



Woodlot Licence (WL) & WL Replacement Area - Considerations

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INTRODUCTION

When a Woodlot Licence (WL) is impacted by a treaty or other measures, the *Forest Act* provides options to mitigate the impact on the licensee, i.e., financial compensation, the direct award of a new WL, or changes to the WL area or boundary.

DISCUSSION

- **Financial Compensation** - The specifics regarding financial compensation are somewhat unclear because provisions of Bill 28 – Forest Amendment Act (2021) have not yet been enacted. The Federation is attempting to engage with MoF to ensure compensation is reasonable and represents fair market value. It is up to each WL licensee to negotiate and decide the level of compensation that they are willing to accept.
- **Direct Award of a New WL** - *Forest Act*, section 47.3(1) says the minister may direct award and enter into a woodlot licence with a person in order to mitigate the effects of a treaty, a specification of a designated area under Part 13, or an agreement between a first nation and the government respecting treaty-related measures, interim measures, or economic measures on that person.
- **Change in Area or Boundary** - *Forest Act*, section 47.1 allows the minister, with the consent of the WL holder and in accordance with regulations, to make 'minor' changes the area or boundaries of a WL. The maximum size of a WL as stated in the act cannot be exceeded. Section 6 of the Woodlot Licence Regulation limits the change in area to a maximum of 10% of the original woodlot licence area and stipulates that any area added must be close to the WL area as well as a couple of other conditions. The 10% cap and close proximity conditions means that s 47(1) will have extremely limited application as an option to mitigate the impacts of a treaty or other forms of FN reconciliation agreements on WL holders. The FBCWA may want to call for section 6 of the WL Regulation to be amended.

CONSIDERATIONS REGARDING A NEW WL OR CHANGE IN AREA OR BOUNDARY

- ⑩ **Location of the Replacement WL or Area(s)**
 - ☞ Distance from residence, distance from mills & manufacturing, etc.
- ⑩ **Access to Replacement WL or Area(s)**
 - ☞ Is there secure, crown access to the WL area?
 - ☞ Will a Road Permit (RP) or Road Use Permit (RUP) be required? If yes, will the terms and conditions of either or both be acceptable to the WL licensee?
- ⑩ **Access within the Replacement WL or Area(s)**
 - ☞ Are all areas within the replacement area(s) accessible?
 - ☞ Are there any existing roads? Y or N?
 - ☞ If yes, are they FS or crown roads, or under tenure to someone else?
 - If FS or Crown, will use be authorized under a Road Use Permit (RUP) or will the WL licensee have to assume full responsibility for the roads under a Road Permit (RP)?
 - If someone else, can an acceptable road use arrangement be reached?
 - ☞ What's the condition of the roads and any structures, e.g., bridges, culverts, cattleguards, etc.? Will significant capital expenditures be required.
- ⑩ **Logging chance** – Suitable terrain, operability, steep slopes, etc.

- ⑩ **Timber Profile** – Is the timber profile suitable for long-term sustainable management and support an economically viable WL?
 - ☞ Species
 - ☞ Age class distribution
 - ☞ Timber quality of timber
 - ☞ Forest health considerations
- ⑩ **AAC**
 - ☞ Is the AAC of the replacement WL or area(s) comparable to the previous WL? Or will more hectares be required to attain an equivalent AAC to the previous WL?
 - ☞ Suggest a draft Management Plan, including W4W analysis, be prepared prior to agreeing to the replacement WL or area.
- ⑩ **Assessments** - Have AOAs, AIAs, & CHRs been completed for the replacement area(s)?
- ⑩ **Inventories**
 - ☞ What inventories are available?
 - ☞ Are they up to date or will re-inventories be required?
 - ☞ Is LiDAR available?
- ⑩ **Constraints**
 - ☞ What constraints apply to the area?
 - Old Growth
 - Species at Risk – e.g., MAMU, NOGO, caribou, mtn goats, CDF, etc.
 - Land Use &/or GAR Orders
 - Scenic/Visual Quality
 - Archeological &/or culturally sensitive sites
 - Recreation sites & features
 - Etc.
 - ☞ If yes, what's the AAC impact? Do they make any areas inaccessible or create operational issues?
- ⑩ **Fibre recovery zone** - Is the replacement area in a FRZ?
- ⑩ **Social Licence** – What will be needed to achieve social licence over the replacement area(s)?
- ⑩ **Proximity to residential areas & private land**
 - ☞ If yes, what operational and/or administrative issues (if any) might this cause, e.g., buffers, fuel mitigation treatments, lower stocking, etc.
- ⑩ **Overlaps with other tenure holders** – what tenures, compatible with a WL, and how (if at all) will they impact WL management and operations.
- ⑩ **First Nations**
 - ☞ Do any First Nation have expressions of interest over the land? Y or N
 - ☞ If yes, how many, i.e., how many FNs would a WL licensee have to deal with?
 - ☞ Does the FN(s) have a proven track record for working with WLs and/or other forest tenure holders?
 - ☞ If the replacement WL or area is within the traditional territory of the First Nation for which the relocation is needed, should the treaty or other agreement with the First Nation contain clauses such as:
 - The replacement WL or area will not be subject to any future land claims in the future.
 - There will be no further consultations or information sharing with the First Nation with respect to the replacement land.

