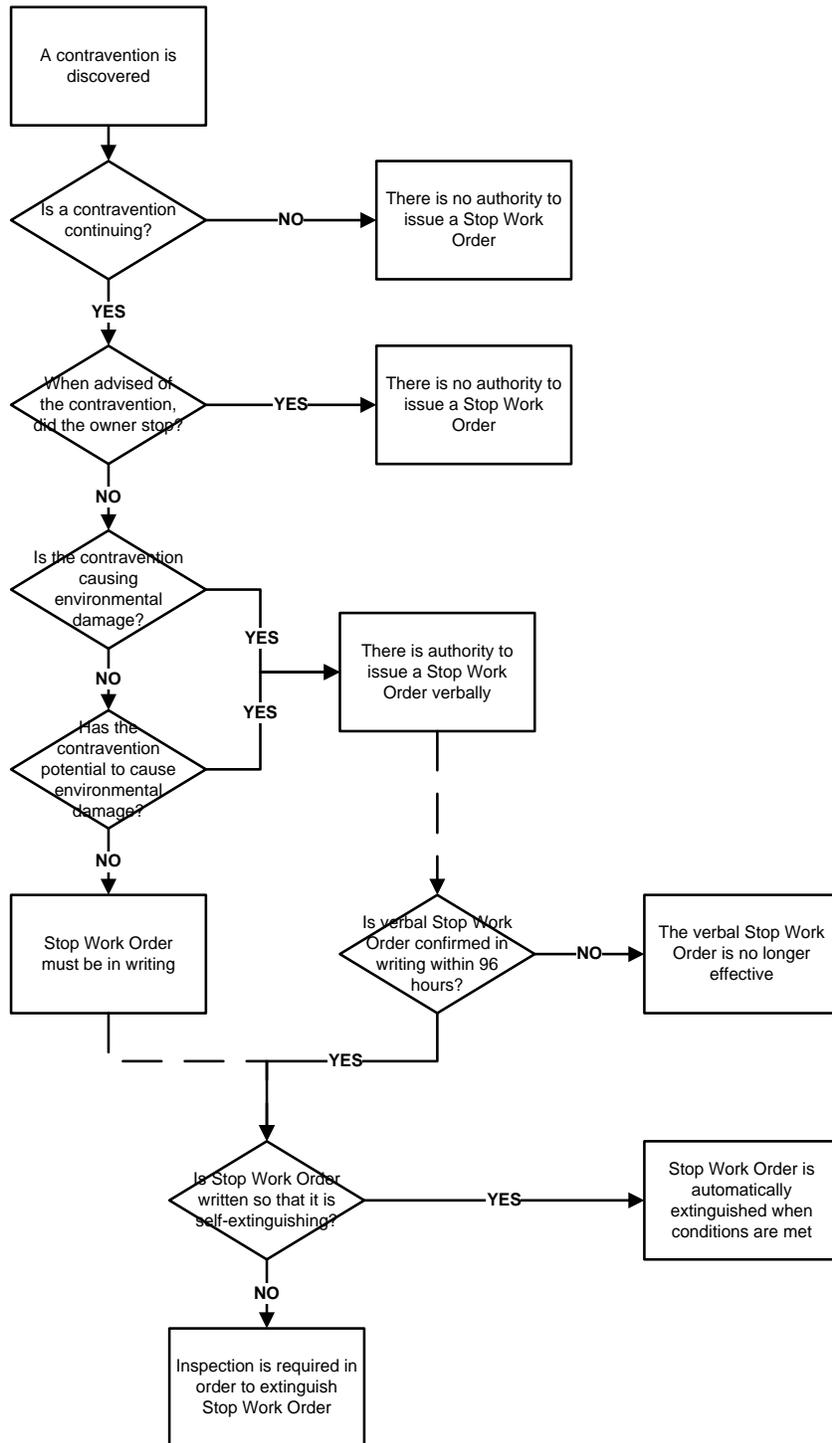
- The executive director (or the council) may vary or change a stop work order (usually after consideration of new information that was not available at the time of the original order).
- A stop work order may not be varied without the consent of the owner or of the person who was the subject of the order.

Stand alone remedy

The issuance of a stop work order is a stand-alone decision, and does not interfere with any subsequent decision to

- recommend to council a report to Crown Counsel to prosecution for the offence, or
- place the matter before the council for a determination as to a finding of contravention, and an administrative penalty or a remediation order.

Stop Work Order Process



5.0 INQUIRY / COMPLAINTS

Guide to Making Private Managed Forest Land Forest Practices Inquiries & Complaints

Overview

The Private Managed Forest Land Council is an independent provincial agency established under the *Private Managed Forest Land Act* to administer the managed forest program and protect key public environmental values on private managed forest land. As of September 19, 2014, the Private Managed Forest Land Council is known as the Managed Forest Council (council).

Key public environmental values are:

- fish habitat
- water quality
- critical wildlife habitat
- soil conservation
- reforestation

The council functions are stated on the council website What We Do page. Selected council functions are:

1. Set and Monitor Forest Practice Standards

- Set or amend forest practice standards in accordance with the objectives set out in the *Private Managed Forest Land Act* and associated regulations

2. Enforce Standards and Perform Audits

- Respond to complaints, and conduct associated investigations
- Enforce the established forest practice standards in accordance with regulations and the principles of natural justice
- In case of landowner noncompliance, use appropriate enforcement tools

Inquiries and complaints regarding private managed forest land may be submitted by managed forest landowners or other interested parties, including the public.

The council can only deal with inquiries and complaints specific to private managed forest land. The council encourages the involved parties to resolve any issues themselves to avoid a formal investigation.

The following process is intended to assist inquirers/ complainants in providing the information required to resolve concerns regarding forest management practices on private managed forest land.

STEP 1

Try to discuss the matter as you would with your neighbours and resolve the issue directly with the owner or the owner's representative.

STEP 2

If the concern is not successfully resolved, you may contact the council's executive director, and consider initiating a formal inquiry/complaint.

STEP 3

Submit a completed Inquiry/Complaint form to the council. Try to be as specific as possible in describing the issue. This form must be filled out as completely as possible to avoid delays in obtaining the information required to process the inquiry/complaint.

STEP 4

The executive director reviews the inquiry/complaint and determines subsequent action:

1. Directs the landowner to address the inquiry/complaint and report back, OR
2. Launches an onsite investigation that may include the executive director, and/or council staff, and may include representatives from the Ministry of Environment and/or the Department of Fisheries and Oceans.

STEP 5

Council prepares an investigation report resulting in the following:

1. If it is found that practices are in compliance with the *Private Managed Forest Land Act* and/or Regulations, the investigation and inquiry/complaint process is ended.
2. If a noncompliance with the *Private Managed Forest Land Act* and/or Regulations is found, the executive director may refer the investigation report to the council prior to enforcement action, or may proceed directly to enforcement action.

POTENTIAL ENFORCEMENT ACTION

- Stop-work order
- Remediation order
- Consent agreement (may include financial penalty)
- Regulatory determination (may include financial penalty)

Following the investigation and decision including a determination of enforcement action, a Directly Affected Party and/or the landowner may appeal the decision to the Forest Appeals Commission.

Inquiry/Complaint Management Process

Introduction:

Council has the authority under Division 2 of the *Private Managed Forest Land Act* (the Act) to make a determination where an owner has contravened a section of the Act. Penalties may be in the form of a consent agreement, fines or remediation order. A determination may be the outcome of an investigation conducted in response to a complaint from the public or as follow-up to an audit or inspection finding.

The inquiry/complaint process outlines how council investigates complaints. It provides details on the steps of an investigation and identifies at what point the complainant, the owner and other affected parties are kept informed.

Steps of the Inquiry/Complaint Process:

1. Is the inquiry/complaint a regulatory issue?

The council receives the complaint from an interested party or the public verbally or in writing. The executive director determines:
Whether the complaint is applicable to private managed forest land; and
Whether the complaint is a regulatory issue with respect to the Act or associated regulations (legislation).

NO	The executive director informs the complainant of the regulations and advises the owner if applicable. The complainant is encouraged to resolve the issue directly with the owner.
YES	The complainant is asked to fill out an Inquiry/Complaint form if not already done. The executive director determines if the Inquiry/Complaint form includes complete information, and contacts the complainant to understand the nature of issue if required. The complaint is entered into the Inquiry Log. An acknowledgement letter is sent to the complainant.

2. Is site inspection required?

The executive director determines whether an on-site inspection is required.

NO	The executive director refers the issue to the owner and requests follow-up action. The owner is requested to provide details of action to be taken in writing and projected completion date within specified time frame. The executive director confirms action completed is satisfactory and notifies the owner and the complainant.
YES	The executive director notifies the owner that a site inspection will take place. The executive director determines who should attend the site inspection. It may include resource specialists, interested third parties, and staff from government resource ministries. The site inspection is conducted and a report is prepared.

3. Are there reasonable grounds to believe that there may have been a contravention?

The executive director decides whether a potential contravention with the legislation may have occurred, based on the results of the site inspection. The decision may be made during the inspection, in which case the owner's representative would be informed.

NO	Council informs the complainant and the owner, and may provide a recommendation for follow-up action by owner. If so, the owner is requested to provide details of action to be taken in writing and a completion date within specified time frame.
YES	<p>Council may issue a Stop Work Order as a result of the site inspection.</p> <p>The executive directors functions are to:</p> <ul style="list-style-type: none"> • Work with the individual leading the investigation • Keep council insulated from specifics of the investigation until the report is presented to council • Provide quality control of the investigation • Ensure notifications are made, and in a timely fashion • Act as primary contact for an owner who is subject to an investigation other than dealing directly with the investigator

4. Is the potential contravention significant?

The executive director determines if the potential contravention is significant considering effects on key environmental values in the legislation (fish habitat, water quality, critical wildlife habitat, soil conservation, reforestation).

NO	<p>Executive director informs the owner of remediation requirements including a completion time frame expected. The owner is requested to confirm when the proposed remediation action is completed.</p> <p>Executive director notifies owner and complainant when satisfied that corrective action is complete.</p>
YES	<p>Executive director decides who will undertake the investigation. This may include engaging a technical specialist.</p> <p>Executive director informs the owner and complainant that an investigation will take place and advises them of:</p> <ul style="list-style-type: none"> • Nature of the complaint • Investigation process

5. Investigation is conducted:

The technical specialist begins the investigation by reviewing the facts documented and information already assembled.

The technical specialist undertakes an inspection and prepares a technical report.

The executive director ensures that the investigation covers all potential issues.

The investigator and /or the executive director prepare an investigation report.

6. As a result of the investigation is a contravention alleged?

NO	The executive director informs the owner and complainant.
YES	<p>Executive director reviews the investigation report to ensure that all potential aspects of the case have been considered.</p> <p>The investigation report is presented to council.</p>

7. Does the alleged contravention warrant a determination by council?

Council considers options for deciding on an administrative a remedy under Division 2 of the Act.

NO	<p>Council instructs the owner to work towards resolution of the issue, and requests notification of satisfactory resolution within a determined time frame.</p> <p>or</p> <p>Council enters into Consent Agreement with the owner.</p> <p>The owner is requested to advise when corrective action is complete.</p> <p>The executive director notifies owner and complainant when satisfied with the action taken.</p>
YES	<p>Council sends an “Opportunity to be Heard” letter to the owner.</p> <p>Council issues a Notice of Hearing to the complainant and advises of the opportunity to make a statement.</p>

8. Does the council determine that there has been a contravention?

Council holds a determination hearing.

