



Ministry of
Forests, Lands, Natural
Resource Operations
and Rural Development

WOODLOT LICENCE PROGRAM PRIVATE LAND REMOVAL GUIDELINES

April 2018

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Document Change Control

Version	Date	Key Change
1	April 2018	Guidelines completed, ready for use.

Questions or comments should be directed to:

Forest Tenures Branch, Ministry of Forests, Lands, Natural Resource Operations and Rural Development

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1 Purpose

The purpose of this document is to provide ministry staff and holders of woodlot licences (WL) issued under the *Forest Act* with guidelines for removing (Schedule A) or all classes of private land consistent with Section 47.1(2)(b) of the *Forest Act*. The guidelines complement Policy 8.8 – Woodlot Licence Program-Private Land Removal. These guidelines apply to licensee initiated requests for removal. They also provide linkages and an overview of the applicable legislation, regulations and policy.

The scope of this document does not include:

- Private land transfers or exchanges, as these are separate processes from removal.
- The removal of private land that was voluntarily added to a WL subsequent to the original awarding of the licence.

Note: Upon written request by the licensee to DDM, private land that was included in a WL after it was awarded must be removed. In this case the private land has been voluntarily added and did not contribute to the competitive award of the WL.

2 Legislation

2.1 Forest Act and Forests, Lands and Natural Resource Operations Amendment Act, 2011

The *Forests, Lands and Natural Resource Operations Statues Amendment Act, 2011* repealed and replaced Section 47.1 of the *Forest Act* dealing with the change in area or boundary of a WL. Section 47.1 allows the minister, with the consent of the WL holder, to remove private land from a WL.

The *Forest Act* and its regulations can be found at:

<http://www.bclaws.ca/civix/content/complete/statreg/1198514681/96157/?xsl=/templates/browse.xsl>

2.2 Regulations

While the Act provides for the ability to create regulation with respect to the removal of private land, there are none at this time.

2.3 Policy

Policy 8.8 – Woodlot Licence Program-Private Land Removal can be found at the following link:

https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/forestry/timber-tenures/woodlots/woodlot_licence_private_land_deletions_policy_88.pdf

3 Delegation of Responsibility

Section 47.1 of the *Forest Act* allows the minister to change the area or boundary of a WL.

The authority for Section 47.1(2) may be delegated to a delegated decision maker (DDM) as per the Act and Regulations authority matrix. Please check with Forest Tenures Branch at ForestTenuresBranch@gov.bc.ca for current delegated authorities or check here: <http://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/policy-legislation/transfer-of-authority>

4 Guidelines For the Removal of Private Land from Woodlot Licences

The following steps are proposed:

1. A licensee should gather information relevant to a request to remove private land from a WL – see 4.1.
2. The licensee and district and/or regional staff should meet to discuss the proposed removal and identify the steps and information required – see 4.2.
3. Should the licensee decide to proceed, then a formal, written request must be submitted to the DDM – see 4.3.

4.1 Proposal to Remove Private Land from a Woodlot Licence

A licensee who is considering requesting private land be removed from a WL should gather and prepare the following information. A licensee may submit this information along with a formal written request to the DDM (see 4.3). However, it is strongly recommended they first review their proposal with the regional or district timber tenure staff.

1. General overview of the proposed private land removal including a suitable map showing the existing private land in the WL and the proposed private land remaining in the WL (if any).
2. Documentation showing the licence has been held by the licensee or his/her family for at least the last 10 years, and that the private land proposed for removal has been in the WL for 10 years. This includes private land that was exchanged and would have been in the WL for 10 years.
3. Documentation that all parties who are named on the licence agree with the land being removed from the licence. In the case of a First Nation which is looking to have reserve land removed from its WL, there should be a band council resolution or similar document attesting to the Nation's support.
4. The AAC of the private land proposed for removal (from the approved management plan).
5. The status of any unresolved C&E action regarding outstanding obligations respecting the Schedule B land and any Schedule A land that will remain part of the WL; E.G. silviculture (RESULTS, roads, hazard abatement and others). The status of obligations on the Schedule A land to be removed is not required.
6. A written commitment to address any overdue or outstanding licence obligations on the Schedule B portions of the WL, and Schedule A private land if any that will remain under the licence.

