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<b>NAME OF POLICY:</b>	Land and Management Transfers
<b>APPLICATION:</b>	Applies to the establishment of all management agreements, head leases, transfers of administration (to provincial agencies), and transfers of administration and control (to Federal government).
<b>ISSUANCE:</b>	Assistant Deputy Minister, Tenures, Competitiveness and Innovation
<b>IMPLEMENTATION:</b>	Ministry of Forests, Lands and Natural Resource Operations
<b>REFERENCES:</b>	<i>Land Act</i> (Ch. 245, R.S.B.C., 1996) Federal-Provincial Memorandum of Agreement on the Salmonoid Enhancement Program; Agreement with Ministry of Forests and Range respecting Grazing Lease Administration
<b>RELATIONSHIP TO PREVIOUS POLICY:</b>	This policy replaces the previous Land Management Transfers policy dated August 16, 2004
<b>POLICY AMENDMENT:</b>	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

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

MAY 26 2011

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Date:

APPROVED AMENDMENTS:		
Effective Date	Briefing Note /Approval	Summary of Changes:
June 1, 2011	BN 175892	Policy and Procedure update to reflect reorganization of resource ministries April 2011

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## 1. POLICY APPLICATION

This policy recognizes and conforms with:

- the authority of local government to regulate land use within its jurisdiction; and,
- the authority of public agencies other than the Authorizing Agency to administer programs related to Provincial Crown land.

This policy prescribes the manner in which management agreements, head leases, transfers of administration, and transfers of administration and control are established. Refer to Inter-Agency Agreements for specific management agreements developed in accordance with this policy.

This policy applies to all Crown land, including shoreland.

This policy applies to conversion, upon their expiry, of *Land Act* tenures in Provincial Parks to *Park Act* tenures.

*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.*

### Strategic Goals

Numerous government agencies have statutory responsibilities related to the use of Crown land. These responsibilities range from authority to manage certain resources contained on Crown lands, to the need to acquire individual areas of Crown land for a specific public purpose.

Recognizing the mandates and technical abilities of other agencies, the *Land Act* provides the authority to enter into various types of agreements with other public agencies to provide more efficient and effective delivery of government programs. Such agreements may involve the transfer of authority to administer the management of a particular aspect of Crown land use, or the actual conveyance of specific areas of Crown land together with complete delegation of authority to manage those lands. The specifics of an apparent need for the transfer of land or authority, and the relevant

provisions of the *Land Act*, dictate the type of transfer agreement that is most appropriate in a given situation.

Transfers of Crown land and authority will be undertaken where, on the basis of mutual agreement, an improved management of Crown land and service to the public can be achieved.

### **Strategic Objectives**

- To establish policy respecting transfers of Crown land and authority to and from other public agencies.
- To improve the level of management of Crown land that is allocated for private use.
- To provide improved service to the public or specific client groups.
- To simplify the administration of Crown land and provide efficient use of public resources.
- To make effective use of technical expertise found in government agencies.
- To provide opportunity for local government to acquire a measure of self-determination in the disposition and management of Crown land within its jurisdiction.
- To enhance the delivery of federal, provincial and local government programs involving the use of provincial Crown lands.

### **Strategic Policies**

The above objectives are met through the following strategic policies:

Enter into management agreements with other provincial agencies respecting the cooperative administration of Crown land in circumstances where it is necessary for the Authorizing Agency to retain a relatively high level of control over the land, and it is jointly perceived that such an agreement will advance the strategic objectives of this policy.

Enter into head lease arrangements with local governments and Crown corporations over specific areas of Crown land in circumstances where it is necessary for the Authorizing Agency to retain a moderate level of control over the land, and where it is jointly agreed that such an arrangement will advance the strategic objectives of government.

Transfer the Administration and Control of specific parcels of Crown land to the Federal government in circumstances where the Authorizing Agency requires a minimum level of control over the land, and where such transfers are deemed appropriate through inter-agency planning or referral processes.