The executive director presents the investigation report to council and the owner presents its case to council. The complainant is given opportunity to make a statement. (This process is described in the Compliance Determinations Procedures Manual)

NO	<p>Council determines that there has not been a contravention in a written determination.</p> <p>The owner and complainant are notified.</p> <p>The determination is made public.</p>
YES	<p>Council determines an appropriate penalty and or remediation order in a written determination.</p> <p>The determination and the investigation report are made public.</p>

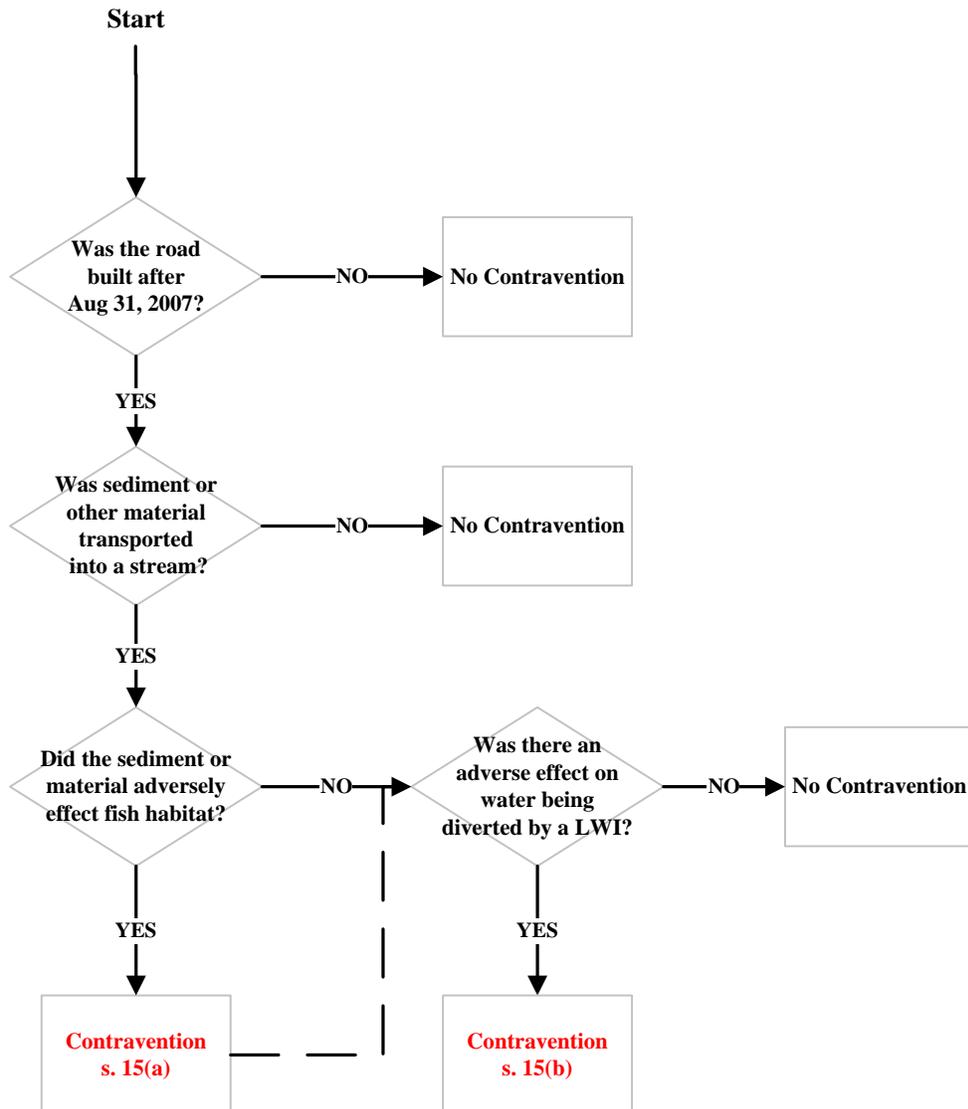
9. Review and appeal process

The owner may request within 30 days that council review a determination or decision as described in the Compliance Determinations Procedures Manual.

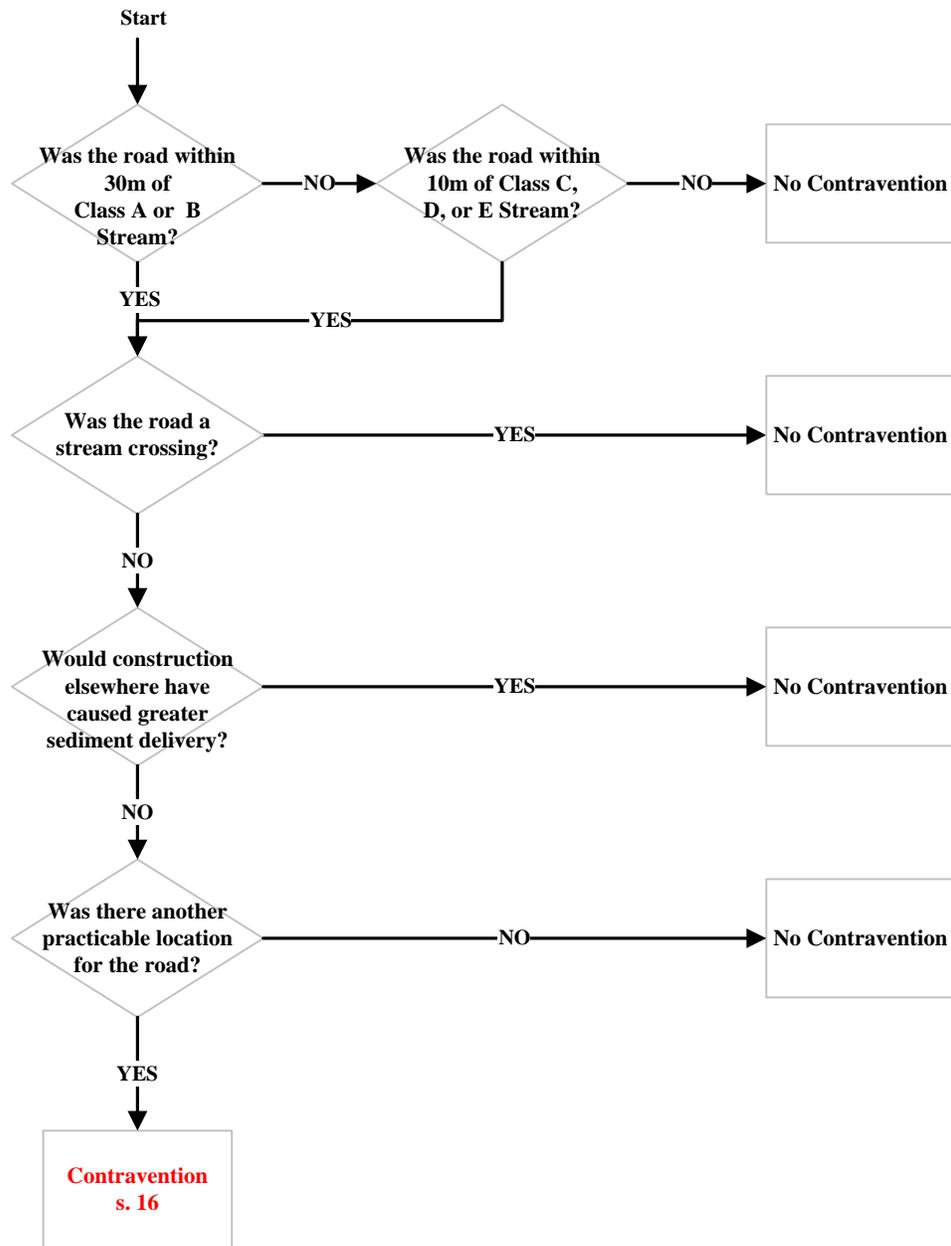
Upon receipt of a final determination from council, an appeal of a decision or determination may be made to the Forest Appeals Commission.

6.0 CONTRAVENTION DECISION TREES

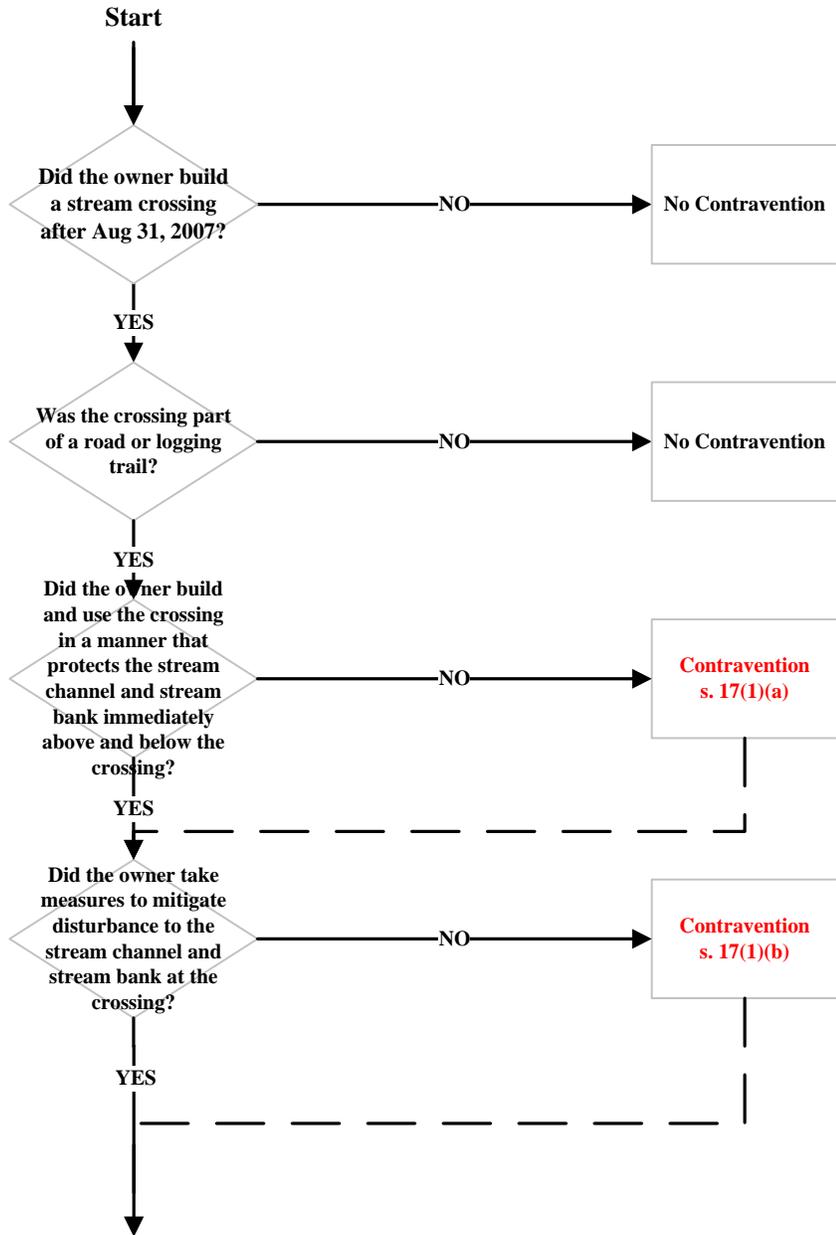
Sediment Transport or Deposition Council Regulation s. 15



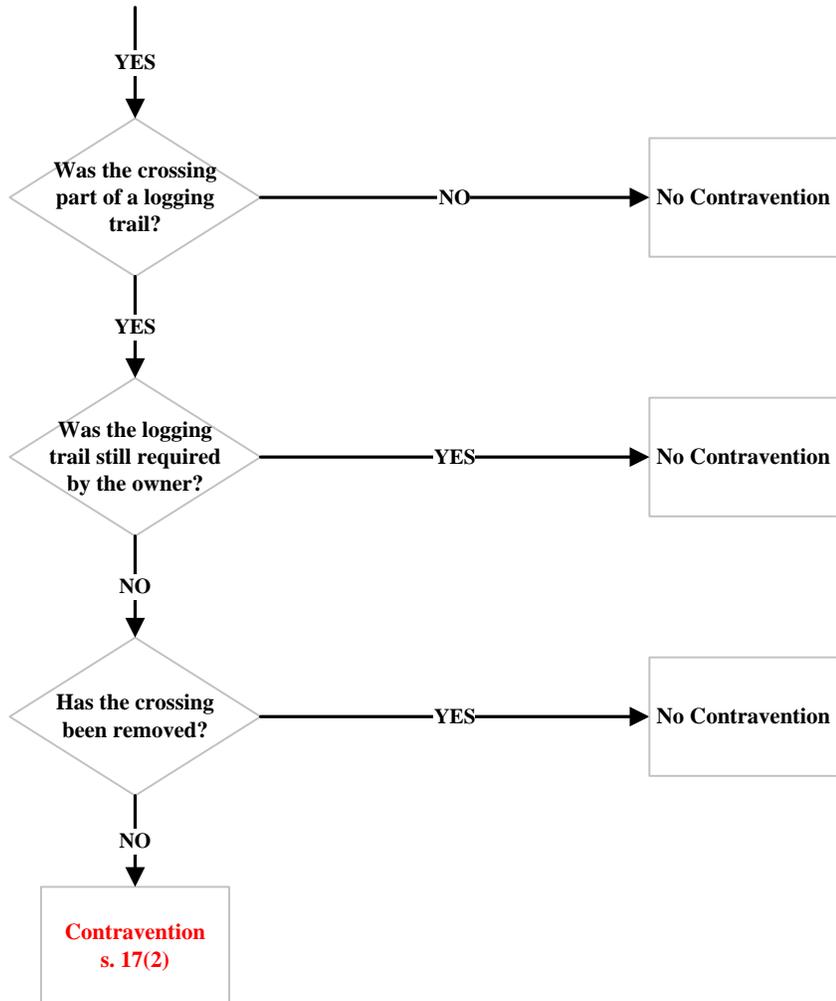
Road Construction Adjacent to Streams Council Regulation s. 16



