

**Chapter-2**  
**Diversion of Forest Land**



## CHAPTER-2

### Diversion of Forest Land

As per paragraphs 1.3 & 1.4 of guidelines of the Forest Conservation (FC) Act, 1980, all proposals for the diversion of forest land for any non-forest purpose, irrespective of its ownership, require prior approval of the Government of India (GoI) and shall be submitted to the Nodal Officer (NO) of the State. For the diversion of forest land, clearance is to be given by the Ministry of Environment, Forests & Climate Change (MoEF&CC), GoI in two stages; in the first stage, the proposal is to be agreed to in principle. The conditions relating to transfer, mutation of equivalent Non-Forest Land (NFL) and declaration of a Reserve Forest (RF) or Protected Forest (PF) under the Indian Forest Act, 1927 for Compensatory Afforestation (CA) and funds for raising CA, are stipulated at this stage. After compliance with the stipulated conditions, formal approval is issued. This is also called the second stage of clearance or final clearance. Thereafter, as and when the State Government decides to permit the use of the forest land for non-forest purposes, it has to pass an order to that effect along with the conditions and safeguards imposed by the GoI while according Stage-I and Stage-II clearance.

In Uttarakhand, out of 2,144 cases (15,083.76 ha) of diversion of forest land which were submitted for developmental works during the period 2014-22<sup>1</sup>, final clearance was granted in 679 cases (3,947.43 ha), in-principal approval was granted in 782 cases (2,025.97 ha) and rest of the 683 cases (9,110.36 ha) are pending/under process at various stages. From the above 679 final clearance cases, no case was noticed wherein compensatory land/designated forest land was not received and no private project proponent applied for requirement of forest land. During the audit period spanning from 2019 to 2022, it was found that 1,850.71 ha (*Appendix-2.1*) of forest land were diverted for non-forest purposes. In compensation, 3,377.63 ha<sup>2</sup> of land were earmarked for CA plantation. The Audit also noted following several deficiencies in the performance of the State Government Machinery concerning the diversion of forest land for non-forest purposes:

#### 2.1 Lapses at the level of Nodal Officer

As per the guidelines of FC Act, NO shall forward, along with his recommendations, all those proposals, where Government of Uttarakhand (GoU) agrees in-principle to de-reserve or divert the forest land for non-forest purposes indicated in the proposal, to the MoEF&CC, GoI. After compliance with the stipulated conditions mentioned in the in-principle approval, final approval is accorded at Stage-II by the MoEF&CC, GoI. In cases, where compliance of the conditions in the in-principle approval remains awaited for more than five years, the in-principle approval may be summarily revoked. Audit observed the following lapses at the NO level regarding the diversion of forest land for non-forest purposes:

<sup>1</sup> Parivesh Portal was started from the year 2014 wherein the cases of forest clearance are uploaded.

<sup>2</sup> Includes equivalent non-forest land or double the degraded land for diverted land, as per act.

### **2.1.1 Unauthorized approval**

Conditions of in-principle approval of road projects provided in FC guidelines stipulate that the forest land proposed to be diverted shall under no circumstances be transferred to any other agency, department or person without prior approval of GoI.

Scrutiny of records (September 2022) of Divisional Forest Officer (DFO), Tons (Purola) revealed that GoU had issued final approval (January 2019) at its own level for the diversion of 1.03 ha of forest land to User Agency (UA)<sup>3</sup> unauthorizedly as the same was to be given by the Central Government.

The State Government replied (July 2023), that in June 2021, the GoI granted authorization for State Governments to issue Stage-II approvals within five years of the issuance of Stage-I approval, specifically for proposals initially approved by the respective State Governments. The reply is not justified as the State Government granted final approval in January 2019, but the GoI's permission came afterward in June 2021. Consequently, the directive from June 2021 was not applicable to the aforementioned approval process.

### **2.1.2 Funds for wildlife mitigation plan not collected**

As per paragraph 11.2 of FC guidelines, the Wildlife Mitigation Plan (WMP) was to be included in the proposals of the projects by considering the anticipated impacts/threats posed by projects, and funds for that purpose were to be realized after in-principle approval of the project and prior to passing the order for commencement of the work.

Audit observed that an amount of ₹ 24.59 crore for WMP was demanded by the two test-checked divisions<sup>4</sup> from the UA after final approval instead of in-principle approval. However, the amount was not yet deposited by the UAs.

