

An Administrative Guide

For Agreement Holders and Government Staff

Version 2 January 21, 2021

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Document Change Control

| Version | Date | Key Change |
|---------|------------------|--------------------------------------------------|
| 1 | June 18, 2019 | Version 1 |
| 2 | January 21, 2021 | Version 2 added Section 3.1 Surrender in General |
| | | |

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1 Background

Where possible, a holder of an agreement or licence under the *Forest Act* may attempt to transfer the agreement or licence to another party when they no longer wish to hold the agreement. This is generally done through a sale, agreed to by both parties. In some circumstances, transfer might not be possible for various reasons, such as a declining allowable annual cut for the licence or agreement as a result of a forest health or other issue, or a personal reason such as estate planning or a change in business structure or objectives. In a case where a transfer is not pursued, the <u>Surrender Regulation</u> under the *Forest Act* may be used.

This regulation may be used to surrender a Forest Licence (FL), Tree Farm Licence (TFL), Community Forest Agreement (CFA), Woodlot Licence (WL) or First Nations Woodland Licence (FNWL) or Timber Licence (TL) inside or outside a TFL. The holder of a licence or agreement as listed above will be referred to as an 'agreement holder' for the purposes of this document.

2 Roles and Responsibilities

2.1 Agreement Holder

The agreement holder will apply for the surrender of their agreement to Branch, Area or District staff depending on the type of agreement. Applications should include the information indicated in Section 3 of this guide. Further information may be requested from the agreement holder, and to assure a timely surrender any additional requested information should be made available as soon as possible.

2.2 Ministry of Forests, Lands and Natural Resource Operations and Rural Development (FLNRORD)

Branch, Area or District staff in the Ministry of FLNRORD will review the application to determine the agreement status and the rationale for surrender and to ensure all issues or concerns have been properly identified and addressed. Staff will request additional information if required, complete the First Nations Consultation, notify the appropriate agency staff and prepare a decision package. They will then forward the completed decision package to the Minister of FLNRORD (the Minister) or other decision maker based on the *Forest Act* and Regulations <u>Delegation Matrix</u> (a relevant excerpt can be found in Section 2.3).

2.3 Decision Maker and Delegations

Currently any decision to accept the surrender of an agreement must be signed by the Minister. The decision, however, may be delegated by the Minister to another decision maker. In general (except in the case of a WL) the decision to accept the surrender is delegated to the issuing

authority for that agreement, with the associated FLNRORD staff preparing the decision package, as follows:

| Agreement | Application Intake | Current Delegated Issuing Authority | Proposed Delegated Surrendering Authority |
|------------------|--------------------|-------------------------------------------------------------------------------------------------|----------------------------------------------|
| TFL | Branch Staff | Tenures, Operations, Pricing and First Nations Division (TOPFN) Assistant Deputy Ministry (ADM) | TOPFN ADM |
| FL | Area Staff | Regional Executive Director (RED) | RED |
| FNWL | Area Staff | RED | RED |
| CFA | Area Staff | RED | RED |
| WL | District Staff | District Manager (DM) | RED |
| TL (outside TFL) | N/A | RED | RED |
| TL (inside TFL) | N/A | Tenures, Operations, Pricing and First Nations Division (TOPFN) Assistant Deputy Ministry (ADM) | TOPFN ADM |

3 Conditions of Surrender

3.1 Surrender in General

The *Forest Act* and Regulation allow surrender to occur. The *Forest Act* references surrender 11 times:

- Section 16 Surrender a Tree Farm Licence or portion of for a Forest Licence.
- Section 24.6 Surrender a Timber Sales Licence for a Forest Licence (non replaceable).
- Section 24.7 Surrender a Timber Sales Licence for a Woodlot Licence.
- Section 24.8 Surrender a Timber Sales Licence for a Forestry Licence to Cut.
- Section 45.54 and 45.55 Surrender of an agreement described in Section 12 for a First Nations Woodland Licence
- Section 57 Surrender a Timber Licence for another Timber Licence.
- Section 58.3 Surrender a Timber Sales Licence.
- Section 79 Continuing liability for the most recent holder of a surrendered licence.
- Section 151(2)(m3) and 151.51 enables the Minister to make regulation regarding the conditions that are to be met before a surrender is accepted by the Minister.