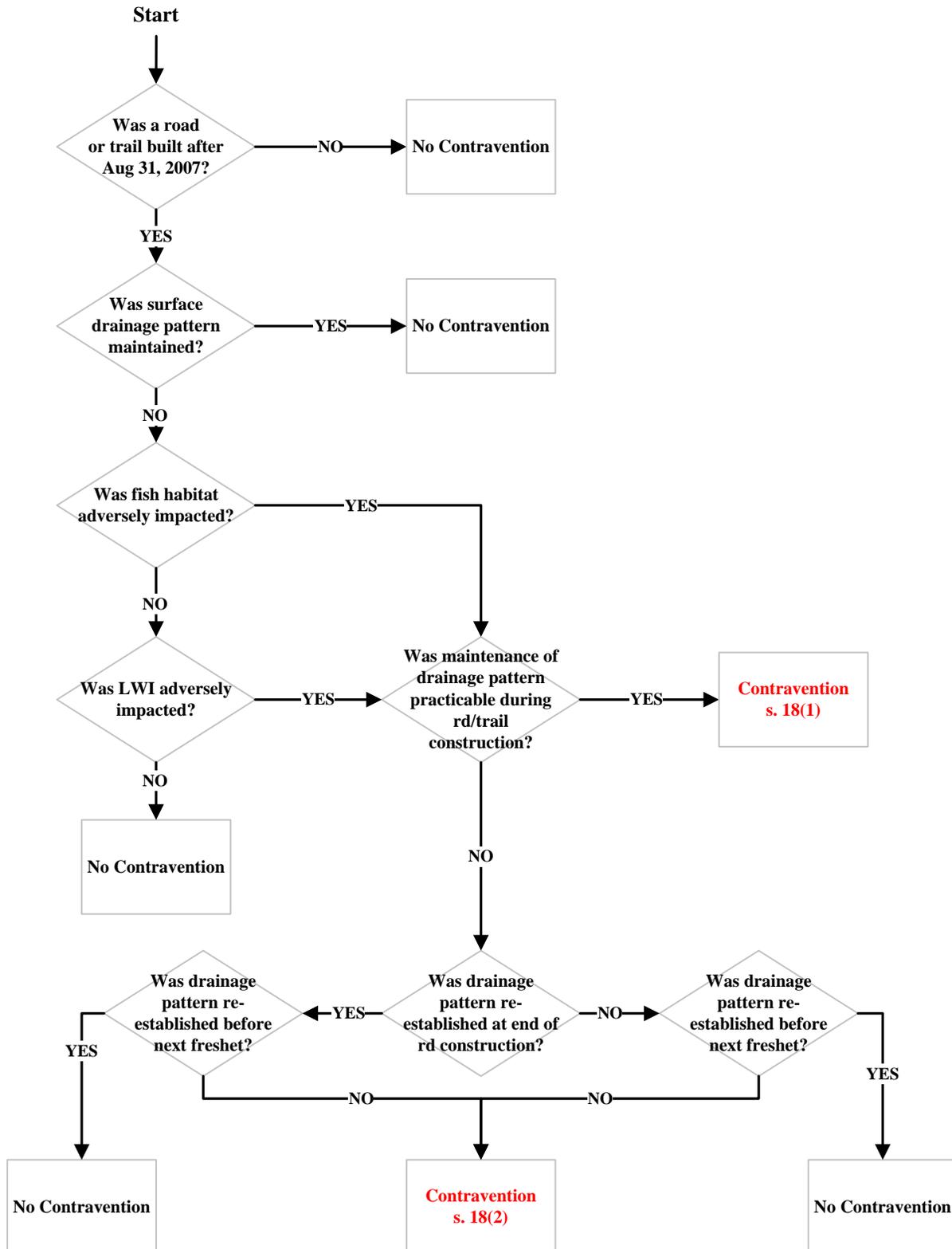
Road Construction – Stream Crossings Council Regulation s. 17



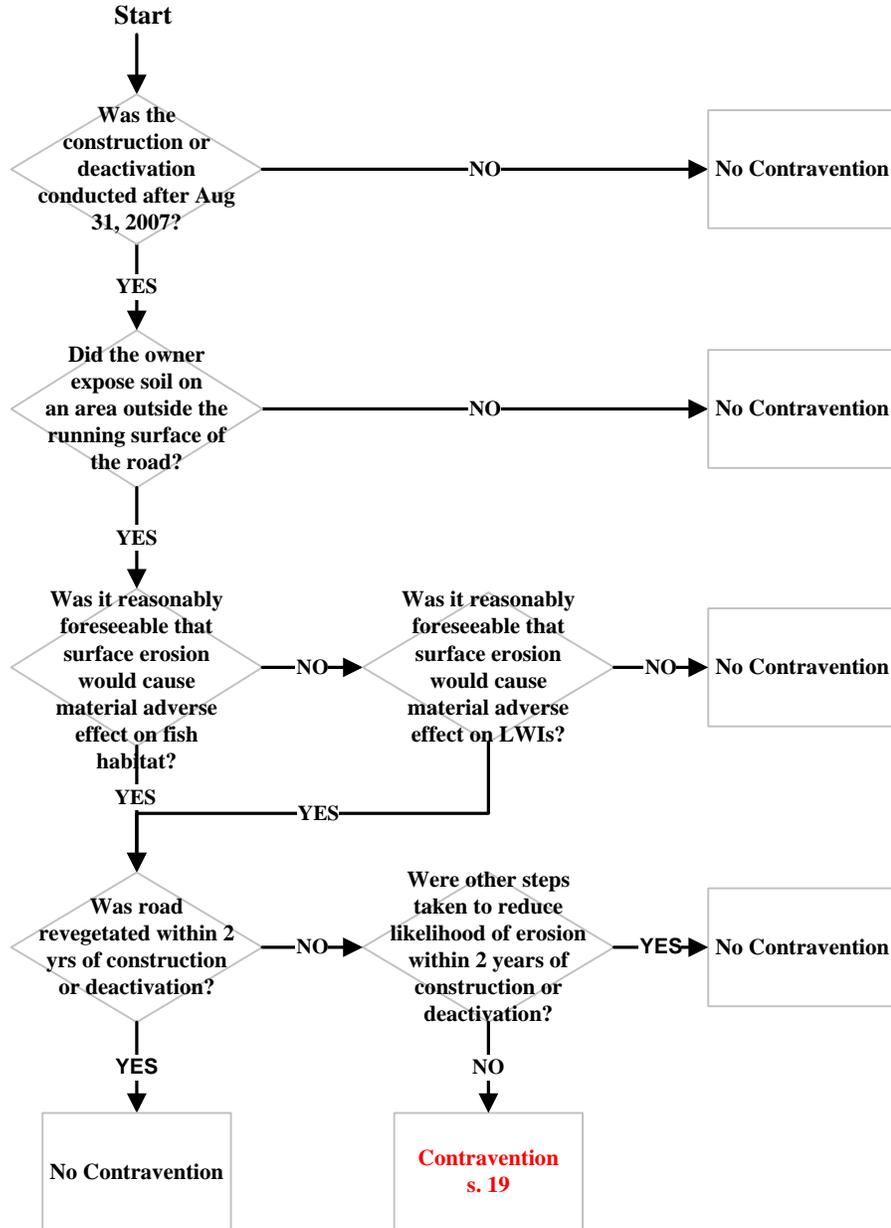
Road Construction – Stream Crossings Council Regulation s. 17



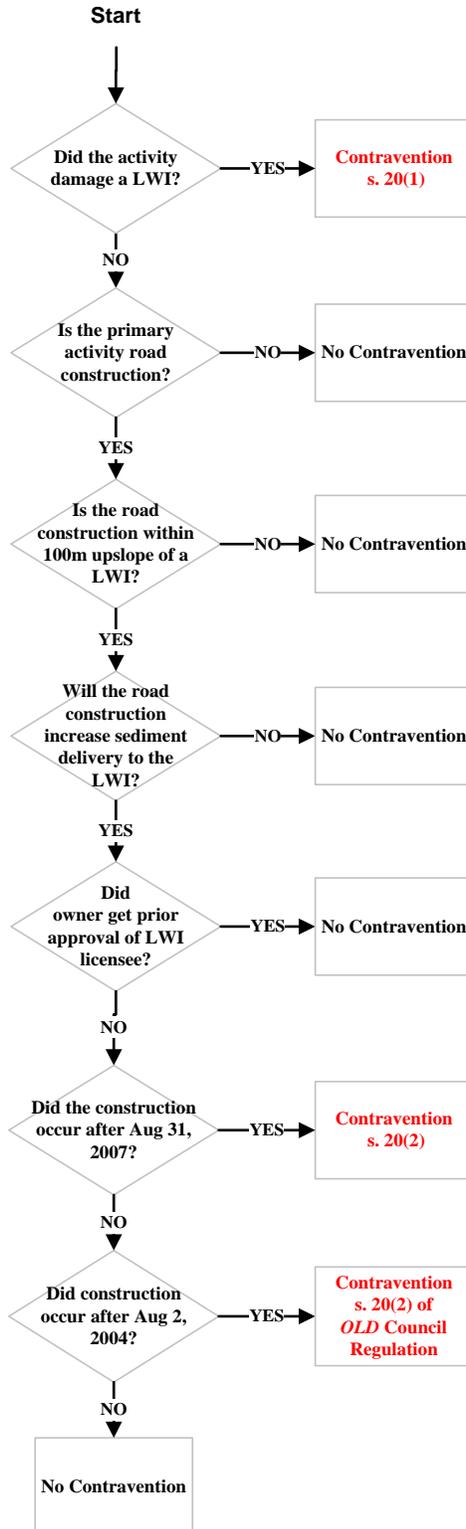
Maintaining Surface Drainage Patterns Council Regulation s. 18



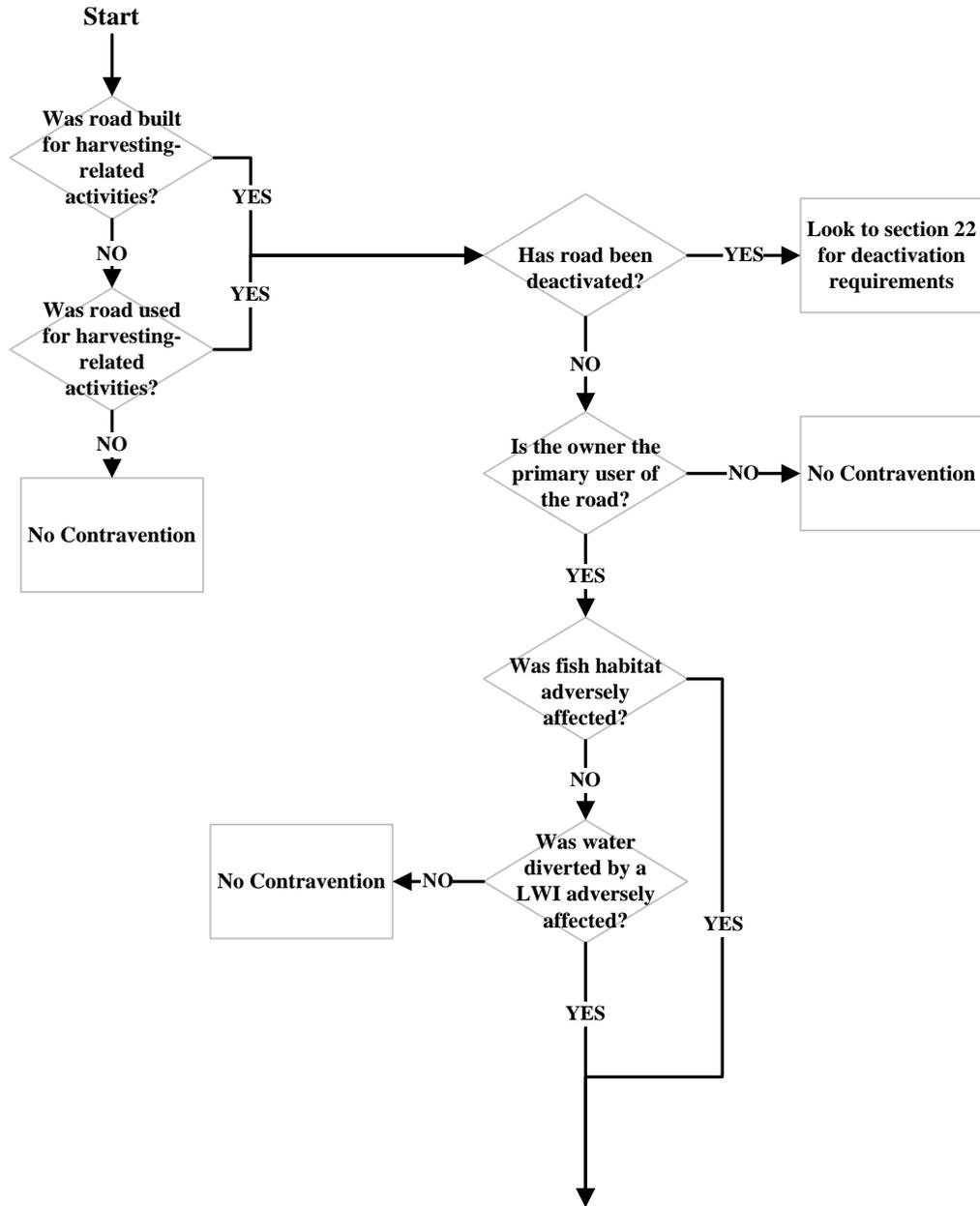
Roadside Erosion Control Council Regulation s. 19



