

COMPLAINT INVESTIGATION

Access Restrictions Within Tree Farm Licence 46

FEBRUARY 2024
FPB/IRC/251



**Forest
Practices
Board**

BC'S INDEPENDENT
WATCHDOG FOR
SOUND FOREST &
RANGE PRACTICES

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Introduction

The Complaint

On July 7, 2023, the Forest Practices Board (the Board) received a complaint from a Courtenay resident (the complainant) about access restrictions within tree farm licence (TFL) 46.

The complainant raised two issues:

1. The Minister of Forests (the ministry) made gate and road closure authorizations within TFL 46 that are contrary to the *Forest and Range Practices Act* (FRPA).
2. Teal Cedar Products Ltd. (Teal) has arbitrarily and unfairly prevented the complainant from accessing TFL 46, which in turn, has impacted the complainant's ability to survey the area for at-risk bird species.

Background

TFL 46 sits southwest of Lake Cowichan and north of Port Renfrew on southern Vancouver Island (see Map 1). The TFL lies within the territories of the Ditidaht First Nation and the Pacheedaht First Nation, and the Board recognizes the importance of their historical relationship with the land that continues to this day.

Teal Cedar Products Ltd. holds TFL 46. The TFL is public land, and Teal and the Ditidaht First Nation have the exclusive authority to harvest timber there. The specific area subject to this complaint lies solely within the territory of the Pacheedaht First Nation.

In August 2020, protestors opposed to harvesting old growth within TFL 46, primarily in the Fairy Creek watershed, began to blockade roads, preventing workers and equipment from accessing work areas.

The protests escalated in the spring of 2021, attracting widespread attention in the media. Some protestors chained themselves to logging equipment, attached themselves to buried 'sleeping dragons' within roadbeds, excavated and occupied trenches in roads, and suspended themselves from trees and tripods, all intending to disrupt Teal's activities. Protestors set up new blockades as Teal moved its' operations about the TFL, significantly impacting Teal's ability to carry out its activities and ensure the safety of its crews. In April 2021, Teal applied for and received an injunction order from the Supreme Court of British Columbia prohibiting protestors from blocking logging roads or interfering with road construction, timber harvesting, and workers. The RCMP enforced the injunction order.

The complainant is an avid birder and self-described citizen scientist. Beginning in April 2021, they began travelling to TFL 46 to document at-risk¹ birds and other species with a group of birders. The old-growth forest ecosystems within TFL 46 provide habitat for several at-risk species, including marbled murrelet and western screech owl. The complainant reports their sightings to the Ministry of Forests, the Conservation Data Centre, and the Canadian Wildlife Service. The complainant wishes to carry out inventory work in all areas of TFL 46 to map habitat use by different species, and to enable the protection of crucial habitats of at-risk species.

On May 13, 2021, Teal made its first request to the ministry to restrict access within TFL 46 in response to the protests. The request was to install a gate on the Caycuse Mainline "to ensure public safety and to protect public property." The ministry consented to the request.

In total, Teal sought and received the ministry's consent for 15 gates. Teal contracted security staff to control access through the gates. Teal requested extensions to some expiring gate authorizations, and let others lapse as it no longer worked in those areas, and access restrictions were no longer needed.

