Forest and Range Practices Act



FRPA ADMINISTRATION BULLETIN

Number #14 March 4, 2010

FSP Review and Comment Requirements Relative to Tenured Commercial Recreational Operations on Crown Land*

*This bulletin does not apply to public recreation or tenure holders under the All Season Resort Policy.

This document is for information purposes only and does not represent legal advice.

Purpose

To clarify, for both forest agreement holders that are required to prepare a Forest Stewardship Plan (FSP) and tenured commercial recreational operators, what the FSP review and comment obligations are with respect to tenured commercial recreational operations rights.

Introduction/ Background

Tenured commercial recreational operators in British Columbia have specific rights granted to them under their tenure agreement. Forest agreement holders must be aware of these rights and provide an opportunity to review their FSP in a manner that is commensurate with the nature and extent to which the person's rights may be affected as per Section 21 (1)(c) of the Forest Planning and Practices Regulation (FPPR). In order for this to occur, there needs to be some assurance that adequate and appropriate dialogue occurs between the holder of the FSPs and the tenured commercial recreational operators. It is incumbent on both groups to engage in meaningful conversation and one group should not expect the other to carry the entire responsibility alone.

In recent years, a number of tourism and recreation groups in BC have suggested that tenured commercial recreational operators have periodically not been adequately contacted by forest agreement holders that are preparing a FSP. The Council of Tourism Associations of British Columbia (COTA) prepared a report to government in July 2007, entitled "A Tourism Industry Strategy for Forests". In this report, a number of recommendations were made for government to consider. One of these recommendations was related to the potential changes to the review and comment requirements of FSPs

based on the claim that some tenured tourism agreement holders were not given the opportunity to provide input into FSPs.

A survey carried out by PFIT of Ministry of Forests and Range (MFR) district staff, forest agreement holders and commercial recreation tenure holders was undertaken to assess and quantify the concern raised by the COTA report. The results indicated that there is a great diversity in how and when commercial recreation tenure holders are contacted, and in many cases, little or no additional consideration was given to commercial recreation tenure holders over and above those provided to the general public. This has led to a number of actions – including the development of this bulletin.

Note: Non-tenured recreation issues also came up during the survey and although these are an important interest, they do not represent "rights" for the purpose of Section 21 (1)(c). Non-tenured recreation users who are interested in the FSP can review it at the licensee's place of business during normal office hours: FPPR, Section 21 (1)(b). Non-tenured recreation users may also contact the Ministry of Tourism, Culture and Arts (MTCA) district recreation officer for further relevant information as part of the public review process.

Tenured commercial recreational operators range in business size from large easily identified corporations to small seasonal operators. Some of these operators have not been involved in operational planning review and comment processes and may not understand the role that they can play in reviewing and commenting on FSPs.

The Integrated Land Management Bureau (ILMB) is responsible for the issuance of commercial recreational operators tenures and can provide tenured commercial recreational operators contact information through the nearest Front Counter BC office. Appendix 1 of this bulletin provides a brief summary of some of the common types of commercial recreation tenures on provincial Crown land that should be readily available to forest agreement holders on the Integrated Land and Resource Registry (ILRR) website at (www.ilrr.ca). The ILRR can be used to identify the presence and extent of tenured commercial recreational operators and other *Land Act* tenures with specific rights.

Forest Agreement Holder's Roles and Responsibilities

Once a forest agreement holder who is required to prepare a FSP has identified which tenured commercial recreational operators are located within its plan area, forest agreement holder staff preparing FSPs for submission are encouraged to share information with tenured commercial recreational operators early on in the FSP development process to determine what level of information sharing is warranted. This will also develop an understanding of how the intended results and strategies may impact the tenured commercial recreational operators and what considerations or actions may be desirable. Ideally forest agreement holders and tenured commercial recreational operators would come to an understanding and/or agreement about the level of opportunity of review and comment that would be "commensurate with rights" of the tenured commercial recreational operators.

The issue of "commensurate with rights" is discussed in Section 4.2.9 of the *Administrative Guide to Forest Stewardship Plans Volume I Version 2.1—Oct 09*. http://www.for.gov.bc.ca/hth/timten/AGFSP/documents/AGFSP-Vol%20I-v%202%200%20Sept%2008(b).doc

Forest agreement holder staff working with tenured commercial recreational operators should be able to determine what types of implications their FSP proposal and activities under the FSP may have on tenured commercial recreational operators. Some typical examples may include:

- Environmental practices;
- Forest management policy;
- Changes in access to tenured rights on Crown land;
- Scope of forest management activity;
- Forest management policy;
- Quality of viewscapes;
- Fisheries values:
- Recreation features and trails;
- Seasonal operations;
- Known safety hazards; and,
- Rate of planned development, harvest and reforestation.

Forest agreement holders should also consider the level of risk proposed FSP operations may have on commercial recreation tenure holder's rights and this consideration should be carried out with tenured commercial recreation operators. If the risk level is high, then a more extensive review opportunity should be provided. If the risk is low, then a less extensive opportunity may be appropriate.

