



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

FOREST TENURES BRANCH

Special Use Permit Administration Guide Issuance

Disclaimer

This document contains material to assist with the administration of agreements entered into under the *Forest Practices Code of British Columbia Act* and the *Forest Act*. This document contains both a summary of the legal requirements and advice/suggestions from the non-legal realm. The latter are not legal requirements that you must follow, nor are they government policy.

Warranty

While every effort has been made to ensure the accuracy of the information herein, no warranties of any kind are made as to the precision or longevity of the contents. Readers are advised to refer to the wording of the legislation and regulations themselves and obtain legal advice from their own sources.

This information is provided as a public service by the Ministry of Forests, Lands, Natural Resource Operations and Rural Development. This document and all of the information it contains are provided "as is" without warranty of any kind, whether express or implied. All implied warranties, including, without limitation, implied warranties of merchantability, fitness for a particular purpose, and non-infringement, are hereby expressly disclaimed.

Limitation of Liabilities

Under no circumstances will the Government of British Columbia be liable to any person or business entity for any direct, indirect, special, incidental, consequential, or other damages based on any use of this information or any other document or material to which this document is linked, including, without limitation, any lost profits, business interruption, or loss of programs or information, even if the Government of British Columbia has been specifically advised of the possibility of such damages.

Copyright © 2021, Province of British Columbia

All rights reserved

This material is owned by the Province of British Columbia and protected by copyright law. It may not be reproduced or redistributed without prior written permission from the Province of British Columbia.

Permission or Questions regarding copyright

Guidance on intellectual property disposal from the Province of British Columbia's Intellectual Property Program:
<http://www2.gov.bc.ca/gov/content/governments/services-for-government/policies-procedures/intellectual-property/intellectual-property-program>

Document Change Control

Version	Date	Key Change
3.05	January 4, 2021	Full revision of administration guide.

Updates and Feedback

This manual will be updated as needed to reflect policy changes, new legislation and user demand for additional content. The latest version will always be available from the publicly available Forest Tenures Branch website.

Questions and suggestions regarding the manual should be directed to:

ForestTenuresBranch@gov.bc.ca

This document has been prepared for FLNRORD staff and their stakeholders, including staff in other government agencies.

References and Support Sites

Special Use Permits [website](#) – public

Legislation [BC Laws website](#) - public

Forest Tenures [Branch](#) – internal only

Forest Tenures Branch [SharePoint Site](#) – internal only

Resource and Business Administration [Manual](#) – internal only

Engineering Branch – [Engineering Manual](#) for roads – public

Contaminated Sites [website](#) – public

This page is left intentionally blank

Table of Contents

1	INTRODUCTION	1
2	LEGISLATION THAT ENABLES SUPS	2
2.1	CLARITY OF WHICH CROWN LAND APPLIES FOR SUPS AND ANCILLARY PURPOSES	3
2.2	COMPETING AUTHORIZATIONS FOR PURPOSE	3
2.3	LEGISLATION FOR MINERAL OR MINE EXPLORATION ACCESS	4
2.4	LEGISLATION FOR ENVIRONMENTAL STANDARDS	5
2.4.1	<i>Forest Practices Code of BC Act (FPC)</i>	5
2.4.2	<i>Forest and Range Practices Act (FPRA)</i>	5
2.4.3	<i>Environmental practices contained in the plan</i>	6
2.4.4	<i>Environmental practices contained in the district manager conditions</i>	6
2.5	LEGISLATION FOR CONTAMINATED SITES.....	7
3	ISSUANCE PROCEDURES	7
3.1	APPLICATION, ACCEPTANCE AND EVALUATION	7
3.2	SUP ISSUANCE.....	8
3.3	SUP PLAN CONSIDERATIONS	8
3.4	TERM.....	9
4	DEPOSITS.....	10
4.1	SIZE OF DEPOSITS.....	10
4.2	SIZE OF DEPOSITS ON SCHEDULE 2 ACTIVITIES IN THE CONTAMINATED SITES REGULATION	11
4.3	FORMS OF DEPOSITS	11
4.3.1	<i>Irrevocable letter of credit</i>	11
4.3.2	<i>Cash, bank drafts, certified cheques and money orders</i>	11
4.4	LINKING DEPOSITS OF MAJOR LICENCES	11
4.4.1	<i>Amending the major licence</i>	12
4.4.2	<i>Documenting the amount of deposit available</i>	12
4.4.3	<i>Requiring more than one deposit</i>	13
5	SIGNATURES ON SUP DOCUMENT	13
APPENDICES.....		1
5.1	PROCESS FLOW CHART FOR SUP APPLICATION AND ISSUANCE	1
B.	PROVINCIAL PROCEDURE TO CALCULATE ANNUAL RENT.....	2
C.	PROCEDURE TO DETERMINE SECURITY DEPOSITS	3

1 INTRODUCTION

This **Special Use Permit Administration Guide Part 1** ('this Guide') is part 1 of the Special Use Permit Administration Guide and provides information and recommended administrative procedures for issuing Special Use Permits. It also includes the recommended administrative procedures for implementing of Special Use Permit Administration Policy 8.27 ('the Policy'), which was made effective **August 16, 2010**. is available for Ministry staff on the Share Point site.

