

Himachal Pradesh  
Public works department  
No./PW/M&P/FCA-1980/2016- 3285-89

Dated: 26-2-16

From

Engineer-In-Chief,  
HP.PWD. Shimla-2.

To

All the Zonal Chief Engineers,  
HP.PWD. including National Highway

Subject: -

**Procedure for seeking approval for diversion of forest land for non-forest purpose for facilities managed by the Govt under section 3 (2) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.**

I am directed to enclose herewith a copy of PCCF(HoFF)office letter No. Ft.66-79/2014/FRA(FCA) dated 23.02.2016 along with its enclosures (i.e. Deputy Secretary (Forest) to the Government of Himachal Pradesh letter No. FFE-B-F(4)-1/2015 dated 14.01.2016 and Deputy Secretary to the Government of India letter No. F.No. 23011/11/2013-FRA dated 14.12.2015) vide which clarification and procedure for the subject cited matter have been given.

You are therefore requested to follow up the clarification and procedure contained therein for seeking approval for diversion of forest land.

Encl:- As above.

*Sub*  
Superintending Engineer (P&M)  
HP, PWD. Shimla- 171002.

From:-

Pr. Chief Conservator of Forests (HoFF),  
Himachal Pradesh, Shimla-171002

To

1. The Addl. Chief Secretary (PWD) to the Govt. Of Himachal Pradesh, Shimla-171002.
2. The Addl. Chief Secretary (I&PH) to the Govt. Of Himachal Pradesh, Shimla-171002.
3. The Addl. Chief Secretary (Education) to the Govt. Of Himachal Pradesh, Shimla-171002.
4. The Addl. Chief Secretary (Health) to the Govt. Of Himachal Pradesh, Shimla-171002.

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Dated Shimla-171001,

M.P.  
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Subject:-

23/2  
Procedure for seeking approval for diversion of forest land for non-forest purpose for facilities managed by the Govt under section 3 (2) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

Sir,

copy of this letter may be endorsed to all CES including CE(NH)  
24/2  
Kindly find enclosed herewith clarifications given by the ACS (Forests) to the GoHP along with procedure for seeking approval for diversion of forest land for non-forest purpose for facilities managed by the Govt. under section 3 (2) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and involves felling of trees not exceeding 75 per ha.

2. Section 3(2) of the Scheduled Tribes and other Traditional Dwellers (Recognition of Forest Rights) Act, 2006 provides for diversion of forest land for the under mentioned facilities which are to be managed by the Govt. and involves felling of trees not exceeding 75 per ha notwithstanding anything contained in the FCA, 1980.

12/193  
23-2-16  
to post it on departmental website  
24/2  
Sh. chandu  
25.2.16

- a) Schools;
- b) Dispensary or hospital;
- c) Anganwadis;
- d) Fair price shops;
- e) Electric and telecommunication lines;
- f) Tanks and other minor water bodies;
- g) Drinking water supply and water bodies;
- h) Water or rain water harvesting structures;
- i) Minor irrigation canals;
- j) Non-conventional source of energy;
- k) Skill up-gradation or vocational training centers;
- l) Roads; and
- m) Community centers;

Provided that such diversion of forest land shall be allowed only if,

- i. The forest land to be diverted for the purposes mentioned in this sub-section is less than one hectare in each case; and
- ii) The clearance of such development projects shall be subject to the condition that the same is recommended by the Gram Sabha

This is for information and further necessary action please.

Yours faithfully,

Sd/

Encls: as above

Principal. Chief Conservator of Forests (HoFF),  
Himachal Pradesh

Endst. Ft.66-79/2014/FRA(FCA)

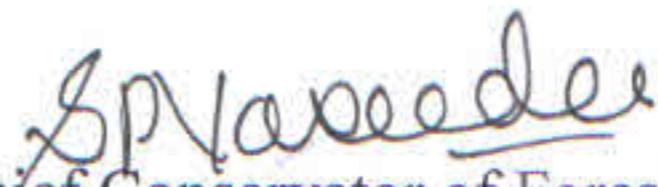
Dated Shimla-171001, the 27/09/2016

Copy along with copies of above mentioned letters for information and further necessary action is forwarded to :-

- ✓ 1 Engineer-in-Chief, HPPWD, Nirman Bhawan, Shimla-2.
- 2 Engineer-in-Chief, I&PH, US Club, Shimla-1
- 3 Director, Elementary Education, H.P. Lalpani, Shimla-1.
- 4 Director, Family & Health Services, H.P. Kasumpati, Shimla-171009.

