




11660-00

Land Use Operational Policy Reserves, Withdrawals, Notations and Prohibitions

NAME OF POLICY:	Reserves, Withdrawals, Notations and Prohibitions
APPLICATION:	Applies to interpretation and use of <i>Land Act</i> Order in Council Reserves (Section 15), Map Reserves (Section 16), <i>Land Act</i> designations (Section 17), and prohibitions of use (Section 66). Applies also to interpretation and use of notations of interest on provincial reference maps.
ISSUANCE:	Assistant Deputy Minister, Tenures, Competitiveness and Innovation
IMPLEMENTATION:	Ministry of Forests, Lands and Natural Resource Operations
REFERENCES:	<i>Land Act</i> (Ch. 245 R.S.B.C, 1996)
RELATIONSHIP TO PREVIOUS POLICY:	This policy replaces the previous Reserves, Designations and Notations policy dated August 16, 2004
POLICY AMENDMENT:	Any formal request for an amendment to this policy is to be directed in writing to the Director, Land Tenures Branch, Ministry of Forests, Lands and Natural Resource Operations



Dave Peterson, ADM
Tenures, Competitiveness and Innovation
Ministry of Forests, Lands and Natural
Resource Operations
MAY 26 2011

Date:

Crown Land Use Operational Policy: Reserves, Withdrawals, Notations and Prohibitions

APPROVED AMENDMENTS:		
Effective Date	Briefing Note /Approval	Summary of Changes:
June 1, 2011	BN 175892	Policy update to reflect reorganization of resource ministries April 2011
February 28, 2014	BN 205155	Amendment #1: Update Policy to clarify intent and gain administrative efficiencies
September 22, 2015	BN 217947	Land Act Reform phase 1 changes

EFFECTIVE DATE: June 1, 2011

FILE: 11660-00

AMENDMENT NO: September 22, 2015

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1. PURPOSE

This policy governs the use and interpretation of Reserves (Section 15), Withdrawals from disposition (Section 16), Conditional withdrawals (Section 17), and Prohibition of use (Section 66) under the *Land Act* and establishes policy governing the use of notations of interest.

This policy also clarifies how the establishment or cancellation of a reserve or withdrawal can affect or influence a *Land Act* application and disposition.

The italicized text in this document represents information summarized from standard Crown land management policies and procedures. This material has been inserted where it provides necessary direction or context. As well, website links offer access to the full text of the relevant land management policies and procedures. Text in standard script is applicable to this policy only.

2. PRINCIPLES AND GOALS

Provincial employees act in accordance with applicable legal requirements when making decisions. The Guiding Principles are a summary of key administrative and contract law principles which guide provincial employees.

This policy is part of a series of policies that have been developed to help provincial staff use business and legal principles to achieve the government's goals with respect to the management of Crown land in a manner that is provincially consistent, fair and transparent. To that end, this policy also serves as a communication tool to help the public understand how the Province of BC makes decisions respecting Crown land.

3. DEFINITIONS

Authorizing Agency means the provincial ministry responsible for the specific land use authorization.

Government body (as referenced in 15(1) of the *Land Act*) means the provincial government, a government corporation as defined in paragraphs b and c as defined in the Financial Administration Act, federal government or prescribed organization.

4. ABBREVIATIONS

O.I.C. - Order in Council

ILRR – Integrated Land and Resource Registry

5. APPLICANT ELIGIBILITY

Federal and provincial government agencies and government corporations may apply for the establishment of reserves, withdrawals, notations and prohibitions.

6. FORM OF LAND ALLOCATION

Refer to Appendix 1 for a summary of the forms and terms of Crown land allocation available for reserves, withdrawals, notations and prohibitions.

For more detailed standard policy information see [Form of Crown Land Allocation](#).