A "Special Use Permit" is an authorization under the *Forest Practices Code of BC Act* that allows the holder the non-exclusive rights to use and occupy Crown land within the Provincial Forest to facilitate a resource use.

This Guide is intended to be used by Ministry of Forests, Lands, Natural Resource Operations and Rural Development (FLNRORD) staff involved in the issuance and performance monitoring of special use permits (SUPs). It can also be used by anyone who wants to know more about the administration of SUPs.

Additional information about the administration of SUPs can be found in the following:

- Resource and Business Administration [Manual](#) which describes the systems and financial management requirements. This manual assist resource clerks with administrative procedures for different types of forest use agreements, including SUPs; or
- Part 2 of the Special Use Permit Administration [Guide](#) - Permit Administration and Clean Up.(internal government use only)

This Guide and the associated companion guides do not contain all possible information necessary to administer SUPs. In particular, the following topics are not addressed in these Guides:

- First Nations consultation procedures - it is recommended to contact appropriate ministry staff to determine the consultation process associated with any decisions relating to SUPs. This includes issuance, extensions and replacement of SUPs.
- Taxation of SUPs – Resource and Business Administration Manual outlines information to the BC Assessment Authority for taxation purposes and land assessment values (i.e., a copy of SUP issuance letter and Exhibit A).
- Other authorizations that may be needed overtop of the SUP. (e.g. OLTC, WSA approval, ENV permits such as for wood waste or waste disposal)

The following topics will be in associated guides or forms: tenure administration, site clean up, letter and plan templates. Updated versions of this Guide may periodically be released to include additional information or address changes in legislation.

Forestry terms are not defined in this Guide. For convenience, a glossary of common forestry terms and a list of forestry acronyms and initialisms are available at:

<http://www.for.gov.bc.ca/hfd/library/documents/glossary>.

2 LEGISLATION THAT ENABLES SUPS

The Provincial Forest Use Regulation ([PFUR](#)) of the *Forest Practices Code of British Columbia Act* (FPC) enables the District Manager to issue a SUP if the planned use is for a specified purpose ancillary to those uses found in section 2 of the FPC. The regulation establishes when and how a person can apply for a SUP.

The PFUR is for land within the Provincial Forest designated through Section 5 of the *Forest Act*. There are currently 139 designated Provincial Forests and 34 TFLs (which are their own Provincial Forest). Any applications not in the designated Provincial Forest must be referred to FrontCounter BC for another authorization such as a Licence of Occupation/Lease under the *Lands Act*.

SUPs may be granted (PFUR Sec. 7) for the following uses **only**:

- (a) construction and maintenance of a road, including construction and maintenance of bridges and other drainage structures;
- (b) sand pits, gravel pits, rock quarries and other quarries that provide materials for road construction, modification or maintenance authorized under the [Forest Act](#);
- (c) a communications site;
- (d) a logging camp and associated facilities, including a waste disposal site;
- (e) a log dump or dry land sort;
- (e.1) disposal of organic debris from a remote log dump or dry land sort;
- (f) a temporary timber processing site;
- (g) a lookout;
- (h) a weather station;
- (i) an airstrip, helipad or other air transportation landing site;
- (j) educational or research purposes;
- (k) weigh scales;
- (l) Repealed. [B.C. Reg. 262/2018, Sch. 1, s. 2 (b).]
- (m) silviculture treatments and associated facilities, including camps and waste disposal sites;
- (n) wildlife habitat enhancement and associated facilities, including camps and waste disposal sites.

Please Note: Guidance on the disposal of organic debris also known as wood waste is being developed with the coordination of Ministry of Environment & Climate Change Strategy and Forest Tenures Branch. Current contact is Kevin Kilpatrick at Forest Tenures Branch.

If SUPs have been issued that don't comply with Section 7, please see section 2.1.1 of the SUP Administration Guide Part 2 for recommendations.

2.1 CLARITY OF WHICH CROWN LAND APPLIES FOR SUPS AND ANCILLARY PURPOSES

SUPs can only be issued on Crown land (including water) within the Provincial Forest and for ancillary purposes in support for the compatible uses defined in section 2 of the *Forest Practices Code of BC Act*.

Provincial Forest

2 (1) ...Crown land must be managed and used in a way that is consistent with one or more of the following:

(a) timber production, utilization and related purposes;

(b) forage production and grazing by livestock and wildlife and related purposes;

(c) recreation, scenery and wilderness purposes;

(d) water, fisheries, wildlife, biological diversity and cultural heritage resource purposes;

(e) another prescribed purpose. (PFUR Section 3 to 7)

There are a few instances in which some licence/tenure holders may not need to apply for a SUP as they already have authorization to use and occupy the crown land. Examples of these are:

- a temporary helipad within an active cutting permit landing;
- funded silviculture treatments(FFT, FESBC) on Licensee obligations;
- aggregate extraction under the Road Permit exhibit "A" area; (refer to the [Engineering manual](#))
- an activity within a Land Tenure; or
- activities within a Mining Tenure/Title/Claim authorized by MEMPR (most mining tenure holders will need to apply for access to their mining tenure, title or claim.)

