

Crown Land Leasing Policy

Chapter:	6 (Licenses, Leases, Permits, Sales, Land Exchanges)
Section:	4 (Crown Land Leasing Policy)
Approved By:	Duff Montgomerie Deputy Minister
Implementation:	Land Administration Division Land Services Branch
Approval Date:	2013-05-03
Effective Date:	2013-05-03
Review Date:	(Five years from Effective Date)
To be Reviewed By:	Executive Director Land Services Branch
First Implemented:	1984-11-01

Approved Amendments:

Effective Date	Version	Reviewed By	Summary of Changes
2013-05-03	1.0	Reviewed by Executive Directors and approved by Deputy, Department of Natural Resources	Initial release

Table of Contents

1.0 Policy Statement	1
2.0 Definitions	1
3.0 Policy Objectives	3
4.0 Application.....	3
5.0 Directives	4
5.1 Eligibility.....	4
5.2 Term of Lease and Option for Renewal	5
5.3 Initiating the Leasing Process	5
5.4 Aboriginal Consultation with Mi'kmaq of Nova Scotia.....	5
5.5 Government Review.....	6
5.6 Approval Authority	6
5.7 Fees.....	6
5.8 Transfer of Lease	7
5.9 Termination.....	7
5.10 Size of Area to be Leased	7
5.11 Financial Security and/or Performance Bond.....	7
6.0 Accountability	8
7.0 Monitoring	10
7.1 Monitoring for Lease Compliance.....	10
7.2 Monitoring for Compliance with the Policy by Staff	10
7.3 Monitoring for Effectiveness of the Policy in Meeting Objectives.....	10
8.0 References	10
9.0 Enquiries	11

1.0 Policy Statement

The Department of Natural Resources (DNR) is responsible for providing effective administration and management of Crown lands in Nova Scotia as authorized under the *Crown Lands Act*.

The Crown Land Leasing Policy sets out the conditions for the use of Crown land for a range of potential activities deemed to be acceptable for this public resource. For example, Crown land leases have been issued in the past for cultivation of blueberries, maple sugar production, and electricity production from wind-energy. Private enterprises, municipal units, non-profit organizations, and individuals may apply for the use of Crown lands. Crown land is not leased for residential purposes.

DNR will evaluate applications for Crown land leases to determine the potential benefits to the province from issuing a Crown land lease.

2.0 Definitions

In this policy:

1. **“Aboriginal”** means the 13 Mi’kmaq First Nations as represented by the Chiefs and Councils of the Assembly of Nova Scotia Mi’kmaq Chiefs.
2. **“Annual Activity Report”** refers to the documentation required to be submitted each year by a lessee indicating the activities that were conducted under the lease agreement.
3. **“Applicant”** is a person or an organization who applies for a Crown land lease.
4. **“Application for the Use of Crown Land”** refers to the form and documentation to be submitted when applying to access Crown land.
5. **“Comfort Letter”** refers to a document that applicants may request from the department confirming that the department has received a complete application and is currently reviewing the request to enter into a lease.
6. **“Crown”** means Her Majesty in right of the Province of Nova Scotia.

