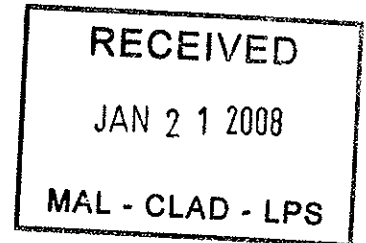


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To: Timber Sale Managers, BC Timber Sales
Directors, BC Timber Sales
Ward Trotter, Director, Land Program Services Branch, MAL
Duncan Williams, Director, Regional Client Services (Headquarters), MAL
Heather MacKnight, Regional Executive Director (Coast), MAL
Tom Kearns, Regional Executive Director (Northern Region), MAL

From: Dave Peterson
Assistant Deputy Minister
BC Timber Sales
and
Gary Townsend
Assistant Deputy Minister
Integrated Land Management Bureau



Re: Transfer of Administration of Log Handling Facilities

This memorandum provides the BC Timber Sales (BCTS) Division of the Ministry of Forests and Range (MFR) and Ministry of Agriculture and Lands/Integrated Land Management Bureau (MAL/ILMB) staff with important guidance regarding the status and use of the long-standing Crown land administration agreement between MFR and MAL.

The 1993 *Protocol On Crown Land Administration and Forest Activity Between BC Forest Service and BC Lands* (the Protocol) and the 2006 Addendum (the Addendum) thereto remains in effect insofar as they relate to the transfer of administration (TA)¹ of log handling facilities².

Both ministries recognize that given the significant organizational and policy changes that have taken place since the Protocol and the Addendum were developed, there are some

¹ Reference section 106 (2) of the *Land Act*.

² Log handling facilities means that portion of tidewater-based log dumps below the high-water line as well as related log handling areas.

implementation challenges that staff must contend with. Nevertheless, in light of the significant business efficiencies that will be realized by our respective ministries and BCTS customers, combined with a net increase in Crown revenue and enhanced environmental stewardship that will result from such TAs, staff are strongly encouraged to make a best effort to apply the spirit and intent of the Protocol and the Addendum. In time, an updated version of the Protocol will be developed to reflect the most current organizational models and business practices of MFR and MAL³.

General Application Requirements

To assist staff in expediting TA applications as effectively and efficiently as possible, the completed general application form (located at: <http://www.al.gov.bc.ca/clad/>) must be accompanied with a cover letter that contains the following information:

- A request that the length of term of the TA be for a period of 60 years⁴;
- The signature of the Timber Sale Manager (TSM) for the TA on behalf of MFR;
- The name, business address and phone number of a MFR contact person;
- Description of current legal status and use of the subject area as understood by MFR (e.g., area is subject to one or more Licences of Occupation and/or Notation of Interest designation or reserve on behalf of MFR for log dumping and foreshore handling purposes);
- An attestation confirming that land use changes for purposes other than log handling is not contemplated by MFR for the duration of the TA;
- In the event that a Notation of Interest or reserve is already in place, or the area is the subject to an existing Licence of Occupation, an indication as to nature of the overlap (e.g., does the TA area fall wholly within the Notation of Interest area or does all or a portion fall outside that area?); and
- Information regarding First Nation (FN) consultation (see further information below).

As per the general application form, provision of a general location map(s) and a detailed site map(s) are required. If available, digital shape files are preferred over paper maps.

Application Requirements Specific to FN Consultation

Currently, the Protocol and the Addendum are silent on the matter of FN consultation requirements. The following guidance to both BCTS and MAL/IMLB staff addresses this specific issue:

- 1) If there is an existing reserve or tenure in place and the lands are currently being used for log handling; the TA application area is contained within the current boundaries of the reserve or tenure; and, there is no land use change contemplated now or for the duration of the TA then FN consultation is not required in relation to the TA.

³ A process to review and update the protocol agreement as it relates to BCTS is expected to be established in the spring of 2008.

⁴ For consistency a period of 60 years for all TAs is recommended, and a justification as per section 2.1.3 of the Addendum is not required.

MAL/ILMB – wording on briefing note accompanying Ministerial Order (MO) regarding no FN consultation is: *“It has been determined that consultation is not required on the transfer of administration as it is internal to the provincial government, the transfer to MFR restricts any changes, now and in the future, from the current use and there is no potential for impact on any First Nation(s) interests that may exist on the property. MFR is responsible for all First Nations referrals and consultation in the future if changes to the use and/or issuing of tenures is contemplated.”*

- 2) If this is a new use (i.e., no existing reserve or *Land Act* tenure for log handling); the boundary has changed/increased; or, there is a contemplated change in use (i.e., is not currently being used for log handling), then MFR must initiate consultation with FN prior to the approval of the TA. Initial consultation with FN is to notify the FN that MFR is requesting a transfer of administration and control under section 106 of the *Land Act* so that it can manage the lands for x purposes (e.g., required for planning and establishing long-term or multi-user log handling facilities); that it is anticipated that the transfer will likely occur on or after x date (e.g., three or more weeks after date that letter is sent); and, that MFR will be following up with the FN to consult further after that date.