In general, government does not issue self authorizations, thus SUPS do not apply to government. If government is seeking to authorize an activity a Section 52 of the *Forest Act* allows authority to harvest timber and use and/or occupy Crown land to government employees to fulfill government duties. More guidance on the use of a *Forest Act* Section 52 authorization can be found on the internal [Sharepoint site](#).

2.2 COMPETING AUTHORIZATIONS FOR PURPOSE

SUPs should be granted for specified ancillary purposes (PFUR section 7). Ancillary is interpreted as providing necessary support to the primary activities or operations of an organization, institution, industry or system (www.Lexico.com, Oxford dictionary). There are likely exceptions to this in terms of the research category. However, commercial purposes (those uses that generate independent income) are not considered as ancillary purposes. SUPs do not apply for access to private land which should be completed by a Land Tenure as specified in section 3(b) of the PFUR, even if the purpose is for timber harvesting.

In some cases, authorizations other than a SUP may be considered more appropriate or suitable. For example: Land's Branch has a policy for log handling. In order to determine which tenure to go with, the process flow chart for issuance of a SUP (Appendix A) will help make the decision easier.

The PFUR provides the District Manager with the discretion to issue a SUP but if the PFUR section 7 applies to the purpose (type of use, ancillary to [FPC Section 2](#) or mining access) and it meets the tests for approval found in section 9 of the PFUR. (e.g. proper management of forest resources), the District Manager must issue the SUP. Prior to SUP issuance, government also has a constitutional obligation to consult with First Nations as guided by the [Updated Procedures for Meeting Legal Obligations When Consulting First Nations](#).

There are some examples where a SUP application would be considered not meeting the approval tests. These include:

- a commercial dry land sort run by an independent forestry client;
- aggregate selling;
- an independent company setting up a work/logging camp for various users on a fee basis;
- a communication tower for uses other than worker safety.

These activities are better suited to be authorized under the *Land Act*.

2.3 LEGISLATION FOR MINERAL OR MINE EXPLORATION ACCESS

Under the *Mineral Tenures Act* (MTA) and the *Coal Act* (CA) there is specific wording that a recorded holder or claim owner has certainty to access their tenure through the issuance of a SUP. This creates a situation where access to the mineral claim or tenure requires the District Manager to accept an application for a SUP. There are conditions to which the DM can refuse that application which include 1) the Chief Inspector of Mines does not provide approval for a SUP as there is an alternative access (MTA s.11.1(2)(b); CA s. 10(1)(b)) or 2) the applications do not pass the approval tests found in the PFUR section 9.

Certainty of access to mineral titles

11.1 (1) In this section, "mining exploration" does not include the collection of a bulk sample of more than 1 000 tonnes of ore.

(2) A recorded holder of a mineral title or an owner of a Crown granted 2 post claim must be issued a special use permit under the [Forest Practices Code of British Columbia Act](#), subject to any terms and conditions set by the issuing authority, for the construction of appropriate access to the area of that mineral title or Crown granted 2 post claim for mining exploration, if the recorded holder or owner

(a) is the holder of a permit under the [Mines Act](#) for the mining exploration,

(b) applies for and receives the written approval of the Chief Inspector of Mines to the issuance under the [Forest Practices Code of British Columbia Act](#) of the special use permit, and

(c) applies under the Forest Practices Code of British Columbia Act for the special use permit.

(3) For the purpose of this section, the Chief Inspector of Mines, after considering practicable alternative means of access, may grant or refuse the written approval referred to in subsection (2)

2.4 LEGISLATION FOR ENVIRONMENTAL STANDARDS

2.4.1 Forest Practices Code of BC Act (FPC)

SUPs are enabled under the FPC. If the SUP was issued while the FPC was in full effect and no replacements have occurred, there may be some provisions (mostly regarding roads) that may still apply to SUPs. With the repeal of the FPC practice requirements, all provisions for environmental management for SUPs were repealed as well.

2.4.2 *Forest and Range Practices Act (FRPA)*

Under FRPA - practice requirements apply to only two non-road uses for which SUP's are issued. These are silviculture treatments, PFUR Section 7 (m), and wildlife habitat enhancement, PFUR Section 7 (n). This was accomplished by amendments to Section 1.2 of the Forest Planning and Practices Regulation (FPPR) and to the definition of "primary forest activity". Please note that holders of permits for **SUP roads** are also "authorized persons in respect of a road" under the definitions in the FPPR and therefore the provisions below and the practices for roads (Section 79 - 81) apply. The applications that FRPA would apply will likely need to be submitted by a qualified professional or as directed by the District Manager.