7. "**Crown land**" means all or any part of land under the administration and control of the Minister of Natural Resources, as defined in the *Crown Lands Act* and *Beaches Act* including freshwater submerged areas.
8. "**Director of Land Administration**" is the person responsible to coordinate and supervise the review and issuance of Crown land lease requests under this policy.
9. "**Director of Surveys**" is the person responsible for surveying Crown land as set out in the *Crown Lands Act*.
10. "**DNR**" refers to the Department of Natural Resources.
11. "**Executive Council (Cabinet)**" exercises the formal executive powers of the Crown. Its formal actions are those of the Governor-in-Council (GIC) and its recorded decisions are Orders-in-Council (OICs).
12. "**Integrated Resource Management**" or "**IRM**" is a process to provide specialized program knowledge to the department's land use planning and decision-making processes. IRM coordinates resource use so that long term sustainable benefits are optimized and conflicts among users are minimized.
13. "**Land Administration Division**" is responsible for the acquisition and disposal of interests in Crown lands.
14. "**Lease**" or "**Crown Land Lease**" means a lease of Crown lands made pursuant to the *Crown Lands Act*.
15. "**Lessee**" means the holder of a lease.
16. "**Letter of Authority**" is an interim authority that allows applicants for a lease to perform certain activities on Crown land and can include activities such as testing whether a project is feasible.
17. "**Minister**" means the Minister of Natural Resources or his or her authorized designate with respect to the administration of any portion of this policy.
18. "**Ministerial Land Transaction Regulations**" or "**MLTR**" means regulations under the *Court and Administrative Reform Act* that assign to the Minister of Natural Resources the authority to acquire or dispose of real property or an interest in real property under the *Crown Lands Act* and the *Wildlife Act*.
19. "**Province**" means the Province of Nova Scotia.

20. **“Regional Services Branch”** means the branch of the Department of Natural Resources that delivers department programs and services through a network of field offices.

3.0 Policy Objectives

The objectives of this policy are to:

- provide for the effective administration of Crown land leases;
- promote economic and social benefits from the use of the province’s Crown land assets;
- ensure sustainable use of Crown land;
- describe the application process for obtaining a Crown land lease and the oversight of approved projects.

4.0 Application

This policy applies to the evaluation of applications for Crown land leases and the processing, issuing, and monitoring of Crown land leases.

Depending on the nature of the proposed activity and the duration, the department can issue a number of alternative land tenure options. Applicants are encouraged to visit the department’s website to evaluate potential tenure options.

After the initial review of an application, DNR will determine which tenure option the proposed activity would fall under.

This policy replaces all previous versions of the following policies:

1. Leases to Private Enterprises and Non-profit Organizations (Special Leasing Policy),
2. Policy for Agricultural Use of Crown Land, and
3. Policy for Wind-energy Generation on Crown Land.

This policy will apply to issuing and monitoring lease types, including (but not limited to):

1. Agricultural Lease;
2. Communication & Utility Lease;
3. Lease For Municipality;
4. Non-Profit Organization Lease;
5. Private Commercial Lease;
6. Waterlot - Commercial Lease;
7. Waterlot - Non Profit Organization Lease;
8. Wind Energy Generation Lease.

This policy does not apply to campsite, peat, aggregate or forestry leases.

5.0 Directives

5.1 *Eligibility*

1. An Applicant must be one of the following:
 - a. an individual at least 19 years of age;
 - b. an organization, considered to be in good standing, registered at the Nova Scotia Registry of Joint Stock Companies or incorporated under the laws of Canada; or
 - c. a municipality of Nova Scotia.
2. Prior to issuance of a lease, unless otherwise directed, an Applicant must complete the following requirements and comply with any other applicable government regulations, by-laws or policies before a lease will be issued:
 - a. Submit a completed Application for the Use of Crown Land;
 - b. Pay all fees and charges associated with the issuance of the lease;
 - c. Submit a Development Plan;
 - d. Submit a survey plan of the boundaries of the lease. Surveys must be prepared by a Nova Scotia Land Surveyor who is a member of the Association of Nova Scotia Land Surveyors;
 - e. Provide an Accredited Appraiser Canadian Institute (AACI) appraisal of the land value;
 - f. Provide proof of adequate liability insurance;
 - g. Submit required financial security and/or a performance bond; and
 - h. Submit any additional documentation requested which may be required based on the specific activity proposed in the application.
3. In addition to the above noted requirements, the Land Services Branch of DNR must obtain approval from Executive Council or the Minister of Natural Resources to issue a lease.

Refer to the *Guidelines for the Preparation of Crown Land Lease Applications* for further details on the application process and requirements.

