

SCHEDULE: FIRST NATION CONSULTATION FOR LAND ACT WITHDRAWAL

1.0 PURPOSE

The Oil and Gas Commission (Commission) and Ministry of Forests, Lands, Natural Resources Operations and Rural Development (FLNRORD) have entered into a Memorandum of Understanding (MOU) to support efficient and effective delivery of policy and regulation related to oil and gas activities and related activities.

The purpose of this Schedule to the MOU is to establish an arrangement to address Indigenous consultation requirements in respect of applications for oil and gas activities and related activities that occur on land subject to a land withdrawal in the North East region or the North West region. Where the Commission accepts applications for oil and gas activities or related activities that overlap a land withdrawal, an amendment to the land withdrawal will also be required. This Schedule establishes a single approach for considering applications for oil and gas activities and an associated land withdrawal amendment by enabling the Commission to share its consultation record and complete a Land Use Report to make a recommendation to FLNRORD for decision on the amendment to the withdrawal.

2.0 DEFINITIONS AND INTERPRETATION

Words and expressions used but not defined in this Schedule, unless the context specifies otherwise, have the same meaning as in the MOU.

“First Nation Consultation Record” means a report that documents the Province’s duty to consult with First Nation communities on a proposed activity on Crown land.

“Land Use Report” means the FLNRORD Land Use Report making a recommendation to the designated statutory decision maker (attached in Appendix).

“Land Withdrawal” means Crown land that is temporarily withdrawn from disposition under section 16 of the *Land Act* and that prevents the acceptance of application for and oil and gas activity in the withdrawn area, or Crown land that is designated by the Minister of FLNRORD under section 17 of the *Land Act* for a particular use (and deemed compatible uses) including conservation of natural and heritage resources.

“Safety” means where an activity/operation is compromised and the threat to the public or the environment is existing or imminent.

3.0 PROCESS GUIDE:

Oil & Gas Commission

When a person submits an application to the Commission for a permit or authorization to carry out an oil and gas activity or related activity and part or all of the proposed activity overlaps

with a land withdrawal in the North East region or the North West region, the Commission will complete the following, on FLNRORD's behalf:

- Post supporting documents to the Applications, Comments and Reasons for Decision website within 7 days of receipt of the application;
- Where required, consult potentially impacted First Nations regarding the amendment of the land withdrawal, and consider any recommended adjustments and accommodations put forward by the First Nations. The Commission will provide First Nations with information relevant to the amendment when requested by First Nations, clarify procedural or regulatory processes, and provide First Nations with proposed recommendations related to the amendment;
- In the case of a land withdrawal made at the request of a government body, notify the applicable ministry of the proposed activity and its affect on the values for which the reserve has been established. The Commission will advise the applicable ministry that a response may be provided within 30 days, that no extension of time will be provided, and that review of the amendment will proceed in the absence of a response;
- Complete a Land Use Report including a First Nations Consultation Record (Consultation Record @ https://nrm.sp.gov.bc.ca/sites/CRTS/CRTS/Consultation_Centre/Ongoing_Consultation/Northeast_Ongoing/Templates/Blank_CRTS_Template.xml) to include the following criteria:
 1. The current purpose for the establishment of the reserve;
 2. Application review summary;
 3. Area Based Analysis assessment of the proposed OGAA application to the withdrawal;¹
 4. A summary of the relevant information considered from referrals, First Nation Consultation, the public and any other source. This includes a description of the evidence relied upon in making a recommendation and whether information was tested or verified;
 5. Recommend either:
 - an amendment to the boundary;
 - amending the land withdrawal (Establishment of a Section 17 will also request inclusion of allowed activities, such as oil and gas activity or gravel

¹ Area Based Analysis: <https://www.bcogc.ca/energy-professionals/application-documentation/aba-guidance/>

extraction, hence reducing the need for further amendments to the withdrawal for those compatible activities);

- cancellation of the withdrawal if the agency who requested the withdrawal to be established indicates it is no longer required or the purpose is now covered via another BC statute; or
 - That the oil and gas activity or related activity is not compatible with the withdrawal; and
6. Submit the application to the responsible FLNR designated statutory-decision maker for adjudication.

FLNRORD

FLNRORD will accept the Land Use Report and First Nation Consultation Record and will adjudicate the application to amend the land withdrawal within 30 days of receipt of an application.