7. Current cut control period and performance of the WL (most recent cut control statement and scale returns).
8. Any active cutting authorities on the private land proposed for removal.
9. A map that:
 - a) shows the location of all roads on the private land that is being proposed for removal; and
 - b) identifies the roads required to access Schedule A or B lands that will remain within the woodlot licence area.
10. Copies of any access agreements applicable to the roads on the private land subject to removal.
11. The name, position, email address and phone number of contact person for the proposed removal.
12. Whether the removal will necessitate a new Management Plan and what that might entail.

4.2 Review of a Proposal to Remove Private Land from a Woodlot Licence

The licensee and regional or district timber tenure staff should meet to discuss:

- The proposal with regards to
 - planning,
 - any existing cutting authorities or road permits that might be affected,
 - AAC and cut control implications (see 6.1),
 - outstanding obligations (see 4.4), and
 - Any implications to the WL by removing road access across the private land proposed for removal (see 4.5).
- Amending the WL document to remove the area and review any clauses from Schedule C.
- The appropriate venue/newspaper to place the public notification and any anticipated reaction/response that this may create.
- The regional or district staff will advise the licensee if the DDM requires any additional form of notification (see Section 4.6 of this guideline).
- At the same time, there should be a discussion around the time frames involved. Each situation will differ based upon local resources, local issues, and the complexities associated with the private land under application for removal.
- That private land removed from the WL will not be able to be used by the licensee, or any partnership, corporation or immediate family member affiliated with the licensee to bid on any new WL opportunities. The DDM may request a statutory declaration to this effect.

Regional or district tenures staff will notify and seek input as required from the following:

- Compliance & Enforcement (i.e. any contraventions of the forestry legislation)
- Ministry of Finance (i.e. any outstanding payments)
- Stewardship (i.e. WLPs, silviculture obligations, annual reporting)
- Districts (i.e. CPs, road use)
- Headquarters (i.e. new policies and/or procedures)
- Forest Land Acquisition Group, Forest Tenures Branch (i.e. to determine options/process for roads required for ongoing access to the WL)

4.3 Request to Remove Private Land from a Woodlot Licence

If the licensee decides to proceed with the removal, a formal request, in writing, must be submitted to the DDM. Addresses for REDs and DMs can be found at the following website: <http://www.for.gov.bc.ca/mof/regdis.htm#kbr>. The submission should include:

1. General overview of the proposed private land removal including a map showing the existing private land in the WL and the private land proposed for removal.
2. Documentation showing the same licensee has held the WL for at least 10 years.

Notes:

- The “same licensee” includes situations where the licence was transferred to a corporation controlled by the same person as the original licence prior to incorporation and the private land proposed for removal has been in the WL for 10 years.
 - The “same licensee” also includes intergenerational transfers of WLs. This can include transfer to the Licensee’s children and/or spouse.
 - The timeline starts at the date of licence issuance (not application) or transfer and ends on the date of the request for removal being submitted.
3. Documentation showing that the woodlot licence has had private land subject to it for a minimum of ten years.
 4. Documentation that all parties named on the licence are in agreement with the removal. Where the Schedule A land is Indian Reserve, a band council resolution attesting to the band supporting the reserve land to be removed from the WL is required.
 5. AAC implication to the WL as a result of the proposed removal and a commitment to update the management plan, if required.
 6. Status of licensee performance criteria and evaluation as listed in Section 4.4 (1 - 4) including a commitment statement if required.

7. Any cut control implications in terms of excess harvest/penalty billing (e.g. if harvesting has occurred, and due to the removal of the private land, the AAC is reduced, excess harvest may be the result).
8. Details regarding the closure of any active cutting permits on the areas proposed for removal.
9. An Agreement with the Crown that provides for continued access to the Schedule A and B lands that remain in the WL (discussion with Forest Lands Acquisition Group is highly recommended).
10. A copy of the public and/or other notification required by the DDM and copies of any inquiries received as a result of the public notification and documentation of the responses by the licensee.
11. A declaration attesting that the licensee understands that the private land removed from the WL will not be able to be used by the licensee or any partnership, corporation or immediate family member affiliated with the licensee to bid on any new WL opportunities.
12. The name, position, email and phone number of contact person for the proposed private land removal.

