

MEMORANDUM OF UNDERSTANDING BETWEEN
THE MINISTRY OF ENVIRONMENT
AND
THE MINISTRY OF AGRICULTURE AND LANDS
TO PROVIDE GUIDANCE TO THE INTEGRATED LAND MANAGEMENT BUREAU
REGARDING ADMINISTRATION OF
CROWN LAND FOR ENVIRONMENTAL MANAGEMENT

1. PURPOSE AND SCOPE

- 1.1. This Memorandum of Understanding (MOU) provides a framework for the Ministry of Environment (MOE) and the Ministry of Agriculture and Lands (MAL), through the Integrated Land Management Bureau (ILMB), with respect to allocating and managing Crown land under the *Land Act* to contribute to the delivery of MOE programs for environmental management. Specific objectives are to:
- identify *Land Act* mechanisms which can be used to secure Crown land for environmental purposes and establish guidelines for their respective application;
 - provide more specific direction on the appropriate process for carrying out "transfers of administration" made under s.106(2) of the *Land Act* for the purposes of Wildlife Management Area (WMA) designation under the *Wildlife Act* or to meet other approved MOE program or planning objectives;
 - clarify the respective roles of ILMB and MOE in administering *Land Act* dispositions over Crown lands under MOE administration; and,
 - clarify the process for resolving any disputes associated with the allocation of Crown land for environmental purposes.
- 1.2. This agreement replaces the 1990 Crown Land for Environmental Management agreement and associated 1992 Directive.
- 1.3. This agreement is consistent with MAL Land Use Operational Policies entitled: 1) *Form of Crown Land Allocation*; 2) *Land and Management Transfers*; and 3) *Reserves, Designations and Notations*.
- 1.4. This agreement applies to all Crown land under the administration of MAL or under the administration of MOE other than Parks and Protected Areas, but does not specifically address those Crown land tenures administered by agencies other than ILMB, such as the Ministry of Tourism, Culture and the Arts, the Ministry of Transportation and Infrastructure, or the Ministry of Forests and Range.
- 1.5. This agreement outlines roles, responsibilities and procedures associated with Environmental Designations and Transfers of Administration.

2. DEFINITIONS

- 2.1. "Environmental Designation" means protecting or recognizing an environmental interest in Crown land by way of a Reserve (section 15), withdrawal from disposition (section 16), conditional withdrawal (section 17), or Notation of Interest, as provided for in the *Land Act* and described in the *Crown Land Policy: Reserves, Designation, and Notations*.
- 2.2. "MOE Administered Lands" means Crown lands transferred to MOE through a transfer of administration under s. 106(2) of the *Land Act*, lands acquired by MOE through purchase, exchange or donation, or lands under long-term lease from a private landowner. It includes lands designated as Wildlife Management Areas under the *Wildlife Act*. (see 2.8)
- 2.3. "Transfer of Administration", "Transfer" or "Transferred Area" means a transfer of administration of Crown land under Section 106(2) of the *Land Act*.
- 2.4. "Parks and Protected Areas" means:
- a park, recreation area or conservancy under the *Park Act*;
 - a park, conservancy or ecological reserve under the *Protected Areas of British Columbia Act*;
 - an ecological reserve under the *Ecological Reserve Act*; and,
 - a protected area or other designation under the *Environment and Land Use Act*.
- 2.5. "Section Head" means the ILMB regional manager, or his or her designate.
- 2.6. "Regional Manager" means the MOE Environmental Stewardship Division and Parks and Protected Areas Division Regional Manager, or his or her designate.
- 2.7. "Regional Executive Director" means the ILMB Regional Executive Director or his or her designate
- 2.8. "Wildlife Management Area" or "WMA" means an area of land under the administration of MOE which is of special importance to fish and wildlife and designated under s. 4 of the *Wildlife Act*. It includes critical wildlife areas and wildlife sanctuaries designated pursuant to ss. 5(1) and 5(2) of the *Wildlife Act* respectively.