5.2 *Term of Lease and Option for Renewal*

1. A Crown land lease may be issued for a term of up to 20 years with an option to renew for up to an additional 20 years provided that the lessee has complied with the conditions of the original lease.
2. To initiate the renewal of an existing lease, at least six (6) months prior to the expiration of the lease, the lessee must submit an Application for the Use of Crown Land together with, where required, an updated or revised Development Plan.

5.3 *Initiating the Leasing Process*

1. Leasing of Crown lands is initiated through an application or in response to a public tender.
2. Applicants must complete and submit an Application for the Use of Crown Land indicating the specific area or parcel of Crown land required. An application may be rejected if the proposed activity is not considered to be in the best interest of the Province or at any time during the lease review process if information is received that would make the requested area not suitable for the requested purpose.
3. DNR may evaluate opportunities for leasing of Crown land for specific purposes. The Crown areas identified as part of this process are then made available to interested parties through a public tendering process. The tendering process involves issuing a Request for Proposal (RFP) for predefined and specific uses (for example, maple syrup production or wind-energy conversion).
4. Requests for Crown land areas will be reviewed on a first come, first served basis. If multiple requests for the same Crown land area(s) are received, a public tendering process may be initiated.

5.4 *Aboriginal Consultation with Mi'kmaq of Nova Scotia*

1. As part of the review of an application to lease Crown land, DNR will follow the consultation process established under the August 31, 2010 Mi'kmaq-Nova Scotia-Canada Consultation Terms of Reference (or any subsequent agreements) and any protocols developed in conjunction with the Mi'kmaq of Nova Scotia.

2. As part of the consultation process, the Applicant may be required to do one or more of the following:
 - a. conduct studies or research regarding Mi'kmaq interests within and in the vicinity of the requested Crown land;
 - b. modify activities proposed for the requested Crown land to accommodate adverse impact(s) on aboriginal and treaty rights;
 - c. make reasonable effort to negotiate, enter into and implement a benefits agreement with the Mi'kmaq through the Assembly of Nova Scotia Mi'kmaq Chiefs;
 - d. provide continued access to the Mi'kmaq for traditional activities (fishing, hunting and harvesting for domestic purposes);
 - e. respect culturally significant areas important to the Mi'kmaq and provide them with continued access to those sites.

5.5 Government Review

1. DNR will review each application for use of Crown land and will seek advice and input from IRM teams, DNR programs and other government departments (as required).
2. Recommendations on the issuance of a Crown land lease will be made by the Director, Land Administration Division.
3. During the lease issuance review process, an Applicant may request
 - a. a Comfort Letter; and/or
 - b. a Letter of Authority.
4. The issuance of a Comfort Letter or a Letter of Authority will not be considered confirmation that a lease will be issued.

5.6 Approval Authority

1. A lease may be authorized by
 - a. the Minister pursuant to the Ministerial Land Transaction Regulations under the *Court and Administrative Reform Act*; or
 - b. Executive Council (Provincial Cabinet) under the *Crown Lands Act*.

5.7 Fees

1. Applicable fees are set out in the DNR fee schedule entitled "Fees for Activities on Crown Land".

5.8 *Transfer of Lease*

1. Assignment or transfer of a lease to another party requires the prior written consent of the Minister.
2. The executed lease agreement will set out the requirements and conditions under which a lease may be transferred or assigned.

5.9 *Termination*

1. A lease may be terminated by DNR at any time during the term of the lease if:
 - a. rent or other payments have not been made on the date due;
 - b. the leased property is used for any purpose other than that for which it is leased;
 - c. the lessee fails to submit an Annual Activity Report on time; or
 - d. the lessee has failed to remedy any non-compliance with the lease (including the approved Development Plan) after being given notice of non-compliance as stipulated in the lease agreement.
2. Prior to terminating a lease, DNR will give notice in writing to the lessee as per terms set out in the lease document.
3. A lessee may make a request to terminate the lease subject to DNR approval.