All sections identified above except for Section 151 are an exchange of an agreement as described in Section 12 for another. In the event of an exchange the Surrender Regulation provides the conditions that must be met before the exchange (surrender) of one agreement for another can be approved.

The Forest Act and regulation do not prevent a holder of an agreement from applying for a surrender of their rights under the agreement. The Surrender Regulation Section 2(1) allows the holder of an agreement to apply for a surrender of their rights for nothing. The Regulation outlines the condition of the holder of an agreement must meet before the surrender of rights for nothing is approved by the Minister. In this case the Forest Act provides general direction through the regulation making power in Section 151(2)(m3).

3.2 Surrender Application in General

To surrender an agreement, the holder must submit an application to the Minister that includes the following:

- A signed request in writing for the surrender of the agreement;
- A list of all outstanding obligations under the Forest and Range Practices Act (FRPA)
 Section 29;
- For a TFL, CFA, FNWL, WL or TL a forest cover inventory and an inventory of forest, recreation and cultural heritage resources;
- A list of outstanding obligations including a maintenance or deactivation schedule for all roads used or constructed by the agreement holder;
- Other reports, inventories, or information as requested on behalf of the Minister or decision maker, such as a forest cover inventory, an inventory of forest, recreation and cultural heritage resources, or riparian, terrain and site plans.

This information must meet the specifications of, and be provided in the form and manner that the Minister requires.

In addition, the following information is required to be included with applications:

- Waste assessments as required under the applicable agreement;
- A money order for the amount of all money owing that has been agreed to between government and the agreement holder in respect of the agreement to be paid and/or arrangement made for payment;
- A security deposit that meets one or more of the agreement holder's continuing obligations.

The Minister must accept the surrender application if:

- all of the above requirements are met; and
- the agreement is not under suspension under Section 76 of the Forest Act; and
- he/she is satisfied that any continuing obligations of the agreement will be fulfilled or addressed.

4 Details Regarding Conditions of Surrender

4.1 Outstanding Free Growing Obligations (FRPA section 29)

Under Section 2(a) of the Surrender Regulation, a surrender application must include:

- a report listing all cutblocks associated with the agreement being surrendered where free growing obligations have not yet been met;
- detailed information for each block including harvest history, obligation details (type, status, date and plan to meet obligation(s));
- confirmation that all legislatively required reporting information and data is up to date in the Reporting Silviculture Updates and Land Status Tracking System (RESULTS).

4.2 Forest Cover Inventory And Inventory Of Forest, Recreation, And Cultural Heritage Resources

Under Section 2(b) of the Surrender Regulation, all surrender applications for area-based agreements must include forest cover inventories and inventories of forest, recreation, and cultural heritage resources. These will be required for the surrender of a TFL, CFA, FNWL, WL or TL. They may, however, also be requested for the surrender of other agreements.

Additional information and inventories may also be requested by staff on behalf of the decision maker, as stated in Section 2(d). The additional information and inventories may include site plans, history records, road and bridge specifications, stream and lake classification, terrain stability mapping, wildlife inventories, visual assessment, archaeological overviews or archaeological impact assessments. This information may be requested to confirm that any outstanding obligations will be addressed as well as ensure any available information for the area, such as forest cover and other inventories, is not lost.