6.1 Reserve (Section 15)

A Reserve is established by the authority of the Lieutenant Governor in Council through an O.I.C. to reserve Crown land from disposition in recognition of a specific public interest, value or attribute. Of the administrative tools available under the *Land Act*, an O.I.C. reserve provides the strongest indication of government's intention and it is used to safeguard an acknowledged public interest or concern.

A reserve may contain specific terms, including terms that authorize a Government body "to place, construct, maintain or operate any works, structures or other improvements on the (reserved) land".

A reserve is an absolute reservation during its term, and can only be cancelled or amended by a further O.I.C. It precludes or prevents the acceptance and adjudication of Crown land applications or the disposition of Crown land, except for temporary occupation through the use of a two year temporary licence, in the subject area.

A reserve must be established for a specific term, with a suggested minimum term of 5 years.

A reserve must be recorded in the Crown land registry and viewed through the ILRR.

Examples of section 15 reserves include: areas of Crown land being set aside for future cemeteries, parks, imminent treaty settlement agreements and watershed protection.

6.2 Withdrawal from disposition (Section 16)

A withdrawal of an area from disposition, by Ministerial Order or as per the delegation matrix, is established by the Authorizing Agency. This type of withdrawal is established to support a provincial or federal government objective, therefore the name of the Withdrawal holder must be a provincial or federal ministry or agency.

A withdrawal may contain terms, including terms that authorize a Government body "to place, construct, maintain or operate any works, structures or other improvements on the land withdrawn".

A withdrawal precludes or prevents the acceptance of Crown land applications or the disposition of Crown land in the subject area.

The maximum term for a withdrawal is thirty years. The term can be made for a shorter period of time if it is deemed appropriate to do so. A withdrawal longer than 10 years is subject to a mandatory review every 10 years.

A withdrawal must be recorded in the Crown land registry and can be viewed through the ILRR.

Examples of withdrawal from disposition under section 16 include: gravel for Ministry of Transportation and Infrastructure, institutional purposes such as a future school/outdoor recreation use, federal boat harbour.

6.3 Conditional Withdrawal (Section 17)

A conditional withdrawal of an area from disposition, by Ministerial Order or as per the delegation matrix, is established by the Authorizing Agency. This type of conditional withdrawal is established to support a provincial or federal government objective, therefore the name of the Withdrawal holder must be a provincial or federal ministry or agency.

A conditional withdrawal will contain terms that specify the use (or uses) that may be authorized. Crown land will not be available for disposition inside this area for activities not deemed compatible with the terms of the withdrawal.

A conditional withdrawal does not preclude the acceptance and adjudication of Crown land applications and the disposition of Crown land for use(s) that are deemed compatible with the conditions of the withdrawn area.

The maximum term for a conditional withdrawal is thirty years. The term can be made for a shorter period of time if it is deemed appropriate to do so. A withdrawal longer than 10 years is subject to a mandatory review every 10 years.

A conditional withdrawal must be recorded in the Crown land registry and can be viewed through the ILRR.

A conditional withdrawal can be established to support a planned disposition project such as intensive agriculture, controlled recreation (ski), and industrial/commercial development such as Liquefied Natural Gas.

6.4 Notation of Interest

A notation of interest is established by the Authorizing Agency in recognition of an interest in Crown land by a provincial or federal ministry or agency. It is not an authorization under the *Land Act* but rather a notation to identify a feature or concern.

A notation of interest may be used to ensure referral of land applications and involvement in a planned disposition. A notation of interest may be used to record such long term interests in Crown land as the location of trails, timber sale areas, grazing licences and woodlot licences.

A notation of interest does not preclude the acceptance and adjudication of Crown land applications in the subject area.

The term for the notation of interest can be 'for as long as required'. It is recommended that a notation with a term longer than 10 years be subject to a mandatory review every 10 years.

A notation is recorded in the Crown land registry and can be viewed through the ILRR.

Examples of Notations of Interest can be First Nation cultural features, historical artefacts or salt licks.