The most effective means of understanding where operational issues may occur with tenured commercial recreational operators is by means of maintaining ongoing dialogue. Regular and ongoing conversations and information sharing will help to reduce the workload and timelines associated with the legislated review and comment provision. There have been instances where forest agreement holders have been relying on FSP public review and comment requirements [FPPR, Section 21 (1)(b)] as a means of identifying and communicating with tenured commercial recreational operators. This may be appropriate in some cases, but the concern is that tenured commercial recreational operator's rights extend beyond the interests of the general public, and so the public review process may not capture their rights in all cases. As such, the general public review process may not be sufficient to meet the legislated requirement for review and comment. Forest agreement holders are encouraged to consider what additional steps may need to be taken to identify and accommodate review and comment needs of this group in meeting requirements of FPPR, Section 21 (1)(c).

Details on the types of tourism rights on Crown lands can be found in Parts 1-2 of the Appendix.

The following table was prepared to assist with the relationship between various commercial recreation tenure holders and forest agreement holders who are required to prepare a FSP.

Review and Comment Framework on Crown Land

by for a recruing on	Type of Tenured Commercial Recreation Rights on Crown Land: (shown on right) m of engagement orest agreement holders ddress tenured commercial eation rights Crown land:	Special Event, Temporary Use Permit (One Time Event)(*4)	Commercial Recreation, Investigative Permit (Typically Leads to a Licence of Occupation) (*4)	Key Access Corridors that Support Tourism Rights (e.g. Roads) (*1)	Commercial Recreation, Licence of Occupation (*2) (Extensive Use Areas Only)	Commercial Recreation, Licence of Occupation with Intensive Use Sites (*6)	Crown Forests Adjacent to Private Lands with Commercial Recreation Tenures (*3) (e.g. Lodge)
1.	Initial informal discussions between forest agreement holders and tenured commercial recreation stakeholders						
2.	Public posting of Forest Stewardship Plans						
3.	Direct referral by forest agreement holders to commercial recreation stakeholders						
4.	Forest agreement holders feed-back to commercial recreation stakeholder on FSP comments received						
5.	Access to forestry site plans (*5)						
6.	Mechanisms to verify effectiveness of engagement after-the-fact						

Key:	Degree to	which t	he form	of revie	ew should	occur:
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- Forest agreement holders recommended to undertake review and comment, where it makes sense and is contingent on input from commercial recreation tenure holder to forest agreement holder.
- Action by forest agreement holder required under FRPA.
- *1 ILMB may be able to provide a limited list of roads and right of ways with commercial recreation interests. Currently, this information is not readily available with the exception of right of ways for All Season Resorts/Ski Resorts. If these are roads tenured by a forest agreement holder, the forest agreement holder will likely be well aware of the commercial recreation user. If heavy recreation users contributed funds to road maintenance and capital upgrades there would already be dialogue.
- *2 A licence of occupation is issued for tenures with an Extensive Use Area involving guiding activity, normally over a large operating area and with or without improvements.
- *3 Related to mitigating impacts on high quality recreation experiences on adjacent Crown land that the commercial recreation operator on private land may be offering to guests. (Note: information gaps may exist in identifying these fee-simple properties and further work required to define precisely "adjacency".)
- *4 In these situations, the onus is on the special event/investigative permit applicant/holder to contact forest agreement holder(s) directly.
- *5 As per Section 11 of FRPA, a holder of a site plan must make it publicly available on request at any reasonable time at the holder's place of business nearest to the area under the site plan.
- *6 These intensive use sites/areas may include frequent camping/staging areas with no/minor improvements, with improvements (e.g. huts, lodges, etc.).

For more information about the nature and scope of *Land Act* tenure rights, please refer to the applicable *Land Act* policy: http://www.al.gov.bc.ca/clad/land prog services/policies.html.

Tenured Commercial Recreational Operator's Roles and Responsibilities

Forest agreement holders are only required to consider written comments on their FSPs. Therefore, tenured commercial recreational operators should ensure that their comments are provided in writing to the FSP proponent within the relevant review and comment period set out in Section 20 (2) of the FPPR. Participation in forest planning is important. Contacting forest agreement holders who operate in an area where overlapping rights in the forest land base occur can help build positive relationships. Tenured commercial recreational operators should also ensure that their concerns with FSP proposals are provided in writing to the FSP proponent within the specific review and comment period. Tenured commercial recreational operators are encouraged to be as specific as possible in explaining their tenure rights so that resource professionals can consider them as they develop their plans for the timber and other resources. To ensure comments are fully considered, tenured commercial recreational operators should:

- Develop a thorough understanding of the rights within the commercial recreation tenure document. Do not assume any rights. Understand the full scope and limitations of the tenure rights.
- Identify interests, uses and attributes in specific areas within the FSP area and their importance for the tenured rights of the commercial recreation operator.
- Identify concerns about forest development and the degree to which those developments could affect those rights.
- Provide other information the forest agreement holder needs to be aware of that could affect those tenured rights.
- Include contact information so the forest agreement holders can respond and continue dialogue.

Tenured commercial recreational operators are encouraged to take advantage of their review and comment opportunity to communicate with the FSP proponent.

Conclusion

This bulletin has been created for those instances where forest agreement holders have an FSP that overlaps commercial recreation tenures. It is intended to show that certain rights are granted to these tenured commercial recreational operators and that those rights may be affected by forestry activity conducted under their FSP. In cases where those rights could potentially be affected, the FSP holder should contact these holders of commercial recreation tenures to seek solutions agreeable to both parties. Tenured commercial recreational operators are encouraged to contact forest agreement holders who have proposed or existing FSPs overlapping their tenured area to help forest agreement holders understand the tenure rights that exist on these overlapping tenures. Through this ongoing dialogue, positive relationships can be built to ensure tenure rights are not compromised.