Holders of special use permits for those **two** uses are designated "authorized persons" under the FPPR so the following practice requirements will apply:

Section 37 - landslides,

Section 38 - gully processes,

Section 39 - natural surface drainage,

Section 40 – revegetation

Section 50(1)(2) – restriction in a riparian management area

Section 52(2) – restrictions in a riparian management zone

Section 53 - temperature sensitive streams,

Section 54 - fan destabilization,

Section 55 - stream crossings

Section 56 - fish passage,

Section 57 - protection of fish and fish habitat

Section 59 - protecting water quality,

Section 60 - licensed waterworks,

Section 63 - use of fertilizer

Section 69 - general wildlife measures

Section 70 - resource features and wildlife habitat features

Some provisions only apply when road construction occurs or when a primary forest activity is taking place. It is important to read the provision carefully for applicability to the SUP holder.

2.4.3 Environmental practices contained in the plan

For most SUPs, FPPR practice requirements do not apply and therefore the permit holder will need to specify any necessary environmental practices within the SUP plan. The plan is required under PFUR Section 9(1) (a) (ii). The SUP is a discretionary decision made by the District Manager and the application must meet all the tests in Section 9 of the PFUR. For example, the PFUR states: *"...any conditions the district manager determines necessary to conserve forest resources and the natural environment, including ... clean up and restoration ... to the satisfaction of the district manager."* Therefore, the PFUR allows a District Manager to require the holder of a SUP to provide a plan that indicates how operations conserve forest resources.

Environmental practices may include maintaining of natural drainage, soil conservation, invasive weeds measures, management of stakeholder's interests or riparian protection. A sample SUP plan has been developed and can be found on the [Special Use Permit Website](#).

To ensure accountability to the plan, the plan must be stated as a condition from the District Manager within the SUP permit documents. For example: Section 2.01 of the SUP Version 2.07 post policy template states;

"The Permittee must carry out all activities in accordance with this permit, the Acts, regulations and standards referred to in Paragraph 6.01, the plan attached as Schedule A, the Environmental Management Act and its regulation and any other applicable legislative requirements"

2.4.4 Environmental practices contained in the district manager conditions

The PFUR does not directly impose obligations on the holders of SUPs but will allow the District Manager to either add conditions or disallow the SUP. It is up to the District Manager to include conditions within the SUP that adequately address the specific site and use. It is recommended that you consult with provincial or area expertise if you have any conditions that need review prior to issuance.

2.5 LEGISLATION FOR CONTAMINATED SITES

The *Environmental Management Act* (EMA), the Contaminated Sites Regulation and the Hazardous Waste Regulation (HWR) establish the legal framework for identification, assessment, and cleanup of contamination.

For more information on contaminated sites, refer to the [Contaminated Sites Website](#) and Part 2 of the SUP Administration Guide –Permit Administration and Clean Up.

3 ISSUANCE PROCEDURES

Appendix A contains a general flow chart on the procedures in which an application may be accepted and issued under the PFUR.

3.1 APPLICATION, ACCEPTANCE AND EVALUATION

Applications will likely come to the district email inbox. The public will be informed about the application process either through the website or FrontCounter BC. In some cases, forestry agreement holders may submit an application for a SUP similar to the cutting permit process already established within the district.

The basic application acceptance process is as follows (some steps may occur simultaneously);

- Client fills out an [application form](#) and sends it in to the appropriate district.
- District Administration staff forward the application to District Authorizations staff.
- Concurrently, if an Electronic Submission Forum (ESF) submission was submitted, Geomatics staff will complete the clearance and status of the application. If an ESF was not submitted, Geomatics and the District staff will either request ESF submission from the client or create ESF submission for the client depending on the capability of the client.
- The status and clearance is completed. If not in the Provincial Forest, the application is rejected.
- First Nation consultation is either initiated as per District procedures or reviewed depending on the information sharing process completed by the applicant.
- First Nation consultation is completed, and the District Manager or Statutory Decision Maker is satisfied that consultation has been completed to the established [procedures](#).
- District Authorization staff evaluates the following;
 - a. Is the use compatible with Section 7 of the PFUR?
 - b. Is the SUP plan acceptable including clean up and restoration information; (templates found on the FTB - Provincial Tenures Administration [SharePoint Site](#))
 - c. Does the issuance impact other stakeholders? Have Stakeholder referrals been conducted and comments or concerns provided for review? (including those internal to government);
 - d. Is there an impact to the management of forest resources and conservation;

- e. What is the appropriate 1st annual rent? (**provincial rent schedule under development**) (Appendix B)
 - f. What is the appropriate deposit based on risk and clean up cost (Appendix C);
 - g. What is the appropriate expiry date? It is recommended roads have expiry dates with terms not exceeding 5 years. Include notification requirements for ongoing/future intention (to close or extend SUP);
 - h. Are any additional conditions required to adequately address the specific site and use.?
- Prepare a decision package to the DM,¹ complete with rationale and recommendation to issue or not issue the SUP
 - District Manager reviews the package and must issue or reject the SUP application.
 - Administration staff finalize documents, send to clients and update systems.

3.2 SUP ISSUANCE

There are three different SUP template documents, accessible on the HTH Provincial Tenures Administration [SharePoint Site](#).

