



MINISTRY OF FORESTS
AND RANGE
POLICY MANUAL

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Scope

This policy provides guidance to Ministry of Forests and Range (MFR) staff regarding requests from First Nations for free use of Crown timber for a traditional and cultural activity.

Policy

It is the policy of this Ministry to address a First Nation request for free use of Crown timber for a traditional and cultural activity through the issuance of a free use permit if the request meets the criteria of forestry legislation and this policy. The form of application and the evaluation criteria will vary depending on the size and purpose of the request.

Definition of Key Terms

For the purposes of this policy

- *a traditional and cultural activity* is, as defined in the Free Use Permit Regulation of the *Forest Act*, an activity that
 - a) has historically been carried out in British Columbia by members of a group to which the person carrying out the activity belongs,
 - b) is carried out for a traditional or cultural purpose of the group,
 - c) is not carried out for profit or for a commercial purpose, including trading and bartering, and
 - d) is not carried out for the purpose of constructing a residential dwelling except for a residential dwelling constructed by an aboriginal community with an aboriginal right to timber that includes constructing residential dwellings.
- *a building* is any structure that is built or proposed to be built with wood from a free use permit for a traditional and cultural activity. E.g. a longhouse, community hall, or other similar structure; a residential dwelling

General Criteria

When evaluating any application for a free use permit under section 48(1)(g) of the *Forest Act*, the following criteria should be applied along with the relevant provisions of sections 48 and 49 of the *Forest Act* and the Free Use Permit Regulation:

- The applicant must be a First Nation person or an Indian Band.
- The applicant requires the wood for a traditional and cultural activity of the First Nation and that activity does not involve the wood being sold, traded or bartered.
- The harvest area should be within the area traditionally harvested by the First Nation, on Crown land, and not in conflict with rights held by others.
- If the harvest area will be greater than one hectare, the harvest location, method and extent must be satisfactory to the First Nation and the district manager or authorized forest officer, considering forest management objectives for the area.
- The volume, quality, and species requested must be appropriate for the traditional and cultural activity.

Timber for Buildings

A request for timber for construction of a building will have additional criteria depending on the type of building and volume required. See the following headings: *Requests for 50 m³ or less* and *Requests for more than 50 m³*.

If construction of a building qualifies for a free use permit for a traditional and cultural activity, the applicant should be informed that the free use permit does not provide any occupation rights for the building. The building will need to be located on an Indian Reserve or on other land where the First Nation community has or has obtained a present legal right of occupation that allows for construction and use of such a building (Note: claims of aboriginal title that have not been accepted and declared as existing by a court of competent jurisdiction do not qualify as a present legal right of occupation for the purposes of forestry legislation and this policy).

Requests for 50 m³ or less

While a written application is not mandatory for smaller volumes, it is recommended. The district manager or authorized forest officer needs to obtain sufficient information to determine eligibility with the general criteria above plus the following:

- The request must have the support of the First Nation community.
- If the application is for the purpose of constructing a residential dwelling, there must be an assertion by the First Nation and the likelihood of the First Nation being able to demonstrate an aboriginal right to domestic use of wood that includes constructing residential dwellings.

Requests for more than 50 m³

The free use permit legislation only allows a free use permit to exceed 50 m³ if the applicant provides an application with information required by the district manager and if the applicant demonstrates that the wood is to be used for the construction of a longhouse, community hall or other similar structure, or a residential dwelling constructed by an aboriginal community that asserts and has a likelihood of being able to demonstrate an aboriginal right to domestic use of wood that includes constructing residential dwellings.

Applications for more than 50 m³ will need to meet the general criteria listed above and should include the following:

- A plan demonstrating the location, type and size of building to be constructed with wood from the permit, and
- A written statement of support from the governing body of the First Nation and, if the application is for the purpose of constructing a residential dwelling, an assertion of an aboriginal right to domestic use of wood for that purpose.

Firewood

If a First Nation person requests firewood for their personal domestic use, the request might best be addressed through the issuance of a personal firewood free use permit under subsection 48(1)(b) of the *Forest Act*. If the request cannot be met by an available public firewood opportunity, the request should be evaluated for a free use permit for a traditional and cultural activity under section 48(1)(g) of the *Forest Act*.

Treaty First Nations

Persons from a First Nation with a treaty may be eligible for a free use permit for a traditional and cultural activity unless the activity is for the purpose of constructing a residential dwelling which is based upon an assertion of an aboriginal right to use of wood for domestic purposes, and no such right is reflected in the treaty as a treaty right. If the Treaty

has specific provisions regarding use of wood or timber from Crown land, the wording of the final agreement and any associated side agreement will apply.

Permit Administration

While there are valid conservation and regulatory reasons to control the free use of timber for traditional and cultural activities, the size and impact of most free use permits will not warrant the type of controls that are typical for industrial timber harvesting operations. Provisions in a free use permit issued under section 48(1)(g) of the *Forest Act* should normally be limited to identifying the timber to be harvested, specifying any essential field practices, and establishing marking and documentation requirements that are appropriate for a small tenure.

MFR staff should ensure that free use permits for traditional and cultural activities are recorded in corporate information systems.

References

- *Forest Act* sections 48 and 49
- Free Use Permit Regulation
- Administration Guide for Free Use Permits for Traditional and Cultural Activities