Further Information

"A Practical Guide to Effective Coordination of Resource Tenures": http://www.agf.gov.bc.ca/clad/tenure_programs/cabinet/guide_resource_tenures.pdf

"A Tourism Strategy for Forests" (COTA; June 2007): http://www.cotabc.com/misc/forest-strategy.pdf

Adventure Tourism Policy:

 $\underline{http://ilmbwww.gov.bc.ca/adventure_tourism/docs/pdf/guided_adventure_tourism_policy.pdf}$

Contacts

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APPENDIX 1

This section briefly describes a summary of the common types of commercial recreation tenures on provincial Crown land that should be readily available to forest agreement holders on the Land and Resource Data Warehouse (LRDW) and Integrated Land and Resource Registry (ILRR). They are divided into two parts: 1. adventure tourism; and 2. roadways. In the event of a conflict between the tenure descriptions shown below and the approved *Land Act* policy, the approved *Land Act* policy prevails to the extent of the conflict.

Applicable policies include: Adventure Tourism Policy; General Commercial Policy; All Season Resort Policy; Community/Institutional Policy; or the Roadways Policy. For more information, please refer to the appropriate *Land Act* policy: http://www.al.gov.bc.ca/clad/land_prog_services/policies.html.

Part 1: Adventure Tourism Tenures

Types of commercial recreation or adventure tourism tenures available under the Adventure Tourism Policy are investigative permits, temporary permits for special events, licences of occupation and leases. A brief summary of the nature and scope of these *Land Act* tenure rights on Crown land are described below:

Investigative Permit

An investigative permit may be issued to any Adventure Tourism (AT) applicant requiring access to the land for appraisals, inspections, analyses, inventories, surveys or other investigations of Crown land or its natural resources, or where otherwise required. No buildings or other improvements may be placed on the land. An investigative permit does not allow the permit holder to undertake AT activities for compensation or reward received or promised.

The tenure holder must permit public access to the area without interference. The maximum term for an investigative permit is 2 years.

Temporary Permit for Special Events

A temporary permit may be issued for temporary uses, where a business is better served by such a permit than by a licence of occupation. Temporary permits may be granted for special events by the Statutory Decision Maker (SDM) and are applicable to special events that occur up to and including 14 days within a consecutive 30-day period.

The tenure holder must allow public access to the area without interference, unless authorized by the SDM for temporary improvements to address safety, and must recognize that overlapping and layering of tenures may be authorized by government.

Licence of Occupation

A licence of occupation may be issued where minimal improvements are proposed, where there are multiple users of a site, and in remote areas where survey costs are prohibitive. It may also be used to allow development to proceed while awaiting completion of survey requirements for a lease or right of way.

A licence of occupation conveys fewer rights than a lease. It conveys non-exclusive use for the purpose described, is not a registerable interest that can be mortgaged, and does not require a survey.

A licence of occupation does not allow the tenure holder to curtail public access over the licence area except where it would impact the licensee's right to use the land as per the licence document. Government may authorize overlapping and layering of tenures. The standard term for an initial and replacement licence is up to 30 years.

A licence is the standard form of tenure for an AT tenure holder's guiding activities within an extensive use area and may include intensive use sites and/or minimal impact sites. A licence may:

- take the form of a single area or multiple areas of Crown land separated by various distances:
- lie within a single Authorizing Agency administrative region or cross regional boundaries; and/or
- be for either mechanized and/or non-mechanized uses.

Lease

A lease should be issued where long-term tenure is required, where substantial improvements are proposed, and/or where definite boundaries are required in order to avoid land use and property conflicts.

AT leases are available for small parcels of Crown land where there is intensive use, it is necessary to define specific boundaries for the use and quiet enjoyment for the leasee and clients. A lease is the standard form of an AT tenure for a primary site and may be used for secondary sites where precise boundaries are required because of the nature of development in an area. AT leases will be issued only where substantial improvements and investments are to be made in and on the land for permanent facilities or on small sites that are absolutely critical to the operation.

The tenure holder has the right to modify the land and/or construct improvements as specified in the tenure contract. The tenure holder is granted the right to exclusive use and quiet enjoyment of the area.

A legal survey will generally be required at the applicant's expense to define the tenured area. A lease is a registered interest in the land that is mortgageable. The standard term for a lease is up to 30 years, including replacements.

Part 2: Roadways

The general intent of the Roadways Policy under the *Land Act* is to consider and provide for access needs across Crown lands where required, and to provide access road authorization to private parties planning to build roads which also serve public access needs. This intent creates a responsibility that every public road will contribute as much as possible to the overall network of roads in the area it services. It also creates a responsibility, whenever a parcel of Crown land is alienated, to consider the advisability of a Section 79, *Land Act* corridor for road purposes to provide future access to lands around or beyond the subject parcel. Ongoing liaison with the appropriate approving officers, as designated by Section 77, *Land Title Act*, is essential to the proper execution of these responsibilities.

Private roads may be authorized only if there are clear physical reasons why access should not be provided to the public, e.g. physical hazards due to industrial traffic, danger from explosives, sour gas, etc.