MAL/ILMB – wording on briefing note accompanying MO regarding initiation of FN consultation is: *“Consultation regarding the TAC was initiated by MFR with x First Nation(s) on x date, responses were received from x First Nation(s) to the effect that [insert summary of concerns] and MFR will be following up with the First Nation(s) concurrently or shortly after the s. 106 transfer to consult further regarding MFR’s proposed use of the property.”*

If initiation of consultation with FN is required, MFR must provide MAL/ILMB with documentation summarizing consultations that have been initiated by MFR, any feedback that may have been already provided by the FN(s) and anticipated future consultation to be carried out by MFR. It is not necessary for MFR to provide MAL/ILMB with any feedback received from FN(s) after submitting the TA application. MFR is required to follow up on and address any concerns brought forward by FN(s) as per MFR Aboriginal Rights and Title Policy 15.1 (2003), whether those concerns were brought forward by the FN(s) before, during or after submitting the TA application.

See the attached First Nation Consultation Requirements flow chart for additional information.

The MO will be processed to the Assistant Deputy Minister (ADM), ILMB office for review and approval.

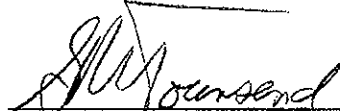
Should you have any questions regarding this matter, please contact Shawn Hedges, Policy Forester, BC Timber Sales at (250) 386-2611; Brian Braidwood, Manager, Legislative and

To Timber Sale Managers, BC Timber Sales et al

Strategic Support, Crown Land Administration Division, Ministry of Agriculture and Lands at (250) 356-7643; or Bev Dubek, Senior Aboriginal Relations Advisor, Crown Land Administration Division, Ministry of Agriculture and Lands at (250) 387-5260.



Dave Peterson
Assistant Deputy Minister
BC Timber Sales



Gary Townsend
Assistant Deputy Minister
Integrated Land Management Bureau

- Attachment(s):
1. First Nation Consultation Requirements flow chart
 2. Section 3.3 – MOF – *Protocol Agreement on Crown Land Administration and Forest Activity* (1993)
 3. Addendum to the SECTION 3.3 MOF Protocol (2006)

pc: Grant Parnell, Assistant Deputy Minister, Crown Land Administration Division, MAL
Tim Sheldan, Assistant Deputy Minister, Operations Division, MFR
Jim Langridge, Director, Resource Tenures and Engineering Branch, MFR
Pat Eng, Manager, Crown Land Adjudication (Nanaimo), MAL/ILMB
Jeff Sheldrake, Senior Advisor, Real Estate Operations, MFR

Log Handling Facilities
Ministry of Forests and Range
First Nation Consultation Requirements for
Application for Transfer of Administration

No First Nations consultation is required if all of the following conditions apply:

- 1) Existing use is log storage & handling;
- 2) The footprint of the requested TA area(s) falls within existing designated area; and
- 3) No land use change contemplated.

Initiation of First Nations consultation required by MFR (e.g., as integral part of the Forest Stewardship Plan approval process) if one or more of these apply:

- 1) New use /no current reserve *Land Act* tenure;
- 2) Boundary change or increase; or
- 3) Land use change.

MFR TA application accompanied by documentation summarizing consultations that have been initiated by MFR as well as commitment to conduct future consultation(s) in accordance with MFR Aboriginal Rights and Title Policy 15.1 (2003).

MAL/ILMB prepare section 106 (2) *Land Act* Transfer Ministerial Order including conditions and restrictions as follows:

"I, Pat Bell, Minister of Agriculture and Lands, order that:

1. The administration of land known as that part of District Lot XX, XX District, containing X hectares more or less, as more particularly shown on the attached map and metes and bounds description, be transferred to the Ministry of Forests and Range for a period of 60 years.
2. As a condition of the transfer in section 1, the land must only be used by the Ministry of Forests and Range for the specific purpose of log handling, and once the land, or any part of the land, is no longer being used for that specific purpose of log handling, the Ministry of Forests and Range must transfer administration and control of the land, or part of the land, as the case may be, back to the ministry responsible for the *Land Act*, subject always to that minister's written acceptance of the transfer."

ILMB Assistant Deputy Minister to sign off on Ministerial Order