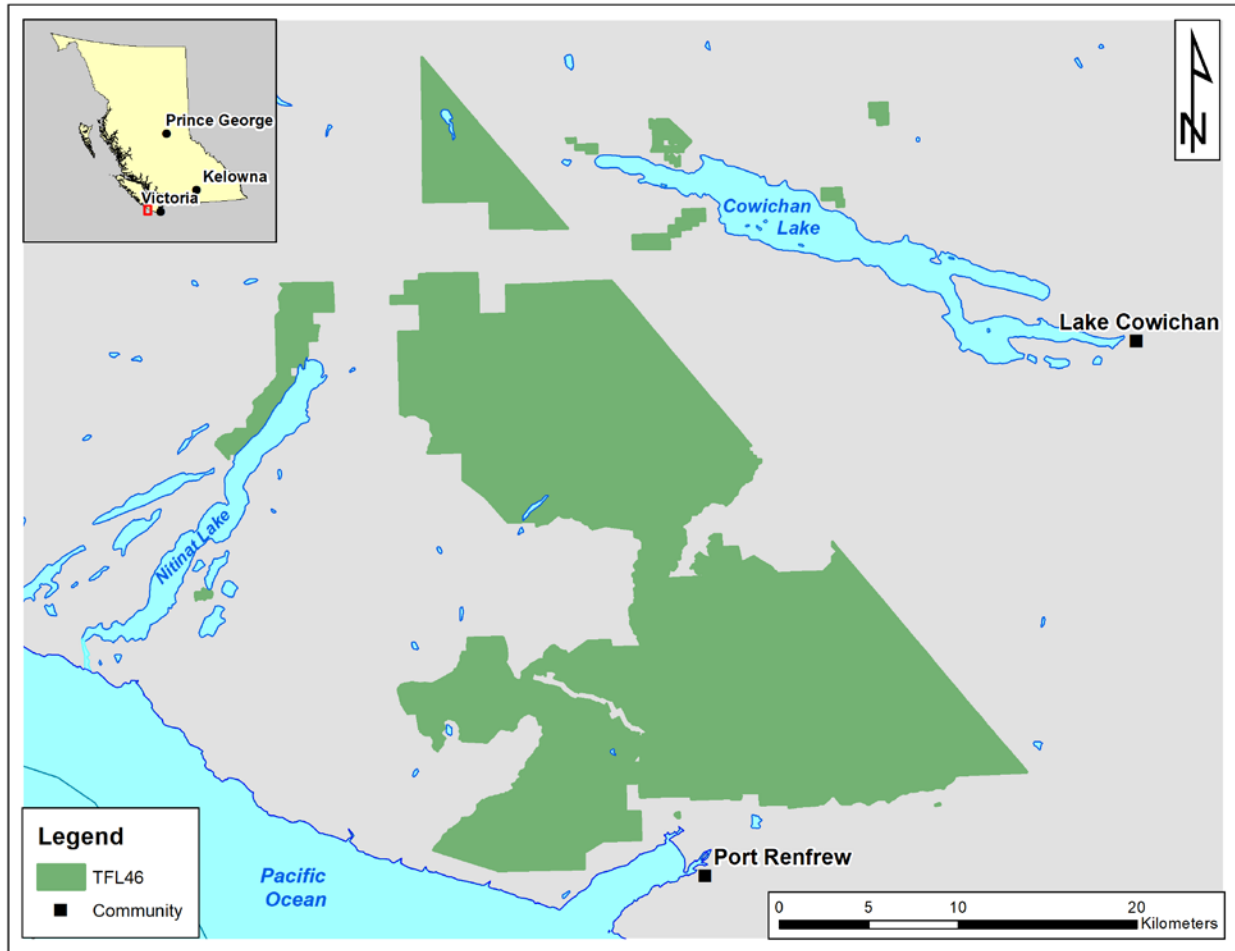
Between November 2021 and July 2023, the complainant made 11 requests for access to carry out bird surveys. Teal granted 5 requests and denied 5 requests, and access was no longer restricted in one case, so the complainant was already free to travel there. A summary of the complainant's requests and Teal's responses appears in Appendix 1.

The complainant petitioned the Supreme Court of British Columbia in February 2022 for a judicial review to, in part, quash the ministry's decisions authorizing Teal to install gates. The court denied the request in May 2022, stating that the Forest Practices Board was an adequate alternate remedy available to the complainant. The complainant appealed that decision to the BC Court of Appeal, and in February 2023 the appeal was dismissed.

As of January 2024, seven gates remain in place, subject to conditions described later in this report. These gates are no longer staffed by security personnel.

One blockade remains in place at the Braden Mainline near Port Renfrew, preventing access to Teal's Braden operating area. Teal continues to observe acts of vandalism within the TFL.

¹ Species or ecosystems that are at risk of being lost can be assessed as endangered, threatened or of special concern.



Map 1. TFL 46 on southern Vancouver Island.

Relevant Legislation

The complete text of the relevant legislation appears in Appendix 2 and is paraphrased below for convenience.