The State Government (July 2023), in the case of DFO Haridwar, stated that instructions were given to the UA regarding the deposit of the amount. In the case of DFO Narendra Nagar, it was stated that no fund provision was included in the Detailed Project Report (DPR) of any project by the GoI, resulting in the non-execution of the WMP. However, this explanation was not justified since the FC Act mandates the inclusion of provisions for WMP in the DPR. This inconsistency can also be verified by comparing it with the response from DFO Haridwar.

### **2.1.3 Compensatory land not declared as RF/PF**

As per paragraph 2.4 (i) of the FC guidelines, the NFL received in lieu of diverted forest land is to be notified as RF or PF under the relevant sections of the Indian Forest Act and the same should be communicated, along with a copy of the notification, within six months of approval of diversion.

Scrutiny of records of Nodal Officer (May 2022) revealed that in 22 (208.62 ha), out of 339 cases, the competent authority was yet to notify compensatory land as RF or PF. The State Government replied (July 2023) that these cases were related to those

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<sup>3</sup> Public Works Department for construction of Hudoli-Vingadera-Malla motor road in Uttarkashi.

<sup>4</sup> DFO Haridwar : ₹ 2.08 crore and Narendra Nagar : ₹ 22.51 crore.

districts<sup>5</sup> that were already considered RF as per prevailing rules of the year 1893 and did not require any declaration as RF/PF. The reply is not acceptable, as the Audit had taken into consideration only those cases that were not covered under the purview of the prevailing rules.

#### **2.1.4 In-principle approval not revoked**

Paragraph 8(2)(a) of Part A of FC guidelines stipulates that in such cases where the compliance of conditions stipulated in the in-principle approval was awaited for more than five years from the State Governments, the in-principle approvals would summarily be revoked.

Scrutiny of records revealed that in 363 cases (forest land measuring 895.71 ha) compliance with the conditions stipulated in Stage-I approval was awaited for more than five years and the cases were not rejected/revoked yet.

The State Government (July 2023) stated that essential follow-up actions were being initiated to revoke these cases. To date, 24 cases have already been revoked, and the remaining 339 cases are currently in the process of being addressed.

#### **2.1.5 Land bank for CA not created**

As per paragraph 2.7 of the FC guidelines, the State had to create land bank for CA for speedy disposal of the forest clearance proposals. In addition to NFL, the degraded forest land with crown density upto 40 *per cent* under the administrative control of the State Forest Department (SFD) had to be identified and made available for the CA. Further, to expedite creation of land bank in a systematic manner, a committee under the Chairmanship of the Head of Forest Force (HoFF) was to be constituted with the Chief Wildlife Warden and representatives of the Revenue Department.

Scrutiny of records of NO (October 2022) revealed that the SFD neither created a land bank of NFL nor identified the degraded forest land with crown density upto 40 *per cent* for CA land bank for speedy disposal of the forest conservation proposal under the FC Act. Further, the committee has not been constituted under the chairmanship of HoFF for the creation of a land bank in a systematic manner. Thus, it led to the selection of un-suitable land and duplicity in CA land as discussed in *paragraphs 5.5 & 5.7*.

The State Government accepted the facts (July 2023) and assured that necessary action would be taken to create the land bank for the execution of CA.

## **2.2 Lapses at the level of Divisional Forest Officers**

As per FC guidelines, DFO has to submit the site inspection report for suitability of non-forest area/degraded forest area identified for CA in the prescribed form. On receipt of a copy of the in-principle approval, the DFO shall prepare a demand note containing the item-wise amount of compensatory levies such as cost of creation and maintenance of CA, NPV, cost of implementation of catchment area treatment plan or wildlife conservation plan *etc.* to be paid by the UA and communicate the same, along with a list of documents, certificates and undertakings required to be submitted by the UA in compliance with the conditions stipulated in the in-principle approval to the

<sup>5</sup> Almora, Bageshwar, Champawat, Nainital, Pauri, Pithoragarh and Udham Singh Nagar.

UA. Audit observed the following lapses at DFOs level regarding certification of the legal status of the land and suitability of area diverted for non-forest purposes:

### **2.2.1 Unauthorised use of forest land**

According to paragraph 11.2 of the FC guidelines, no work on forest land should be started unless the order of diversion of forest land is given by the competent authority. In case of linear projects<sup>6</sup>, permission to start of work can be accorded by the competent authority for a period of one year after in-principle approval.

Audit noticed that in 52 cases<sup>7</sup>, forest land (188.62 ha) was diverted to UAs for non-forest purpose where in-principle approvals were granted but permission to start work was not granted by the competent authority. However, the UAs started the road works in forest area without permission. Further, the forest divisions did not take any cognizance of unauthorized use of forest land in these cases and did not book these as cases of forest offence.