As per Section 3(2) of the Scheduled Tribes and other Traditional Dwellers (Recognition of Forest Rights) Act, 2006, DFOs are empowered for the diversion of forest land up to one ha and felling of trees not exceeding 75 per ha. This clarification may be circulated in the field for getting the benefit for the diversion of forest land subject to the condition that this does not involve felling of trees exceeding seventy five per hectare for the facilities mentioned as above. The above mentioned instructions have already been conveyed to the DFOs for taking further necessary action.

Encls: as above

  
Pr. Chief Conservator of Forests (HoFF),  
Himachal Pradesh.

No. FFE-B-F(4)-1/2015  
Government of Himachal Pradesh  
Department of Forests

From: The Additional Chief Secretary (Forests) to the  
Government of Himachal Pradesh.

To: The Pr. Chief Conservator of Forests (HoFF)  
Himachal Pradesh, Shimla.

Dated:- Shimla-2, The 14-01-2016.

Subject:- Clarification under Scheduled Tribes and Other Traditional Forest  
Dwellers (Recognition of Forest Rights) Act, 2006.

Sir,

I am directed to enclose herewith copy of letter F.No.23011/11/2013-FRA dated 14-12-2015 of Dy. Secy. to the GoI, Ministry of Tribal Affairs received through Addl. Commissioner (TD) Himachal Pradesh vide which clarification sought by Tribal Development Department on the subject cited above have been conveyed.

You are, therefore, requested to issue necessary directions to all the Divisional Forest Officers (DFOs) to dispose of the cases received under Section 3(2) of Forest Rights Act in the light of Clarification and procedure given by MoTA dated 18-05-2009 to facilitate expeditious implementation of the Act in Himachal Pradesh.

Yours faithfully,

Sd/-

(Sat Pal Dhiman)  
Deputy Secretary (Forests) to the  
Government of Himachal Pradesh.  
2621874, 2880662

Copy for information and further necessary action is forwarded to:-

1. Pr. CCF WL HP. Shimla
2. All CCFs (T&WL) in HP.
3. All CFs (T) & CF GHNP Shamshi in HP

The clarifications of Schedule Tribe & other Traditional Forest Dwellers (Recognition of Forest Right) may be complied with in letter and spirit. Necessary directions may be issued to all DFOs to dispose cases received under section 3(2) of Forest rights Act in the light of clarification and procedure given by MoTA vide letter dated 18-05-2009 (copy enclosed) to facilitate expeditious implementation of the Act in Himachal Pradesh.

Sd/-

Encl: As above.

Principal Chief Conservator of Forests (HOFF)  
Himachal Pradesh. Shimla-1

**F. No. 23011/11/2013-FRA**  
**Government of India**  
**Ministry of Tribal Affairs**

R.No. F-281- August Krant Bhawan,  
 Bhikaji Cama Place, New Delhi.  
 Dated: 14<sup>th</sup> December, 2015.

To

The Additional Commissioner (T.D.),  
 Tribal Development Department,  
 Himachal Pradesh,  
 Chhota Shimla-171002.

**Subject: Clarification under Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Right) Act, 2006-Regarding.**

Sir,

I am directed to refer to your letter No. TBD.F(TDM)1-1/2007-XXVI dated 17<sup>th</sup> November, 2015 on the above subject and to render clarifications on the points raised therein ad-seriatim as under:

<b>SI. No.</b>	<b>Clarification sought</b>	<b>Clarification provided</b>
1.	Whether diversion of forest land can be sought u/s 3(2) of the Act exclusively, without getting clearance under FCA, 1980?	Yes. No permission is required under the Forest (Conservation) Act, 1980, since the FRA frees the forest rights of all encumbrances and procedural requirements of the 1980 Act in terms of Section 4(7) of FRA. However, such developmental facilities must fulfill the conditions under Section 3(2) of the FRA, namely (i) the facilities are managed are by a Government; (ii) diversion of less than one hectare of forest land is involved; (iii) cutting of not more than 75 trees; (iv) recommendation of the Gram Sabha and; (v) limited to the 13 items listed