Protecting Licensed Waterworks Intake Council Regulation s. 20

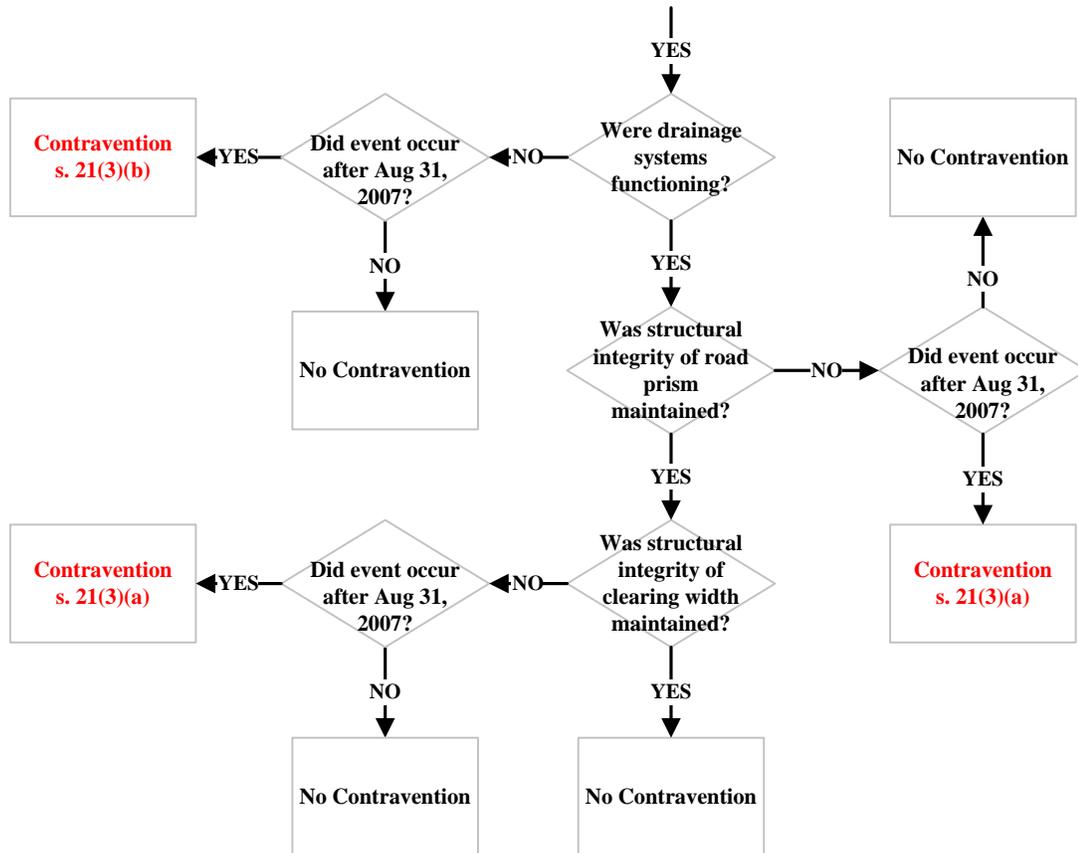


Road Maintenance Council Regulation s. 21

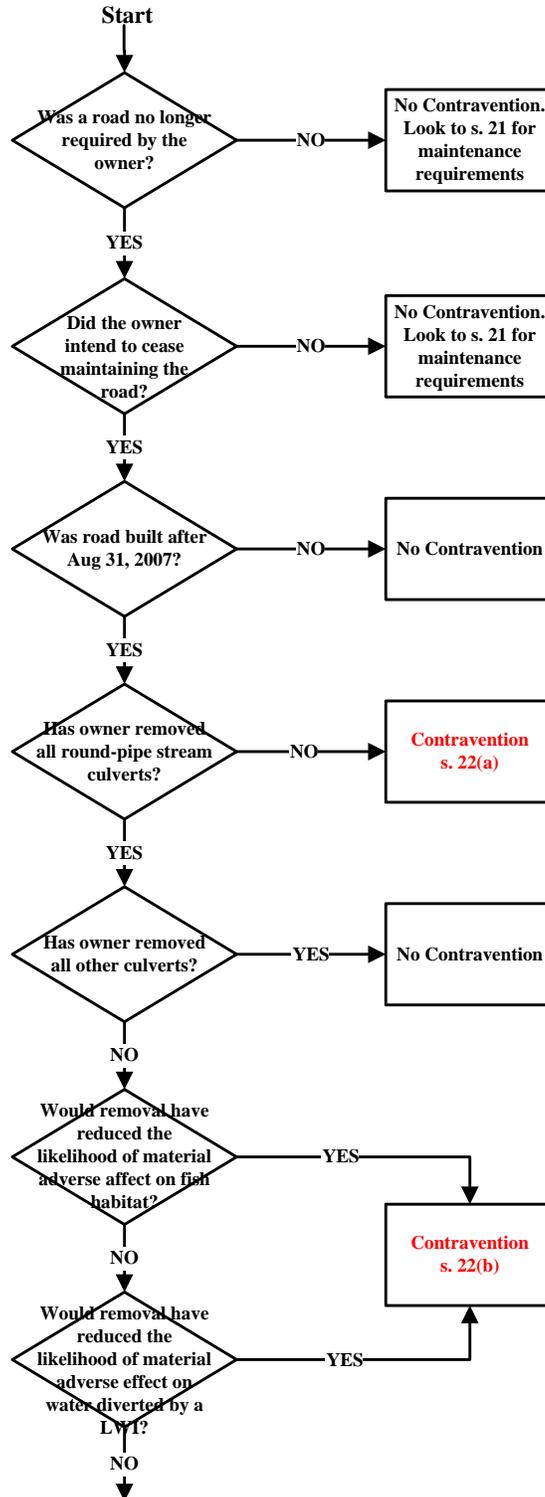


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Road Maintenance Council Regulation s. 21

