

Land Policy Form of Crown Land Allocation

NAME OF LAND POLICY: Form of Crown Land Allocation


APPLICATION: Applies to Crown land allocated through tenuring, sale, transfers of administration and control and reserves.

ISSUANCE: Assistant Deputy Minister
Tenures, Competitiveness and Innovation

IMPLEMENTATION: Ministry of Forests, Lands and Natural Resource Operations

REFERENCES: *Land Act* (Ch. 245, R.S.B.C, 1996)

RELATIONSHIP TO PREVIOUS LAND POLICY: This procedure replaces the previous Form of Crown Land Allocation Policy in effect August 16, 2004



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Resource Operations

MAY 26 2011

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
February 28, 2014	BN 205155	Amendment #1: Update Policy to clarify intent and gain administrative efficiencies
September 22, 2015	BN 217947	Land Act amendments as per Phase 1 table

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1. PURPOSE

Under the *Land Act*, Crown land may be allocated to individuals and corporations through a fee simple disposition (sale), or through a variety of tenures. In addition, Crown land may be allocated to government ministries through administrative transfers or reserved from disposition or withdrawn from particular uses.

The purpose of this policy is to provide an overview introduction to each of the Crown land allocation methods available to authorizing agency.

The appropriate form of Crown land allocation and tenure term will vary according to land use program. Where there is a section of a land use program policy that is different than a section of this policy, the land use program policy will be applied.

2. FORM OF CROWN LAND ALLOCATION

2.1 Tenures

As of September 22, 2015, section 14 permits will no longer be issued. Temporary, ie. minimal impact, short term, uses of Crown land will be authorized by a section 11 temporary licence of occupation (temporary licence). Previous activities that may have required a permit may now be authorized as a temporary licence or under the Permissions Policy or if the use requires a longer term or higher impact, a standard licence of occupation.

2.1.1 Temporary Licence of Occupation(Temporary Licence) (Section 11)

A temporary licence grants the right to carry out specified activity(s) for a short term.

A temporary licence may be issued for temporary uses, where an applicant is better served by a short term, minor rights authorization than by a longer term tenure. A temporary licence does not grant exclusive use. The tenure holder must allow public access to the area without interference and must recognize that overlapping and layering of tenures may be authorized by Government.

The maximum term for a temporary licence is 2 years. Temporary licences are not replaceable. The authorizing agency may decline to provide a subsequent tenure, or may alter the terms and conditions of a subsequent tenure, if, for example, the existing tenure is not in good standing, if development contemplated in an approved management plan has not been completed, or where it is deemed to be in the public interest.

2.1.2 Licence of Occupation (Section 39)

A licence of occupation may be issued where minimal improvements are proposed, where there are potentially multiple users of a site (e.g. communication sites), where survey is not required or when the land is located in remote areas and legal survey costs required for lease or right of way are prohibitive, and where Government wishes to retain future options and management control over the use of the lands. It may also be used to

allow development to proceed while awaiting completion of survey requirements for a lease or right of way.

A licence of occupation conveys fewer rights than a lease. It conveys non-exclusive use for the purpose described, is not a registerable interest, and does not require a survey.

The tenure holder may be given the right to modify the land and/or construct improvements as specified in the tenure document. The tenure holder may, in accordance with section 65 of the *Land Act*, take legal actions against any unlawful acts by individuals interfering with the holder's right to use the land as authorized by the tenure (e.g., stealing personal property, damaging improvements). However, a licence of occupation does not confer a right to the exclusive use and occupancy of the land. A licence of occupation does not allow the tenure holder to curtail public access over the licence area except where it would impact the licencees' right to use the land as per the licence document (e.g. improvements placed on the land may be locked or gated). Government may authorize overlapping and layering of tenures.

The maximum term for a licence of occupation varies according to the land use program. The maximum term provided within each land use policy is guidance to the decision maker, who exercises the discretion to make the term shorter or longer giving consideration to the facts of a particular application. When considering the appropriate term, the decision maker will normally consider factors such as the nature of the land use, the proponent's basis for seeking long term security and the Province's interest in retaining the flexibility to review or change the tenure term.

In most cases, tenure holders may apply for a tenure replacement following the mid-term of the tenure. Replacement of tenures is at the authorizing agency's discretion. The authorizing agency may decline to replace a tenure, or may alter the terms and conditions of a replacement tenure, if the existing tenure is not in good standing, if development contemplated in an approved management plan has not been completed, or where it is deemed to be in the public interest.

2.1.3 Lease (Section 22 – 38)

A lease should be issued where long term tenure is required, where substantial improvements are proposed, and/or where definite boundaries are required in order to avoid land use and property conflicts. A legal survey will be required at the applicant's expense to define the tenured area.