3. BACKGROUND

- 3.1. The Minister of Agriculture and Lands administers Crown land resources under various statutory authorities including the *Land Act* and *Ministry of Lands, Parks and Housing Act*. The minister administers all Crown land except land specifically under the administration of another minister, branch or agency of government.
- 3.2. MAL has delegated the Crown land adjudication, tenure administration and management and Crown land sales function to the ILMB. ILMB also has responsibility for the maintenance of databases and maps related to interests on Crown land.

- 3.3. FrontCounterBC (FCBC) is responsible for providing information to applicants on the types of authorizations they require. FCBC also accepts resource tenure applications, including those for Crown lands, and forwards completed applications to the appropriate adjudication agency.
- 3.4. MOE is responsible for conserving and managing fish and wildlife in British Columbia, under various statutory authorities.
- 3.5. To meet specific program objectives, including designation of WMAs, MOE may require either that an Environmental Designation be placed on Crown land or that administration of the land in question be acquired. MOE can acquire administration through land acquisition (purchase, exchange, or donation), through long-term lease from a private landowner, or through a Transfer of Administration under the *Land Act*.
- 3.6. MOE is responsible for adjudicating and authorizing land uses that pertain to MOE's mandate in any areas administered by MOE. Some other land uses may be authorized by ILMB with MOE's consent.

4. GENERAL ROLES AND RESPONSIBILITIES

- 4.1. MOE will apply for a Transfer of Administration or an Environmental Designation to address government or MOE approved program or planning objectives.
- 4.2. MOE will generally seek a Transfer of Administration under the *Land Act* where it is important to:
 - actively manage the land;
 - undertake improvements on the land;
 - enter into contractual agreements with third parties for environmental management purposes, or other purposes within the mandate of MOE;
 - administer dispositions of land that relate to MOE's mandate; and/or,
 - pursue a WMA designation under section 4 of the *Wildlife Act*.
- 4.3. To meet program objectives other than those described above, MOE may require only an Environmental Designation under the *Land Act* rather than a Transfer of Administration.
- 4.4. Environmental Designations may also be used as a temporary method to reserve Crown land while preparing the appropriate documentation for a section 15 Reserve or section 106 Transfer of Administration.
- 4.5. Refer to Appendix 1: *Options Under the Land Act for Securing Crown Land for Environmental Management Purposes* to help select the most appropriate tool to meet objectives.
- 4.6. ILMB will maintain a record in Tantalus and the Integrated Land Resource Registry (ILRR) of all Crown lands that are acquired, transferred, or secured by MOE. MOE is responsible for conveying the required information, in the format requested by ILMB, to ensure that the information in Tantalus and ILRR is current and accurate.

- 4.7. Notification of establishment of Environmental Designations and Transfers of Administration will be made to the originating MOE regional office and to the Planning and Management Branch of Parks and Protected Areas (HQ) Division of MOE (or its successor agency).

5. ENVIRONMENTAL DESIGNATIONS

- 5.1. Environmental Designations, such as a reserve or withdrawal, may be initiated to provide interim protection to an area of Crown land while a WMA designation is under consideration or an application to transfer administration is underway.
- 5.2. An application for an Environmental Designation will be initiated by the appropriate MOE regional office. The application will be delivered to the corresponding regional FCBC/ILMB office.
- 5.3. ILMB will respond to all MOE requests for Crown land Environmental Designations in a timely manner, consistent with approved policies and procedures for Crown land allocation.
- 5.4. MOE will be responsible for addressing First Nations, stakeholder or public consultation and any conflicts that arise in connection with a designation proposal. ILMB may assist MOE in conflict resolution, if required.
- 5.5. MOE will submit to the appropriate regional FCBC/ILMB office the completed application which must be accompanied with a cover letter that contains the following information (or the information required by FCBC):
- a request for the length of the tenure term;
 - the signature of the MOE Regional Manager;
 - the name, business address and phone number of a MOE contact person; and,
 - description of current legal status and use of the subject area as understood by MOE.
- 5.6. See Appendix 2 for the current (2009) application requirements for Environmental Designations.
- 5.7. Environmental Designations may be periodically reviewed by ILMB for currency. Cancellations and expiries of Environmental Designations will proceed as outlined in Section 10.