4.3 Outstanding Road Obligations (Forest Planning and Practices Regulation (FPPR) Section 79(2))

As stated under Section 2(c) of the Surrender Regulation, all outstanding road permit obligations associated with an agreement must be accounted for at the time that the agreement is surrendered. Maintenance obligations for a road must continue until one of the following conditions is met:

- the road is deactivated and deactivation obligations are met; or
- the district manager wishes to maintain the access for accessing available timber, recreation sites and trail or another purpose and gives notice that the road should not be deactivated; or
- a Road Permit (RP) or Special Use Permit (SUP) for the road is issued to another person;
 or
- the road is declared a forest service road under the Forest Act.

A surrender application must include a report that lists all roads constructed under Cutting Permit (CP) or RP by the agreement holder and associated with the agreement that is being surrendered. This report must include detailed information regarding outstanding obligations for each road, indicating:

- whether the road is being maintained for future use by the agreement holder;
- what the future plan for retirement of the road might be;
- if the road has been deactivated and declared as such; or
- if one of the other options listed above (that relieve the agreement holder from maintenance obligations) applies.

In the case where a road is going to continue to be used by the agreement holder (such as if the road is used to access private land or an area under another agreement, or to meet the agreement holder's ongoing obligations), maintenance obligations must continue until one of the above conditions are met. If a road is no longer needed by the agreement holder or is deemed unnecessary by the district manager for other purposes, it should be deactivated and a declaration that deactivation obligations have been met must be made under Section 107 of FRPA.

Under Section 5 of the Surrender Regulation, an additional security amount may be obtained to ensure meeting of ongoing obligations.

4.4 Waste Assessments

In accordance with Section 3 of the Surrender Regulation, waste assessments may be required prior to accepting an application for surrendering any form of forest agreement.

All required waste assessments must be completed before the application to surrender an agreement is accepted.

4.5 Financial Obligations

Under Section 5 of the Surrender Regulation, the application to surrender may also be required to include additional security to meet outstanding obligations. Although the agreement is surrendered, the agreement holder remains responsible for areas where there are outstanding obligations until the obligations are met, or the obligations are transferred to another party as defined under Section 79 of the *Forest Act*. These obligations cannot be transferred to the government, but may be transferred to a third party in accordance with Section 29.1 of FRPA.

FRPA Administrative Bulletin Number 6 contains further information on the transfer of obligation to establish a free growing stand.

Any billings for stumpage, penalties, waste assessments, or securities to ensure the meeting of continuing obligations must be made by government and paid by the agreement or licence holder before the application to surrender an agreement is accepted. If these amounts are not paid, they will be captured as a continuing liability under Section 79 of the *Forest Act*.

Annual Rent is calculated in accordance with the Annual Rent Regulation for the Allowable Annual Cut (AAC) of the licence. Annual Rent is billed each year for all agreements and is non-refundable. Annual rent and other fees payable must be up to date to ensure the licence

holder is in good standing. Any outstanding invoices for annual rent must be billed by government and paid by the agreement holder before the application to surrender an agreement is accepted. In the case of the early surrender of Non-Replaceable Forest Licences (NRFLs), the licence holder is required to pay Annual Rent for the total volume of the licence.

Following the approval of a surrender of an agreement by the Minister, any security deposits must be returned to the former holder of an agreement, with the exception of any deposits that are held to ensure outstanding silviculture obligations are met.

4.6 Fire Hazard Abatement under the Wildfire Act

It is important that FLNRORD staff ensure that the agreement holder who requests the surrender of that agreement has met all obligations to assess and abate fire hazards associated with harvested areas. These obligations must be completed before the application to surrender an agreement is accepted; however, the obligations are considered a continuing liability to the holder even after the agreement is surrendered under section 79 of the *Forest Act*.

4.7 Cut Control

It is possible for the agreement holder to be in a situation of non-compliance with the maximum cut control limit according to Section 75.41 of the *Forest Act*, depending on the date that the agreement surrender becomes effective.