1. **“SUP Post Policy 8.27 Version 2.07”** is for situations that are for new SUPs, SUP replacements or SUP issued after August 16, 2010.
2. **“SUP Pre-Policy 8.27 Version 2.07”** is for situations that have the SUP issued prior to August 16, 2010 with contaminated sites language missing.
3. **“SUP for roads Version 1.05”** is for SUPs issued for access to mining exploration as required under legislation.

3.3 SUP PLAN CONSIDERATIONS

Section 9 of the PFUR requires that an applicant for a SUP submit a plan that sets out how the land will be used. A SUP plan template is found on the Application form and/or the SharePoint Site.

The regulation provides for the District Manager to form an opinion of whether issuance of the SUP will impair the proper management and conservation of forest resources. It also provides for the District Manager to include conditions in the SUP to conserve the forest resources and the natural environment. The District Manager has discretion under the legislation about what to consider in forming such an opinion and determining which conditions to include.

The DM could require that the following be included with the SUP application:

- A declaration of the applicant’s planned use of the site with identification of any industrial purposes and activities listed in Schedule 2 of the *EMA’s Contaminated Sites Regulation*.

¹ District Manager is specified as the decision maker in the Provincial Forest Use Regulation. This authority cannot be delegated.

- Actions the applicant will take to ensure the site does not become contaminated, including preventing, containing and remediating spills of fuel and other liquids permanently or temporarily stored on the site.
- Measurable and verifiable strategies or results the proponent plans to follow to ensure environmental standards such as soil damage, riparian integrity or invasive weeds management.
- Measurable and verifiable strategies or results the proponent plans to follow to complete clean up and restoration of the site prior to expiry.

A sample letter to request a SUP Plan from a permit holder can be found in the prepared templates package found on the HTH - Provincial Tenures Administration SharePoint Site.

3.4 TERM

The PFUR does not specify a maximum term for a SUP. Historically, most SUPs have been issued for terms of five years or less. Another factor to contemplate regarding the term of a SUP is that suspension and cancellation provisions for SUPs are very limited. Expiry dates allow the District Manager to check in with the activities associated with the SUPs and whether the tenure is still required and in compliance with the permit.

In some cases, the use of the site under the SUP is expected to be long term. To increase the administrative efficiency for both government and industry, it may be appropriate to issue, replace or extend a SUP for longer than a five year term. Determining the appropriate term for a SUP should include an assessment of whether there are any risks associated with a longer term.

Several factors can be considered in choosing whether or not to provide a longer term, such as:

- The intended use of the site;
- The plan for the site. A plan that provides a satisfactory and appropriate level of information. Longer terms may be appropriate for those plans that provide greater detail;
- The level of investment in the site (either existing or planned). A higher level of investment may suggest a longer term is appropriate;
- The associated tenures. For SUPs located in or associated with long-term tenures, and for SUPs that appear to be critical to the forestry operations of the SUP holder, corresponding longer terms for the SUP may be appropriate;
- The level of risk to the Crown. Less risk would support a longer term for the permit. Higher risk may facilitate the use of another type of authorization other than a SUP. For example, a long-term logging camp with significant infrastructure, waste disposal, airstrips and storage may be better suited for a Lease under the *Land Act*, which enables greater security and rights to the investment of a long-term logging camp.

In some cases, it may be appropriate to match the SUP term to the term of a dependent form of land tenure (e.g., match the term of a SUP for a log sort to that of the associated foreshore lease).

In the absence of a rationale that suggests otherwise, it is recommended that SUPs needed for long-term should still be granted a 5-year term with a potential extension to 10 years.

4 DEPOSITS

The Provincial Forest Use Regulation ([PFUR](#)) of the *Forest Practices Code of British Columbia Act* (FPC) under Section 9 (2) (c), enables the District Manager to issue an SUP subject to a condition that the holder provide a deposit in the form of money or other securities acceptable to the district manager to:

- ensure conditions of the permit are met; or
- if personal property owned by a person other than the holder or the government is situated on the land under the permit.

The final decision regarding the deposit amount for a SUP rests with the District Manager.

4.1 SIZE OF DEPOSITS

As described in Appendix C of this guide, the amount of deposit required for a SUP should be based on the expected cost of cleaning up and restoring the site, as well as, the risk of the permit holder not meeting its obligations. It is recommended when SUPs are being considered for replacements or extensions, consideration is given to the size of the deposit held for the current SUP to ensure it is still appropriate.

The appropriate size of deposit for a SUP can depend on the risk associated with many factors including:

- The purpose intended for the site;
- The size of the operations, including the number of buildings, structures or equipment that may need to be demolished or disposed of;
- Site restoration if operations cease or permit expires prior to the holder satisfying their obligations. (soil rehabilitation, planting, removal of building, structures or equipment)
- The location of the site and risk to downstream features such as sensitive ecosystems, water sources including wetlands, fish bearing streams and sensitive or historic sites
- The associated costs of transportation and clean-up.
- The risk to the resource as a result of the planned activities (e.g., risk associated with [Schedule 2 activities](#) vs. weather station, which may be considered negligible);
- The clean-up and restoration obligations in the SUP, including any special requirements.
- The past performance of the Permittee and potential liabilities to the Crown for non-conformance with the permit conditions.