		under Section 3(2) of the FRA.
2.	Whether diversion of forest land under the Act can be sought/ given only in those areas where forest dwellers reside or where their rights have been settled?	Forest Rights Act applies on all forest land and wherever forest dwelling STs and OTFDs are present as per the definition in FRA. Diversion of forest land for the facilities (managed by the Government) need to be provided to the eligible forest dwellers and need not wait till the recognition and vesting of rights is complete.
3.	Whether provision of sub section 2 of section 3 of the Act can be invoked independently or will they be invoked in area where provisions of subsection 2 of section 3 of the Act can be sub section 1 of the same section of the Act are complied with?	Development facilities under section 3(2) can be extended in parallel or independently of the process of recognition of the rights under section 3(1). Clearances of development project under section 3(2) is subject to the condition that same is recommended by the Gram Sabha. It however needs to be ensured that no rights are affected or any forest dweller is evicted due to diversion of forest land till the recognition and verification process under FRA is complete. Therefore while obtaining recommendation of the Gram Sabha for diversion of forest land under section 3 (2), it may also be obtained in writing from the Gram Sabha that no rights under are likely to be affected by such diversion.
4.	Whether the rights which have already been settled and recorded in the record of rights in Wazib-ul-Arj and also in the forest settlement should be settled again as per the Act and recorded as community rights?	The FRA under Section 3(1) (j) and (i) provide for recognition of forest rights recognized under any state law or which are accepted as rights of tribals under any condition or customary law of the concerned tribes of any State. Therefore, rights already recognized under Wazib-ul-Arj if it is under the meaning of section 3(1) (j) and section 3(1) (i) of FRA should be recorded as community rights. However, rights under the said Wazib-ul-Arj, may be concessions given to communities such as for collection of

	Minor Forest Produce. This under FRA has been recognized as ownership rights of MFP which needs to be accordingly recognized under Section 3(1) (i) of FRA provides for right to protect regenerate or conserve manage any community forest resource which they have been traditionally protecting and conserving for sustainable use. These rights are also required to be recognized under FRA. Modifications have to be now made in the record of rights and titles have to be issued to the individual as well as to the community as mandated under FRA.
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2. This issues with the approval of the competent authority.

Yours faithfully,  
Sd/-

(Roopak Chaudhuri)  
Deputy Secretary to the Government of India  
Tel. No. 011-26182428

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## APPENDIX

**Form for seeking prior approval for diversion of forest land for non-forestry purposes for the facilities managed by the Government under sub-section (2) of Section 3 of the scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.**

### Form-A

[See para 2.2 (i)]

**(To be filled up by the User Agency)**

1. Project details:
  - i. Short narrative of the proposed project/scheme for which the forest land is required.
  - ii. Details of the forest land required (two options to be indicated)
    - a. Location-Survey No./ compartment No.
    - b. Extent of the area (in hectare)
    - c. Forest Division.
    - d. Map showing the required forest land, boundary of adjoining forest on a 1:50,000 scale map.
  - iii. Justification for locating the project in proposed forest land (s)
  - iv. Number of trees to be felled (per hectare) and number that will be kept standing.
2. Detailed, purpose-wise break-up of the total forest land required with proposed building/ activity area map.
3. Confirmation that User Agency will plant at least twice the number of trees to be felled, in the project or adjacent area and the amount to be provided annually for protection and maintenance of these plants for at least five years (Details to be enclosed).
4. Recommendation of the Gram Sabha- Accepted/ Rejected [Please tick (✓), as the case may be],  
[Copy of the Gram Sabha resolution to be attached.]

Signature of the authorized person for the User Agency

(Name in Block letters)

Address

Date: \_\_\_\_\_

Place: \_\_\_\_\_

Serial No. of Proposal \_\_\_\_\_

(To be filled up by the Range Forest Officer with date of receipt)

FORM-B

[See para 2.2 (iv)]

(To be filled up by the concerned Range Forest Officer)

Serial No. of proposal

1. Location of the project/Scheme:
  - (i) State/Union Territory
  - (ii) District.
  - (iii) Forest Division
  - (iv) Proposed forest land(s) (two options to be indicated)
    - i. Location-Survey No./ compartment No.
    - ii. Extent of the area (in hectare)
  - (v) Whether part of biosphere reserve, tiger reserve, elephant corridor, etc.
2. Site inspection report (to be attached), containing the date of visit and justified opinion on the acceptability of the proposal (separately for the two options).
3. Specific recommendation of the Range Forest Officer for acceptance or otherwise of the proposal and the better option.