In accordance with *Forest Act* Section 75.4(7), the final cut control period ends on the date that the agreement surrender becomes effective. This might leave the agreement holder with insufficient volume apportionment to cover the volume of timber harvested if the agreement holder harvested the full five years of volume early in the cut control period, and the surrender of the agreement took effect before the end of the five year cut control period.

There may also be situations where an agreement holder has exceeded the maximum cut control limit for a five year cut control period that had just ended before the request to surrender the agreement was made.

In these situations, the cut control penalty is to be assessed before the application to surrender an agreement is accepted, to ensure the agreement holder accepts liability for the penalty before the agreement is surrendered.

4.8 Outstanding Silviculture Reporting Obligations

FLNRORD staff must ensure annual reporting obligations are complete and accurate through RESULTS, including all historic information, before the application to surrender an agreement is accepted.

The former agreement holder will be required to continue to make RESULTS submissions electronically into the future.

4.9 Private and Crown Land

Upon the approval of the surrender by the statutory decision maker, all private land associated with the agreement or licence automatically returns to the holder of the private land. There is no requirement for the licence holder to seek the consent of the Minister to remove the private land from the licence area, either as a separate decision or prior to the surrender request. All Crown land is reverted to the underlying Timber Supply Area (TSA).

As part of the surrender, the Crown may include conditions regarding access, or purchase access through private land to ensure Crown lands are not isolated from current and future opportunities.

4.10 First Nations Consultation

First Nations must be consulted on a request for an agreement surrender and any associated forest management decisions that will result, such as road deactivation. Consultation commitments with individual First Nations should be considered as well as specific interests they may have in the area after the agreement is surrendered. Further information about consultation can be found in the Updated Procedures for Meeting Legal Obligations When Consulting First Nations (May 7, 2010).

5 Agreement Holders Intent to Acquire Another Licence or Agreement

Sometimes, an agreement holder's intent for a surrender is to acquire a different type of licence or agreement on the same area.

Issuance of a different licence or agreement for the same area as the surrendered licence or agreement is a separate and independent decision. There is no guarantee that a particular licence or agreement holder who surrenders a licence or agreement will be issued a licence or agreement for that area or for any other area.

It is possible that some outstanding financial or other obligations or credit from a surrendered agreement may be assigned to the agreement holder through conditions in a new agreement, if one is separately issued.

Related Resources:

Application to Surrender a Forest Act Agreement (see section 6)

Forest Act Agreement Surrender Checklist (see section 7)

FRPA Administrative Bulletin Number 6 (December 2006)

Annual Rent Billing Procedures (January 2015)

6 Application to Surrender a *Forest Act* Agreement

The application form below is to be completed by the holder of an agreement under the *Forest Act*. Once complete, it can be submitted to the relevant FLNRORD staff .

| A | General Information | To be completed by Agreement Holder (include details) |
|---|-----------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | Forest Agreement Number | |
| 2 | Forest Agreement Type | ☐ Tree Farm Licence (TFL) ☐ Community Forest Agreement (CFA) ☐ First Nations Woodland Licence (FNWL) ☐ Woodlot Licence (WL) ☐ Replaceable Forest Licence (RFL) ☐ Non-replaceable Forest Licence (NRFL) ☐ Timber Licence outside a TFL (TL) ☐ Timber Licence inside a TFL (TL) |
| 3 | Natural Resource District | ☐ Licence to Cut (LTC) |
| 4 | Name(s) of Agreement Holder (include all names on Agreement document) | |
| 5 | Mailing Address of Agreement Holder | Street Address City Province Postal Code |
| 6 | Contact Name | |
| 7 | Contact Phone Number | |
| 8 | Contact Email Address | |
| 9 | Date Checklist Completed | |