6. APPLICATIONS FOR CROWN LAND SUBJECT TO AN ENVIRONMENTAL DESIGNATION

- 6.1. Applications for disposition of Crown land may be received by FCBC where all or part of the land under application is subject to an Environmental Designation.
- 6.2. Depending on the type of Environmental Designation in place, disposition may not be permitted. As per procedure, where preliminary statusing shows that there are obvious conflicts, such as when the land requested is reserved or withdrawn from disposition (section 15 reserve or section 16 withdrawal) applications will not be accepted. Where

other designations are in place, such as a notation of interest, which may not be in conflict with the proposed use, applications can be accepted and proceed to adjudication.

- 6.3. Upon acceptance of an application for Crown lands subject to an Environmental Designation, FCBC staff will notify MOE staff in the appropriate regional office of the application, through the referral process.
- 6.4. Open communication between MOE and ILMB regional staff is encouraged to ensure that all applications of interest are reviewed by MOE staff prior to a decision being rendered on disposition.
- 6.5. MOE staff will provide ILMB adjudication staff with comments on the application within the standard timelines.
- 6.6. Regional offices of ILMB and MOE may develop more detailed protocols for handling applications for disposition of Crown lands subject to an Environmental Designation. Such protocols must be consistent with the steps outlined in this agreement.

7. TRANSFERS OF ADMINISTRATION TO MOE

- 7.1. An application for a Transfer of Administration will be initiated by the appropriate MOE regional office. The application will be delivered to the corresponding regional FCBC/ILMB office.
- 7.2. ILMB will respond to all MOE requests for Transfer of Administration in a timely manner, consistent with approved policies and procedures for Crown land allocation.
- 7.3. Applications for Transfer of Administration will proceed as follows:
 - 7.3.1. MOE will submit to the appropriate regional FCBC office a completed application which must be accompanied with a cover letter that contains the following information (current as of 2009):
 - a request for the length of the Transfer of Administration term;
 - the signature of the MOE Regional Manager;
 - the name, business address and phone number of a MOE contact person;
 - description of current legal status and use of the subject area as understood by MOE;
 - confirmation that land use change for purposes other than a Wildlife Management Area is not contemplated by MOE for the duration of the Transfer of Administration; and,
 - information regarding First Nation Consultation (see: Appendix 5: *First Nation Consultation Requirements for a Transfer Application from MOE*).
 - 7.3.2. See also Appendix 2 for information requirements to accompany applications for Transfer of Administration.
- 7.4. MOE will be responsible for addressing First Nations, stakeholder or public consultation and any conflicts that arise in connection with an Environmental Designation or Transfer proposal. ILMB may assist MOE in conflict resolution, if required.

8. APPLICATIONS FOR CROWN LAND UNDER MOE ADMINISTRATION

- 8.1. On Crown land that is under the administration of MOE, applications for Crown land which involve activities consistent with MOE's mandate will be adjudicated and administered by MOE using its own disposition powers.
- 8.2. Where preliminary statusing shows that all or part of the subject lands are under the administration of MOE, FCBC will forward the application to the appropriate regional MOE office. MOE staff will determine if the proposed land use is one that falls under MOE's mandate. MOE's mandate is defined by Appendix 4: *Activities and Uses to be Tenured by MOE*.
- 8.3. Applications for land uses which do not fall under MOE's mandate will be forwarded by MOE to the appropriate ILMB adjudication staff along with notification of MOE's preliminary consent or lack of consent for the proposed application. MOE may also identify and discuss with ILMB any required considerations or conditions that would need to be met if the proposed land use is to proceed.
- 8.4. Applications to which MOE has indicated preliminary consent will then be adjudicated and administered by ILMB. Prior to final tenure issuance, MOE may ask to review a copy of the draft tenure documents.
- 8.5. When both parties are satisfied with the contents of the tenure documents, the appropriate MOE Regional Manager will advise in writing that:
 - the proposed land use activity is compatible with the administration of the land by MOE, and,
 - if the land is in a WMA, he/she permits the use pursuant to s. 4(4) of the *Wildlife Act*.
- 8.6. In cases where MOE has determined that the proposed use is acceptable, ILMB may decide to not approve the application. The final decision to offer a tenure is ILMB.
- 8.7. Regional offices of ILMB and MOE may wish to jointly develop more detailed protocols for handling applications for the disposition of MOE administered lands. Such protocols must be consistent with the steps outlined in this agreement.
- 8.8. See Appendix 3: *Transfer of Administration for Crown Land Adjudication Process Chart* for roles and responsibilities for land use applications received by FCBC/ILMB on lands administered by MOE.