Transfer the administration of specific parcels of land from other provincial agencies to the Authorizing Agency in circumstances where the administration of such lands would be more appropriately carried out by the Authorizing Agency or where the other agency

wishes to recommend a particular disposition or use for the land, but does not have the legislative authority to dispose of the land itself.

### 3. DEFINITIONS

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

**Head Lease** means a lease (authorized under Section 38 of the *Land Act*) with a municipality, regional district or Crown corporation which permits the tenure holder to sublet or issue licences to third parties.

**Management Agreement** means a formal term-specific agreement authorized pursuant to Section 97(1) of the *Land Act* between the Authorizing Agency and one or more provincial ministries in which authority is delegated to that ministry(ies) to enforce, administer and/or manage a specific aspect(s) of Crown land dispositions made by the Authorizing Agency.

**Transfer of Administration** means the transfer of administration pursuant to Section 106 of the *Land Act* of a particular area of Crown land to another provincial ministry by a ministerial order for a specified purpose.

**Transfer of Administration and Control** means the transfer of administration, control, and benefit pursuant to Section 31 of the *Land Act* of a particular area of Crown land to the Government of Canada by order in council for a specific purpose.

### 4. ABBREVIATIONS

**BCA** - BC Assessment

**ha.** - Hectare

**MOU** - Memorandum of Understanding

**OIC** – Order in Council

### 5. APPLICANT ELIGIBILITY

#### 5.1 Management Agreements

Management Agreements may only occur between the Authorizing Agency and provincial ministries (as represented by the respective Deputy Ministers).

#### 5.2 Head Lease

Head Lease agreements are restricted to municipal and regional governments with corporation status, Band corporations and to Crown corporations.

#### 5.3 Transfers of Administration

Transfers of Administration may be made to (disposition) or from (acquisition) provincial ministries.

## **5.4 Transfers of Administration and Control**

Proposals for Transfers of Administration and Control are accepted only from the Government of Canada.

## **6. FORM OF LAND ALLOCATION**

Refer to Appendix 1 for a summary of the forms and terms of land and management transfers.

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

### **6.1 Management Agreement**

A Management Agreement is not legally binding on either party and does not constitute a legal document.

Management Agreements are normally established to employ the technical expertise of another provincial ministry in a specific component of *Land Act* tenure administration. Management Agreements are reinforced by inter-agency agreements at headquarters and regional levels.

The term for which Management Agreements remain in effect is a subject of inter-ministry negotiation. Provision is normally made in an agreement for periodic review of the provisions of the agreement (e.g. every 5 years).

### **6.2 Head Lease**

Head Lease documents are drafted by Legal Services Branch, Ministry of Attorney General on an individual basis as required.

The maximum term of a Head Lease is 60 years. A lessee may apply to obtain a replacement head lease at mid-term of the existing tenure.

Sub-leases may not be issued for a term longer than the unexpired term of the Head Lease.

### **6.3 Transfers of Administration**

Proposals from other Ministries respecting the Transfer of Administration of a particular area of Crown land may be submitted to the Authorizing Agency. Transfers of Administration from the Authorizing Agency to another provincial agency or from another provincial agency to the Authorizing Agency require a ministerial order.

A ministerial order authorizing a transfer of administration, normally, is to specify the term for which the transfer is effective. The minimum term is 5 years. A transfer is subject to periodic review (e.g. every 5 years).

### **6.4 Transfers of Administration and Control to Canada**

Proposals from the Federal government respecting the Transfers of Administration and Control of a particular area of Crown land may be submitted to the Authorizing Agency.



Transfers of Administration and Control require an Order in Council (see Appendix 1 for a list of transfer types, terms, and corresponding charges).

An Order in Council for the Transfer of Administration and Control to the Federal government is subject to a reciprocal Federal Order in Council accepting the land.

Where capital projects require expediting for budgetary reasons, a contingent letter of consent may be issued on an interim basis to allow the Government of Canada to proceed with the project contingent upon the Transfer of Administration and Control.

Federal Crown corporations and commissions are not eligible to receive a Transfer of Administration and Control. Dispositions to such organizations are authorized by Crown grant, lease, licence, right of way, or easement.