Please refer to **Appendix C** for procedures and suggested minimums for security deposits. This procedure is based on the Land Branch procedures.

4.2 SIZE OF DEPOSITS ON SCHEDULE 2 ACTIVITIES IN THE CONTAMINATED SITES REGULATION

The template document for SUPs makes completion of the requirements of the *Environmental Management Act* (site profiles and site investigations) a requirement of the permit². Consequently, in the case of non-compliance with a contaminated site regulation requirement to conduct a site investigation, FLNRORD staff can use the deposit to have the site investigation completed.

Deposits for these SUPs where there are [Schedule 2 activities](#) could be up to \$50,000. This allows \$40,000 to be available to commission a site investigation and clean up of any contamination and an additional \$10,000 available for general clean-up and restoration of the SUP site if these obligations/requirements are not completed by the SUP holder.

4.3 FORMS OF DEPOSITS

The form of deposit can be cash or an equivalent form of security. There are two forms in which deposits can be provided. This is provided for general information and it is recommended to refer to the Resource and Business Administration [Manual](#) for greater detail. Please note that personal cheques and safekeeping agreements are not accepted for deposits.

4.3.1 Irrevocable letter of credit

The letter of credit is the form most often used for SUPs and other forest tenures. An irrevocable letter of credit can be issued by a financial institution and accepted by the Authorizing Agency provided that they must always contain the Evergreen Clause.

4.3.2 Cash, bank drafts, certified cheques and money orders

Cash is held in trust by the Provincial Treasury. No interest is paid on cash security deposits.

4.4 LINKING DEPOSITS OF MAJOR LICENCES

If requested by a Forest Agreement holder, deposits for a SUP have been linked to the deposit of a major licence agreement held by the holder of the SUP. It should be noted that there are associated risks in continuing to follow this practice. The risks include the following:

1. The SUP is not linked to the Licensee's obligations under *Forest Act* 79 (2) or within the regulations.
2. In the event the Licensee was to claim bankruptcy, make general assignment for the benefit of its creditors or to otherwise acknowledge its insolvency, then the linked deposits would not be sufficient to cover the clean-up of all the company's tenures, that may include the licence, cutting permits, road permits, road use permits and SUPs.
3. Ministry of Finance has advised that a deposit is required for each individual licence or permit.

Please contact a provincial or area Tenures expert for more information on the risks of linking deposits if requests come in to link these deposits for new SUPs.

² Including the completion of the requirements of the EMA as part of the permit does not affect the implementation or provisions of the EMA. However, it does allow FLNRORD staff to use the SUP deposit to meet the conditions of the permit, which might include the requirement to conduct a *site investigation*.

The following information is to understand how deposits were linked in the past. All five of the following conditions are required:

1. both the SUP and major licence agreement are held by the same entity;
2. the SUP is related to all or part of the licence or to operations carried out under the licence;
3. the SUP holder has consented for (e.g., has requested) the linking of the deposits;
4. the District Manager has assessed the risk and is comfortable in linking the deposits; and
5. appropriate wording must be included in both the SUP document and in the major licence agreement. The current SUP template includes wording for this option.

There was no upper limit to the number of SUPs that were linked to a single major licence agreement deposit. It was acceptable for the total liability associated with the deposits for multiple SUPs to exceed the total amount of the major licence agreement deposit, as long as the size of the major licence agreement deposit was greater than what was required for each individual SUP deposit. That is, each individual SUP deposit does not act as a 'hold' on the deposit funds for the major licence agreement. For example, six SUPs, each with a deposit of \$10,000, could have been linked to a single major licence agreement deposit of \$50,000.

Note: It is not acceptable to link a SUP deposit to a security obtained under the Mines Act. Deposits under the Mines Act can only be collected and used for purposes under that Act and cannot be used for the purposes of SUPs.

4.4.1 Amending the major licence

Tree Farm Licence (TFL) documents/agreements already contain wording that enables the linking of a SUP deposit to the TFL deposit. As a result, no amendments to TFLs are required to allow for SUPs to be linked to TFL deposits.

If the SUP deposit was to be linked to the deposit of a Forest Licence (RFL, NRFL) or Forestry Licence to Cut (FLTC), wording must have been amended into the deposits section of the major licence agreement using an [FS 3](#) amendment form.

Suggested wording is as follows:

9.12 The Licensee agrees that the deposit held under Paragraph 9.02 may be realized in the event of a failure to meet the conditions of a special use permit that pertains to an area covered by this Licence or in the event that the Licensee damages personal property owned by a person other than the Licensee or the government that is on the area covered by the special use permit in accordance with the procedures set out in Paragraph 9.03 to 9.11 and the applicable special use permit.

Note: The section numbering in the suggested clause above corresponds to a Forest Licence (replaceable) document. You may need to change section numbering and the cross reference to other sections depending on the agreement.

4.4.2 Documenting the amount of deposit available

If a SUP was linked to the deposit for a major licence agreement, the amount of the major licence agreement deposit available to meet the conditions of the SUP should be documented in the SUP.