9. ERRONEOUS ISSUANCE OF TENURES (WITHIN A RESERVE OR OTHER ENVIRONMENTAL DESIGNATION AREA)

- 9.1. If ILMB erroneously issues a tenure in an area of land reserved for environmental purposes, the parties will notify each other as soon as possible to address the error. As per the current *Crown Land Use Operational Policy: Reserves, Designations and Notations*, the portion of the tenure which overlaps the reserved area may be cancelled by ILMB. If agreed to by both parties, ILMB may re-establish the reserve or designation over top of the tenure, and when the tenure comes up for renewal, may disallow renewal.

10. NOTIFICATION OF TRANSFER OR DESIGNATION EXPIRY OR CANCELLATION

- 10.1. Each of the instruments of transfer or Environmental Designation have a standard term which ranges from two years to 60 years, depending on the instrument and purpose for the Environmental Designation. Upon expiry of the term, Environmental Designations may be renewed for an additional term. If a Transfer of Administration to MOE is subsequently designated as a WMA under the *Wildlife Act*, the Transfer of Administration will be automatically renewed for as long as the area is required by MOE for WMA purposes.
- 10.2. In the course of tenure administration, ILMB may find Environmental Designations or Transfers which appear to have continued beyond the purpose for which they were established and may wish to cancel them to improve efficiency of land administration or to allow for the issuance of a tenure over all or part of the area.
- 10.3. At least ninety days prior to effecting an expiry or cancellation of a Transfer or an Environmental Designation, ILMB will notify the MOE's Parks Planning and Management Branch in Victoria of the expiry or cancellation, with a copy to the appropriate regional office of MOE.
- 10.4. Notices of expiry or cancellation should include a file number, a location or description of the area, the date the Environmental Designation or Transfer was established, the date the expiration or cancellation will take effect, and to whom the response should be directed.
- 10.5. If no response is received by the designated ILMB staff before the effective date of the expiry or cancellation, the expiry or cancellation will proceed.
- 10.6. Responses from MOE should include: a rationale for why the Transfer or Environmental Designation should be renewed or not cancelled; information regarding any changes to the resource values, or management objectives (if applicable) for the area; and, if First Nations consultation is required, the outcome of consultations, or a timeline for completion of consultations.
 - 10.7. If the changes to the area include boundary changes, the existing Environmental Designation will be cancelled and MOE must submit a new application with the amended boundaries.
- 10.8. Environmental Designations or Transfers may be extended if MOE requires additional time to complete First Nations consultations.
- 10.9. Once completed, notification of the cancellation or expiry, or of the renewal of the Environmental Designation or Transfer, will be sent by ILMB to the appropriate regional/district MOE office and the Parks Planning and Management Branch.

11. PAYMENTS TO THE HABITAT CONSERVATION TRUST FOUNDATION

- 11.1. Pursuant to section 119(1)(f) and section 120 of the *Wildlife Act*, any revenue derived by government from use of MOE Administered Lands must be paid into the Consolidated Revenue Fund (CRF) and then paid out of the CRF to the Habitat Conservation Trust Foundation (HCTF).
- 11.2. MOE Administered Lands will follow pricing policies described in the MAL program policy documents. Where a land use application includes a Crown area administered by MOE

and a Crown area administered by MAL/ILMB, the fees are to be apportioned on the basis of the portion of land administered by the respective ministries.

12. DESIGNATED CONTACTS

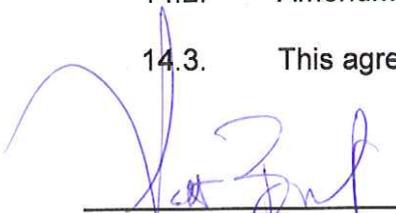
- 12.1. The Executive Director, Parks and Protected Areas Division, MOE and Assistant Deputy Minister, Regional Client Services Division of ILMB are responsible for the administration of this agreement.
- 12.2. The appropriate Regional Manager for MOE and Section Head for ILMB are the "initial contacts" regarding interpretation and liaison with respect to this agreement.