6.5 Prohibition of Use - Order in Council (Section 66)

A prohibition of use is established by the Lieutenant Governor in Council through regulation to prohibit specific activities from occurring in designated areas of Crown land. It is not used as a means of regulating the Crown land application process or planned disposition process.

A prohibition of use regulation may be applied in circumstances where government's intent is to restrict a specific use or activity on Crown land.

An example of a prohibition regulation under the *Land Act* includes the restriction of motorized vehicles in certain areas of Crown land.

6.6 Transfers -

Information about transfers of Crown land, sections 31 and 106 of the *Land Act*, into other provincial ministry or federal government jurisdiction is contained in the [Land Policy - Form of Crown Land Allocation](#).

7. PRICING POLICY

7.1 Administrative Fees

Application fees for tenures, and other administrative fees, are payable to the Province of BC. These fees are set out in the fee schedules contained in the [Land Act Fees Regulation](#).

There are no application fees associated with Reserves, Withdrawals, Notations or Prohibitions for provincial government bodies. Fees for federal government bodies are as per the [Land Act Fees Regulation](#).

7.2 Rentals

There are no rentals charged for Reserves, Withdrawals, Notations or Prohibitions.

8. ALLOCATION PROCESSES

8.1 General Policy

Refer to Appendix 1 for a summary of the forms and terms of Crown land allocation available for Reserves, Withdrawals, Notations and Prohibitions.

Approval authority for reserves (Section 15) and prohibitions of use (Section 66) regulations rests with Cabinet.

Approval authority for all Withdrawals (section 16), Conditional Withdrawals (section 17), and Notations of Interest rests with the Minister of the Authorizing Agency or their delegated representative as detailed in the most current *Land Act* delegation matrix.

8.2 Recording, Evaluating and Reporting Activities

A proposal or request to establish, amend or cancel a Reserve, Withdrawal, Notation or Prohibition should be managed and processed through the appropriate Authorizing Agency regional office.

8.3 Adjudication Activities

Following a positive decision to establish a Reserve, Withdrawal or Notation, the Authorizing Agency:

- signs a notice (see appendices) establishing the Reserve, Withdrawal or Notation and places it on file (in the case of an O.I.C., the order is signed by Cabinet);
- the Authorizing Agency advises the proponent agency of the decision, and notifies other agencies as appropriate;
- the Reserve, Withdrawal or Notation is entered into the Crown land registry and viewed through the ILRR;

Example wording for Reserves, Withdrawals and Notations are provided in the Appendices.

Following a positive regional decision of a proposal or request for a Reserve requiring an O.I.C., the Authorizing Agency is required to follow standard O.I.C. administrative process. Contact the Legislation Branch for advice.

Where a proposal or a request for a Reserve, Withdrawal, Notation or Prohibition may lead to inter-agency or land use conflict, the Authorizing Agency may establish a term notation of interest. This action will permit the Authorizing Agency to request the proponent agency to prepare a report, pursuant to section 35 of the *Land Act*. The report will substantiate the proposal in detail and establish the means of minimizing potential conflict.

8.4 Review, Renewal and Cancellation Activities

Refer to Appendix 1 for a summary of the forms and terms of Crown land allocation available for Reserves, Withdrawals, Notations and Prohibitions.

Review of all Reserves, Withdrawals, Notations and Prohibition regulation may be undertaken in advance of the expiry date of the instrument or within ten years from the date of establishment, whichever comes first.

A review is to be conducted with consideration of the following:

- the degree to which public interest is served by renewal or continuance;
- the number of years the Reserve, Withdrawal, Notation or Prohibition has been in

effect;

- the conditions and provisos contained in the notice establishing the instrument;
- other relevant factors.

Where a Reserve, Withdrawal, Notation and Prohibition regulation has been in place for more than one ten year term, the ministry or agency in whose favour the instrument has been placed should be notified at least 90 days prior to the expiry date (or 10th anniversary) that cancellation will occur unless justification for renewal is received 30 days prior to expiry of the instrument.