The State Government did not furnish any reply (July 2023) itself and enclosed the replies of the four divisions. According to divisional replies, two divisions<sup>8</sup> accepted the facts while the other two divisions<sup>9</sup> stated that in-principle approval was granted by the GoI, hence no permission was required. The replies from these two divisions were unjustified since the FC guidelines explicitly state that permission to commence work can be granted by the competent authority only after obtaining in-principle approval.

### **2.2.2 Short recovery of cost towards Net Present Value (NPV)**

As per paragraph 2.3 (i) of the FC guidelines, money is to be collected for CA from UAs in lieu of the forest land diverted for non-forest use. The NPV for every patch of forest is computed depending on the quality of the forest<sup>10</sup>. As per the notification of MoEF&CC (January 2022), rates of NPV were revised and fixed based on the outcome of the scientific assessment of ecosystem goods and services.

In all test checked divisions, the responsible officers neither took any further action to obtain fresh proposals from UAs nor imposed the new NPV rates in terms of notification of MoEF&CC (January 2022). Audit observed that forest divisions failed to comply with the conditions of the in-principle approval, which resulted in a short recovery of ₹ 0.57 crore in six cases for which final clearance was granted. The details of the short recovery of NPV are given in **Table-2.1** below:

**Table-2.1: Detail of short recovery of NPV**

(₹ in crore)				
Name of forest division	Name of work	Actual NPV required (as per GoI sanction)	NPV deposited by UA	Less amount collected
Pithoragarh	Algad to Jumma motor road	0.31	-	0.31
	Charaman-Jaurasi to Bajni motor road	0.18	0.12	0.06

<sup>6</sup> New roads, widening of existing highways, transmission lines, water supply lines, optic fiber cabling, railway lines, etc.

<sup>7</sup> DFO Haridwar: One case, 1.60 ha, Tons (Purola) : 09 cases, 46.34 ha, Narendra Nagar : 27 cases, 55.22 ha, Pithoragarh: 14 cases, 77.37 ha and Tarai East (Haldwani) : One case, 8.09 ha.

<sup>8</sup> DFO Haridwar and Pithoragarh.

<sup>9</sup> DFO Narendra Nagar and Tarai East.

<sup>10</sup> Open forest: ₹ 6.99 lakh to ₹ 7.30 lakh per ha, Dense forest : ₹ 8.97 lakh to ₹ 9.39 lakh per ha and Very dense forest : ₹ 9.91 lakh to ₹ 10.43 lakh per ha.




Name of forest division	Name of work	Actual NPV required (as per GoI sanction)	NPV deposited by UA	Less amount collected
Civil & Soyam, Pauri	Barsudi link road	0.07	0.06	0.01
Narendra Nagar	Jwarna to Bangiyal motor road	0.26	0.20	0.06
Tons (Purola)	Kunora to Ludrana Electrification	0.20	0.14	0.06
Badrinath	Gona Bhanali link motor road	0.19	0.12	0.07
<b>Total</b>				<b>0.57</b>

The State Government replied (July 2023) that the concerned divisions deposited the NPV amount from the UA at the time of in-principle approval. The reply is not acceptable as the differential amount was still to be collected as per the MoEF&CC order (January 2022).

### 2.3 Conclusion

The Government of Uttarakhand had issued final approval at its own level for the diversion of 1.03 ha of forest land to the User Agency unauthorizedly as the same was to be given by the Central Government. An amount of ₹ 24.59 crore for the Wildlife Mitigation Plan was demanded by the divisions from the User Agency after final approval instead of in-principle approval. In 22 cases (208.62 ha), the competent authority was yet to notify compensatory land as a reserve forest or protected forest. The action for revocation in 363 cases (895.71 ha) of diversion of forest land wherein the user agencies failed to comply with the Stage-I conditions even after a lapse of more than five years, was not initiated. The Forest Department had not created a land bank of non-forest land for speedy disposal of the forest conservation proposal. The user agencies started the road works without permission for 188.62 ha of forest land in 52 cases. The department failed to comply with the conditions of the in-principle approval in six cases resulting in a short recovery of ₹ 0.57 crore.

### 2.4 Recommendations

-  *Timely compliance with the conditions of in-principle approval for the diversion of forest land and fund matters should be ensured and requisite action should be taken in case of violation/non-compliance;*
-  *A land bank should be created for CA to avoid the selection of unsuitable land which has a cascading effect leading to backlog, cost escalation and poor survival of plantations. A database of land bank for the NFL should be created immediately and kept updated for transparency, accounting and ease of monitoring;*
-  *The mechanism to recover the balance amount of NPV from user agencies in time should be developed and strictly enforced.*