For example, if the major licence deposit is \$100,000 and the deposit for the SUP is stated as \$10,000, then only \$10,000 of the major licence agreement deposit would be available for obligations under the SUP. This should be documented in the SUP.

4.4.3 Requiring more than one deposit

If the SUP holder wished to link to a major licence agreement deposit but the size of the major licence deposit is smaller than what is required for the SUP, the SUP holder could provide both a link to a major licence agreement deposit and a SUP deposit for the remaining amount.

As an example: the district manager determined that a SUP required a deposit of \$8,000. The SUP holder also held a Forest Licence with a deposit of \$5,000. The SUP deposit could be linked to the deposit for the Forest Licence and the SUP holder would have been asked to provide an additional deposit for the SUP of \$3,000 in an acceptable form described in Section 3.0.

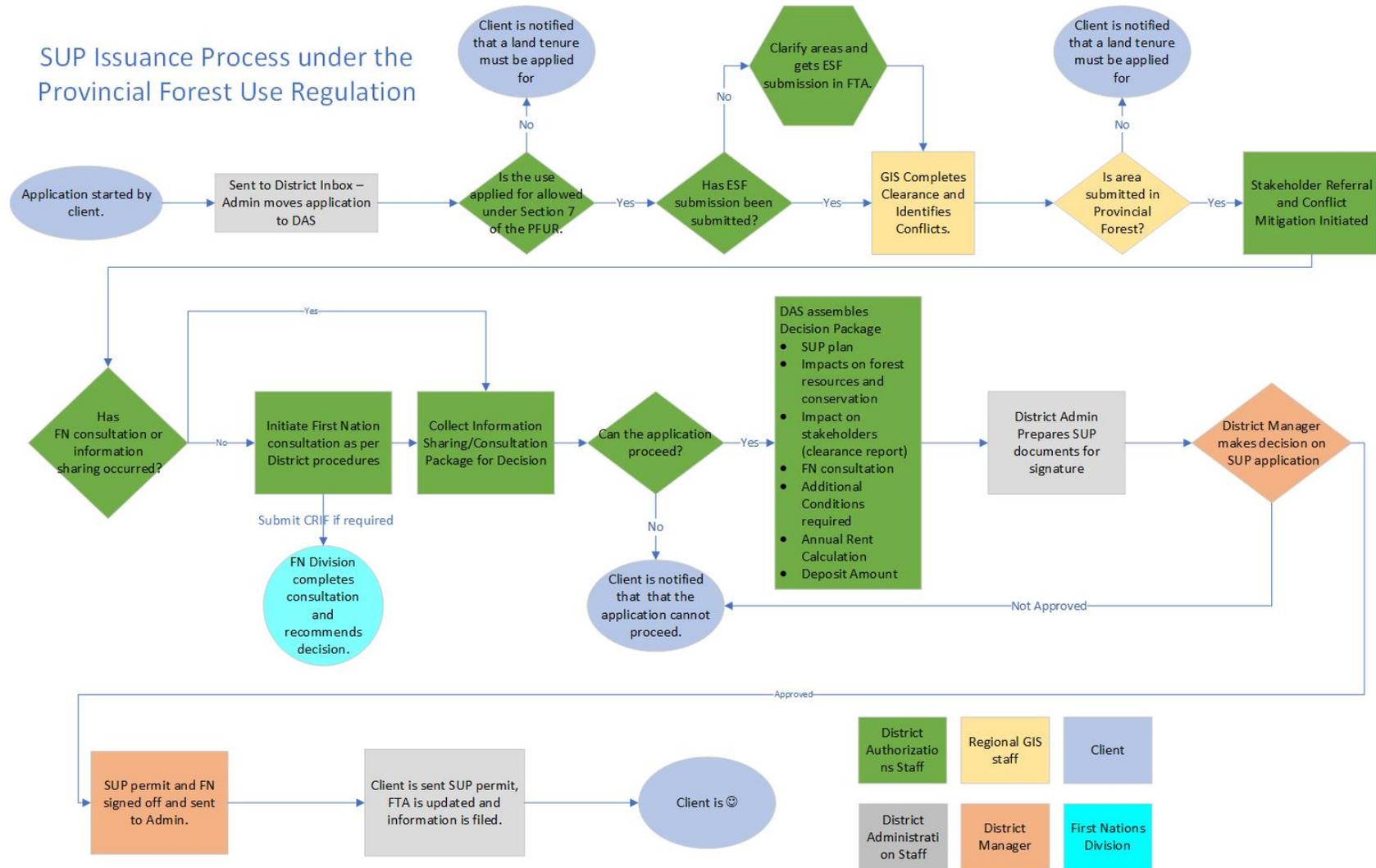
5 SIGNATURES ON SUP DOCUMENT

The SUP template documents contain a signing page for both the district manager and the permit holder to sign.

This signing page was added in 2010 to verify that the SUP holder has acknowledged the conditions of the permit.

APPENDICES

5.1 PROCESS FLOW CHART FOR SUP APPLICATION AND ISSUANCE



B. PROVINCIAL PROCEDURE TO CALCULATE ANNUAL RENT

Under Construction....