| | | | To be completed by FLNRORD staff | |
|---|------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|----------------------------------|--------------------------|
| В | Contents of Application Package | To be completed by Agreement Holder (include details, checkmarks, "yes", "no", "n/a", and/or page/attachment #) | Date Receive d | Review er Initials |
| 1 | A request in writing for the surrender of agreement. | ☐ yes ☐ no Page/Attachment Number: | | |
| 2 | A report setting out the extent to which the applicant has outstanding obligations under section 29 (free growing stands) of the Forest and Range Practices Act. | □ yes □ no Page/Attachment Number: | | |
| 3 | For TFL's, CFA's, FNWL's and WL's: a forest cover Inventory (in the form of a spatial .pgdb file or equivalent). | ☐ yes ☐ no Page/Attachment Number: | | |
| 4 | For TFL's, CFA's, FNWL's and WL's: an inventory of forest, recreation and cultural heritage resources (or for other agreements upon request). | □ yes □ no Page/Attachment Number: | | |
| 5 | A report of outstanding obligations regarding maintaining or deactivating roads used or constructed by the agreement holder. | ☐ yes ☐ no Page/Attachment Number: | | |

| | | | To be completed by FLNRORD staff | |
|----|-----------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|--------------------------|
| В | Contents of Application Package | To be completed by Agreement Holder (include details, checkmarks, "yes", "no", "n/a", and/or page/attachment #) | Date Receive d | Review er Initials |
| 6 | Included are other reports, inventories or information as requested by the Minister. | □ archaeological reports □ visual impact assessments □ terrain classification inventory □ riparian classification inventory □ wildlife inventories or assessments □ site plans or silviculture prescriptions □ road access inventories □ research plot installations □ other (describe): □ Page/Attachment Numbers: | | |
| 7 | Verify all hazard abatement has been completed as required. | □ yes □ no | | |
| 8 | Verify all waste assessments and reporting have been completed as required. | □ yes □ no | | |
| 9 | Verify all payments owed to Government are up to date, including Annual Rent and Stumpage. | □ yes □ no | | |
| 10 | If required, provide payment schedule approved by the decision maker for overdue payments. | Page/Attachment Number: | | |
| 11 | Verify that the security amount for meeting one or more outstanding obligations has been paid. | □ yes □ no | | |

| | Outstanding Obligations | To be completed by Agreement Holder (include details, "yes", "no", "n/a", and/or page/attachment #) | To be completed by FLNRORD staff | |
|-------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|----------------------------------|--------------------------|
| С | | | Date Receive d | Review er Initials |
| Silvi | culture Obligations for Sche | dule B land and (if applicable) Schedule A land. | | |
| 1 | Verify current silviculture obligations are up to date (i.e., all milestones met). Attach RESULTS Regeneration and Free Growing reports. | ☐ yes ☐ no Page/Attachment Number: | | |
| 2 | Verify annual reporting is complete, including all required RESULTS submissions. | □ yes □ no | | |
| 3 | Provide summary of current silviculture obligations. A RESULTS Opening Summary Report is attached, including all comments, maps and Activities Treatment Unit details. | Summary of obligations: | | |
| Acce | ess Structure/Road Obligation | ons | | |
| 4 | A report is attached setting out the extent to which the applicant has outstanding obligations to maintain or deactivate roads constructed or used for activities carried out in respect of the agreement. | ☐ yes ☐ no Page/Attachment Number: | | |

Agreement Holder(s) Declaration

I (we) certify that to the best of my (our) knowledge, the above information is correct. I (we) agree to the surrender of the agreement (if a First Nation, a Band Council Resolution must be attached).

| Name: | Signature: | Date: |
|-------|------------|-------|
| Name: | Signature: | Date: |
| Name: | Signature: | Date: |

7 Forest Act Agreement Surrender Checklist

The checklist below is to be completed by Ministry of FLNRORD staff.