Where the continuance or renewal of an instrument is not justified to the satisfaction of the Authorizing Agency the withdrawal or notation is to be cancelled and deleted from provincial records following the sequence of events outlined above (Adjudication Activities), but for cancellation rather than establishment.

Where a Reserve or Prohibition is no longer necessary, the Authorizing Agency is to initiate the process to cancel the instrument. Notice of cancellation, if approved by Cabinet, is to be made by the Authorizing Agency, and adjustments made on files and records.

9. LAND APPLICATIONS AND EXISTING TENURES

9.1 General Policy: Applications

Applications are not accepted for Crown land in areas reserved from disposition under Reserves (Section 15), except for temporary occupation through a 2 year temporary licence.

Applications are not accepted on Crown land covered by a withdrawal (Section 16).

Applications may only be accepted on Crown land covered by a conditional withdrawal (Section 17) if the use or uses are allowed in the withdrawal notice or are compatible with the intent of the withdrawal notice.

Applications for Crown land may be accepted in notation of interest areas. All applications are to be referred for comment to the provincial/federal ministry or agency in whose interest the notation has been recorded. Comments are to be solicited and evaluated in accordance with standard referral policy and procedures.

Applications are not accepted in prohibited use areas (Section 66) for those uses which are prohibited by the establishing O.I.C.

Applications for Crown land over a cancelled reserve area are required to be advertised according to Allocation Procedures- Applications.

9.2 General Policy: Erroneous Issuance of Tenures

If it is determined appropriate, **the Province may honour tenures mistakenly issued for land covered by a Section 15 O.I.C. reserve. Extensions of term and tenure replacements, however, may not occur** unless the O.I.C. expires or the subject area is deleted by O.I.C. Where it is determined that an erroneously issued tenure should not

remain in effect, Section 44 of the *Land Act* may be used to cancel the disposition. However, government exposure to liability to pay compensation should be considered before undertaking the cancellation.

The erroneous issuance of a tenure over Crown land covered by a Withdrawal under Section 16 creates a conflict with the original intent of the reserve to temporarily withdraw the Crown land from disposition. **A Withdrawal under Section 16 is automatically cancelled upon issuance of tenure, but requires formal cancellation or amendment in provincial records.**

If a tenure is erroneously issued over Crown land covered by a Withdrawal under Section 16, the agency holding the reserve must be contacted to inform them of the error and to confirm their information for reserve replacement. The agency holding the reserve can choose to either amend the initial reserve boundaries or replace the entire reserve area. Where the tenure is for a short term and the initial reserve boundaries are replaced, the tenure may be allowed to expire rather than be cancelled. Where the tenure is allowed to expire, it will not be replaced.

9.3 General Policy: Existing Tenures

Reserves (Section 15) and Withdrawals (Section 16), as well as Conditional Withdrawals (Section 17), may be placed over land that has been disposed by means other than Crown grant. To do so has no effect on the existing tenure. Where the reserve/withdrawal will impact the issuance of a replacement tenure, the tenure holder may be given reasonable notice that the tenure will not be replaced.

10. VARIANCE

Variances to this policy must be completed in accordance with the [Policy Variance Procedure](#).

Appendix 1. Reserves, Withdrawals, Notations and Prohibitions Summary.

