

TREASURY BOARD DIRECTIVE

TO: Ministry of Forests, Lands and Natural Resource Operations

DIRECTIVE #: 2/15

SUBJECT: Authority to dispose of Atmospheric Benefit Rights and enter into Agreements respecting sharing of Atmospheric Benefit Rights.

AUTHORITY: This directive is issued pursuant to section 4 and 46 of the *Financial Administration Act*.

APPLICATION: This directive applies to all ministries entering into agreements respecting entitlement to claim emission offsets in respect of projects that sequester carbon on Crown land wholly or partially in a provincial forest or administered by the minister responsible for section 4 of the *Land Act*.

DIRECTIVE: Treasury Board hereby issues the directive set out in the attached Appendix "A".

EFFECTIVE DATE: Dec 17, 2014



Honourable Michael de Jong, Q.C.
Chair, Treasury Board

Appendix "A"

Directive governing the Disposition of Atmospheric Benefit Rights on Crown Land

Definitions:

In this directive:

"Atmospheric Benefits" means reductions in atmospheric greenhouse gases caused by reduction or avoidance of GHG emissions or increases in removals of GHGs from the atmosphere;

"Atmospheric Benefit Rights" means proprietary or contractual entitlement to rights associated with Atmospheric Benefits, including any entitlement of the holder to obtain Emission Offsets under an Emission Offset Program, but does not include any possessory rights associated with carbon sequestered in Terrestrial Reservoirs;

"Atmospheric Benefit Agreement" means an agreement between a Proponent or other person and the government regarding the allocation of Atmospheric Benefit Rights;

"Crown Land" means land owned by the government in fee simple;

"Emission Offset" means any tradable credit, offset or unit that represents an estimated Atmospheric Benefit from a GHG Reduction Project and is recognized by an Emission Offset Program and used to offset GHG emissions from other sources;

"Emission Offset Program" means a voluntary or regulatory program of the government or a third party for the recognition of Emission Offsets and application of Emission Offsets against GHG emissions;

"Forests Minister" means the minister responsible for administration of the *Forest Act*;

"Future Activity Project" means a GHG Reduction Project or component of a GHG Reduction Project where Atmospheric Benefits arise directly from the Proponent carrying out or causing to be carried out a physical activity such as:

- (a) afforestation and reforestation;
- (b) forest or range rehabilitation;
- (c) forest fertilization, spacing or thinning;
- (d) forest fire or disease suppression; and,
- (e) re-vegetation or rehabilitation of vegetation on land or foreshore,

after the execution of an Atmospheric Benefit Agreement relating to that project;

"GHG" means greenhouse gas;

"GHG Reduction Project" means a specific course of action or management that leads to measurable Atmospheric Benefits;

“Intentional Reversal” means a Reversal caused by activities undertaken or authorized by government, or undertaken pursuant to a disposition of an interest in land by the government;

“Lands Minister” means the minister responsible for administration of section 4 of the *Land Act*;

“Non-Intentional Reversal” means a Reversal caused by factors not within the direct control of government, including trespass, or natural causes such as fire, wind, disease or drought;

“Proponent” means the person who carries out or causes the carrying out of a GHG Reduction Project for the purpose of obtaining Emission Offsets;

“Provincial Forest” means “Provincial Forest” as defined in the *Forest Act*;

“Reversal” in relation to a GHG Reduction Project, means the release of carbon into the atmosphere, where such carbon has previously been sequestered in Terrestrial Reservoirs, and such sequestration was the basis for an Emission Offset;

“Sequestration Project” means a GHG Reduction Project that yields Atmospheric Benefits by increasing levels of carbon sequestered in Terrestrial Reservoirs above levels that would exist in the absence of the project;

“Terrestrial Reservoir” means a place where carbon is sequestered from the atmosphere in vegetation, including trees and aquatic vegetation, and soils, including foreshore, but does not include underground geological formations.