Forest and Range Practices Act

Section 22.2 – Non-industrial use of a road

A person may use a forest road for non-industrial purposes free of charge. The holder of a road permit may close a road or restrict its use, with the minister's consent, if the use of the road would likely endanger property, public health or public safety.

Section 112 – Power to impose conditions

A person with discretion to give consent may impose conditions (subsection 1(a)), and a person subject to the consent must comply with those conditions (subsection 3).

Investigation Results

This investigation considered three questions:

1. Did the district manager comply with section 22.2 of FRPA when they consented to access restrictions within TFL 46?
2. Did Teal comply with section 112(3) of FRPA?
3. Was it reasonable for the licensee to restrict the complainant's access to parts of TFL 46?

Did the district manager comply with section 22.2 of FRPA when they consented to access restrictions within TFL 46?

Section 22.2 of FRPA permits Teal, as a road permit holder, to close a road or restrict its use, with the Minister's consent, if the use of the road would likely endanger property, public health or public safety. Before consenting, the Minister would have to be satisfied that use of the road would likely endanger property, public health or public safety. The Minister has delegated this power to the district manager.

When it first requested consent for a gate in May 2021, Teal wrote to the ministry that access restrictions were necessary to ensure public safety and to protect public property. Teal also wrote that the RCMP advised that control of access to the blockade sites was a key requirement for successfully enforcing the injunction order while protecting the safety of the public and logging crews.

The district manager told the Board that he recognized the importance of maintaining public access as much as possible. In 2017, the district manager's predecessor wrote to all licensees in the district instructing them to keep existing gates open, unless they had authorization. The district had only consented to access restrictions previously on limited occasions, and, to the current district manager's knowledge, Teal had never requested access restrictions before May 2021.

However, during this time, the protests and the number of people present on the TFL were unprecedented. Tensions between protestors, the RCMP, and workers were escalating, and arrests were made daily. The district manager described the sense of urgency he felt to make a timely decision to address public health and safety concerns. The district manager told the Board that he felt that there was a strong likelihood that if access was not restricted, a member of the public or a worker could be seriously injured or killed.

The district manager approved Teal's request for access restriction on the Caycuse Mainline with four conditions, referencing section 22.2 of FRPA. The first three conditions related to the safe location of the gate, "gate ahead" warning signs, and gate standards,

while the fourth required Teal to provide keys upon request. The authorization was for a limited time, expiring on November 30, 2021.

As protests continued and expanded and Teal moved its road building and harvesting operations to other areas of the TFL, it requested approval of additional gates and extensions to approvals when they expired. Table 1 summarizes Teal's requests over time for gates on the Braden Mainline and Truck Road 11, as an example. These two gates restricted access to the Braden Creek operating area.

Table 1. Requests for Access Restrictions on Braden Mainline and Truck Road 11

REQUEST DATE	TEAL'S REASONS FOR REQUEST	MINISTRY'S CONSIDERATIONS AND DECISION	CONDITIONS
May 27, 2021	To ensure public safety and to protect public property. Operations are being disrupted by activist blockades. The RCMP has advised that control of access to the blockade sites is a key requirement for the successful enforcement of the court order while protecting the safety of the public and logging crews.	No reasons for the decision are included in the approval letter. Request for access restrictions to protect logging operations approved until Nov. 30, 2021, consistent with section 22.2 (3)(b)(i) of FRPA.	The gate shall not be a danger to users, signs are to be installed, the gate must be built of tubular steel a minimum of three inches in width, and keys must be made available upon request.
Nov. 9, 2021	To continue to ensure public safety and to protect public property. Operations continue to be disrupted by activist blockades.	No reasons for the decision are included in the approval letter. Request for extension of gate authorizations to protect public health and safety and to protect property approved until Jun. 30, 2022, consistent with section 22.2 (3)(b)(i) of FRPA.	No new conditions.
Jun. 16, 2022	Unrestricted use of the road would likely cause significant damage to the road and endanger public safety and property. The danger to property includes damage to Crown resources and equipment. Danger to public health and safety includes increased fire hazard risk, threats and harassment of workers, illegal blockades and tree sits, protestors suspended from trees, bridges, and tripods, placing people in deep trenches, intentionally plugged	The district manager considered the history of events, damage to property, and impacts to public health and safety; a letter of support for the application from the Pacheedaht First Nation; and access had been provided (keys) to the Pacheedaht First Nation. Request for extension of gate authorizations to protect public health and safety and to protect property approved until Dec. 31, 2022.	Teal will provide a gate key to the Pacheedaht First Nation Band Office; make every effort to provide public access where it is determined public health and safety can be maintained; provide keys to government staff and other tenure holders within the TFL upon request.