TYPE OF INSTRUMENT	PURPOSE AND USE	TERM:
Reserve (S.15 <i>Land Act</i>)	<ul style="list-style-type: none"> ▪ Reserves Crown land from alienation as a result of an acknowledged value or concern ▪ An absolute reservation; can only be cancelled or amended by a further Order-in-Council ▪ May be used where the land is of key or critical significance in a regional or provincial setting; or where it is in public interest to protect land and maintain long-term options 	<ul style="list-style-type: none"> ▪ Minimum 5 years <p style="margin-left: 20px;">Subject to review as needed</p>
Withdrawal (S. 16 <i>Land Act</i>)	<ul style="list-style-type: none"> • Withdraws Crown land from disposition • May be used to support a government objective or activity 	<ul style="list-style-type: none"> • A maximum term of up to 30 years may be applied to section 16 withdrawals. • A withdrawal with a term longer than 10 years is subject to a mandatory review every 10 years.
<i>Conditional withdrawal</i> (S. 17 <i>Land Act</i>)	<ul style="list-style-type: none"> • Withdraws Crown land from dispositions, except for a designated use and compatible uses; land applications compatible with the designated use may be entertained 	<ul style="list-style-type: none"> • A maximum term of up to 30 years may be applied to section 17 conditional withdrawals. • A conditional withdrawal with a term longer than 10 years is subject to a mandatory review every 10 years.
Notation of Interest (NOI)	<ul style="list-style-type: none"> • A recognition of interests by a Ministry or agency recorded on reference maps • Land applications are referred to the agency whose interest has been recorded, to provide input to the adjudication process • Applications are referred to the interested agency for comment • Notations may be placed over areas covered by reserves or designations 	<ul style="list-style-type: none"> • When approving a notation, it is the responsibility of the decision maker to determine the appropriate term. Any term including a term of 'for so long as required' may be applied to NOIs. • An NOI with a term longer than 10 years, (including a term of 'for so long as required') is subject to a mandatory review every 10 years.
Prohibition of Use - Order-in-Council (S. 66 <i>Land Act</i>)	<ul style="list-style-type: none"> • Allows Lieutenant Governor in Council to prohibit specific uses of Crown land in a designated area 	<ul style="list-style-type: none"> • Specific term, approved by Lieutenant Governor in Council

Appendix 2. Withdrawals from Disposition (Section 16): Sample Notice of Establishment, Amendment, Cancellation or Continuation

NOTICE OF	ESTABLISHMENT AMENDMENT CANCELLATION CONTINUATION	WITHDRAWALS FROM DISPOSTION (Section 16)
WHEREAS:	The undersigned has been charged with the administration of Section 16 of the <i>Land Act</i> ; and	
WHEREAS:	The undersigned considers it advisable in the public interest to withdraw from disposition the area identified on the attached map; then (IN THE CASE OF ESTABLISHMENT)	
THEREFORE:	The Crown land area outlined on the attached map is hereby withdrawn from disposition on behalf of the (ministry or agency) due to its importance for (specific value or interest), for a period of (number not to exceed 30) years, effective (date). (OR, IN THE CASE OF CANCELLATION)	
THEREFORE:	The existing withdrawal , established (date) on File (number) and shown on the attached map is hereby cancelled, effective (date). (OR, IN THE CASE OF AMENDMENT)	
THEREFORE:	The existing withdrawal, established (date) on file (number) and shown on the attached map is hereby amended by the (addition/deletion) of Crown land outlined in red. The (addition/deletion) is to remain in effect for a period of (number not to exceed 30) years, effective (date). (OR, IN THE CASE OF CONTINUATION)	
THEREFORE:	The Crown land area outlined on the attached map continues to be withdrawn from disposition on behalf of the (ministry or agency) due to its importance for (specific value or interest), for a period of (number not to exceed 30) years, effective (date).	