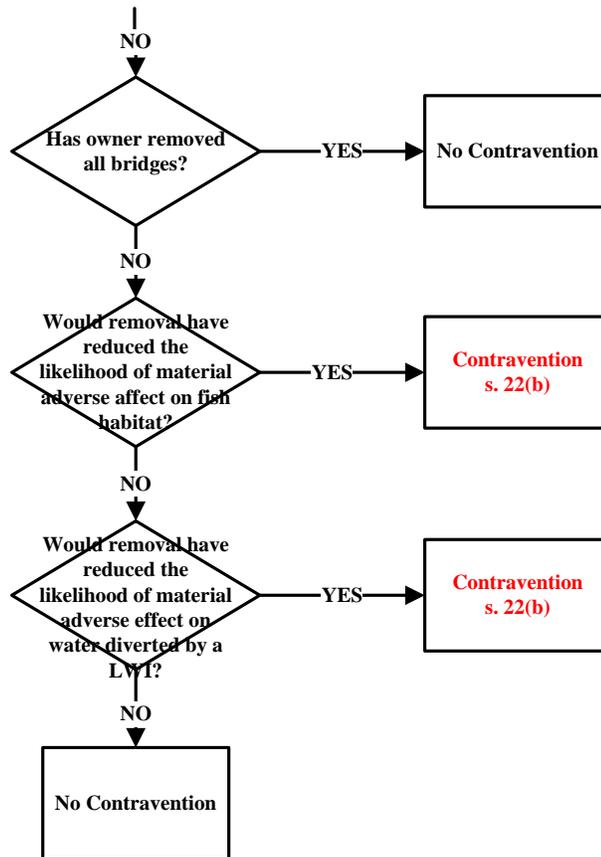


Road Deactivation Council Regulation s. 22

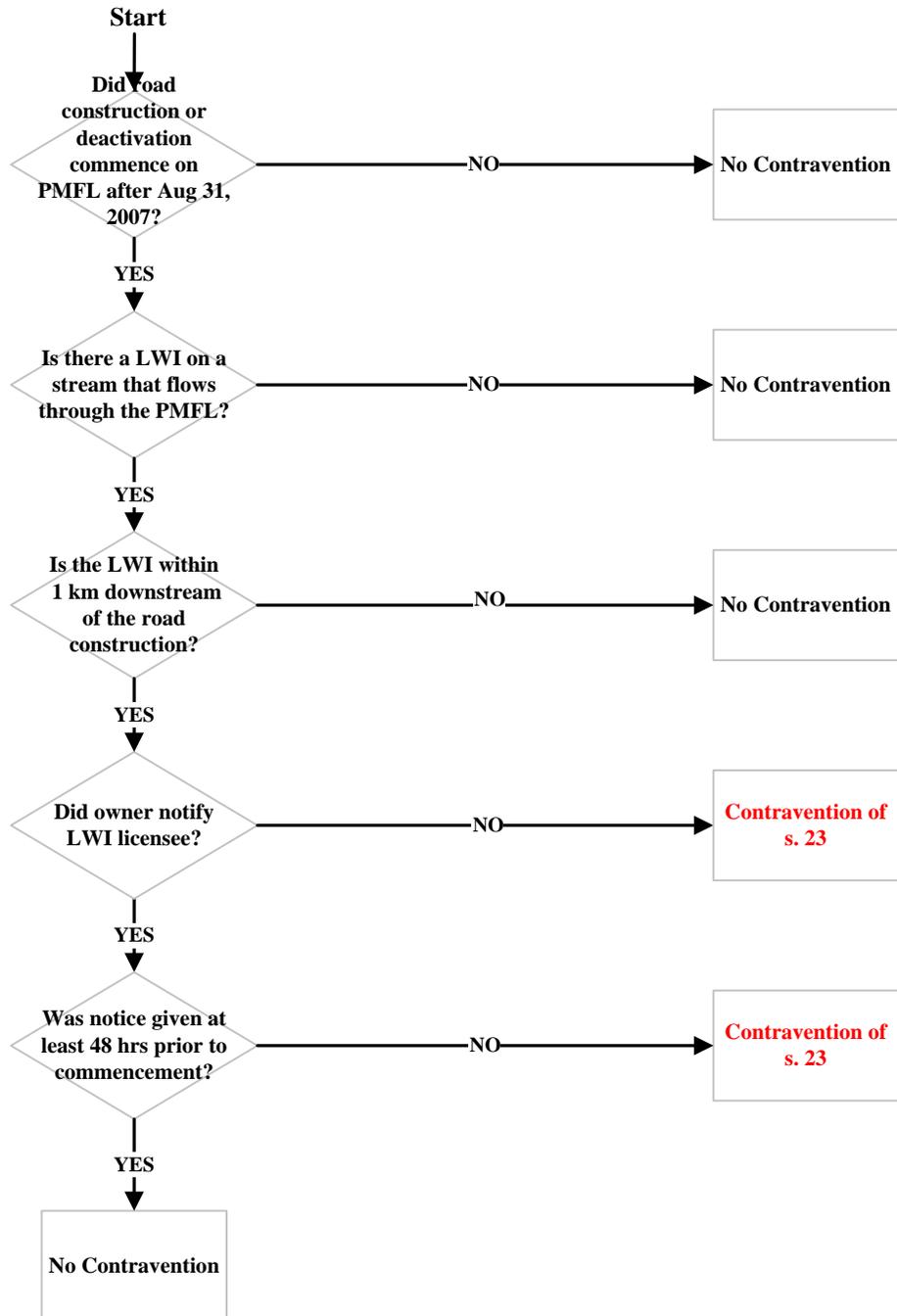


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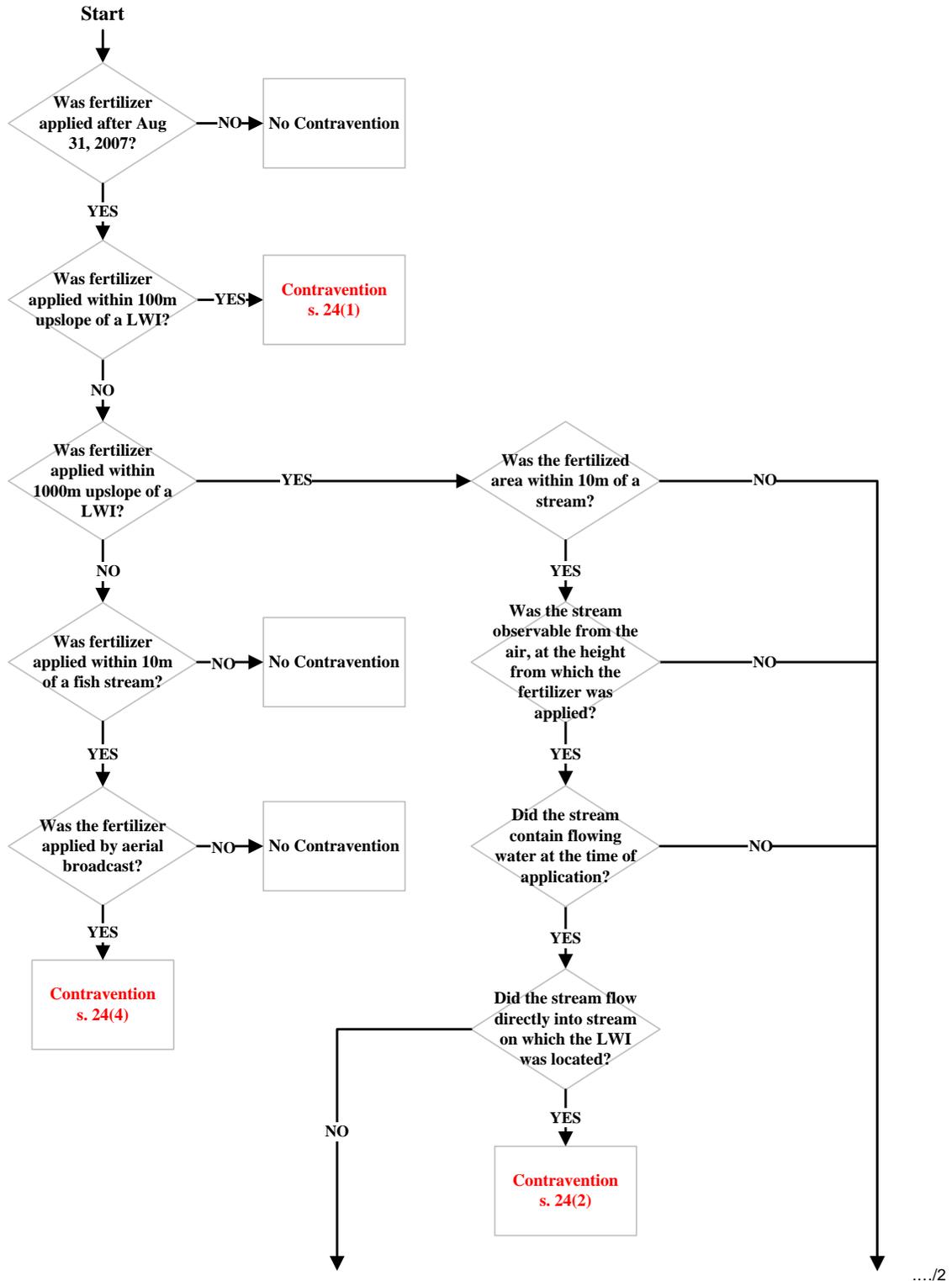
Road Deactivation Council Regulation s. 22



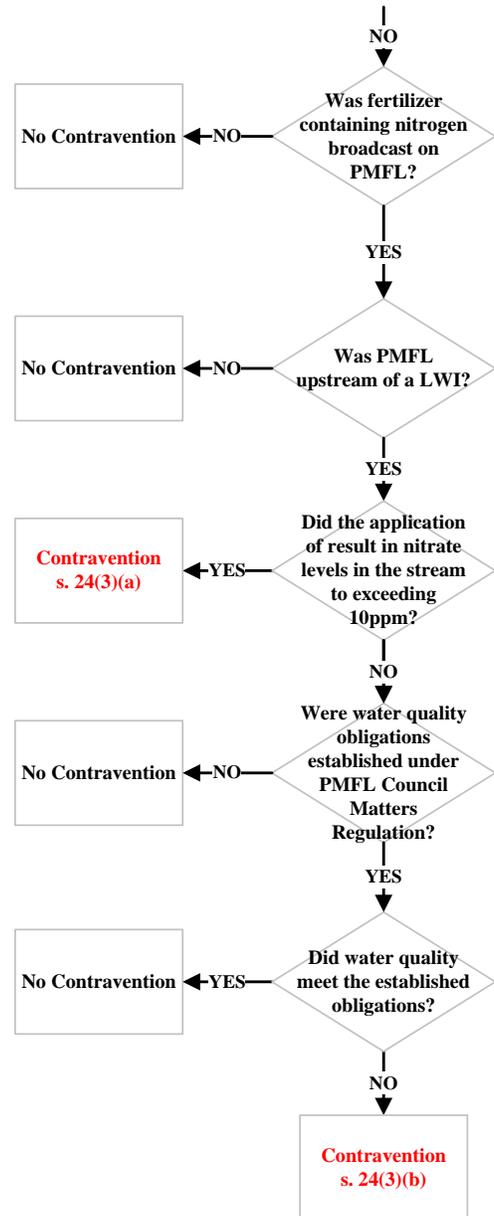
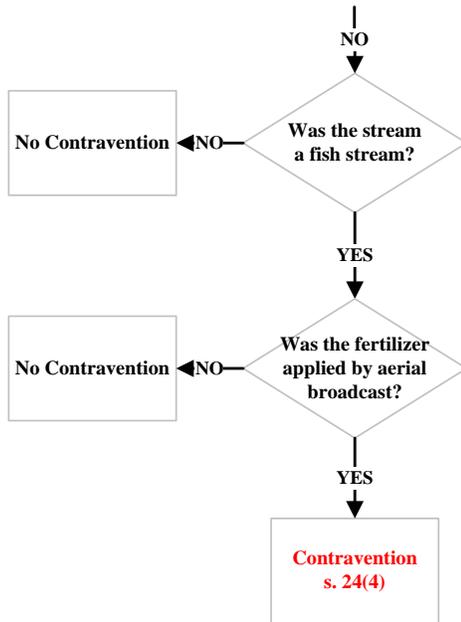
Notice – Roads Located Upstream of Licensed Waterworks Intake Council Regulation s. 23



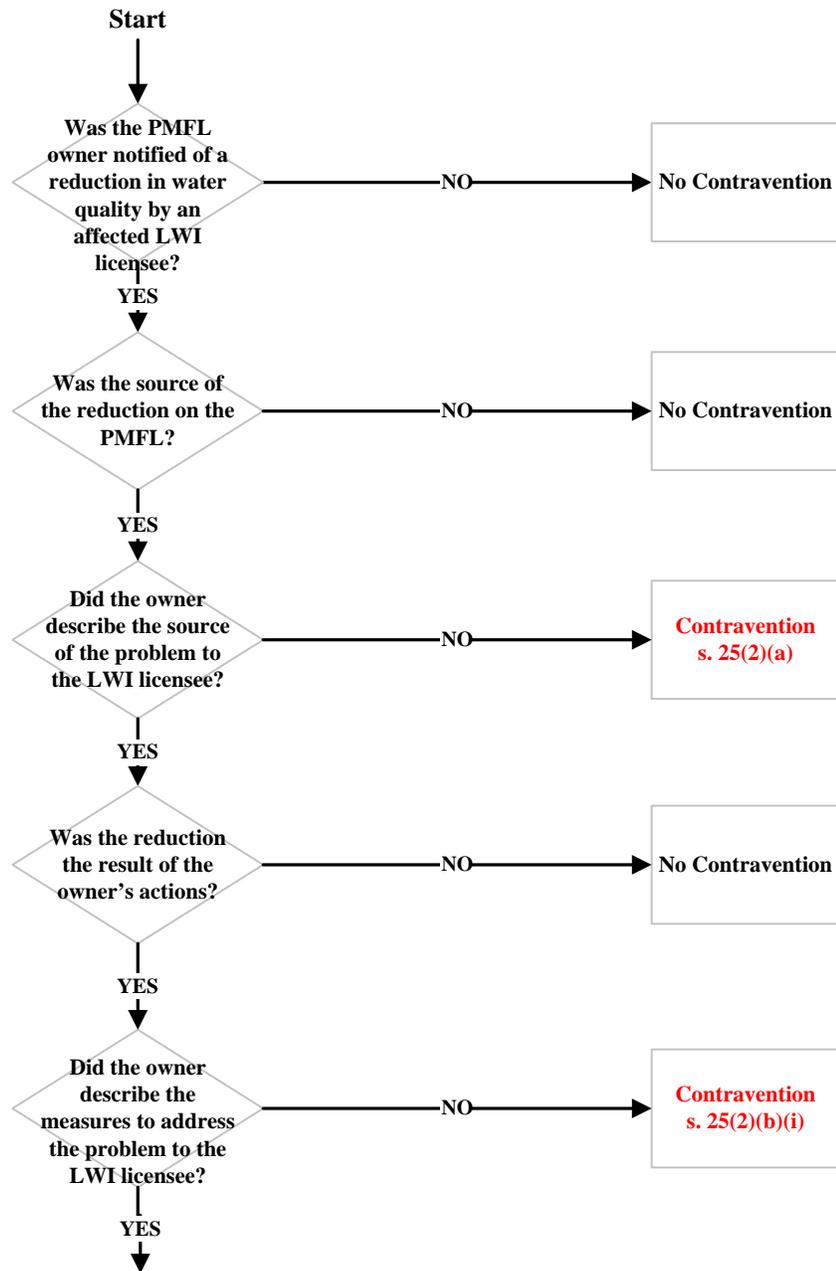
Management of Fertilizer near Streams Council Regulation s. 24