The tenure holder has the right to modify the land and/or construct improvements as specified in the tenure document. The tenure holder is granted the right to exclusive use and enjoyment of the area. The tenure holder also has the right to exclude or charge the public for use of the land and/or improvements, when this is consistent with the terms of the lease. The lessee may, in accordance with section 65 of the Land Act, take legal action against trespassers to the lease area.

The standard term for a lease is 30 years. A maximum term of 60 years is available in some land use programs.

Leases of area over 520 ha must be approved on behalf of the Minister by the Authorizing Agency.

A lease can be issued in a form that is registerable in the Land Title Registry. Registered leases for a term of 30 years or more may be considered to a fully taxable transfer of interest in property and may be subject to Property Transfer Tax in accordance the Property Transfer Tax Act. For more details, see Ministry of Finance information at:

http://www.rev.gov.bc.ca/individuals/Property_Taxes/Property_Transfer_Tax/ptt.htm

Where a lease is not registered in the Land Title Registry, Property Transfer Tax does not apply.

In most cases, a tenure holder may apply for a replacement tenure at any time following the mid-term of the lease. Replacement of tenures is at the authorizing agency's discretion. The authorizing agency may decline to replace a tenure, or may alter the terms and conditions of a replacement tenure if the existing tenure is not in good standing, if development contemplated in an approved management plan has not been completed, or where it is deemed to be in the public interest.

Where a replacement lease is for the same land, will result in a total duration of more than 30 years, and the replacement lease is registered in the Land Title Registry, the leases may be viewed as a single transaction and may be subject to Property Transfer Tax.

Where the term of a registered lease is less than 30 years or the total duration of all Leases does not exceed 30 years, Property Transfer Tax exemption is available.

2.1.4 Right of Way (Section 40)

A statutory right of way is normally used to authorize linear uses of Crown land for transportation, communication, energy production and utility developments (e.g. roads, power lines, cable telecommunications, or oil and gas pipelines). A legal survey will be required at the applicant's expense to define the tenured area.

A statutory right of way can be registered in the land title office. The tenure holder is granted a legal right of passage over the land for a specific purpose. It generally does not confer the right to exclusive use and enjoyment of the area, but does provide the tenure holder with certainty respecting access to the land and use of the improvements. Exclusive use may be granted where required for safety reasons. The tenure holder may, in accordance with section 65 of the *Land Act*, take legal action against individuals interfering with the holder's right to use the land as authorized by the tenure (e.g., stealing personal property, damaging improvements).

Statutory rights of way for major activities are normally issued for "so long as required". Shorter tenures may be issued where the use is of a shorter duration as defined under a specific program policy.

2.1.5 Easement

An easement is a non-possessing interest held by one person in another person's land whereby the first person is accorded partial use of such land for a specific purpose.

An easement is used to authorize linear uses where no legal interest in the land is required. An easement can be granted for any purpose necessary for the operation and

maintenance of the grantee's undertaking, including a right to flood. Easements may be used when selling Crown land if there is a need to register a linear corridor for the use of a third party against the title.

It does not confer the right to exclusive use and enjoyment of the area, nor the right to exclude the public from the land except as provided in the document (e.g. for safety purposes)

2.2 Sale

2.2.1 Crown Grant

Fee simple dispositions, or sales of Crown land, are made either under the *Land Act* (restricted to Canadian citizens and permanent residents) or the *Ministry of Lands, Parks and Housing Act*.

Crown grants to any individual or corporation for more than 520 ha, except for commercial, industrial, railway, or airport purposes (*Land Act* section 20(2)), must be approved, by the Minister, of the authorizing agency.

Fee simple disposition of Crown land conveys surface rights only. This includes the right of the land owner to any sand and gravel, earth, soil, peat and marl and construction rock on the land. Rights to sub-surface resources (e.g. minerals, petroleum and natural gas) as well as water resources are retained by the Crown (*Land Act* section 50). A disposition of Crown land will also require payment to the government for the value of the timber on that land.

2.2.2 Lease purchase

Some Crown Land programs allow the conversion of *Land Act* tenures to private ownership.

2.3 Sponsored Crown Grants/Nominal Rent Tenures

The [Community and Institutional Land Use Policy](#) utilizes two instruments: Sponsored Crown Grant - (sponsored transfers of Crown land from the Province to public sector organizations, such as regional governments and school boards); and, Nominal Rent Tenure - (leases and licences of occupation of Crown land that are provided to charities, non-profit organizations and public sector organizations for a nominal amount of rent).

This policy serves to support the community, social and economic goals of the Province of British Columbia by making parcels of Crown land available for community and institutional land uses. It enables the use and disposition of Crown land for health, education, public safety, community infrastructure, transportation and public facilities that benefit the public-at-large. The FCG and NRT Program provides opportunities for local economic diversification, a supportive social fabric and healthy communities.