Authorized Signatory

Date Signed

cc: i.e. Proponent ministry or agency.
e.g. Ministry responsible for the *Forest Act*
e.g. Ministry responsible for the *Park Act*
e.g. Surveyor General Division, Land Title and Survey Authority

Appendix 3. Conditional Withdrawal (Section 17): Sample Notice of Establishment, Amendment, Cancellation or Continuation

NOTICE OF	ESTABLISHMENT AMENDMENT CANCELLATION CONTINUATION	CONDITIONAL WITHDRAWAL FROM DISPOSITION (Section 17)
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WHEREAS: The undersigned has been charged with the administration of Section 17 of the *Land Act*, and

WHEREAS: The undersigned considers it advisable in the public interest to (establish/amend/cancel/continue) a conditional withdrawal from disposition over the area identified on the attached map; then

(IN THE CASE OF ESTABLISHMENT)

THEREFORE: The Crown land area outlined on the attached map is hereby temporarily withdrawn from disposition except for (primary use or purposes) Use/Purposes for a period of (any number of years including the term 'for so long as required'). The area is hereby withdrawn from disposition under the *Land Act* for any purpose or use other than the above and others deemed compatible with or ancillary to the above by the undersigned, effective (date).

(OR, IN THE CASE OF CANCELLATION)

THEREFORE: The Crown land conditionally withdrawal from disposition under Section 17 of the *Land Act*, established (date) on file (number) and shown on the attached map is hereby cancelled, effective (date), and is available for disposition under the *Land Act*.

(OR, IN THE CASE OF AMENDMENT)

THEREFORE: The existing disposition under Section 17 of the *Land Act* established (date) on file (number) and shown on the attached map is hereby amended by the (addition/deletion) of Crown land outlined in red. Lands remaining within the amended *Land Act* area are conditionally withdrawn from disposition under the *Land Act* for a period of (any number of years including the term 'for so long as required') for any purpose or use other than (primary use or purpose), and others deemed compatible with or ancillary to the above by the undersigned, effective (date).

(OR, IN THE CASE OF CONTINUATION)

THEREFORE: The Crown land area outlined on the attached map is hereby temporarily continued as a Section 17 *Land Act* conditional withdrawal for (primary use or purposes) Use/ Purposes for a period of (any number of years including the term 'for so long as required'). The area hereby continues to be withdrawn from disposition under the *Land Act* for any purpose or use other than the above and others deemed compatible with or ancillary to the above by the undersigned, effective (date).

Authorized Signatory

Date Signed

cc: i.e. Proponent ministry or agency.
e.g. Ministry responsible for the *Forest Act*
e.g. Ministry responsible for the *Park Act*
e.g. Surveyor General Division, Land Title And Survey Authority

Appendix 4. Notations of Interest: Sample Notice of Establishment, Amendment, or Cancellation

NOTICE OF	ESTABLISHMENT AMENDMENT CANCELLATION	NOTATION OF INTEREST
WHEREAS:	The undersigned has been charged with the administration of the <i>Land Act</i> , and,	
WHEREAS:	The undersigned considers it advisable to (establish/amend/cancel) a Notation of Interest over the area identified on the attached map; then	
	(IN THE CASE OF ESTABLISHMENT)	
THEREFORE:	A Notation of Interest is established over Crown land shown on the attached map to record the interest of (ministry or agency) in the area due to its importance for (specific value or interest) for a period of (any number of years, including the term 'for so long as required') Applications for Crown land in the above area are to be referred to (ministry or agency) for comment and consideration in the adjudication of such applications, effective (date).	
	(OR, IN THE CASE OF CANCELLATION)	
THEREFORE:	The existing Notation of Interest established (date) on file (number) and shown on the attached map is hereby cancelled, effective (date).	
	(OR, IN THE CASE OF AMENDMENT)	
THEREFORE:	The existing Notation of Interest, established (date) on file (number) and shown on the attached map is hereby amended by the (addition/deletion) of Crown land outlined in red. The (addition/deletion) is to remain in effect for a period of (any number years including the term 'for so long as required') during which applications within the amended Notation of Interest area are to be referred to (ministry or agency) for comment and consideration in the adjudication of such applications, effective (date).	

Authorized Signatory

Date Signed

cc: i.e. Proponent ministry or agency.
e.g. Ministry responsible for the *Forest Act*
e.g. Ministry responsible for the *Park Act*
e.g. Surveyor General Division, Land Title and Survey Authority