Management of Fertilizer near Streams Council Regulation s. 24

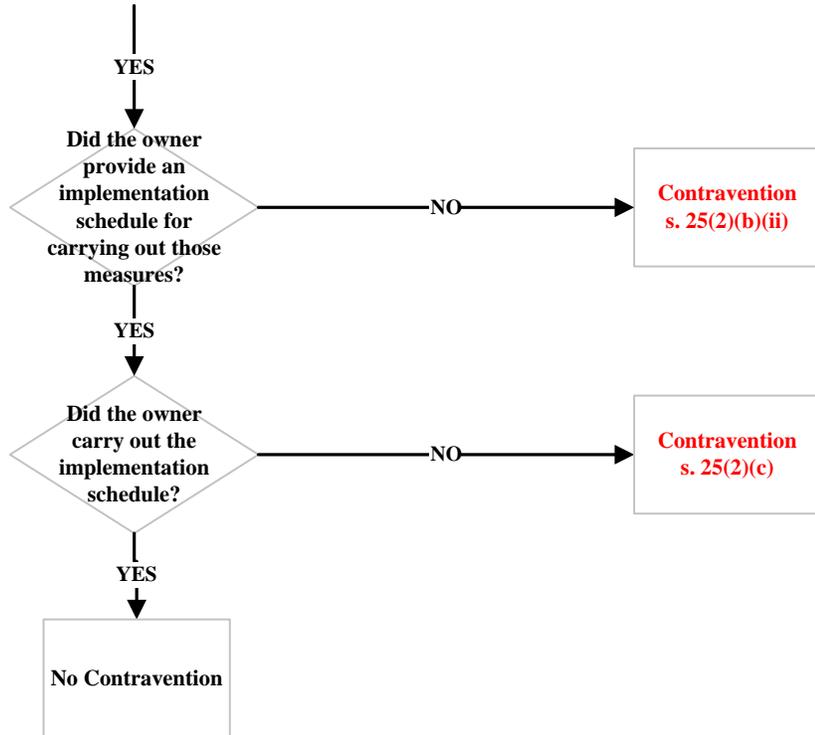


Water Quality – Licensed Waterworks Intake Council Regulation s. 25

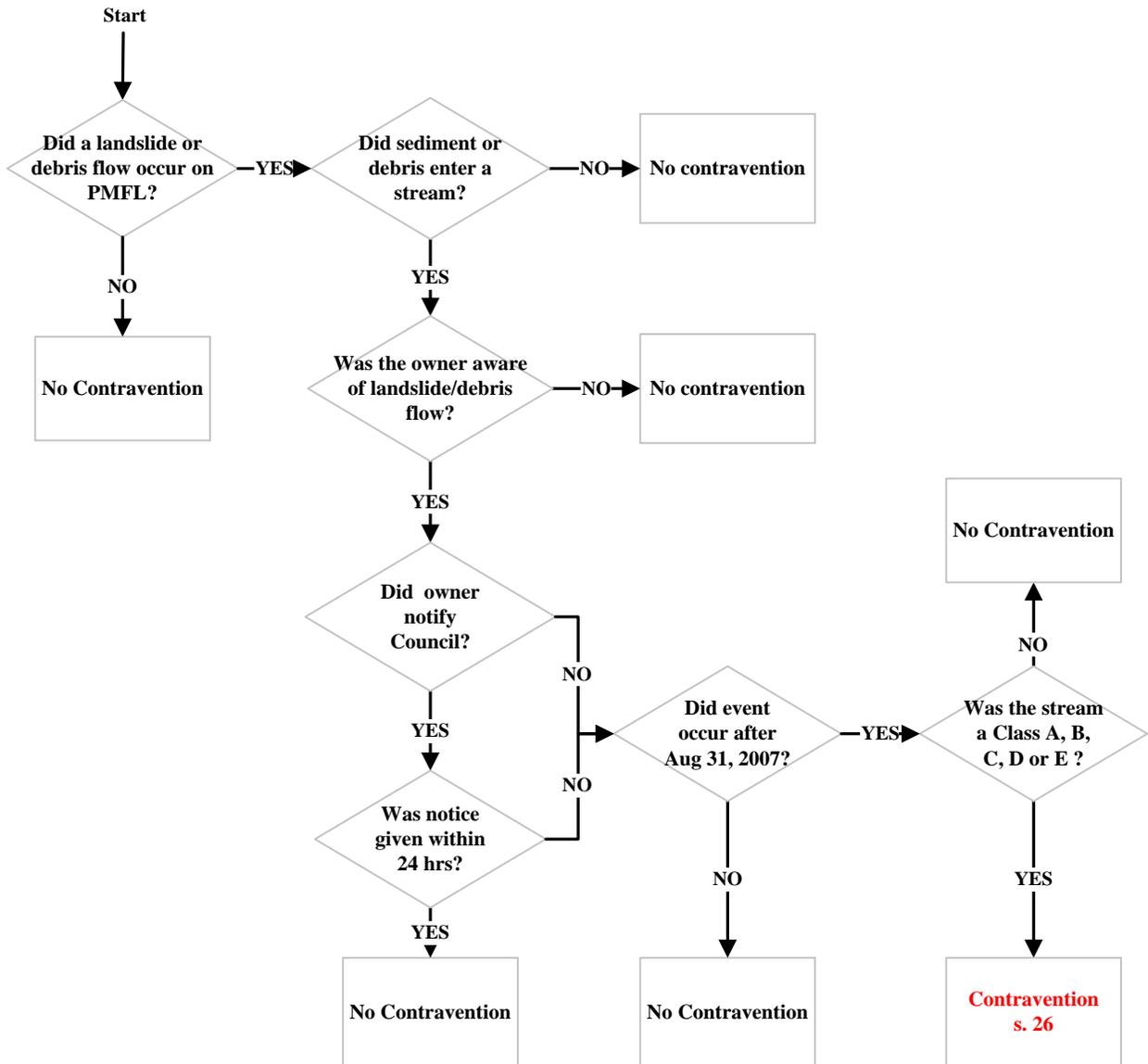


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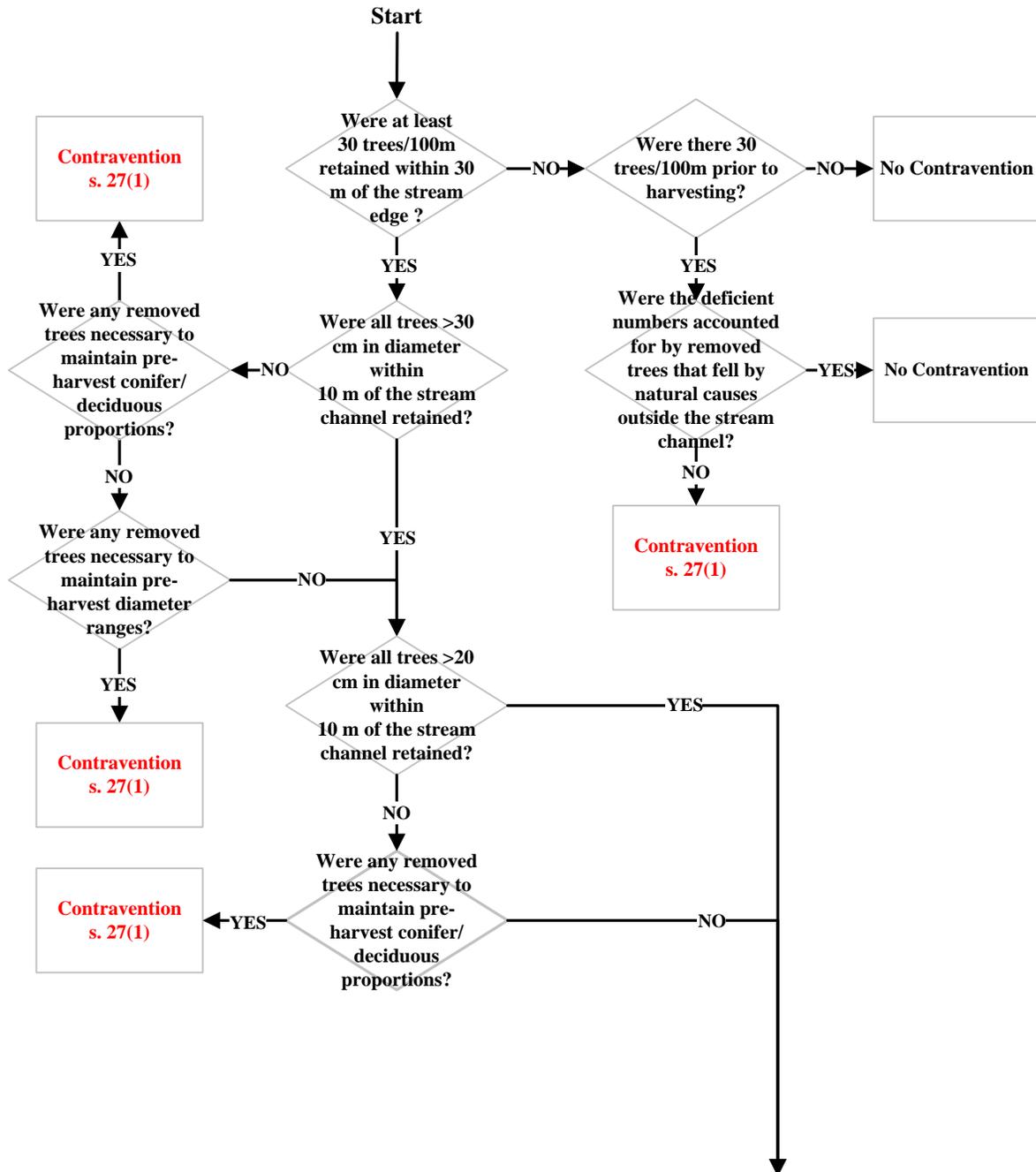
Water Quality – Licensed Waterworks Intake Council Regulation s. 25