2.4 Reserves, Withdrawals and Transfers

Reserves, withdrawals and transfers are carried out through a variety of administrative instruments. Administrative instruments are formal legal mechanisms, or informal administrative measures, employed by the Province to provide for the optimal

management or use of Crown land by government. Administrative instruments include written procedural agreements between the Province and other agencies; mechanisms used to reserve, withdraw, designate, or record an interest in Crown land; as well as devices used to transfer Crown land and/or the authority to manage Crown land to other agencies.

2.4.1 Reserves and Withdrawals

Federal and provincial government agencies and government corporations may apply for the establishment of reserves over high value sites required for public purposes, including research and education. Reserves may authorize a government body to place, construct, maintain or operate any works, structures or other improvements on the reserved land.

Order in Council 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. It is established pursuant to Section 15 of the *Land Act*. An O.I.C. reserve is an absolute reservation during its term and can be cancelled or amended only by another Order in Council.

An O.I.C. reserve is used in special circumstances where a withdrawal (Section 16) is insufficient to safeguard an acknowledged public interest or concern. Such circumstances include, but are not limited to, the following:

- the resource or potential use of the land is unique, critical, or has provincial or regional significance which should be conserved over the long term;
- long term conservation or maintenance of future options on the land is in the public interest.

Withdrawal (Section 16)

A withdrawal from disposition, established by the authorizing agency on behalf of the Minister, is to temporarily withdraw or withhold Crown land from alienation for all purposes under the *Land Act*. It is established pursuant to Section 16 of the *Land Act*. A withdrawal can be established to suit a variety of circumstances, including:

- to permit agencies to undertake operational planning and/or to facilitate market development for a specified use;
- to provide temporary protection of the land base and its resources from use and development; and
- to permit the authorizing agency to temporarily maintain options on the future use of the area
- to authorize a government body to use the land for public purposes.

A withdrawal is established on Crown land for a specific term, with a maximum term of 30 years.

Conditional Withdrawal (Section 17)

Conditional withdrawals can designate a portion of Crown land for a particular use or for the conservation of natural or heritage resources. In this case, the land is withdrawn from dispositions under the *Land Act* except for the designated use(s) and any compatible use(s). Uses identified as compatible or associated with the designated use may be authorized by the authorizing agency as an agent for the Minister, subject to the specifications of the notice used to establish the area.

Conditional withdrawals are established pursuant to Section 17 of the *Land Act*. A *Land Act* conditional withdrawal may be amended or cancelled by the Minister responsible for the *Land Act*.

A conditional withdrawal may be established to permit the orderly development of a designated area for a specified use (or uses) through the Crown land application process. They may also be used to implement a planned disposition project (including Crown land planning projects) for a variety of non-forest uses.

2.4.2 Notation of Interest

A Notation of Interest is a recording on provincial reference maps of an interest in Crown land by another provincial ministry or agency. It is not a reserve or withdrawal under the *Land Act*, and does not preclude the acceptance of land applications or disposition of Crown land.

A notation of interest may be used to ensure referral of land applications to agencies or ministries whose mandate, programs or interests dictate a concern with the nature, extent and/or conditions associated with Crown land disposition in a specific area. It may also be used to ensure the involvement of such agencies in planned disposition projects. A notation of interest may be recorded over an area for which a Crown land planning project is proposed or has been initiated, in order to bring the planning project to the attention of provincial staff. A notation of interest can also record such long term interests in Crown land as the location of trails, timber sale areas, grazing licences and woodlot licences.

2.4.3 Transfers of Administration and Control (TAC)

Section 31 of the *Land Act* allows the Lieutenant Governor in Council to transfer the administration, control and benefit of Crown land to the government of Canada either in perpetuity or for a specified period. Proposals for transfers of administration and control are accepted only from the Government of Canada.

2.4.4 Transfers of Administration

Section 106 of the *Land Act* allows the transfer of the administration of Crown land to another provincial agency by Ministerial Order. Transfers of administration are used when it is in public interest to have land administered by an agency with more specialized interest or resource management mandate. Transfers of administration may be made to (disposition) or from (acquisition) other provincial ministries.

2.4.5 Head Lease

A Head Lease is a lease with a local government, Band corporation or Crown corporation which permits the tenure holder to sublet or issue licences to third parties. Head lease agreements are restricted to municipal and regional governments with corporation status, Band corporations and to Crown corporations.

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

A prohibition of use is established by the Lieutenant Governor in Council to prohibit specific activities from occurring in designated areas of Crown land. A prohibition of use is established over Crown land by the Lieutenant Governor in Council pursuant to Section 66 of the *Land Act*, and can be cancelled or amended only by another Order in Council.

It is not used as a means of regulating the Crown land application process or planned disposition process.