4.4 Licensee Performance

The removal of private land from a WL is at the minister's discretion. One of the principles is that licensees that are not in compliance with their licence obligations will not be given the consideration to remove their private land. The criteria and evaluation of performance are listed below.

Performance criteria and evaluation, specifically that the Minister (or delegate) is satisfied that:

1. All payments to government (stumpage, waste, annual rent, penalties, tickets, etc.) are up-to-date or an approved payment schedule is in place. This can be verified by contacting the Ministry of Finance (each regional office has two contacts) to verify that the client is in good standing.
2. There are no unresolved compliance and enforcement actions or contraventions of the *Forest Act*, the *Forest Practices Code of British Columbia Act*, the *Forest and Range Practices Act*, or the *Wildfire Act* on Schedule B lands or any Schedule A lands remaining in the WL.
3. Any remediation orders resulting from compliance and enforcement actions must be fully complied with (approved), or actioned to the satisfaction of the DDM.
4. That the licensee's commitments are adequate to address any overdue or outstanding licence obligations on the Schedule B portions of the WL, and the remaining (if any) Schedule A private land portion of the WL area. With the commitment the licensee should list and present a reasonable timeline in which the deficiency will be addressed.

WLs thought to be out of compliance during the private land removal adjudication process will be advised by the DDM, in writing, to take the appropriate actions to resolve the issue(s) in the

timeline stipulated by the DDM. Failure to comply will result in appropriate action(s), allowable under legislation, by the DDM.

4.5 Road Access

Prior to allowing removal of the private land, the DDM should give consideration to roads that exist on the Schedule 'A' (private) land proposed for removal to ensure that the removal of private land won't isolate Schedule A or B land that remains in the WL. As part of the removal application, a licensee will commit to:

1. Entering into a registerable agreement (Statutory Right of Way) to allow the access through the private land using existing roads for the purpose of inspecting the licensee's activities under or associated with the WL and/or for the purpose of fulfilling an obligation or exercising a right under the WL agreement; and
2. Entering into an agreement with a person who has been granted existing rights under the *Forest Act* to harvest timber or remove fibre from within the WL to access that timber or fibre. This does not extend to a person who is attempting to exercise rights granted under the *Forest Act* to areas outside of the WL.

Should suitable alternate access currently or in the future exist to the remaining WL land(s) then the ministry will accept said access as meeting the road access requirements and, if applicable, would remove any related access agreements from the title to the Schedule A land being removed.

In the event that the road(s) across the private land are the only viable location for access to Crown lands beyond, for purposes other than access to the WL, then the Crown may wish to consider trying to negotiate an access agreement with the licensee/Schedule 'A' landowner. In this situation, a licensee's unwillingness to negotiate an access agreement to Crown lands beyond should not be considered justification for refusing to remove the private land from the WL.

Recognizing the uniqueness of each situation, it is suggested that the Forest Lands Acquisition Group, within Forest Tenures Branch, be contacted to discuss the options available.

4.6 Notification

Public and local government notification of the proposed removal of private land from WLs is required. Notice/notification (see Appendix for sample notification format) announcing the intention of the removal of private land from a WL must:

- a) be published by the licensee by posting the notice in the legal section of a newspaper circulating in or near the area of the proposed removal (and/or other public notification

process as described above and deemed appropriate) for two issues of the newspaper separated by a two week period, and

b) include:

- The WL number;
- The name of the licensee;
- The amount of area (hectares) proposed for removal;
- A clear legal description of the private land that is being proposed for removal;
- A description of where the land proposed for removal is located;
- A clear indication that only written inquiries will be accepted and where and when (two weeks from the last posting) to submit the inquiries; and
- An indication of where persons can obtain details of the proposed private land removal (licensee or consultant's address and/or phone number).