Notification of Landslides and Debris Flows Council Regulation s. 26

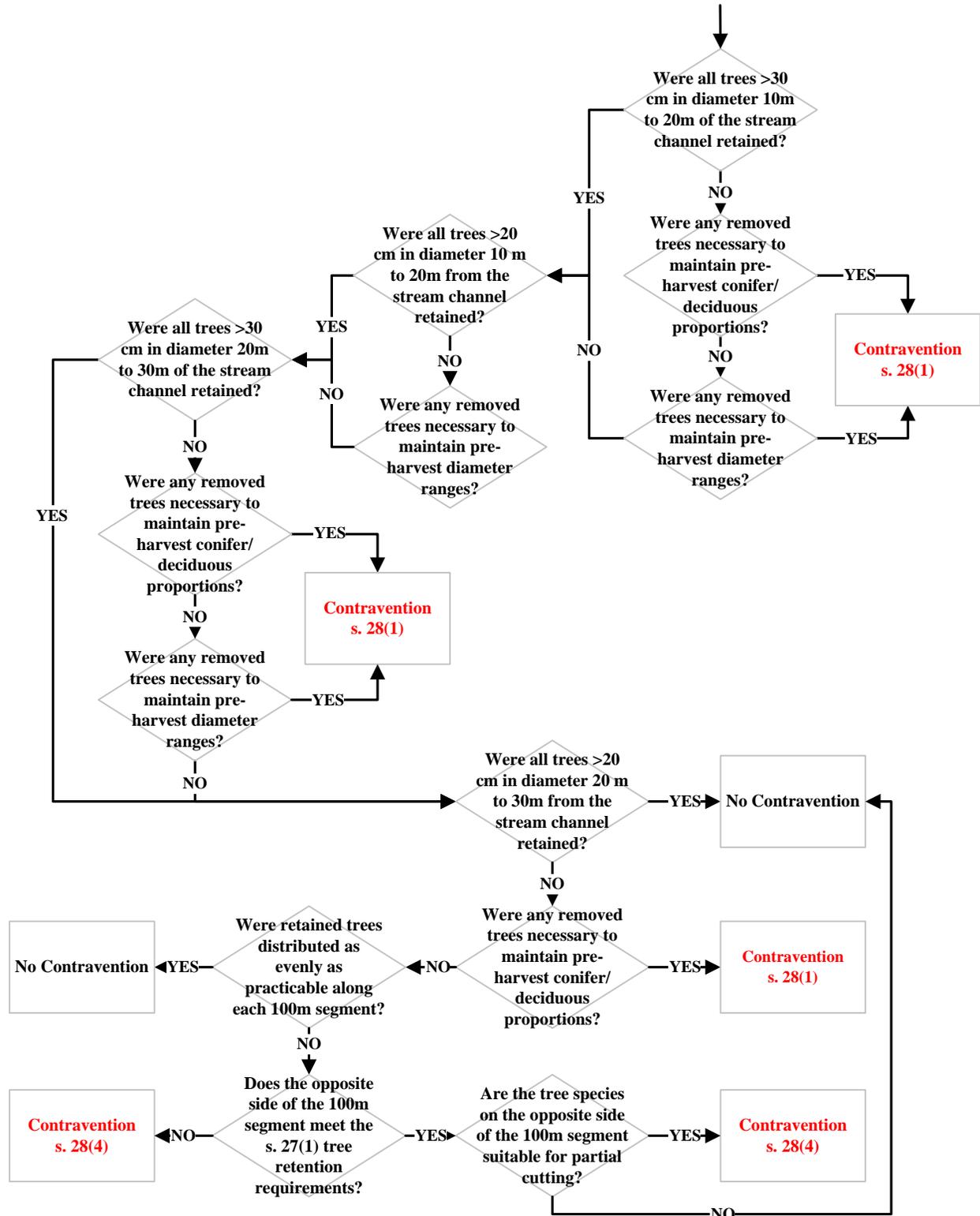


Stream Class A Tree Retention Requirements Council Regulation s. 27

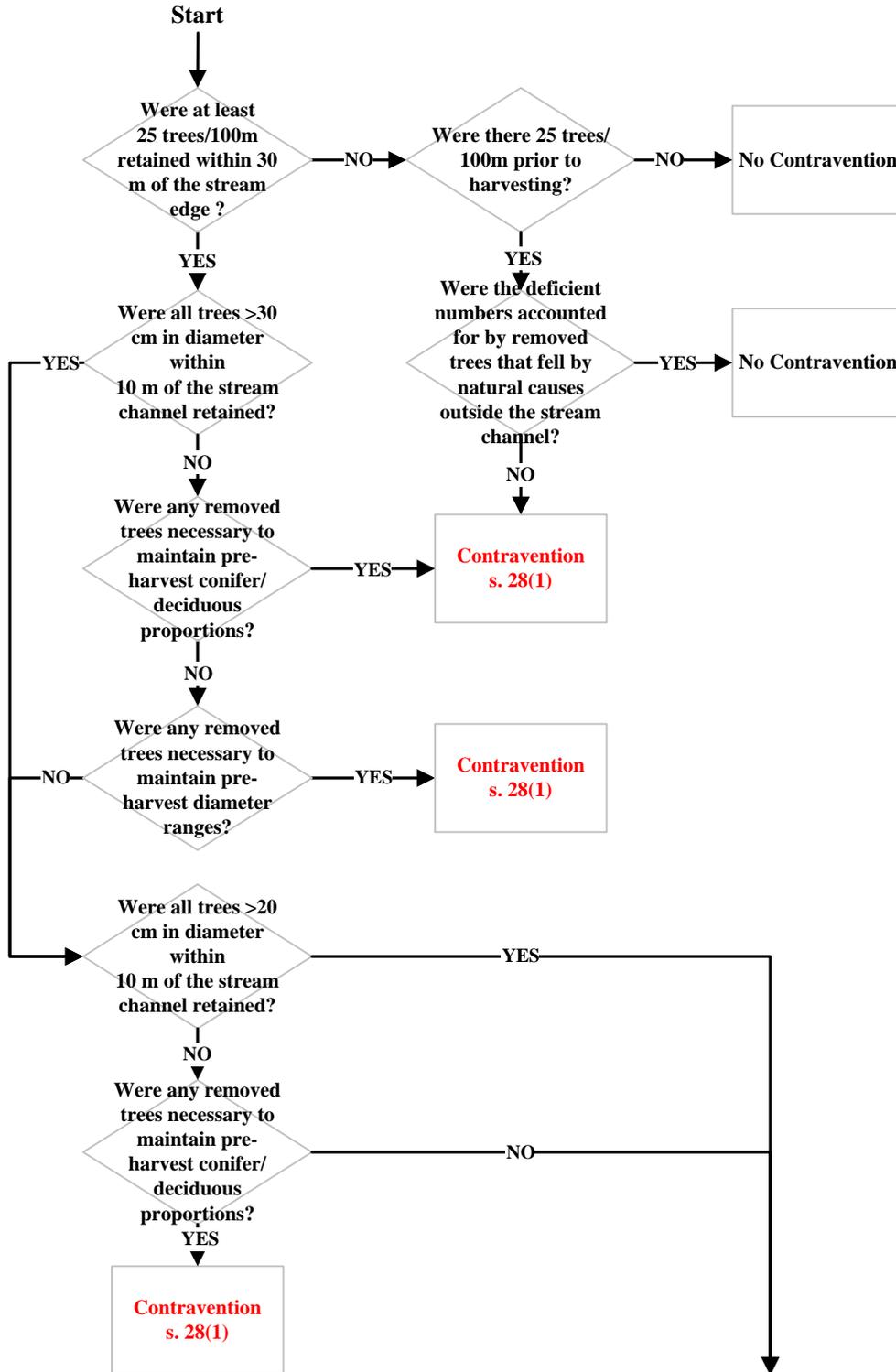


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Stream Class A Tree Retention Requirements Council Regulation s. 27

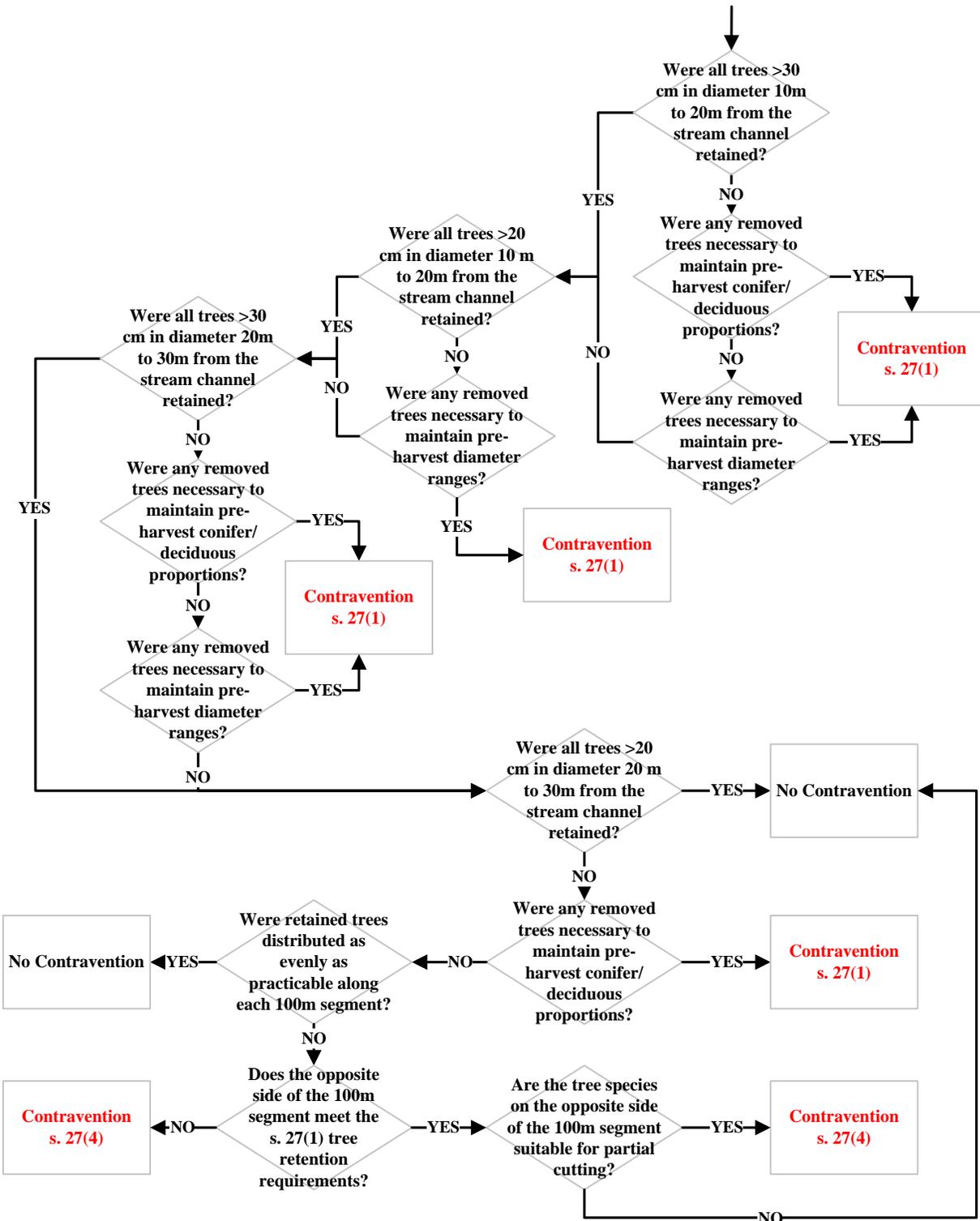


Stream Class B Tree Retention Requirements Council Regulation s. 28

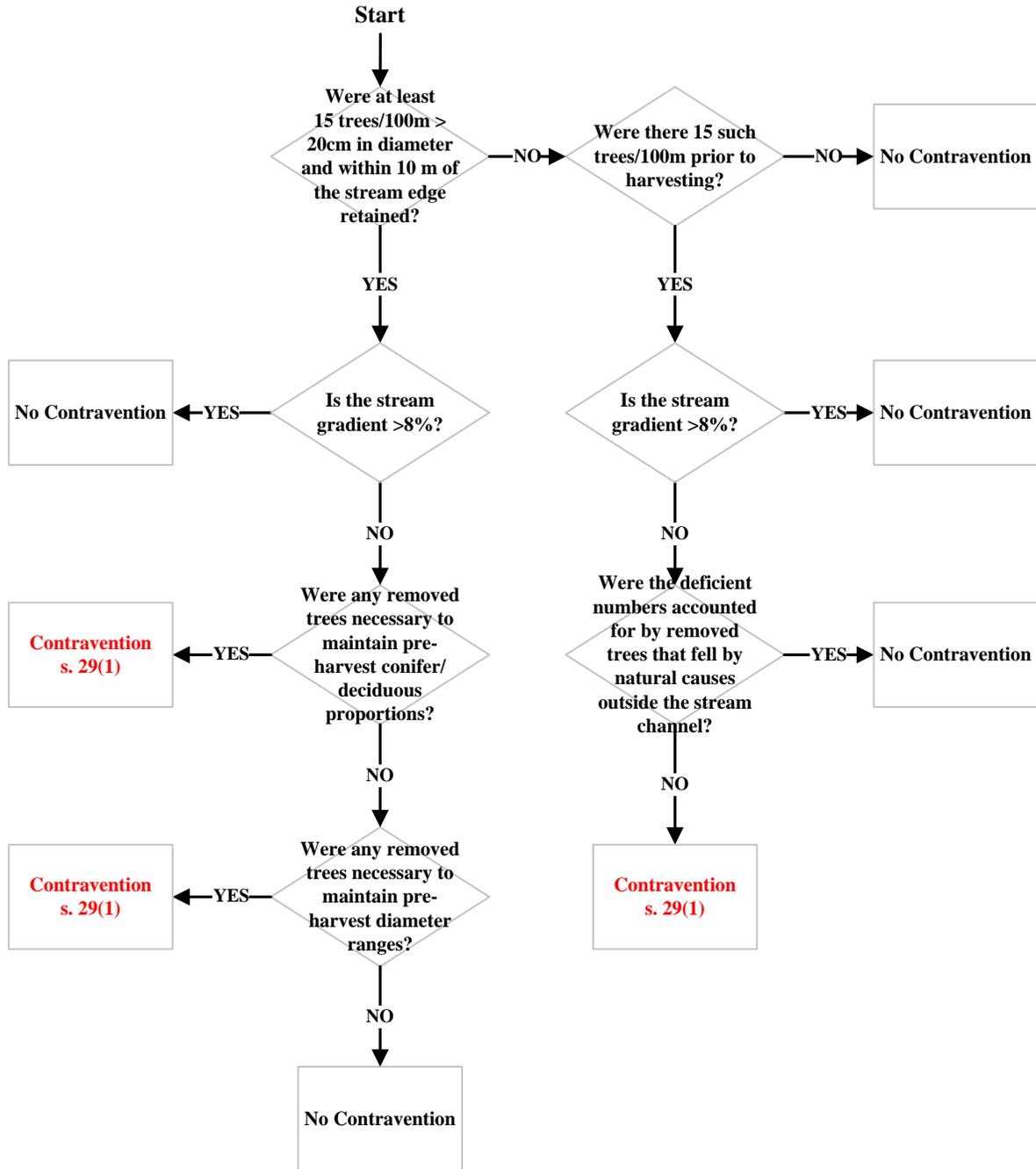


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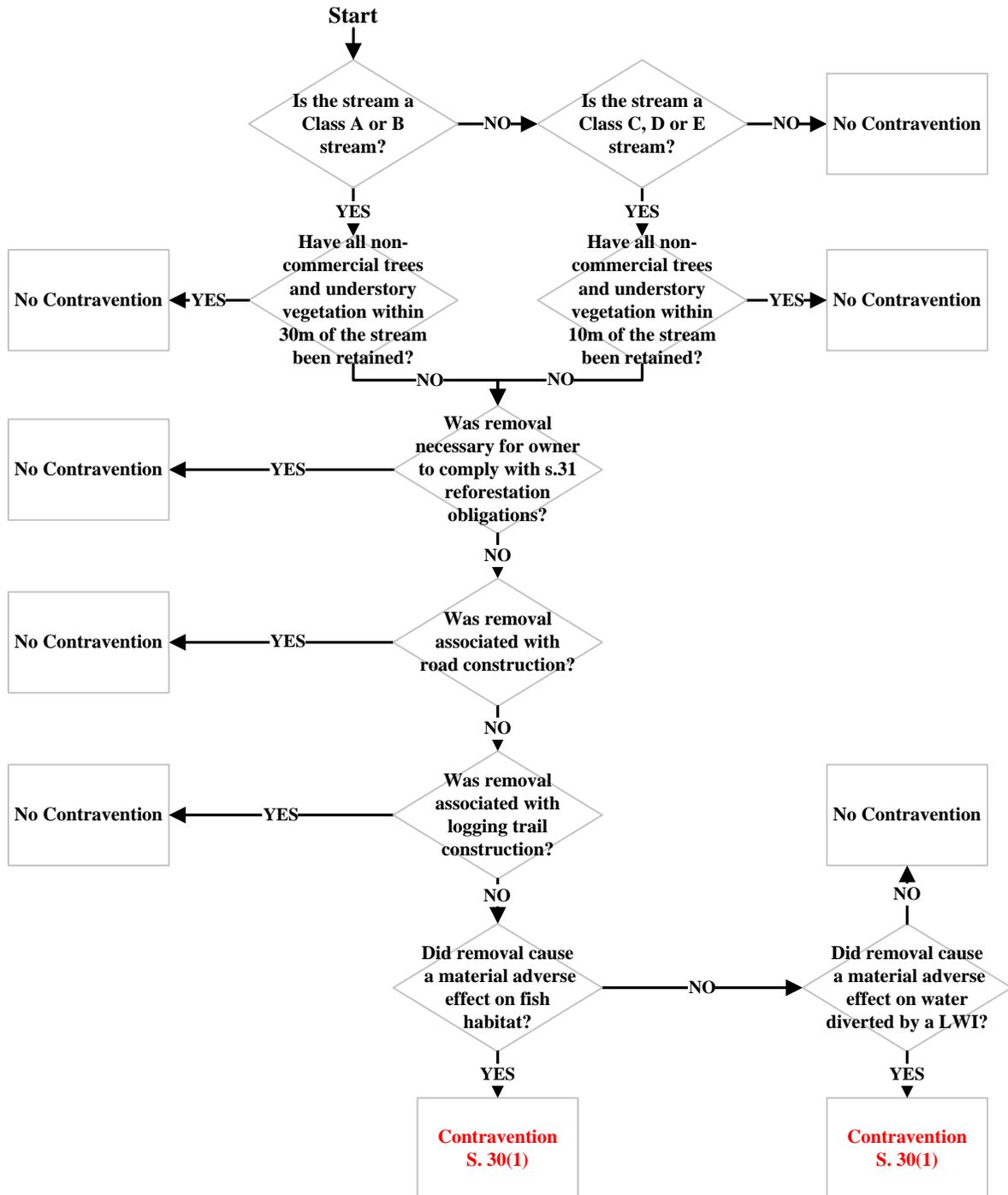
Stream Class B Tree Retention Requirements Council Regulation s. 28