C. PROCEDURE TO DETERMINE SECURITY DEPOSITS

More information on Deposits can be found in the SUP Admin Guide Part 2. – Deposits and Clean Up.

The risk matrix is included to help with the issuance of the SUP found in Section 3.0 – Issuance. This process is taken from *Land Procedure: Tenure Administration Appendix A: Risk Assessment and Security Amount*.

The following steps provide a guide for Authorizations staff when assessing risk and determining an appropriate minimum security amount for a new or replacement SUP.

Steps:

1. Determine the clean-up cost category (Low (L), Moderate (M), and High (H))

The following information must be considered when estimating the costs of site clean-up:

- Type & size of improvements to be removed;
- Type of site impact and area impacted;
- Site restoration required;
- Presence of hazardous materials and contaminants;
- Material disposal costs for dumping any pipes, foundations, anchors, culverts, abutments, wood, steel and other potential debris in an appropriate designated facility; and
- Travel distance to and from the site for any future clean up.

Mitigating factors that may be used to adjust clean-up costs:

- Likelihood of other operators taking over the permit area and on-site improvements (e.g. only minimal clean-up required).

2. Determine likelihood of needing to use security (L, M, H)¹

Consider the following:

- Past experience with, or history of the applicant / permit holder;
- Current financial condition of the applicant / permit holder;
- Past experience with or history of similar business and uses; and
- Economic health of sector.

3. Assess Risk

Table 1. Risk Ranking

CLEAN-UP COST CLASS	Likelihood of Security Being Used		
	L	M	H
L (\$0 - \$10K)			
M (>\$10K - \$50K)			
H (>\$50K)			

Note:

1. Clean-up cost estimate must be submitted and included in the applicants SUP Plan;
2. If the clean-up cost is not provided by the applicant, then a cost will be determined by district authorizations staff; and
3. Likelihood of security being used is determined using Steps 1 & 2.

Table 2. Security Amount

Risk Ranking	Security Amount Required
L	Minimum Security Deposit as Per Table 3.
M	30-60% of the Estimated Clean-up Cost Used for Table 1.
H	50-100% of the Estimated Clean-up Cost Used for Table 1.

Table 3. Minimum Security Amounts by Ancillary Use

SUP Ancillary Purposes	Minimum
Construction and maintenance of a road (SO1 & SO2), including construction and maintenance of bridges and other drainage structures	\$1,000 minimum per km of road, \$500 minimum per culvert & per cross ditch, \$250 minimum per waterbar, \$5,000 minimum per 100m of steep terrain & all costs associated with bridge removal (remove the abutments, bridge decking, girders as well as re-sloping and seeding the creek banks)
Sand pits, gravel pits, rock quarries and other quarries that provide materials for road construction, modification or maintenance authorized under the <i>Forest Act</i>	Security is only charged IF the use is not covered by a Ministry of Energy and Mines Reclamation Bond. \$5,000 per hectare
A communication site	\$2,000 - \$5,000 minimum
A logging camp and associated facilities, including a waste disposal site (for refuse associated with the camp)	All permanent camps \$50,000. \$5,000 minimum for seasonal camps
A log dump or dry land sort	\$5,000 minimum
A temporary timber processing site	\$2,000 - \$5,000 minimum
A lookout	\$5,000 minimum
A weather station	\$1,000 minimum
An airstrip, helipad or other air	\$5,000 minimum for airstrips

transportation landing site	\$1,000 minimum for helipads
Education or research purposes	\$0
Weigh scales	\$5,000 minimum
Silviculture activities and associated camp facilities	\$0 to 5,000 minimums
Wildlife habitat enhancement activities and associated camp facilities	\$0 to 5,000 minimum
Wood waste management site associated with remote log dumps and dry land sorts	\$5,000 minimum

Note:

1. Minimum amount will depend on the size, scale & intensity of proposed activity
2. It is suggested that deposits for these SUPs where there are [Schedule 2 activities](#) would normally be in the range of up to \$50,000 with \$40,000 being available to commission a *site investigation* if required by Ministry of Environment and Climate Change (ENV) and not done by the SUP holder, and \$10,000 being available for general clean up and restoration of the SUP site if those obligations are not completed by the SUP holder.
3. Comprehensive risk assessments are often limited by not being able to access financial information of potential permittees, and by the Authorizing Agency not having the expertise available to properly assess such information. Consequently, risk will often be more heavily weighted by potential clean-up costs which are largely a factor of the extent and type of on-site improvements (proposed or existing).
4. If the SUP holder is requesting or replacing a SUP with multiple ancillary uses, then cumulative deposits (Table 3.) for each ancillary use will be required
5. A Notice of Work and *Mines Act* Permit may be required if any of the following occurs:
 6. The aggregate quarry is located >200 m from the road permit it is servicing;
 7. The quarry is owned by multiple companies; or
 8. The quarry is servicing multiple projects.

Please check with the local Mines Inspector for further details on how to proceed should any of these situations arise.

6. It is not acceptable to link a SUP deposit to a security obtained under the Mines Act.