	<p>culverts, and conduct that undermines roads and bridges.</p> <p>Numerous examples of unauthorized persons entering active worksites and interfering with operations, including jumping out of the bush at fallers.</p>		
Dec. 1, 2022	<p>Unrestricted use of the road would likely cause significant damage to the road and endanger public safety and property. The danger to property includes damage to Crown resources and equipment. Danger to public health and safety includes increased fire hazard risk, threats and harassment of workers, tree sits, protestors suspended from trees, bridges, and tripods, placing people in deep trenches, intentionally plugged culverts, conduct that undermines roads and bridges, and obstacles on or near roads.</p>	<p>The district manager provided a detailed consideration of consistency with legislation; endangerment of property, public health, and public safety; First Nations consultation and impacts to Aboriginal rights and title; and the public interest.</p> <p>Request for extension of gate authorizations to protect public health and safety and to protect property approved until Dec. 31, 2023, consistent with section 22.2 (3)(b)(i) of FRPA.</p>	<p>Teal will provide a gate key to the Pacheedaht First Nation Band Office; make every effort to provide public access where it is determined public health and safety can be maintained; provide a gate key to the South Island Natural Resource District.</p>

At first, Teal cited the need to maintain public safety and protect public property in the face of disruptive blockades. Later, Teal cited the blockades, vandalism, harassment, and the presence of unauthorized people within active worksites as reasons for gates.

Initially, the approval letters did not provide specific reasons for the ministry’s consent, although the district manager told the Board that every decision considered the elements set out in section 22.2 of FRPA, including endangerment of public health, safety, and property. The district manager began providing the factors they considered in the approval letters, starting with the second extension request. For the third extension request, they provided more detail about how they considered consistency with legislation, endangerment of property, public health and public safety; First Nations consultation and impacts to Aboriginal rights and title; and the public interest.

The district manager told the Board that they communicated regularly with Teal. During these communications, Teal cited safety concerns near active operations. Examples of safety concerns included the difficulty of navigating heavy equipment along narrow roads with vehicles parked on the roadside, vandalism of equipment, a person jumping out of the bush in front of a faller falling trees, people suspended in tree stands or hanging in tripods, people digging trenches in roads, and tree spiking, among others.

The district manager was concerned that a member of the public or a worker could be seriously injured or killed if temporary access restrictions were not in place. They were satisfied that the restrictions were supported by the reasons provided in section 22.2 of FRPA. They also considered that the gates only restricted access to areas with active operations, which was only a portion of the TFL.

Finding

The district manager was satisfied that the use of the road would likely endanger property, public health or public safety. The district manager complied with section 22.2 of FRPA when they consented to access restrictions within TFL 46.

Did Teal comply with section 112(3) of FRPA?

Section 112 of FRPA permits the district manager to attach conditions to access restrictions, and it requires Teal to comply with any conditions.

The district manager specified various conditions when they consented to the access restrictions. For example, they required Teal to provide access to the Pacheedaht First Nation Band Office so members could access the territory. For some gates, they required that access be allowed for other tenure holders that required the use of the road, including forest and mining tenure holders. These conditions were met.

The condition most relevant to this complaint was that Teal must "make every effort to provide public access where it is determined public health and safety can be maintained." The district manager began specifying this condition in June 2022. The investigation considered whether Teal complied with this condition.

The district manager explained to the Board that access to active cutblocks and road construction operations is typically prevented with signs and by roping or ribboning off areas to ensure public safety. However, in this case, and because of the tension between the public and workers, a rope or ribbon across the road would not have been adequate to ensure that public health and safety and property would not be endangered.

The district manager expected Teal to use its discretion when members of the public requested access. If it wasn't an active area and public health and safety could be maintained, then the district manager expected Teal to provide access. The district manager also expected that gates would be left open if Teal was no longer active in an area and access restrictions were no longer needed.