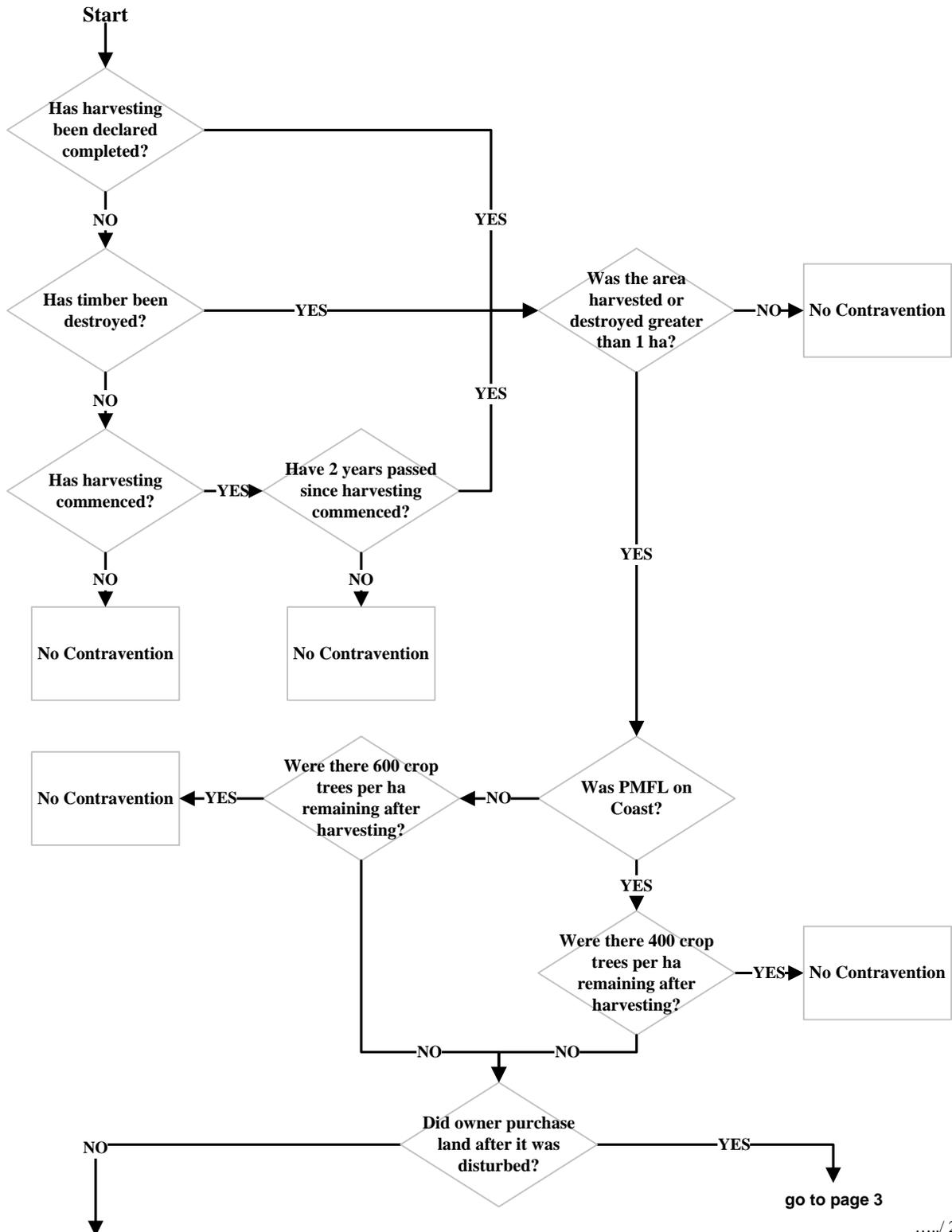
Stream Class C Tree Retention Requirements Council Regulation s. 29



Retention of Non-Commercial Trees and Understory Vegetation Council Regulation s. 30

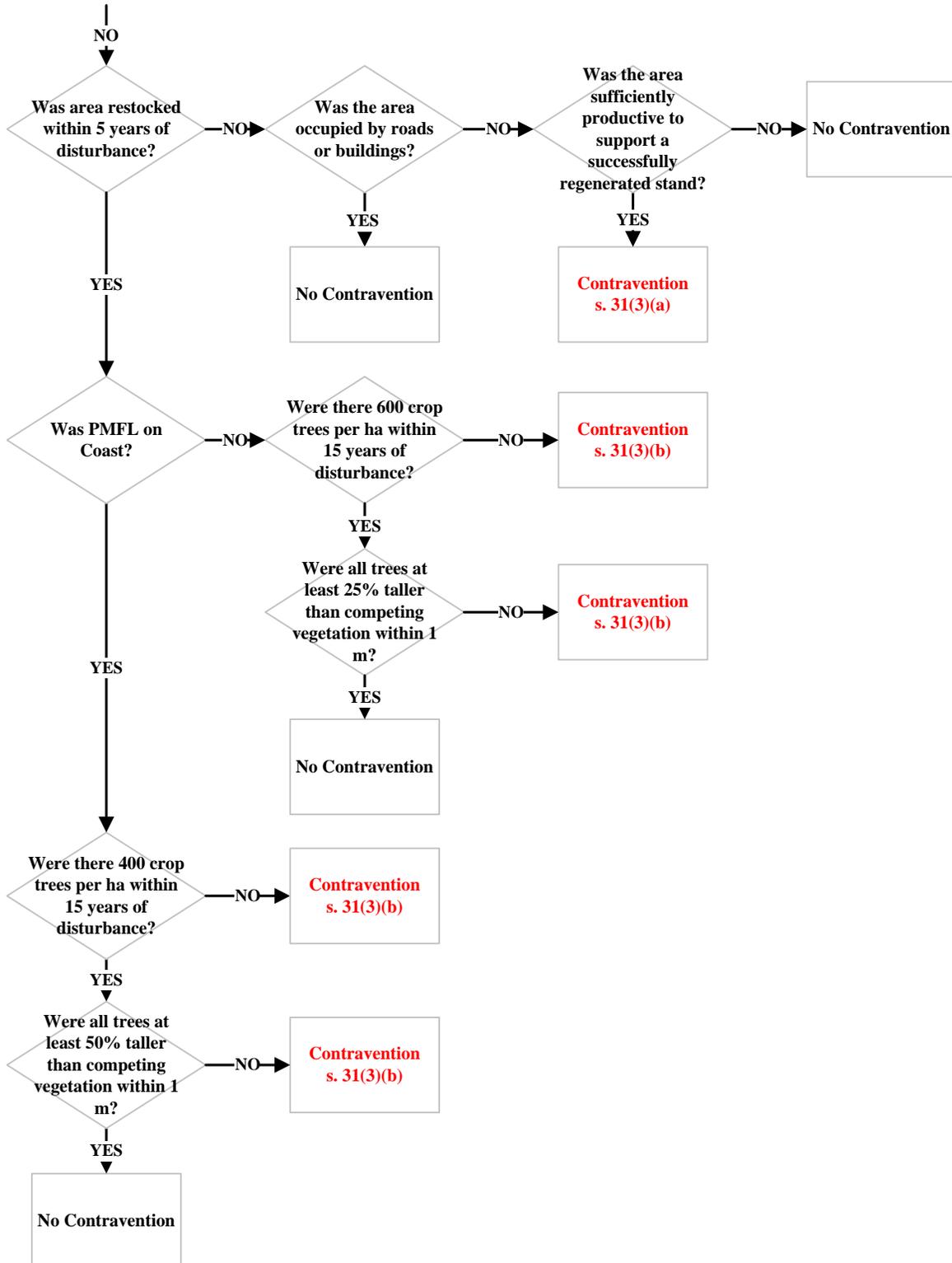


Reforestation Obligations Council Regulation s. 31

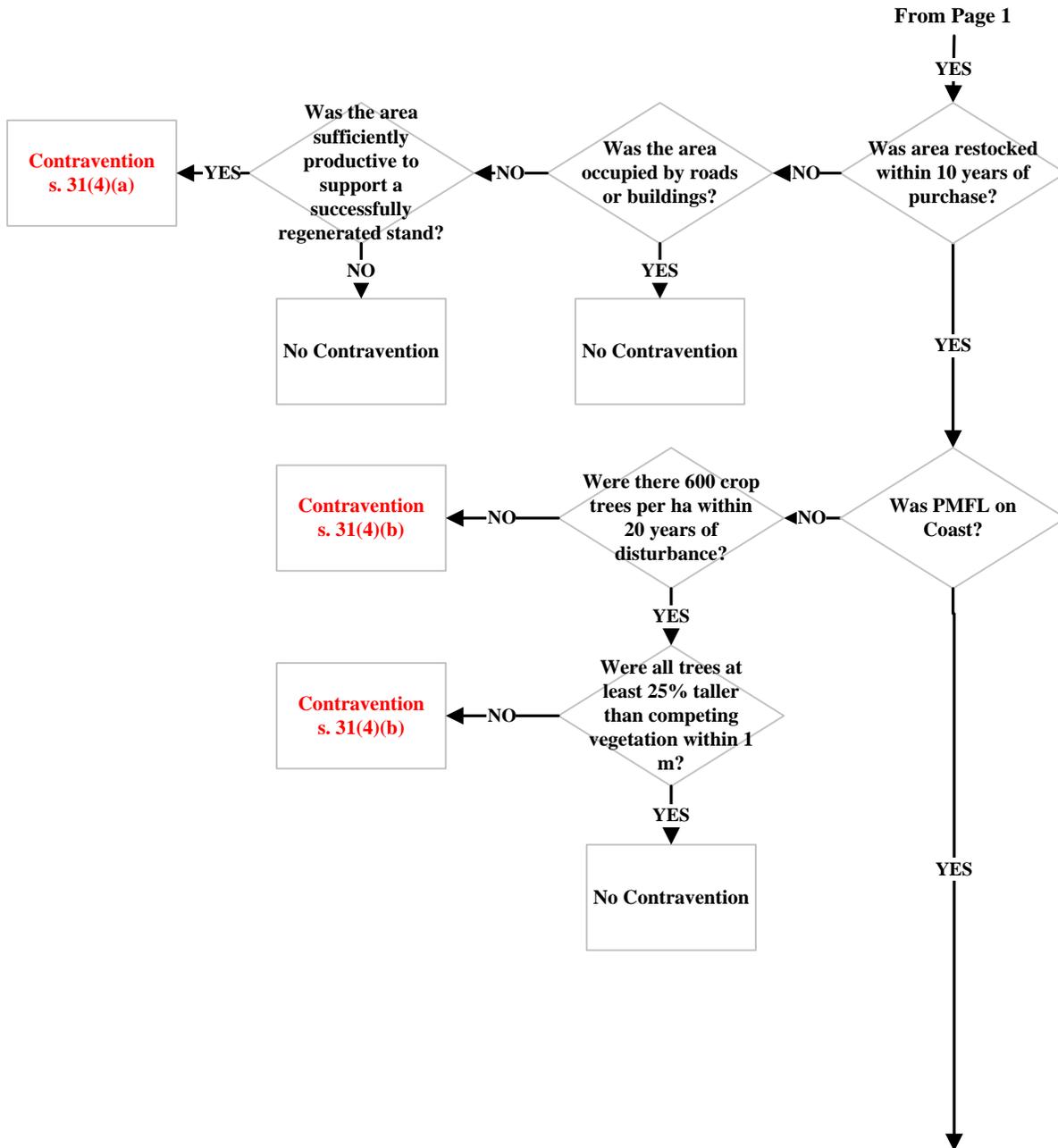


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Reforestation Obligations Council Regulation s. 31



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Reforestation Obligations Council Regulation s. 31