| D | Staff Review | To be completed by FLNRORD staff | | To be completed by FLNRORD staff | |
|---|------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|----------------------------------|--|
| | | (include details, "yes", "no", "n/a", and/or page/attachment #) | Date Receive d | Review er Initials | |
| 1 | Forest Agreement Number | | | | |
| 2 | Forest Agreement Type | ☐ Tree Farm Licence (TFL) ☐ Community Forest Agreement (CFA) ☐ First Nations Woodland Licence (FNWL) ☐ Woodlot Licence (WL) ☐ Replaceable Forest Licence (RFL) ☐ Non-replaceable Forest Licence (NRFL) ☐ Timber Licence (TL) ☐ Licence to Cut (LTC) | | | |
| 3 | Natural Resource District | Literate to ear (Lite) | | | |
| 1 | Active Cutting Permits | Are there any active cutting permits? | | | |

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¹ Choose the relevant status code from Forest Tenures Administration (FTA); see <u>Provincial Guidebook for Resource Clerks</u> for more information.

| D | Staff Review | To be completed by FLNRORD staff iew (include details, "yes", "no", "n/a", and/or page/attachment #) | To be completed by FLNRORD staff | |
|---|--------------|------------------------------------------------------------------------------------------------------|----------------------------------|--------------------------|
| | | | Date Receive d | Review er Initials |
| | | Current cut control period: from to | | |
| | | Volume harvested to date in this cut control period: cubic metres. | | |
| 2 | Cut Control | Percentage of the total volume (or AAC) that has been harvested:%. | | |
| | | Harvest Billing System report attached? ☐ yes ☐ no Page/Attachment Number: | | |
| | | Are roads on private land currently being used by others? | | |
| | | ☐ yes ☐ no If yes, provide details: | | |
| 3 | Roads | Road ID: Road | | |
| | | User: | | |
| | | Road ID: Road User: | | |
| | | Has access through private land where required for industrial use been secured? ☐ yes ☐ no ☐ n.a. | | |
| | | If yes, list road, type of agreement to secure the road, and | | |
| | | holder of agreement: | | |
| | | Road ID: | | |
| | | Type of Agreement: | | |
| | | Holder of Agreement: | | |
| 4 | Access | Road ID: | | |
| | | Type of Agreement: | | |
| | | Holder of Agreement: | | |
| | | If no, confirm the following: | | |
| | | Access is not required access is not required | | |
| | | Agreement is not attached to a road permit | | _ |

| | | To be completed by FLNRORD staff | To be con | - |
|-----|----------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|--------------------------|
| 5 6 | Staff Review | (include details, "yes", "no", "n/a", and/or page/attachment #) | Date Receive d | Review er Initials |
| 5 | Is there a suspension of the agreement under section 76 of the Forest Act? | ☐ yes ☐ no (If yes notify licensee of the suspension and and that surrender of the licence cannot proceed until this issue has been resolved.) | | |
| 6 | Outstanding Obligations and Security Deposits | ROADS: Have all outstanding obligations been addressed for roads? yes | | |

| | | To be completed by FLNRORD staff | | by FLNRORD staff | |
|-------|----------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|--------------------------|--|
| D | Staff Review | (include details, "yes", "no", "n/a", and/or page/attachment #) | Date Receive d | Review er Initials | |
| | | Have all applicable First Nations been consulted on the surrender of the agreement? □ yes □ no | | | |
| 7 | First Nations Consultation | (If no, notify licensee of the outstanding obligation and that surrender of the licence cannot proceed until this issue has been resolved.) Date licensee was notified: | | | |
| | | Attachment number: | | | |
| | ures Officer / Reso | ource Manager oplication and have found the information to be correct. | | | |
| | | SUPPORT (circle one) the licensee's request to surrender to | the agreem | ent. | |
| Nam | e: | Signature: Date: | | | |
| Reco | ommendations: | | | | |
| Distr | ict Resource Mar | ager | | | |
| Nam | e: | Signature:Date: | | | |
| Surre | ender RECOMME | NDED / NOT RECOMMENDED (circle one) | | | |
| | de this completed Surrender Regulat | I form with Briefing Note to Statutory Decision Maker for ion. | decision u | nder | |