13. DISPUTE RESOLUTION

- 13.1. Responsibility for resolving disagreements relating to the effect and administration of this MOU is between the appropriate Regional Manager and ILMB Regional Executive Director.
- 13.2. On those occasions that there is a disagreement pertaining to the effect and administration of this MOU that cannot be reached, then the responsibility is elevated to the Executive Director, Parks and Protected Areas Division, MOE and the Assistant Deputy Minister of Regional Client Services, ILMB.

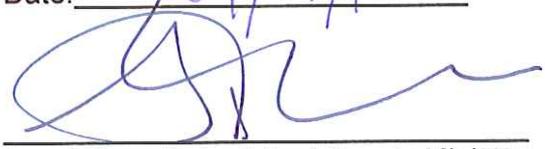
14. EFFECTIVE DATE AND TERM OF AGREEMENT

- 14.1. This agreement becomes effective on the date of signature by all parties.
- 14.2. Amendments to this agreement may be effected by mutual consent of all parties.
- 14.3. This agreement continues in force until the written withdrawal of one party.



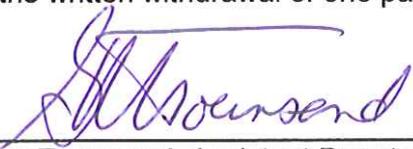
Scott Benton, Executive Director
Parks and Protected Areas Division
Ministry of Environment

Date: 2009/07/10



Grant Parnell, Assistant Deputy Minister
Crown Land Administration Division
Ministry of Agriculture and Lands

Date: June 26/2009.



Gary Townsend, Assistant Deputy Minister
Regional Operations Division
Integrated Land Management Bureau

Date: July 2, 2009

APPENDIX 1:

OPTIONS UNDER THE *LAND ACT* FOR SECURING CROWN LAND FOR ENVIRONMENTAL MANAGEMENT PURPOSES

NOTE: refer also to Crown Land Use Operational Policies including: 1) *Form of Crown Land Allocation*; 2) *Land and Management Transfers*; and 3) *Reserves, Designations and Notations*.

Type of Environmental Designation or Transfer	Source of Authority	Standard Term	Guidelines for Determining Appropriate Land Act Instrument
Notation of Interest	No legal authority; but purely a notation on the map	Short-term, 2 years; Long-term, 5 years	Notations of interest (NOI) are established in recognition of short-term interest of a parcel of land by a provincial agency. An NOI does not preclude disposition of the land, but is intended to ensure a referral to the agency with the interest if an application for disposition of the subject parcel is received.
Withdrawal from Disposition (map reserve)	<i>Land Act</i> , Section 16	Up to 5 Years. Renewable, subject to review	No significant management, development or improvement is proposed. Regionally significant resource values dictate temporary withdrawal from disposition under the <i>Land Act</i> .
Conditional Withdrawal Area (Designated Use Area)	<i>Land Act</i> , Section 17	Up to 5 years. Renewable, subject to review.	Active MOE management of Crown land is proposed. A resource management planning study has rationalized environmental management as a priority use for the land in question. Existing <i>Land Act</i> tenures have been grandfathered. Only <i>Land Act</i> applications for existing uses compatible with the designated use will be accepted by ILMB. MOE will be fully involved in any adjudication.
Reserve	<i>Land Act</i> , Section 15	5-60 years	No significant management or development is proposed. Provincially significant resource values dictate a long term withdrawal from disposition under <i>Land Act</i> . A minimum number of non-compatible land tenures exist and a long-term management plan for these uses has agreement between MOE and ILMB.
Transfer of Administration	<i>Land Act</i> , Section 106	5-60 years (Standard 30 years)	Management objectives cannot be achieved through an Environmental Designation. Active management or development or improvement is proposed, and may include rehabilitation projects, water regime management and construction of structures. Also considered where a Wildlife Management Area is proposed; where MOE has entered a third party agreement for environment management purposes; where the land is contiguous to other lands

			managed by MOE and integrated use of those lands and the Crown lands is proposed. If the area is subsequently designated as a WMA under the <i>Wildlife Act</i> , the transfer will be automatically renewed for as long as the area is required by MOE for WMA purposes.
--	--	--	---