Bridges generally carry a greater liability risk than roadways, and therefore, deserve special consideration. Tenures should be maintained on bridges throughout the construction period and, wherever feasible, during their usable life. Before tenures expire, the need for renewal of the tenure and renovation or removal of the bridge should be considered.

Types of tenures under the Land Use Operational Policy for roadways include:

Works Permit

A road constructed pursuant to a works permit is open to the public and the holder cannot deny use to any person.

A works permit is the standard form of *Land Act* authorization for construction and maintenance of a public roadway or a bridge over Crown land. Other purposes served by works permits are to authorize construction of a road prior to dedication under Section 80 and to upgrade and maintain an existing abandoned access road, which provides access to a *Land Act* tenure or private land.

The usual term for a works permit is 2 years. A works permit is also available for up to 10 years where there are ongoing construction and/or maintenance requirements: for bridges; for existing roads; where completion of construction cannot be assured within a one-year term. The authorizing agency is responsible to ensure that long-term permits are justified.

Licence of Occupation

A licence of occupation may be issued where minimal improvements are proposed, where short-term tenure is required, where there are multiple users of a site (e.g. communication sites) or in remote areas where survey costs are prohibitive. It may also be used to allow development to proceed while awaiting completion of survey requirements for a lease or right of way.

A licence of occupation conveys fewer rights than a lease. It conveys non-exclusive use for the purpose described, is not a registerable interest that can be mortgaged, and does not require a survey.

A licence of occupation does not allow the tenure holder to curtail public access over the licence area except where it would impact the licensees' right to use the land as per the licence document. Government may authorize overlapping and layering of tenures. The standard term for a licence of occupation is 10 years.

Where an application has been received for a statutory right of way, a licence of occupation may be issued for a private roadway for temporary use (usually 2 years) as an interim right of occupancy pending completion of the required survey.

For a private roadway, (but not a rail bed) a licence of occupation may be issued for short-term use (10 years), where there are clear economic reasons why survey costs for a statutory right of way are unaffordable.

Statutory Right of Way

A statutory right of way is normally used to authorize linear uses of Crown land for transportation, communication, energy production and utility developments. The tenure holder is granted a legal right of passage over the land for a specific purpose. A legal survey will be required at the applicant's expense to define the tenured area.

A statutory right of way is the preferred tenure for roads/rail beds where public use must be excluded.

A right of way for a private road may be issued for as long as required, provided the term does not exceed 30 years.

Appendix 2

Commercial Recreation Tenure Status using ILRR

This tutorial was developed with the understanding that licensees are in possession of their areas in Shapefile format. ILRR does not re-project on the fly, therefore, shapefiles must be in BC Albers projection, NAD83 datum.

There are many validation criteria associated with a custom status in the ILRR depending on the hectare size of the area of interest (AOI). This tutorial was based on an AOI of less than 1 million hectares....preferably closer to 500,000 ha. Larger areas tend to have more vertices in the shape file, of which there is also a limit in the ILRR. If a large area has been uploaded and a red 'X' appears in the top left corner of the map viewer, your area may be too big or it may have to many vertices. Please select a smaller area for upload.

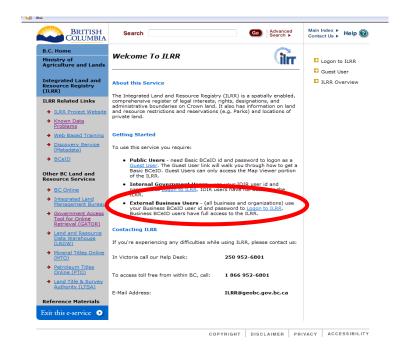
One other note, although a shape file may have multiple (single part) polygons associated with it, when selecting the AOI polygon for the query (Step 13), only ONE polygon can be selected at one time.

For help with the ILRR, training and reference material can be found on-line at: http://archive.ilmb.gov.bc.ca/ilrr/tr ref mat.html or contact GeoBC Service Desk at GEOBC.ServiceDesk@gov.bc.ca.

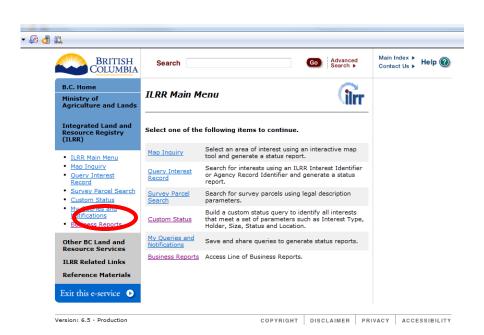
Tutorial

Step 1:

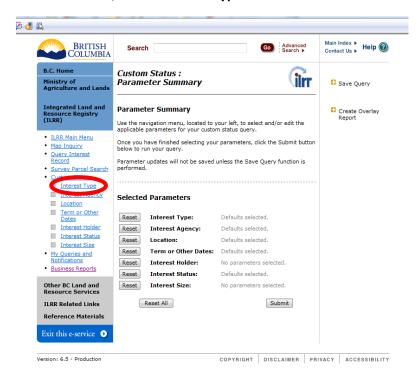
Logon to the ILRR (https://apps.gov.bc.ca/apps/ilrr/html/ILRRWelcome.html) using your 'Business BCeID'.