An Order in Council authorizing a Transfer of Administration and Control may be for a specified term (standard term 60 years), or for so long as the land is used for the purpose specified in the Order in Council (see Appendix 1 for a list of transfer types, terms and corresponding charges). A transfer is subject to periodic review (e.g. every 5 years) to determine the necessity of renewal or continuation.

Generally, the Land shall be used only for public purposes and shall not be used for private commercial purposes involving the operation of a business as a going concern.

Crown land may be reserved pursuant to the *Land Act* on behalf of the Federal Government where the proposed use does not involve improvements.

In such cases a Transfer of Administration and Control is not required.

## **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](#).*

### **7.2 Rentals**

#### **7.2.1 Management Agreement**

No rental is charged.

#### **7.2.2 Head Lease**

The pricing of a Head Lease is to be negotiated between the head lessee and Authorizing Agency. Rental rates for sub-leases and licences are not to be less than standard Crown land use rentals in effect at the time for the respective uses authorized by the lessee.

Within 30 days of each anniversary of a Head Lease the lessee must deliver to the Authorizing Agency an audited statement of revenues collected pursuant to the head lease, together with a rental as prescribed in the lease agreement. The province may inspect and audit books and records kept in relation to a Head Lease.

### **7.2.3 Transfers of Administration**

No rental is charged.

### **7.2.4 Transfers of Administration and Control to Canada**

Where Crown lands are transferred to the Federal Government for industrial or commercial use (e.g., industrial park operated on Federal airport lands, Federal buildings and structures, etc.), the Authorizing Agency will negotiate with the former to determine either:

- a market value consideration for the lands;
- an appropriate revenue-sharing arrangement; or
- deletion (from the transfer) of that land which is to be used for commercial purposes such that revenue accrues to the Crown.

## **8. ALLOCATION PROCESSES**

### **8.1 Management Agreement**

Management Agreements are the subject of negotiation between senior representatives of the respective ministries.

### **8.2 Head Lease**

Head Leases are issued by direct offer pursuant to individual applications. They normally involve prior negotiations between the provincial staff and the applicant and, in all cases require approval of the ADM of the Authorizing Agency.

Application for Head Lease assignment is subject to Authorizing Agency approval and review by the Legal Services Branch.

A Head Lease is issued subject to existing Crown dispositions affecting the land.

The lessee is required to refer all sub-tenure proposals to the Authorizing Agency for approval prior to the issuance of sub-tenures, unless otherwise negotiated in the Head Lease.

### **8.3 Transfers of Administration/Transfers of Administration and Control to Canada**

#### **8.3.1 Status, Clearance and Documentation**

Transfers of Administration and Transfers of Administration and Control are to be processed in accordance with the standard application procedure respecting the need for status, clearance, referrals, land inspection and field reporting. Both forms of transfers are subject to Crown Land Survey policy. The Surveyor General Division of the Land Title and Survey Authority is to be contacted to determine the nature of any survey requirements.

Draft orders should be provided to the Surveyor General Division to initiate the clearance, legal description and area calculations, prior to the transfer being executed to minimize delays in processing the transfer.

Transfer of Administration Ministerial Orders and Transfers of Administration and Control Orders in Council are to be completed as per standard procedure.

Refer to the [Reserves, Withdrawals, Notations and Prohibitions policy](#) for procedures related to proposals, establishment and review of Orders in Council for reserves, and Transfers of Administration (and Control).

### **8.3.2 Survey**

Completion of legal survey is required prior to initiation of an Order in Council for Transfer of Administration and Control to the Federal Government.

It is the responsibility of the Federal government to undertake the legal survey for non-commercial/non-industrial dispositions (i.e. those involving only an administrative charge).

### **8.3.3 Terms and Conditions**

A Transfer of Administration to or from a provincial agency is subject to the terms and conditions specified in the ministerial order.

Unless otherwise negotiated with the Federal government and agreed to by the Province, the Order in Council transferring administration and control is to contain the provision that the transfer “excepts and reserves to the Province the rights, titles, privileges and interests referred to in Section 50(1) of the *Land Act*”.