A licensee must respond to inquiries from a person(s) who would be materially impacted by the private land being removed from a WL. Copies of the inquiry and response, or notes of discussions that occurred, must be included in the formal request to remove the private land (see #9 in section 4.3 above).

4.6.1 Public

Typically, public notification will take the form of a notice in the legal section of the local newspaper. However, where a DDM believes, based on factual local knowledge that public or stakeholders' interest could be materially impacted by the removal of the private land, he/she may request that the licensee

- post a notice in a local post office, community hall or other public venue; and/or
- send a notice directly to certain stakeholders (rec groups, trappers, etc.).

Before approving the removal of private land, a DDM must be satisfied that the licensee has adequately addressed legitimate queries from person(s) who would be materially impacted by the private land being removed from a WL.

4.6.2 Local Government

Separate notification to local government (municipality and/or regional district) will generally be required. Where the private land being proposed for removal is within or adjacent to a municipal boundary then the municipality needs to be notified. However, if the private land

proposed for removal is remotely located the need for notification may be waived. The DDM should notify the woodlot licensee if municipal or regional district notification is necessary.

4.6.3 WLS held by First Nations

In addition to the notification requirements stated above, WLS held by First Nations are also required to notify Indigenous and Northern Affairs Canada.

4.7 First Nations Consultation

Removal of private land from a WL is a statutory decision and requires First Nations consultation consistent with provincial standards and following regional authority consultation matrices. Special circumstances may apply with respect to Forest Consultation and Revenue Sharing Agreements (FCRSAs), Forest and Range Opportunities (FROs), Forest and Range Agreements (FRAs), other interim measure agreements or treaty areas.

A full listing of agreements can be found on Ministry of Indigenous Relations and Reconciliation website. <https://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/consulting-with-first-nations/first-nations-negotiations>

The DDM and his or her staff will lead any consultation process.

4.8 Decision That Removal May Proceed or Not Proceed

Staff will prepare a decision briefing note for the DDM that includes options and a recommendation. This will include information summaries regarding First Nations consultation and public and stakeholder comments.

If the DDM decides that the removal will proceed, the DDM will so advise the licensee in writing. As a consequence of the land removal the licence document will have to be amended – see Section 5.0.

A DDM who is contemplating not approving a request to remove private land because the licensee did not meet one or more of the criteria in Policy 8.8 may direct staff to contact the licensee, discuss the shortcomings and possible remedial action.

A DDM who decides not to approve a request to remove private land must so inform the licensee in writing (under the DDM's signature) and give the reasons why the request was denied.

The DDM will advise the licensee if the approved private land removal results in the need for a new or amended Management Plan (MP); i.e. AAC determination and/or other changes to the MP, licence document, and/or updated spatial information.

5 Licence Documentation

The licence document will have to be amended to reflect the removal of the private land; notably the following:

1. New Schedule A with maps of the remaining private land (if any) or a notation that there is no private land.
2. Removal of any clauses from Schedule C of the WL that pertain to the private land being removed.
3. Addition of any clauses to Schedule C to address any new commitments as a result of the public notification.

The FS 3 form is typically used to make the amendments. Different licence templates have been used over the years so there may be other clauses that have to be amended.

A licensee who has requested the removal of private land from their WL, may, based on the conditions set forth in the amended licence document, decline the amended licence. If not accepted, the amended licence is null and void. In this case, the existing licence agreement remains in place and continues unchanged.

6 Licence Administration

6.1 Cut Control

According to Section 75.91 of the *Forest Act*, if the WL is in an over cut position then penalty provisions apply. However unlikely, a situation may arise whereby a licensee has harvested close to his maximum limit, but because of the removal of the private land and the resultant AAC reduction, the licensee may now be in an overcut position. Therefore, it is important to discuss the cut control implications with the licensee as soon as possible in the process.

If the AAC is reduced through a new MP submission requirement then a note should be made to make the necessary adjustment in future cut control statements.

The current Cut Control statement should be updated to reflect the reduced AAC in year of PL removal (prorated as of date of removal) and only Schedule B AAC in future years.

If harvesting occurred on the private land in the current year prior to the removal, the volume should be tracked and included as volume harvested for cut control purposes.