<u>Step 2:</u> Select 'Custom Status'.

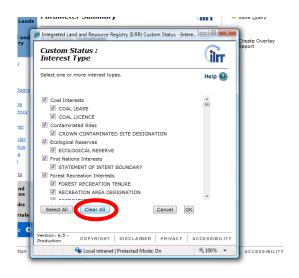


<u>Step 3:</u>
In the left hand Table of Contents, **select 'Interest Type'**.



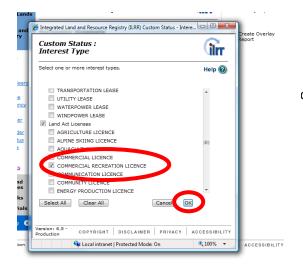
Step 4:

Select the 'Clear All' button (select 'OK' when the window pops up asking if you want to clear all selected items).



Go through the list and individually check the following:

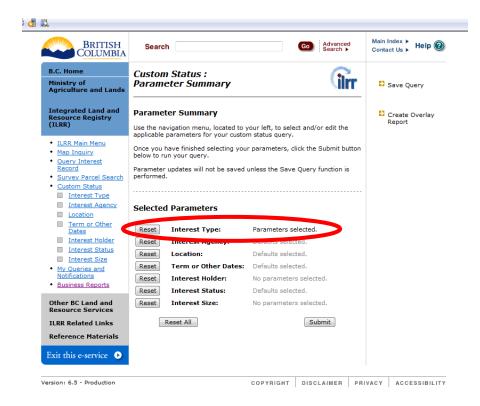
- Commercial Recreation Crown Grant (under Land Act Crown Grants grouping)
- Commercial Recreation Lease (under Land Act Leases grouping)
- Commercial Recreation Licence (under Land Act Licenses grouping)
- Commercial Recreation Permit (under Land Act Permits grouping)



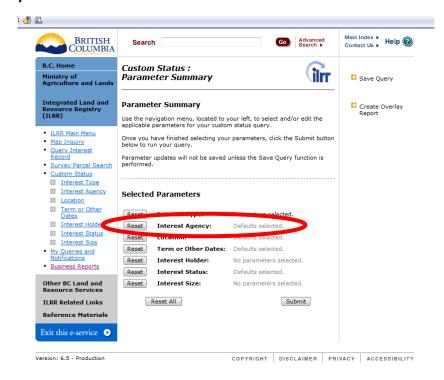
Example of the Commercial Rec Licence checked off.

Select 'OK' when all required interest types have been selected.

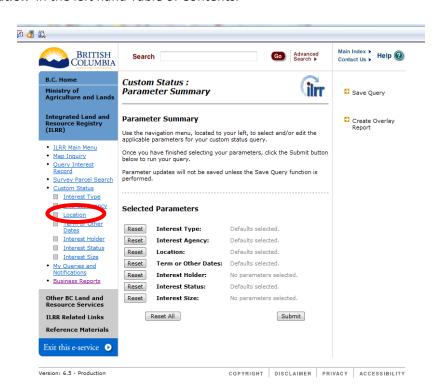
When this is complete, the 'Interest Type' under 'Selected Parameters' should now read 'Parameters Selected'.



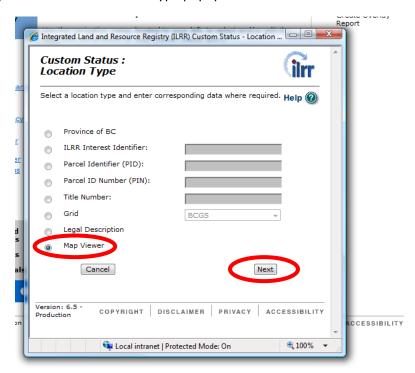
<u>Step 5:</u>
Leave the 'Interest Agency' with the Defaults selected.



<u>Step 6:</u> Select 'Location' in the left hand Table of Contents.

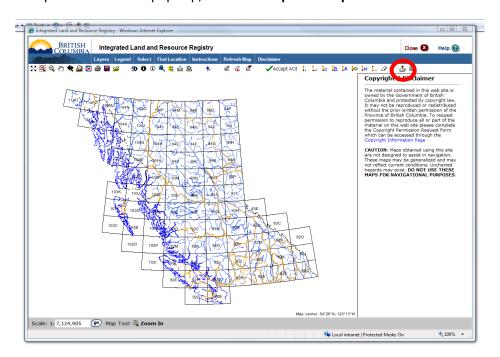


<u>Step 7:</u>
Select 'Map Viewer' in the Location Type popup window and then select 'Next'.



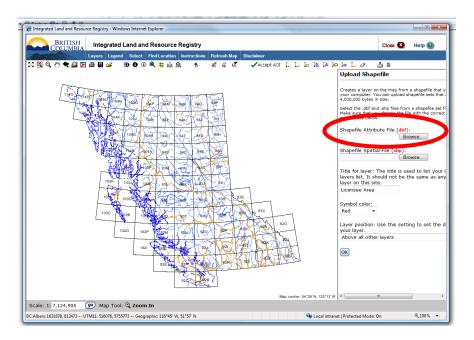
<u>Step 8:</u>

When the Map Viewer window pops up, select the 'Upload Shapefile' button.