### **8.3.4 Special Procedures - Transfer of Administration**

Where a proposal for a Transfer of Administration is received from a Ministry for the purpose to erect buildings or other structural improvements, that Ministry is directed to make application to the BC Buildings Corporation.

In the case of Transfer of Administration to the Authorizing Agency, the transferring agency may recommend a preferred lessee/licensee or use for the land being transferred.

Where a status report for a replacement tenure application indicates that the subject tenure is encompassed by a provincial park, the application is referred to the appropriate Parks office. On the basis of a review of the application, the Parks office will advise the Authorizing Agency to either:

- disallow the application on the grounds that the land is required for park use; or
- inform the applicant in writing that the tenure is to be converted to a Park Use Permit and that the Parks office will contact the applicant directly.

Where another Provincial agency transfers administration to the Authorizing Agency, and that agency states a preferred lessee/licensee or use for the land, the Authorizing

Agency will endeavour to comply with that preference in the disposition process, where possible.

## **9. VARIANCE**

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

**Appendix 1. Land and Management Transfers Policy Summary**

<b>FORM OF TENURE/ AGREEMENT</b>	<b>METHOD OF DISPOSITION/ NEGOTIATION</b>	<b>TERM OF TENURE/ AGREEMENT</b>	<b>PRICING/ RENTALS</b>	<b>SPECIAL REQUIREMENTS</b>
Management Agreement may occur only with provincial ministries.	Negotiated by Senior representatives of respective ministries at the headquarters or regional level.	As negotiated (Periodic review and cancellation by mutual consent).	N/A	Executive approval required (for other than regional agreements). Reciprocal Ministries letter required to effect agreement (for other than regional agreements).
Head Lease may occur only with incorporated local governments, Band corporations and Crown corporations.	Application (normally preceded by negotiation between applicant and Manager).	30 yrs-standard term (60 yrs maximum). Provision for tenure replacement at midterm.	Negotiated	The Authorizing Agency retains the authority to review all sub-lease applications
Transfer of Administration may occur only to other provincial ministries.	Ministerial Orders	Specific term, minimum 5 years.	No charge	At the Authorizing Agency's discretion, T.A.'s may be subject to special conditions.  Ministerial Orders - Executive to make initial approval based on regional recommendations. Renewal subject to approval by Executive.
Transfer of Administration & Control may occur only to Federal government	Order in Council	Specific term (standard 60 years), or as long as the land is required for the specified purpose.	Market value, revenue sharing or as otherwise negotiated for industrial or commercial use or Federal buildings and structures.	Executive to make initial approval based on regional recommendations. Executive approval required for replacement or cancellation.  Order in Council required.

**Transfer of Administration and Control to Canada**

<b>TYPE OF TRANSFER</b>	<b>TERM OF TRANSFER</b>	<b>PRICING/RENTALS</b>
Transfer of lands in perpetuity	As long as required	Market value, revenue sharing, or as otherwise negotiated.
Transfer of lands for Federal buildings	Up to 60 years	Market value, revenue sharing, or as otherwise negotiated.
Transfer of lands for boat harbours, break-waters, wharves, boat landing ramps, floats, fish hatcheries and other similar purposes	Up to 60 years	No charge where no commercial activity is envisaged.  Market value, revenue sharing or as otherwise negotiated.
Transfer of lands for marine navigation aids	10 years and thereafter until ceded	No charge.
Transfer of lands together with appurtenant easement for powerlines, pipelines, sewers, water and other similar purposes	30 years and thereafter until ceded	No charge.
Transfer of easement appurtenant to lands owned by Canada for powerlines, pipelines, sewers, water and other similar purposes	30 years and thereafter until ceded	No charge.
<b>NOTE:</b> <b>Application fees apply in all cases as per <i>Land Act</i> Fees Regulation.</b> <b>Pricing for each federal request for provincial Crown land is to be considered on its merits, with respect to terms and conditions which are to be attached.</b>		