Teal explained that it permitted access to individuals where it was reasonably certain that they would not pose a risk to public safety or the protection of public and private property. These individuals included mineral claim holders and forest licensees with specific locations of interest that did not require entry to active Teal cutblocks where logging or road construction was occurring. Teal provided keys to these individuals, and they managed their own access through gates.

Teal also provided access for a limited time to kayakers who wanted to paddle the Gordon River. At the time, security personnel were present and could arrange passage through the gate and monitor the kayakers. Other than the kayakers, only tenure holders or contractors were permitted access.

Teal denied the complainant access through gates four times after the district manager specified the condition (in June 2022) to provide public access where it is determined public health and safety can be maintained. These denials are summarized in Table 2.

Table 2. Denial of Access Through Gates Post June 2022

DATE	COMPLAINANT'S REQUEST	REASONS FOR NOT PROVIDING ACCESS
Jul. 24, 2022	Access past the Bugaboo Main 2 km point for complainant and partner July 26-29.	Bugaboo Main is still an active worksite. The road is closed to public access for safety.
Apr. 24, 2023	Access to Grierson and Bugaboo April 27-30 (two cars).	Teal cannot provide access through the gates due to a recent influx of protestors entering areas where access is not permitted. There have been acts of vandalism and harassment of security personnel.
Apr. 24, 2023	Access to Granite/Renfrew and Braden/Reid Creek areas (two cars) May 5-7.	Teal cannot provide access through the gates due to a recent influx of protestors entering areas where access is not permitted. There have been acts of vandalism and harassment of security personnel.
Jul. 19, 2023	Access to Granite/Renfrew and Braden/Reid Creek areas (two cars) August 4-7, 2023.	There has been recent vandalism and damage to gates and structures in the TFL. As recently as last weekend a gate was vandalized to the extent it could not be unlocked or opened. There are no longer security personnel to provide access through gates. There is no one to assist you in the event of a medical emergency. The fire danger is extreme and we are not encouraging camping in undesignated areas.

Teal said that when the complainant sought access to the Bugaboo mainline in July 2022, heli-logging was underway, and logs were being landed and processed on the road. When the road was clear, there were still active operations in the area, and it was unsafe for public access. In April and July 2023, Teal explained that gates to the areas the complainant wished to access had been vandalized and blocked by activists in the Gordon River area.

In summary, when Teal denied access to the complainant after June 2022, it was because it believed that public health and safety could not be maintained due to active operations, protest activity, or vandalism.

Finding

Teal complied with the conditions specified by the district manager and therefore complied with section 112(3) of FRPA.

Was it reasonable for Teal to restrict the complainant's access to parts of TFL 46?

Teal requested access restrictions because it believed the unrestricted use of certain roads would endanger property and jeopardize public and worker safety. The district manager agreed and consented to the gates. The complainant told the Board that they have never damaged property nor endangered public safety within the TFL. They feel that Teal has been arbitrary and unfair in preventing them access to the TFL.

Teal has been consistent in its reasons for not providing access. In a March 2022 affidavit, it said it would provide access in 2022 unless it would create an "unreasonable safety risk." Teal said that active logging, road building operations, or weather conditions were unsafe conditions. When it denied the complainant access in May² and July 2022, it was because those areas were active. The investigation confirmed that the gates restricted access to active operating areas. In April and July 2023, Teal denied access due to recent protest activity, vandalism, and safety concerns.

Despite being consistent in its reasons, the investigation considered whether it is reasonable for Teal to restrict access to areas much larger than individual active cutblocks and road construction operations. Every day throughout BC, industrial and public traffic share logging roads where it is safe to do so. While access to specific locations, such as active cutblocks and road and bridge construction activities, is routinely restricted for public safety, entire operating areas are not generally restricted.

Teal explained that, typically, fallers place a rope across the road and place signs that warn people to keep out of the active work area. However, in light of the protests, this was not sufficient. Teal had to decide where to place gates to ensure protestors couldn't drive close to an operating area and easily access active work areas on foot. For example, the Braden operating area is accessed from both the Braden mainline from the south and Truck Road 11 from the north. Thus, two gates were required.