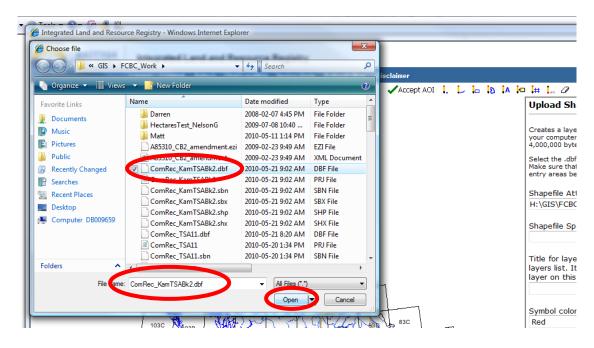


Step 9:

Select the 'Browse' button under 'Shapefile Attribute File' on the right side of the screen under 'Upload Shapefile', and navigate to the directory where your shapefile resides.

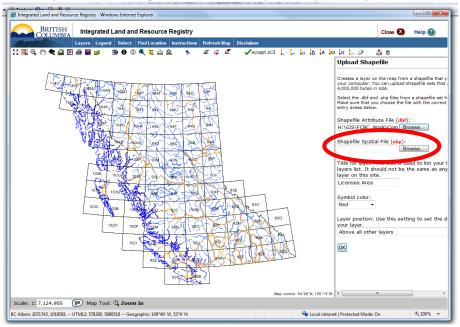


Select the '.DBF' file and hit 'Open'.

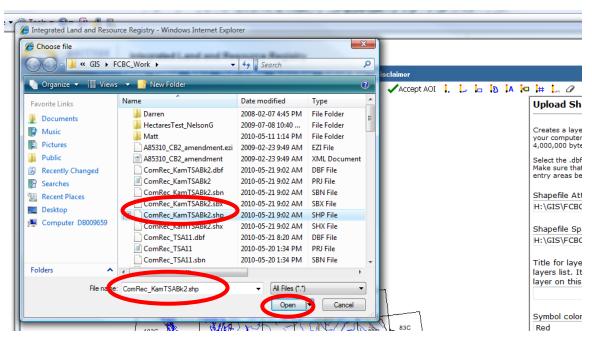


Step 10:

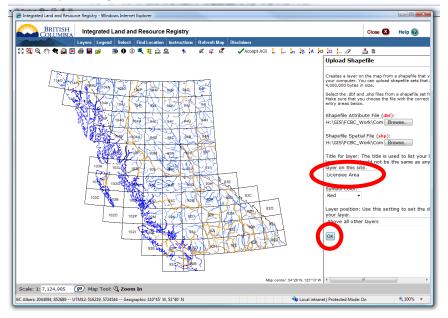
Next, **select the 'Browse' button** under 'Shapefile Spatial File' on the right side of the screen under 'Upload Shapefile', and navigate to the directory where your shapefile resides.



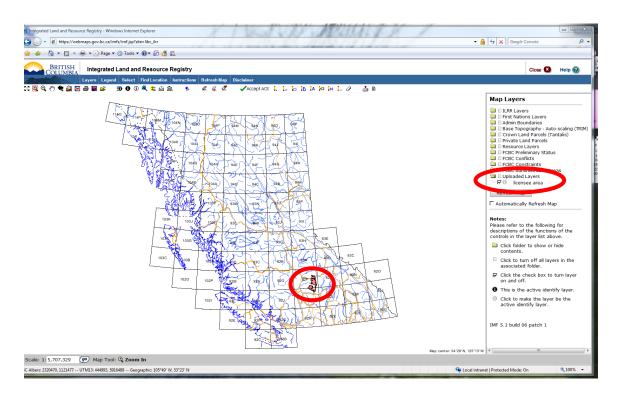
Select the '.SHP' file and hit 'Open'.



<u>Step 11:</u>
Give a title for the layer being added and select 'OK'.

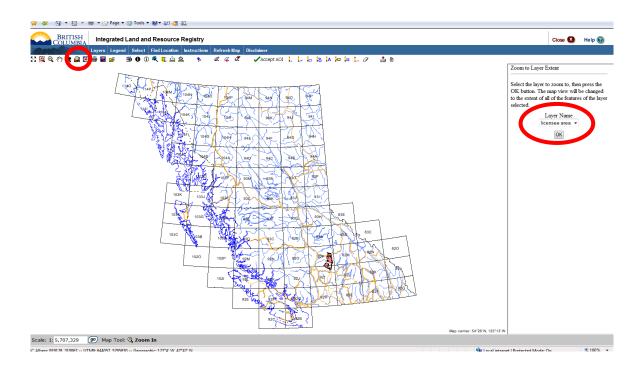


The uploaded Shapefile will appear on your map and in your legend.