- No future revenue sharing that involves the WL holder.
- ⑩ **Other persons' obligations**
 - ☞ Are there any areas where someone has existing obligations, e.g., a BCTS cutblock that has not yet been declared free growing, a road that was supposed to be deactivated, etc.?
 - ☞ Any infrastructure built or established without authority, e.g., hiking or biking trails.
 - ☞ Anything on or about the land that the WL licensee would have to assume responsibility for?
- ⑩ **Roads**
 - ☞ Are there any existing roads? Y or N?
 - ☞ If yes, are they FS or crown roads, or under tenure to someone else?
 - ☞ If yes, are there any structures such as bridges, culverts, cattleguards, etc. that will have to be repaired or replaced? What are the cost implications, liability, etc.
 - ☞ If FS or Crown, will use be authorized under a Road Use Permit (RUP) or will the WL licensee have to assume full responsibility for the roads under a Road Permit (RP)?
 - ☞ If private or under tenure to someone else, will satisfactory road use arrangements be possible?
- ⑩ **Management Plan (MP)**
 - ☞ Will the MoF do, pay for, or compensate the WL licensee for having to do a new MP?
 - ☞ Assurance that a MP will be approved and approval will be done in a reasonable time frame?
 - ☞ Affected WL licensee may want a MP approved-in-principle before the previous WL is terminated or surrendered.
- ⑩ **Woodlot Licence Plan (WLP)**
 - ☞ Will the MoF do or compensate the WL licensee for having to do a new WLP?
 - ☞ Should there be an approved WLP in place before the previous WL is terminated or surrendered?
 - ☞ Affected WL licensee may want a WLP approved-in-principle before the previous WL is terminated or surrendered.
- ⑩ **Cutting Permit(s) & Road Permit(s)**
 - ☞ Should there be approved CP(s) and RP(s) in place before the previous WL is terminated or surrendered?
 - ☞ Affected WL licensee may want CP(s) and RP(s) approved-in-principle or in place before the previous WL is terminated or surrendered so that operations can commence immediately after the new WL and/or change in area is approved.
- ⑩ **Timeline**
 - ☞ Commitment from government when the entire process will be complete.
- ⑩ **Compensation & Expense**
 - ☞ Replacement will likely cause an interruption in operations (lost revenue) and involve a myriad of expenses. Affected WL licensee may want to negotiate an agreement with government early on to address compensation and expenses.

CONSIDERATIONS REGARDING THE DISPOSITION OF THE EXISTING WL

- ⑩ **Carry-on with Existing Operations**
 - ☞ Will the affected WL licensee will be allowed to continue operating on the existing WL until the replacement WL and/or area has been identified, agreed upon, and approved.
- ⑩ **Termination or Surrender?** Need to check if legally there is any difference between a WL being terminated or surrendered.

- ⑩ **Schedule A (private) land** – Will it be removed or included in the new WL?
- ⑩ **Legal &/or Licence Obligations**, e.g., road deactivation, waste assessments, waste disposal, reforestation, free growing, RESULTS reporting, etc.
 - ☞ How will they be handled?
 - ☞ Will WL licensee have to complete, pay at time licence is surrendered, or will the obligation(s) be waived?
- ⑩ **Continuing Liability** – The *Forest Act* contains provisions regarding continuing liabilities on the licensee after a WL has been terminated or surrendered. A WL holder may want to reach an agreement with the government that those provisions no longer apply once the WL has been terminated or surrendered.
- ⑩ **Management Plan** – MP is no longer valid once the WL has been terminated or surrendered.
- ⑩ **Woodlot Licence Plan** – WLP is no longer valid once the WL has been terminated or surrendered.
- ⑩ **Road Permits**
 - ☞ Surrender or disposition of RPs associated with the WL and held by the WL licensee.
 - ☞ RP obligations complete, e.g., maintenance and deactivation.
 - ☞ Road users and RUP holders have been notified and had their concerns addressed.
- ⑩ **Road Use Permits** – includes RUPs that the WL licensee is either the holder or the user.
 - ☞ RUPs are terminated (to all parties' satisfaction) when the WL has been terminated or surrendered.
 - ☞ All commitments and obligations under RUPs are complete or waived. No continuing liability.
- ⑩ **Cutting Permits** – CPs are no longer valid once the WL has been terminated or surrendered AND there are no take it or pay charges or penalties.
- ⑩ **Compliance & Enforcement** – Any ongoing C&E matters (alleged or real) have been resolved.
- ⑩ **Financial / Gov't Accounts** – No outstanding accounts with government, e.g., annual rent, stumpage, penalty billings, etc.
- ⑩ **Cut Control**
 - ☞ What, if any, are the cut control implications when the existing WL is surrendered or terminated?
 - ☞ Overcut – will penalties be waived?
 - ☞ Undercut = lost opportunity. Will there be compensation?
- ⑩ **Deposits** – Will they be returned or applied to the new WL?
- ⑩ **Agreements** – Have all agreements with buyers, sellers, and service providers, e.g., log sales, log brokers, contractors, consultants, etc. been addressed to everyone's satisfaction.
- ⑩ **Professional Accountability** – Have all professionals and others who have accountability regarding the existing WL have been notified and their professional obligations and accountability addressed to their satisfaction. For example, a professional may not want a WLP they signed and sealed to remain in existence and be used by the person who acquired the land in the existing WL.
- ⑩ **Information-sharing, Consultations & Referrals** - If the replacement area(s) is within the traditional territory of the First Nation(s) who will be the recipient of area from the WL to be terminated or surrendered, should there be an agreement reached – maybe as part of a treaty or measure – regarding information-sharing and consultation.

- ⑩ **Long-term Certainty** - To create long-term security, a WL holder may want to make the case and reach an agreement with the provincial government and First Nation(s) that there is no opportunity for either of them to come back later and make claims against the WL licensee.