6.2 Cutting Permits

All active cutting permits (if any) covering the private land being removed must be closed or amended to exclude the land being removed.

6.3 Annual Rent

Where a new management plan is requested resulting in new AAC on the Crown portion of the WL the annual rent will have to be adjusted. Annual rent adjustments should be made consistent with Section 7.1 of the document titled "Annual Rent Billing Procedures". This document is located at: <https://www.for.gov.bc.ca/ftp/HTH/external/!publish/web/timber-tenures/annual-rent-billing-procedures-jan-1-2015.pdf>

6.3.1 Outstanding Obligations

Despite Section 79 of the Act [expiry, surrender, suspension, or cancellation (not removal)] once the private land is removed from the WL, there are no ongoing obligations pertaining to the forestry legislation on the removed land. Therefore, it is important that if there are any obligations that the DDM considers important, that they be carried out before the land is removed or there is a written commitment from the licensee to do so.

6.4 Operational Plans

The WL Plan may need to be amended once the private land has been removed.

6.5 AAC and Management Plans

Where the private land that is being removed contains timber of sufficient quantity or quality to impact the AAC by its removal then a new management plan needs to be submitted by the licensee to update the AAC for the WL [Crown and private (if any remaining)].

Note: The removal of private timber may have the effect of also reducing the AAC on the Crown portion of the WL.

A new management plan will be required to go through the First Nation consultation process. It may be efficient to batch/include this consultation with the private land removal consultation.

7 Systems and Filing

7.1.1 FTA

FTA must be updated to reflect the new area and AAC for the licence. The private mark for the area being removed will need to be removed as an associated file.

7.1.2 RESULTS

RESULTS data must be updated to retire any openings associated with the removed area. The retire functionality in RESULTS must be done by a district user with “Approval” role. Further, the opening category must be updated to “EXCLU”. The opening category update may be done by any user with “Update” role in RESULTS.

7.1.3 BCGW

Ensure the BCGW is updated; i.e. the removed area is retired/removed from the data base. This is done by sending an FTA data fix request to the Applications Helpdesk (NRS Business Applications CSNR:EX) to retire the pertinent Schedule A lands from the woodlot.

7.1.4 Timber Marks

The Registrar of Private Timber Marks should be notified to remove reference to Woodlot Licence from legal description, to change management unit from F (Woodlot Licence) to Z (outside managed units) for private marks associated with the private land being removed, and to change the term to 5 years effective the date the private land removal was approved. This is done using the “P.M. amend” tab FTA for under the Private Mark – Mark Application screen.

After the Private Mark is updated, a new Private Mark Certificate should be printed and sent to the licensee.

7.1.5 Other

- Hard copies of file documents (briefing notes, approval letters, amended licence) must be placed on the appropriate files of the licence being amended as part of the removal. If the approval letter includes approval to amendments to the management plan and the woodlot licence plan regarding the removal of the private land, copies of the approval letter should be placed on those files as well.
- Where a Section 281 (formerly Section 260) *Land Titles Act* notice is on the private land, it must be removed. This can be accomplished by sending an email to Forest Tenures Branch at ForestTenuresBranch@gov.bc.ca The email must include the DDM’s Private Land

Removal approval letter, description of the removed lands (PIDs – Parcel Identification Numbers) and the licence FS3 Amendment document. If available, copies of the land title and section 260/281 notice should also be sent to Forest Tenures Branch. Forest Tenures Branch will also forward PIDs of private lands removed from WLs to the Managed Forest Council at office@mfcouncil.ca with the subject heading “WL Schedule A Land Removal”.

8 APPENDIX

8.1 NOTICE TO REMOVE PRIVATE LAND FROM WOODLOT LICENCE W____

Please be advised that (Licensee's Name) is proposing to remove (# hectares) of private land from Woodlot Licence (W____) located in the vicinity of (location of the private land proposed for removal).

Inquiries/comments to this proposal must be submitted to (name & address to submit to) by (date (one month from 1st notice OR 2 weeks from 2nd notice)).

Only written inquiries received by the above date will be responded to.

Information about this proposal can be obtained by contacting (contact info).