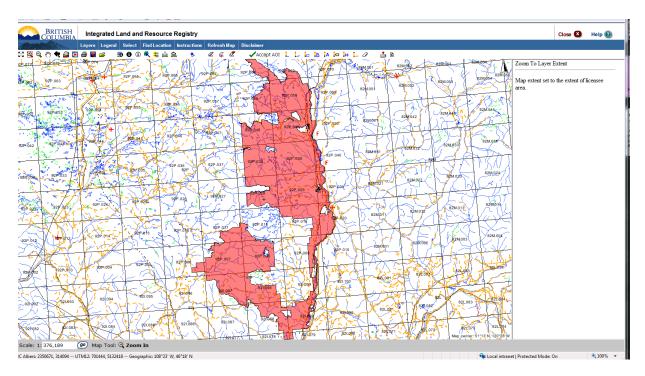


Step 12:

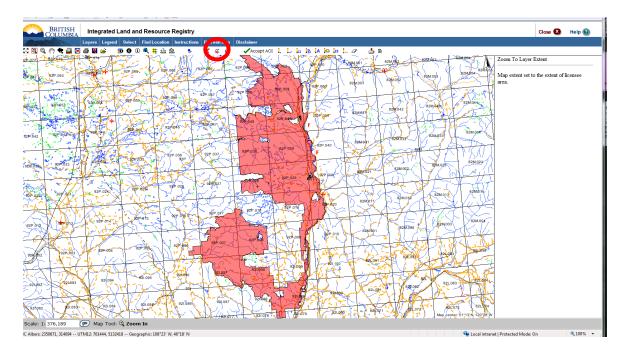
Select the 'Zoom to the Uploaded Shapefile' button and in the drop down box on the right, select the layer name added in the previous steps.



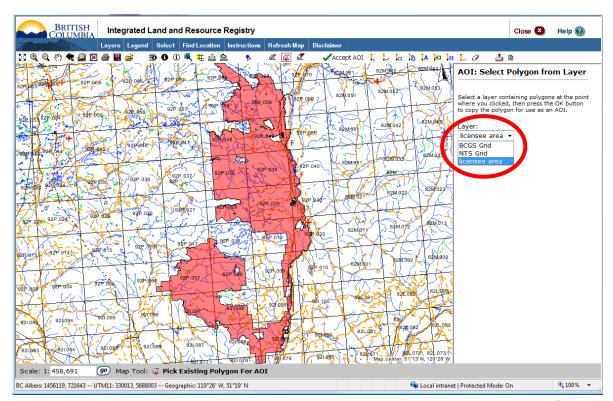
The map viewer window will zoom to the extent of the shapefile added.



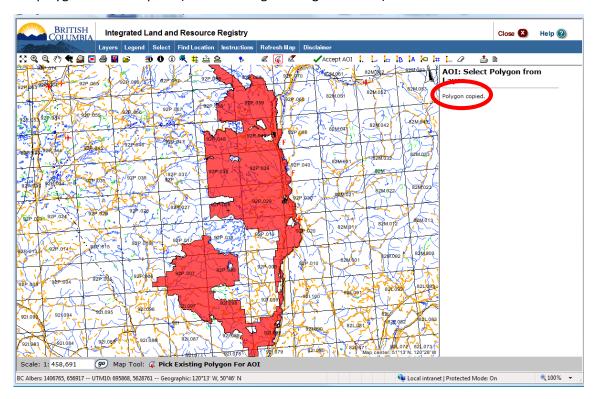
<u>Step 13:</u>
Select the 'Pick Existing Polygon for AOI' button. A 'cross hairs' cursor will come up. Click ONCE on the polygon / layer that was just uploaded.



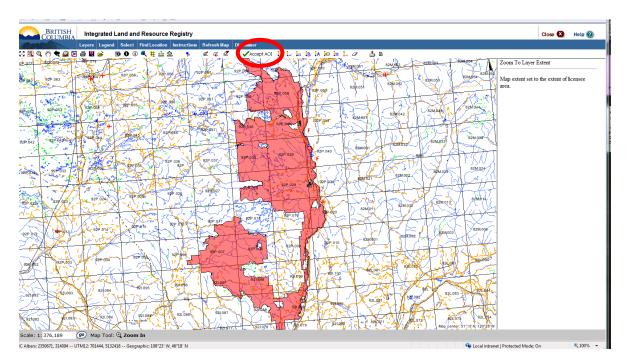
Select the drop down box on the right side of the screen and select the polygon added in the steps above. **Select 'OK'.**



The polygon is now 'copied' (notice the slight change in colour).

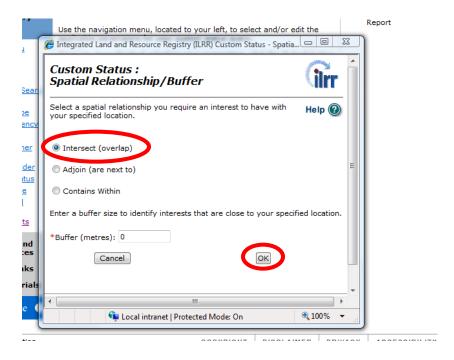


<u>Step 14:</u> Select the 'Accept AOI' button.