Background

Proponents of GHG Reduction Projects are typically, under the terms of Emission Offset Programs, required to show that they have Atmospheric Benefit Rights that entitle them to claim Emission Offsets resulting from their project. This is generally achieved by these persons entering into commercial arrangements where other potential claimants to the offsets agree that the Proponent has Atmospheric Benefit Right.

Except in relation to land where government recognizes aboriginal title, the government generally takes the position that, in the absence of any agreement or legislation to the contrary, it is the owner of Atmospheric Benefits Rights resulting from Sequestration Projects on Crown Land.

Thus, Proponents of Sequestration Projects on Crown Land generally must enter into an Atmospheric Benefit Agreement with the government so as to evidence their entitlement to Atmospheric Benefit Rights.

Reversals may reduce or eliminate any Atmospheric Benefits from Sequestration Projects. Proponents of Sequestration Projects may be required under Emission Offset Programs or arrangements made with purchasers of Emission Offsets to replace Emission Offsets that represent reductions that were subsequently reversed.

The government has an interest in:

- encouraging GHG Reduction Projects that enhance Provincial resource values and employment by providing entitlement to Atmospheric Benefit Rights arising from such projects;
- ensuring that it does not grant Atmospheric Benefit Rights in respect of Atmospheric Benefits for which the government has already granted Atmospheric Benefits Rights;
- ensuring that government decision makers granting tenures in relation to Crown Land, authorizing activities on Crown Land, or carrying out activities on Crown Land, are able to identify Crown Land that is subject to Atmospheric Benefit Agreements;
- ensuring that government ministries responsible for administering specific Crown Land approve Atmospheric Benefit Agreements related to that land; and
- limiting any risk to the government associated with Reversals.

Atmospheric Benefit Agreements that grant entitlement to Atmospheric Benefits Rights arising from activities that have already occurred on Crown Land may involve a disposition of public property requiring statutory authority. The directive is intended to:

- (a) authorize such dispositions; and
- (b) ensure Atmospheric Benefit Agreements, whether or not involving a disposition of public property, are approved by the appropriate minister, and consider key factors

but is not intended to apply to Atmospheric Benefit Agreements respecting GHG Reduction Projects carried out solely on Crown Land that is not in a Provincial Forest or administered by the Lands Minister.

DIRECTIVE

Atmospheric Benefit Agreements to be approved

- 1(1) If an Atmospheric Benefit Agreement is to provide that a Proponent or other person is to be entitled to all or a portion of Atmospheric Benefit Rights arising from a Sequestration Project occurring, in whole or in part, on Crown Land, and that land is under the administration of the Lands Minister, the government may only enter into that agreement as represented by or with the approval of the Lands Minister.
- (2) If an Atmospheric Benefit Agreement is to provide that a Proponent or other person is to be entitled to all or a portion of Atmospheric Benefit Rights arising from a Sequestration Project occurring, in whole or in part, on Crown Land, and that Crown Land is in a Provincial Forest, the government may only enter into that agreement as represented by or with the approval of the Forests Minister.

- (3) If an Atmospheric Benefit Agreement is entered into pursuant to an agreement between the government and a First Nation that deals with reconciliation of aboriginal rights or title with the Canadian legal system, the government may only enter into that agreement as represented by or with the approval of the Minister responsible for the *Treaty Commission Act*.
- (4) The minister entering into an agreement under subsection (1), (2) or (3) must not enter into or approve an Atmospheric Benefit Agreement
 - (a) without first obtaining the approvals required by those subsections and consulting with any other ministries who have potentially significant interests in the Crown land covered by the Agreement, and
 - (b) meeting constitutional consultation and accommodation obligations to First Nations.
- (5) Nothing in this directive is intended to limit or otherwise affect the authority of the Lands Minister or Forests Minister to delegate to officials in the ministry of that Minister the authority to sign or approve Atmospheric Benefit Agreements.