The investigation considered whether Teal could have provided a key to the complainant once security guards were no longer stationed at the gates. Teal said that it does not allow its employees to work behind unmonitored locked gates where they have no other means to exit the area or summon assistance in an emergency, and it does not condone members of the public doing so either. In addition, recent vandalism has damaged some gates to the point where they cannot be opened or cannot be opened without tools. Teal believes that continuing vandalism of gates poses an undue risk to the safety of workers or members of the public who may be present in the area behind the gates.

Finding

It was reasonable for Teal to restrict the complainant's access to parts of TFL 46.

² See Appendix 1, request 3.

Conclusions

Section 22.2 of FRPA is clear – with limited exceptions, everyone has the right to freely use forest roads for non-industrial purposes. The Board fully supports this principle of right to access. This complaint involves one of the exceptions in section 22.2 – a road permit holder may restrict access, with the consent of the minister, where use of the road would likely endanger property, public health, or safety.

The Board found that the district manager was satisfied that use of the road would likely endanger property, public health, or public safety and that the district manager complied with section 22.2 of FRPA when they consented to access restrictions within TFL 46.

The district manager imposed certain conditions on the access restrictions in accordance with section 112(3) of FRPA, and the Board found that Teal complied with those conditions.

Finally, the Board found that it was reasonable for Teal to restrict the complainant's access to certain parts of TFL 46.

In investigating this complaint, the Board turned its mind to the question of whether or not restricting access in the circumstances of the complaint was lawful. The Board believes that the use of section 22.2(3)(b) to protect property and public safety, endangered by protest activity within TFL 46, is valid.

Appendix 1 – Access Requests and Response

In some cases, requests were granted but the complainant did not travel through a gate. For the purposes of the following table, a request for access and a response concerning a specific access point is considered one request.

REQUEST	DATE	REQUEST	RESPONSE
1	Nov. 8, 2021	Access to Caycuse River watershed and an area off Bugaboo Main for complainant and her husband.	Granted. Both areas are active work sites. In light of blockades and disruptions we have had to restrict public access. If you wish to gain access to Caycuse and Bugaboo areas we ask that you drop by our office and we can advise you of road conditions.
1	Nov. 19, 2021	The complainant confirmed plans to visit Hemmingsen and Bugaboo mainlines.	Hemmingsen road is fine and you should be okay on Bugaboo. Security staff at Hemmingsen gate will ask for identification.
2	April 2022 Exact date of request unknown	Access to Grierson on April 14, 2022.	Granted. Security people will not be at the Grierson gate until 5 p.m. I will try to make sure the gate is left unlocked until then. I have advised them that you are coming. You should let them know when you are leaving the area just to make sure someone is at the gate to open it for you.
3	May 4, 2022	Reference to phone message concerning access to the Walbran. Also indicating plans to pass through Braden gate starting May 18.	Teal employee was on vacation until May 12.

3	May 13, 2022	Access through Braden gate for up to six birders during the week of May 16.	Not granted. Braden and Granite Creek areas are active logging areas and in the interest of public safety, we are not able to provide permission to access these sites. Access can be arranged for pretty much any other areas of TFL 46 where logging is not taking place.
4	May 17, 2022	Access to Hemmingsen May 19-20.	Access not restricted. Hemmingsen gate is open. If not, Teal employee will ensure that it is.
5	June 24, 2022	Access to Bugaboo and Hemmingsen June 28-30.	Granted. Hemmingsen is open. The Bugaboo is open during the day. Please let me know when you intend to travel and I will make arrangements to get you through.
6	July 12, 2022	Access to Bugaboo July 14 – 17 for two vehicles and up to six people.	Granted. The gate is still usually open 5 am to 4 pm weekdays. The road is likely blocked by logs at the 2 km point due to helicopter logging.
7	July 24, 2022	Access past the Bugaboo Main 2 km point July 26-29.	Not granted. The Bugaboo main is still an active worksite. The road is closed to public access for safety.
7	July 26, 2022	Complainant asked to be informed when she can access the Bugaboo Main.	No response.
8	March 29, 2023	Access to lower Campers (Grierson Mainline) and Gordon Mainline for six people April 6-8.	Granted. Can arrange access to lower Campers. There are no active operations in the Gordon mainline area and there are no access restrictions.
8	April 12, 2023	Reschedule of April 6 trip to April 27-May 1.	Teal employee asked to be reminded a couple of days before.
9	April 24, 2023	Provided schedule of passage through Grierson and Braden gates April 27-29 and requested access through Bugaboo gate on April 30.	Not granted. Teal employee responded that he cannot provide access through the gates due to a recent influx of protestors entering areas where access is not permitted. There have