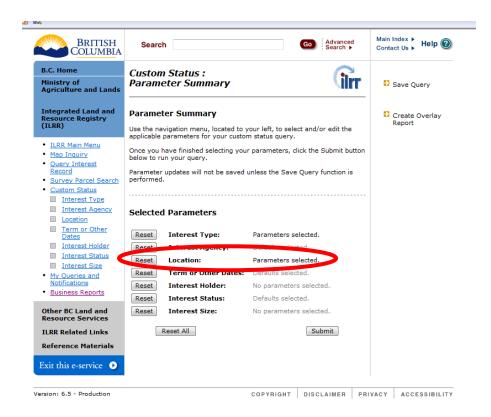


Step 15:

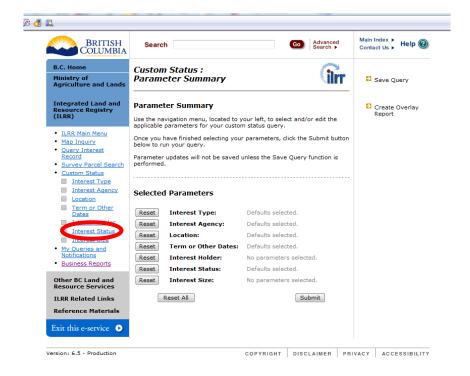
Keep the default 'Intersect' radial button selected, enter a buffer size if required, and select 'OK'.



When this is complete, the 'Location' under 'Selected Parameters' should now read 'Parameters Selected'.

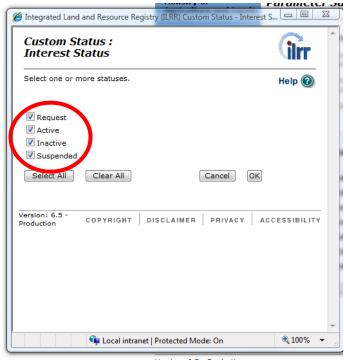


<u>Step 16:</u>
Select 'Interest Status' in the left hand Table of Contents.



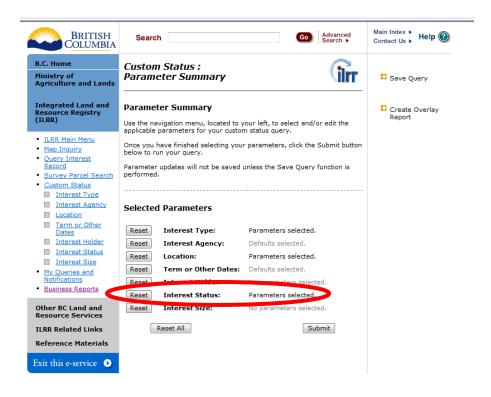
Step 17:

Select the statuses required for your query. The default for this parameter has ALL statuses selected so if all are required, this step can be ignored.

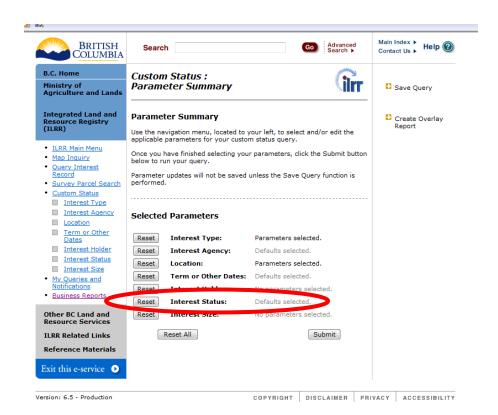


Version: 6.5 - Production

When this is complete, the 'Interest Status' under 'Selected Parameters' will either read 'Parameters Selected' or 'Defaults Selected' – depending on the statuses selected or if all left turned on.

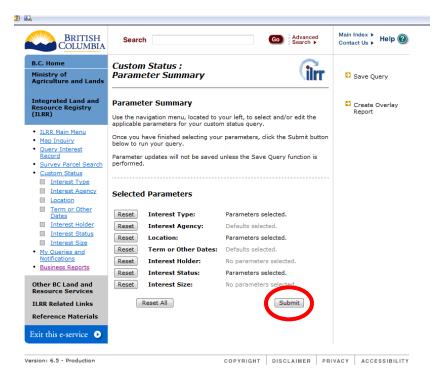


OR



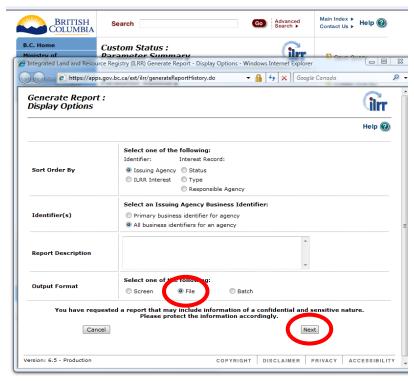
Step 18:

Select 'Submit'.



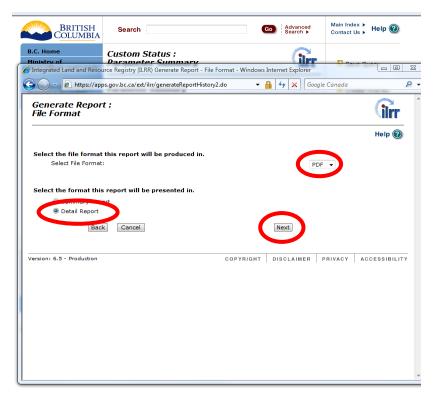
Step 19:

In the Report Display Options window, **select 'File'** beside the Output Format option. Leave the first 2 parameters as defaulted. **Select 'Next'**.



Step 20:

In the Report File Format window, **select 'Detail Report'** and chose your File Format as per the drop down box – '**PDF**, **RTF**, **CSV'**. **Select 'Next'**.



Step 21:

Open and save the file as instructed by the popup window. When the 'Detailed Report' option is selected, Interest Holder information is provided in the report if available in the ILRR.