Authority to Dispose of Atmospheric Benefits

- 2 The following persons are authorized to dispose of the Province's interest in existing or future Atmospheric Benefits Rights from Sequestration Projects occurring on Crown Land in a Provincial Forest or under the administration of the Lands Minister:
 - (a) the Lands Minister or the Forests Minister in respect of the land for which that minister's approval is required by section 1.
 - (b) the minister responsible for the *Treaty Commission Act*, if the agreement is:
 - (i) with a First Nation, group of First Nations or entity controlled by First Nations,
 - (ii) approved under section 1(1) or (2), as applicable, and
 - (iii) for the purpose of reconciliation of aboriginal rights or title with the Canadian legal system.

Retention of Share of Atmospheric Benefits

- 3(1) Except as provided by subsection (2), an Atmospheric Benefit Agreement relating to Sequestration Projects on Crown Land, other than Crown Land where the government recognizes aboriginal title, must provide that a share of the Atmospheric Benefits derived from such projects are retained by the government, to be dealt with or disposed of at the discretion of the government.

- (2) An Atmospheric Benefit Agreement is not required to provide that a share of the Atmospheric Benefits derived from a Sequestration Project on Crown Land is retained by the government,
- (a) if the project:
 - (i) is a Future Activity Project,
 - (ii) is reasonably expected to have a positive impact on job creation and long term provincial revenue, and
 - (iii) in the case of projects relating to forest management and silviculture, is reasonably expected to have a positive effect on future timber supply; or
 - (b) the agreement is for the purpose of reconciliation of aboriginal rights or title with the Canadian legal system.

Contents of Atmospheric Benefit Agreements

- 4(1) Before entering into or approving an Atmospheric Agreement under section 1, the minister must:
- (a) ensure the agreement excludes government liability arising from Non-Intentional Reversals; and
 - (b) ensure that any potential liability for Intentional Reversals is commensurate with the benefits received by government under the agreement and takes into consideration
 - a. consistency of the agreement with existing policies, statutes and mandates of the Executive Council regarding compensation;
 - b. future anticipated use of the land and risk of Reversals;
 - c. the existence of interests in the relevant Crown Land that are held or obtained by third parties, including rights under the *Land Act*, *Water Act* or legislation dealing with sub-surface interests, the exercise of which may cause Reversals, and the potential for third parties to obtain such interests under existing legislation;
 - d. the potential for counterparties to Atmospheric Benefits Agreement to obtain, under existing statutory schemes, compensation from third parties holding interests referred to in paragraph c.; and
 - e. the potential to limit government liability to an obligation to retire emission offsets in the event of a Reversal.
- (2) An Atmospheric Benefit Agreement entered into under section 1, must require that Atmospheric Benefits resulting from the GHG Reduction Project that is the subject of the Agreement are quantified by the *Protocol for the Creation of Forest Carbon Offsets in British Columbia* or another applicable protocol published or approved by government.

Management of Atmospheric Benefit Agreements and Atmospheric Benefits.

- 5(1) The minister entering into an Atmospheric Benefit Agreement pursuant to section 1(1) to (3) must provide copies of the agreement to the Lands Minister, and the Lands Minister must ensure that:
- (a) appropriate notations or entries are included in the Integrated Land and Resources Registry under section 7.1 of the *Land Act* or similar databases or registries that will alert government decision makers to the Atmospheric Benefit Agreement during the entirety of its term and alert decision makers to the potential interest of holders of such agreements in maintaining Atmospheric Benefits; and
 - (b) an appropriate record is maintained of the Atmospheric Benefits retained or obtained by the government, or obtained by the Proponent or other persons under Atmospheric Benefit Agreements.

Relation of Atmospheric Benefits and Atmospheric Benefit Agreements

- 6 For greater certainty the authority granted by this directive is not an authority to dispose of an interest in Crown Land, or an authority to authorize any activity on Crown Land.