			been acts of vandalism and harassment of security personnel. The complainant was free to travel to any other area of the TFL where access was unrestricted.
10	April 24, 2023	Access to Granite/Renfrew and Braden/Reid Creek areas May 5-7.	Not granted. Teal employee responded that he cannot provide access through the gates due to a recent influx of protestors entering areas where access is not permitted. There have been acts of vandalism and harassment of security personnel. The complainant was free to travel to any other area of the TFL where access was unrestricted.
11	July 19, 2023	Access to Granite/Renfrew and Braden/Reid Creek areas August 4-7, 2023.	Not granted Teal employees cannot grant access. There has been recent vandalism and damage to gates and structures in the TFL. There are no security personnel to provide access through gates. There is no one to assist you in the event of a medical emergency. The fire danger is extreme and we are not encouraging camping. Complainant is welcome to bird watch in any other area of the TFL not subject to access restrictions.

Appendix 2 – Relevant Legislation³

Forest and Range Practices Act

Non-industrial use of a road

22.2(1) Subject to subsections (2) to (4) and to regulations respecting roads made under the [Industrial Roads Act](#), a road that is

- (a) a forest service road, or
- (b) authorized under a road permit or a woodlot licence

may be used by any person without charge for a purpose other than a timber harvesting purpose, silviculture purpose or natural resource development purpose.

(2) The

- (a) district manager, for a forest service road, or
- (b) holder of a road permit or a woodlot licence, for a road under the permit or licence,

may take action under subsection (3) if

- (c) use of the road under subsection (1) would likely
 - (i) cause significant damage to the road,
 - (ii) cause significant sediment delivery, or
 - (iii) endanger property, public health or public safety, or
- (d) the presence on the road of a vehicle or animal would likely cause damage to the road or environment or endanger life or property.

(3) In the circumstances described in subsection (2),

- (a) the district manager, for a forest service road, may
 - (i) close the road or restrict its use, or
 - (ii) remove a vehicle or an animal from the road at the expense of the owner of the vehicle or animal, and
- (b) the holder of a road permit or a woodlot licence, for a road under the permit or licence,
 - (i) with the prior consent of the minister, may close the road or restrict its use, or
 - (ii) may remove a vehicle or an animal from the road at the expense of the owner of the vehicle or animal.

³ This is the current version of the legislation, in force November 25, 2021.

(4) The minister, in accordance with the regulations, may specify types of expenses that must be paid to

- (a) government for a road referred to in subsection (1) (a),
- (b) a holder of a permit or licence referred to in subsection (1) (b), or
- (c) other persons who meet prescribed requirements

by a person who uses a road or class of roads for a purpose other than a timber harvesting purpose, silviculture purpose or natural resource development purpose.

Power to impose conditions

112(1) Except in prescribed circumstances a person with a discretion under this Act to make an order, grant an exemption, give a consent, grant an approval, or grant an authorization under this Act may

- (a) impose conditions that the person considers necessary or desirable in respect of the order, exemption, consent, approval or authorization, and
- (b) remove or vary the conditions by own motion or on the application of a person who is the subject of the order, exemption, consent, approval or authorization.

(2) A condition imposed under subsection (1) is conclusively deemed to be part of the order, exemption, consent, approval or authorization in respect of which it is imposed, whether contained in or attached to it or contained in a separate document.

(3) If a person is the subject of an order, exemption or condition under this Act, the person must comply with the order, exemption or condition.



**Forest
Practices
Board**

PO Box 9905 Stn Prov Govt

Victoria, BC V8X 9R1 Canada

Tel. 250.213.4700 | Fax 250.213.4725 | Toll Free 1.800.994.5899

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For more information on the Board, please visit our website at: <https://www.bcfpb.ca>