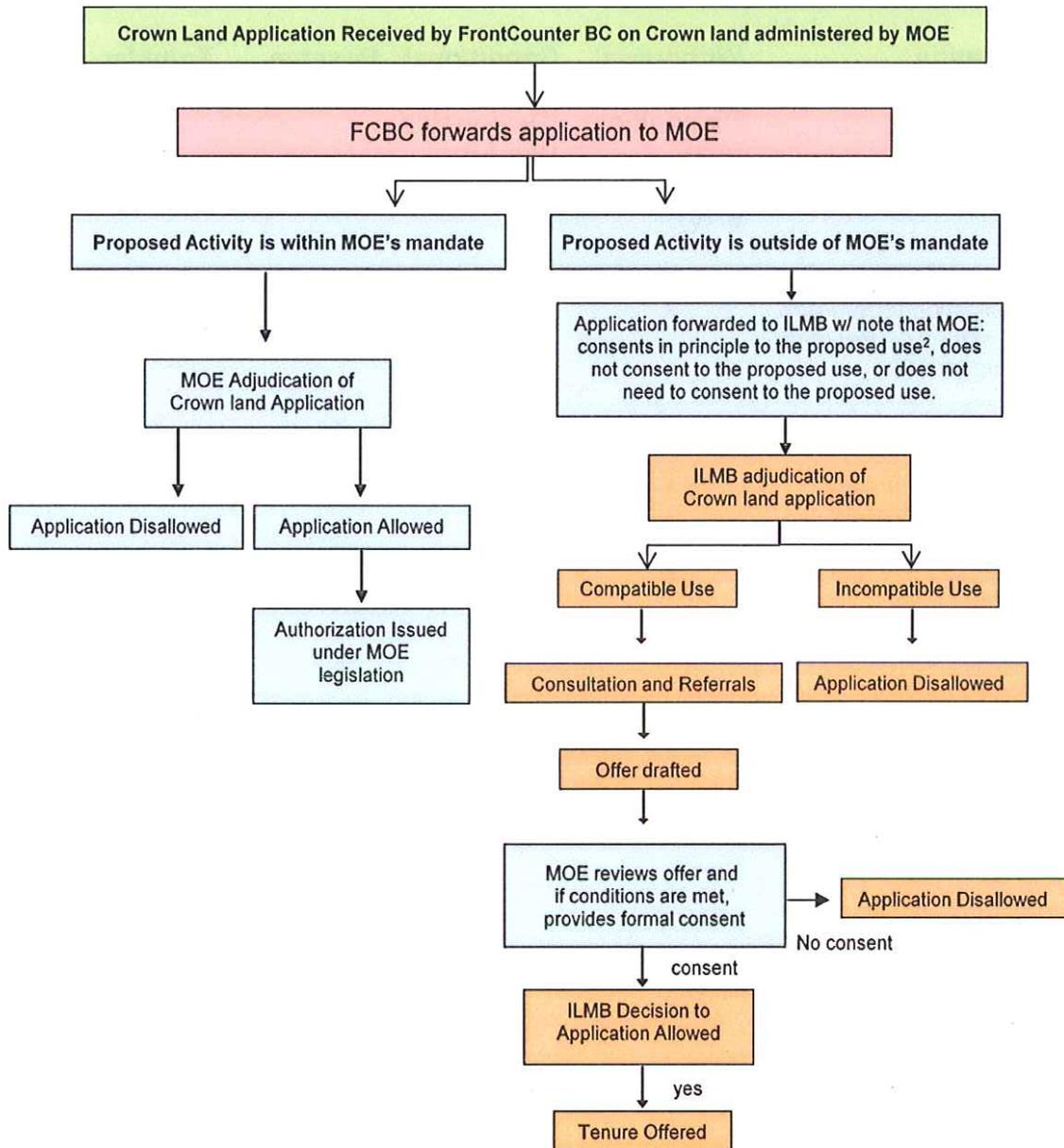
APPENDIX 2:

INFORMATION REQUIREMENTS TO ACCOMPANY CROWN LAND APPLICATIONS FOR ENVIRONMENTAL DESIGNATIONS

Information Requirements	Withdrawal from Disposition (map reserves s.16)	Conditional Withdrawal (Designated Use Area s.17)	Reserve (s. 15)	Transfer (s. 106)
1. Application form (Form 43, signed by Regional Manager MOE)	X	X	X	X
2. Map outlining area	X	X	X	X
3. Metes & bounds or survey description	X	X	X	X
4. Proposed use and period of use	X	X	X	X
5. Reason why land should receive Environmental Designation or be Transferred*	X	X	X	X
6. Description of existing resource values	X	X	X	X
7. Description of current land/resource use	X	X	X	X
8. Implications for other land/resource users	X	X	X	X
9. Identification of surrounding lands which may be integral to a proposal.		X	X	X
10. The results of all appropriate First Nations consultation and accommodation	X	X	X	X
11. Management objectives				X

APPENDIX 3:

CROWN LAND ADJUDICATION PROCESS CHART FOR MOE ADMINISTERED LANDS



1. This process does not apply to Adventure Tourism applications which are partially or completely located in Parks or Protected Areas. See the Adventure Tourism Operational Policy.
2. Consent-in-principle may require placing conditions on the tenure.

APPENDIX 4:

ACTIVITIES AND USES TO BE TENURED BY MOE

Activities/Uses Generally Tenured by MOE
<ul style="list-style-type: none">• general habitat restoration and management activities (excluding timber removal)• commercial recreation and guiding (e.g. hunting, angling, heli-skiing, kayaking, eco-tours, wildlife viewing)• research/education/outreach• grazing, haying and agriculture agreements that support wildlife/habitat management objectives• access roads, trails that support wildlife/habitat, recreation or related management activities• special events that support wildlife/habitat, recreation or related management activities (e.g. wildlife festivals, fishing/hunting events)• commercial filming

APPENDIX 5:

FIRST NATIONS CONSULTATION REQUIREMENTS FOR A TRANSFER OF ADMINISTRATION APPLICATION FROM MOE

If there is an existing reserve or designation in place and the lands are currently being used for fish and wildlife conservation purposes; the transfer application is contained within the current boundaries of the reserve or designation; and, there is no land use change contemplated now or for the duration of the transfer, then First Nations (FN) consultation is not required in relation to the Transfer.

MAL/ILMB wording on briefing note to accompany 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 MOE 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. MOE is responsible for all First Nations referrals and consultation in the future if changes to the use and/or issuing of tenures is contemplated"*

If this is a new use (i.e. no existing reserve or designation for conservation), the boundary has changed/increased; or there is a contemplated change in use (i.e. area is not currently being used for conservation), then MOE must initiate consultation with FN prior to approval of the Transfer. Initial consultation with FN is to notify the FN that MOE is requesting a Transfer of Administration under section 106 of the *Land Act* so that it can manage the lands for [x] purposes (e.g. required for planning and establishing a longer term conservation area); 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 MOE will be following up with the FN to consult further after that date.

MAL/ILMB-wording on briefing note to accompany MO regarding initiation of FN consultation is: *"Consultation regarding the Transfer of Administration was initiated by MOE with x First Nations(s) on x date, responses were received from x First Nation(s) to the effect that [insert summary of concerns] and MOE will be following up with the First Nation(s) concurrently or shortly after the s. 106 Transfer to consult further regarding MOE's proposed use of the property"*.

If consultation with FN is required, prior to initiating the consultation it is suggested that MOE talk to ILMB to get an understanding of which FN and large affiliate groups (e.g. Tribal Councils; Treaty Councils) ILMB would expect consultation to occur with. ILMB will advise which FN and larger affiliate groups separate referral letters are to go to and which only needed to be copied. MOE must provide MAL/ILMB with documentation summarizing consultations that have been initiated by MOE, any feedback that may have been already provided by the FN(s) and anticipated future consultation to be carried out by MOE. It is not necessary for MOE to provide MAL/ILMB with any feedback received from FN(s) after submitting the Transfer of Administration application. MOE is required to follow up on and address any concerns brought forward by the FN(s) before, during or after submitting the Transfer application.

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