A prohibition of use may be applied in circumstances where the restriction of a specific use or activity on Crown land is deemed in the public interest. Such circumstances include the following:

- a specific use or activity is adversely affecting Crown land and its resource values or attributes; or
- a specific Crown land use or activity is adversely affecting some other use of Crown land.

Appendix 1. Summary of Land Use Tenures

SUMMARY OF LAND USE TENURES							
LAND USE	TENURE						
	Temporary Licence	Permission	Licence of Occupation	Lease	ROW/ Easement	Crown Grants	Sponsored Crown Grants
AGRICULTURAL & AQUACULTURE							
Extensive Agriculture				X		X	
Intensive Agriculture				X		X	
Grazing				X			
Aquaculture	X		X	X			
INDUSTRIAL							
General Industrial	X		X	X		X	
Quarry	X		X	X		X ¹	
Mining	X		X	X		X	
Oil and Gas	X		X	X	X	X	
Log Handling	X		X	X			
CLEAN ENERGY							
Waterpower	X ³		X	X	X	X	
Wind Power	X ³		X	X			
Ocean Energy	X ³		X	X	X	X	
COMMERCIAL							
General Commercial	X		X	X		X	
Alpine Skiing	X		X	X	X	X	
Film	X		X				
Golf Course				X		X	
Commercial Recreation	X		X	X			
Marina	X		X	X			
COMMUNITY/INSTITUTIONAL							
Institutions			X	X		X	X
Community Organizations			X	X		X	
TRANSPORTATION, COMMUNICATION AND UTILITIES							
Airports	X		X	X			
Communication Sites			X	X	X ²	X	
Public and Private Utilities	X		X		X		
Roadways			X		X		
RESIDENTIAL							
Residential Land			X	X		X	
Float Homes							
Private Moorage		X		X			

¹ Crown Grant by Order-in-Council only

² ROW for replacement tenure only.

³ Investigative licence, not temporary licence

Appendix 2. Summary of Administrative Instruments

TYPE OF INSTRUMENT	PURPOSE AND USE	APPROVAL AUTHORITY	TERM
Order-in-Council Reserve (S.15 Land Act) ⁴	<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"> Cabinet 	<ul style="list-style-type: none"> Specific term Subject to review
Withdrawal (S. 16 Land Act) ⁴	<ul style="list-style-type: none"> Temporarily withdraws Crown land from disposition May be used to support Crown land planning project designations for management by another agency or market development by the Ministry 	<ul style="list-style-type: none"> Ministerial order 	<p>Maximum term is 30 years</p> <p>It is recommended that reserves with a term longer than 10 years be subject to a mandatory review every 10 years.</p>
Conditional Withdrawal (S. 17 Land Act) ⁴	<ul style="list-style-type: none"> Withdraws Crown land from all dispositions except for a designated use and compatible uses; land applications compatible with the designated use may be entertained by the Authorizing Agency May be used to support and secure decisions of a Crown land planning project for land disposition 	<ul style="list-style-type: none"> Initial and renewal decisions by Delegated decision maker 	<p>Maximum term is 30 years</p> <p>It is recommended that reserves with a term longer than 10 years be subject to a mandatory review every 10 years</p>
Notation of Interest ⁴	<ul style="list-style-type: none"> A recognition of interests by a Ministry or agency recorded on reference maps Land applications entertained by the Authorizing Agency 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"> Delegated decision maker 	<p>Any term including a term of 'for so long as required may be applied to NOIs. It is recommended that a NOI with a term longer than 10 years, (including a term of 'for so long as required') be subject to a mandatory review every 10 years.</p>
Prohibition of Use - Order-in-Council (S. 66 Land Act)	<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"> Cabinet Executive Committee for renewal decision 	<ul style="list-style-type: none"> Specific term Maximum 5 years Renewal subject to review
Transfer of Administration Provincial Ministries (Ministerial Order) (S. 106 Land Act) ³	<ul style="list-style-type: none"> Transfers the administration of Crown land to another provincial agency by Ministerial Order Used when it is in public interest to have land administered by agency with more specialized interest or resource management mandate 	<ul style="list-style-type: none"> Executive Committee for initial and renewal decision Regional Director for continuance decision 	<ul style="list-style-type: none"> Specific term Minimum 5 years Renewal subject to review
Transfer of Administration and Control Gov't of Canada (Order-in-Council) (S. 31 Land Act) ³	<ul style="list-style-type: none"> Used to transfer Crown provincial lands to Canada 	<ul style="list-style-type: none"> Executive committee for initial and renewal decision 	<ul style="list-style-type: none"> Specific term 60 years or for so long as required Renewal subject to review

³ See Land and Management Transfer for details of these instruments

⁴ See Reserves, Withdrawals, Notations and Prohibitions policy for details of these instruments.