Signature of the RFO

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Place: \_\_\_\_\_

(Official Seal)

Accepted/Not accepted

With reasons to be recorded

Signature of the DFO

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Place: \_\_\_\_\_

(Official Seal)

**Government of India  
Ministry of Tribal Affairs**

**Procedures for seeking prior approval for diversion of forest land for non-forest purposes for facilities managed by Government under Section 3(2) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Right) Act, 2006.**

Sub Section (2) of Section 3 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 provides that notwithstanding anything contained in the Forest (Conservation) Act, 1980, the Central Government shall provide for diversion of forest land for certain facilities managed by the Govt., as specified in that section, which involve felling of trees not exceeding seventy-five trees per hectare, provided that such diversion of forest land shall be allowed only if:

- i. The forest land to be diverted purposes mentioned in the said sub-section is less than one hectare in each case; and
- ii. The clearance of such development projects shall be subject to the condition that the same recommended by the Gram Sabha.

2 For implementation of the provision of sub-section (2) of Section 3 of the Schedule Tribes and Other Traditional Forest Dwellers (Recognition of Forest Right) Act, 2006 the Central Government hereby lays down the following procedure:-

**2.1 Definitions:- In the procedure, unless the context otherwise requires:-**

- a) "Act" means the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007);
- b) "District Level Committee" shall mean the Committee constituted under Rule 7 of the Schedule Tribes and Other Traditional Forest Dwellers (Recognition of Forest Right) Rules, 2008;
- c) "Forest Land" shall have the same meaning as defined in Section 2(d) of the Act;
- d) "Gram Sabha" shall have the same meaning as defined in Section 2(g) of the Act;
- e) "Nodal Officer" means any officer not below the rank of Conservator of Forests; authorized by the State Government to deal with matters relating to diversion of Forest land under the Act;
- f) "Section" means section of the act;
- g) "User Agency" means a Department of the Central or State Government or a District Panchayat making a request for diversion of forest land for development projects managed by the Government as specified in Sub-Section (2) of Section 3 of the Act;

h) "Village" shall have the same meaning as defined in Section 2(p) of the Act,

**2.2 Submission of the proposals seeking approval for diversion of the forest land under sub-section (2) of Section 3 of the Act:-**

- i. Every User Agency, that wants to use any forest land for any development projects specified in Section 3(2) of the Act, shall make a proposal in the appropriate Form, i.e. Form "A", and place it before the general assembly of the concerned Gram Sabha for adopting a resolution to that effect.
- ii. A quorum of at least half the members of the Gram Sabha should be present for adopting a resolution recommending the diversion of forest land.
- iii. On receipt of a recommendation of the proposal by the Gram Sabha, the user agency will submit the proposal to the concerned Range Forest Officer (RFO) of the area, along with the resolution adopted by the Gram Sabha.
- iv. The Range Forest Officer (RFO) concerned will carry out site inspection of the proposed area to opine on the acceptance of the proposal.
- v. The Range Forest Officer (RFO) concerned will submit the proposal and his recommendation to the concerned Divisional Forest Officer (DFO) in Form "B" appended, along with his site inspection report and his opinion within three weeks from the date of receipt of complete proposal from the User Agency.
- vi. The Divisional Forest Officer (DFO) concerned will consider the proposal, and if he agree, he will accord his approval and communicate his decision to the Range Forest Officer (RFO) concerned with a copy to the Chairperson of the District Level Committee, within four weeks from the date of receipt of the proposal from the RFO.
- vii. After receipt of the approval from the concerned DFO, the RFO will demarcate the area of the forest land approved for diversion and hand over the same to the User Agency under the supervision of the Gram Sabha.
- viii. If the Divisional Forest Officer (DFO) concerned does not approve the proposal submitted by the User Agency through the Range Forest Officer (RFO), he shall forward the proposal to the District Level Committee for a final decision.
- ix. The District Level Committee will meet and take a final decision, will at least 1/3 quorum, and convey the decision to the DFO for implementation and correction of records and map if the proposal is accepted.
- x. The approval for diversion of the forest land by the Divisional Forest Officer (DFO) or by the District Level Committee, as the case may be, shall be accorded subject to the condition that the land diverted for specific purpose shall not be allowed to be used for any other purpose and the diverted and would be appropriated by the Forest Department if the activity for which the land was diverted is not started within one year handing over the land to the User Agency.
- xi. The DFO concerned will submit a quarterly report of the approvals accorded for diversion of forest land under Section 3(2) of the Act to the Nodal Officer of the State who, in turn, will furnish the consolidated information quarterly to the secretary, Tribal Welfare Department who will, in turn send the consolidated report to the Ministry of Tribal Affairs and Environment & Forests.
- xii. The Nodal Officer will also monitor the progress.