For greater certainty, before adjudicating the application to amend the land withdrawal, FLNRORD must determine whether the Crown's duty to consult and accommodate a potentially impacted First Nation has been adequately addressed.

If FLNRORD determines that the Land Use Report and First Nations Consultation Record require additional information, FLNRORD will request this information from the Commission within 7 days of receipt of the application.

4.0 ACTIVITIES COMPATIBLE WITH SECTION 17 LAND ACT WITHDRAWALS

The following oil and gas activities and related activities are deemed a compatible use within a land withdrawal in the North East region or the North West region made under section 17 of the *Land Act* and do not require the Commission to submit a Land Use Report to FLNRORD:

- Pipelines or powerlines located within a section 17 conditional withdrawal established for grazing licence purposes;
- Activities that fall entirely within areas previously disturbed by industrial activities.
- Examples of existing industrial operations include: existing facility and well site leases, pipelines, cut blocks harvested within the last 20 years, roads etc.;
- Activities required for emergency or safety works;
- Geotechnical and geophysical activities. Examples include: boreholes, low impact seismic operations, etc.; and
- Investigative use activities.

5.0 COMMUNICATION AND ISSUE MANAGEMENT

If there is uncertainty or disagreement about the Parties' obligations in relation to an application or whether an activity is a compatible use within a Section 17 withdrawal area, and the issue cannot be resolved by staff, the issue will be referred to the following:

- FLNRORD Director, Resource Authorizations/ OGC Executive Director, Permit Adjudication monthly meetings – resolution within 2 working days.
- FLNRORD Executive Director, North Area/ OGC Vice President, Applications – resolution within 5 working days.

6.0 TERM

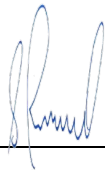
This Schedule comes into effect when signed by all Parties.

Either Party may terminate this Schedule by giving 30 days written notice of termination to the other Party.

After one year, and upon review and mutual agreement, the Parties may extend the Schedule to apply to any applications within the Province.

The FLNRORD Assistant Deputy Minister (ADM) North Area Regional Operations and OGC Executive Vice President, Applications & Operations agree to review this schedule annually.

7.0 SIGNATORIES



Geoff Recknell
Acting Assistant Deputy Minister
North Area Regional Operations
Ministry of Forests, Lands, Natural Resources
and Rural Development



Ken Paulson, P. Eng.
Executive Vice President
Applications & Operations
Oil and Gas Commission

August 24, 2020

Date

August 19, 2020

Date

Attachments: Land Use Report form

LAND USE REPORT

OIL And GAS COMMISSION- LAND MGMNT – Office

File:	Of s. 16 or 17	Report Date:	Date
Applicant:			

Application Type:	Amendment of s. XX	Land Policy:	Various
Purpose:		Sub-Purpose:	
Type:		Sub-Type:	
Commencement Date of s. 16 or 17:		Term of s.16 or 17:	
Purpose Statement:	A comprehensive review of Land Act reserve (Sec 16 & 17) where a proposed Oil and Gas application has been received		

Tenure Area:
Location:

Legal Description:

Site Information:

Referrals	Agency (list Ministry/ Branch) holder and FN (list) referral responses.
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Public Engagement

Application Review Summary, to include First Nations Consultation (Record Attached) and Engagement:	<ol style="list-style-type: none">1. Agency/Branch for who the withdrawal was established and their response to the proposed activity, if any. (Attach a copy of the information provided to Agency, and the response received from the Agency on whose behalf the s.16 or 17 was established)2. A description of land use conflicts, encumbrances, and Agency comments that were received during the application review and how they were addressed.3. Evaluation of the Area Based Analysis of the proposed OGAA application for Considering Cumulative Effects and Value Management.4. First Nation Consultation and Agency/Branch Summary.
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**Rent, Security,
Insurance, and
other financial
factors**

N/A

**Recommendation &
Rationale:**

Recommend and rationale for either:

- an amendment to the boundary;
- Amend the Section 16 to a Section 17 (Establishment of a Section 17 will also request inclusion of allowed activities, such as OG activity or gravel extraction. Hence reducing the need for further amendments to the withdrawal for those compatible activities);
- Cancellation of the withdrawal if the agency who the withdrawal was established is no longer required or the purpose is now covered via another BC statute; or
- A determination that the land use is not compatible with the withdrawal.

Approval:

Land Use Report Prepared by:

Full Name, Title

Approved by:

Signature

Name: Full Name

Delegated Authority (position): Title

Date: Date