5.10 *Size of Area to be Leased*

1. The area of Crown land which is leased for a particular purpose will be limited, to the extent possible, to the area required for the requested purpose of the lease.
2. Where possible, existing land parcel survey boundaries will be used to define the area to be leased to reduce requirements for additional surveying when creating lease area boundary descriptions.

5.11 *Financial Security and/or Performance Bond*

1. A financial security and/or performance bond may be required where it is deemed necessary to protect the public from liabilities associated with the undertaking, for example, the anticipated site reclamation costs at termination of the lease agreement.
2. The required financial security will be established by DNR and incorporated into the lease.

6.0 Accountability

1. Minister is responsible for:
 - a. delegating authority to the appropriate staff; and
 - b. approving and authorizing lease documents.

2. DNR Deputy Minister is responsible for:
 - a. ensuring that the policy objectives are met;
 - b. approving the policy; and
 - c. approving changes in the policy.

3. DNR Executive Directors are responsible for:
 - a. communicating the policy and any changes within their branch;
 - b. ensuring that the policy objectives are met;
 - c. reviewing and recommending approval of the policy;
 - d. reviewing and recommending approval of any changes in the policy;
 - e. implementing the policy and any changes to the policy and monitoring compliance; and
 - f. ensuring that delegated authorities are carried out effectively by the appropriate staff.

4. The Executive Director of the Land Services Branch is responsible for:
 - a. recommending changes to the policy;
 - b. approving changes to standard lease precedents;
 - c. making final recommendations on the issuance of leases; and
 - d. approving Crown land lease opportunities to be tendered.

5. The Director of the Land Administration Division is responsible for:
 - a. ensuring that authority is effectively delegated to appropriate staff;
 - b. recommending Crown land lease opportunities to be tendered;
 - c. making recommendations on the issuance of leases;
 - d. initiating compliance audits for existing leases;
 - e. leading periodic reviews of the Crown land lease policy;
 - f. liaising with the Office of Aboriginal Affairs to ensure that requirements for aboriginal consultation with the Mi'kmaq are met; and
 - g. responding to enquiries received on the interpretation and application of the policy and related procedures.

6. The Director of Surveys of the Land Services Branch is responsible for:
 - a. issuing Orders of Surveys as required for the preparation of the lease;
 - b. reviewing and approving survey plans; and
 - c. mapping lease boundaries into the Crown Cadastral Database.

7. The Manager, Acquisitions and Disposals is responsible for:
 - a. responding to general enquiries related to the interpretation and application of this policy;
 - b. monitoring staff for compliance with the policy and application processing;
 - c. identifying Crown land lease opportunities to be tendered; and
 - d. making recommendations on the issuance of leases to the Director, Land Administration.

8. Land Administration Officers are responsible for:
 - a. reviewing and processing Crown land lease application and renewal requests;
 - b. liaising with other government departments and agencies with respect to matters related to this policy;
 - c. completing Aboriginal Consultations Analysis Checklist and making recommendations for consultations;
 - d. requesting IRM review of lease applications and/or renewals;
 - e. requesting performance/compliance audits be conducted by field staff from Regional Services Branch as needed; and
 - f. providing advice on the effectiveness of the policy to the Manager, Acquisitions and Disposals.

9. The Executive Director of the Regional Services Branch is responsible for:
 - a. providing adequate staff resources to carry out the Regional Resources Branch's responsibilities identified in the policy in a timely manner; and
 - b. ensuring that authority is effectively delegated to appropriate staff.

10. Regional Resource Managers and IRM staff of the Regional Services Branch are responsible for:
 - a. identifying Crown land lease opportunities to be tendered;
 - b. conducting an IRM review of applications and providing recommendations with respect to the issuance of Crown land leases;
 - c. conducting site visits during lease and lease renewal application reviews;
 - d. conducting compliance monitoring of lessees based on the terms and conditions of a lease and the Annual Activity Report submissions received from lessees; and
 - e. assessing wood harvesting stumpage fees required from lessees (if required).

7.0 Monitoring

7.1 Monitoring for Lease Compliance

Lessees are subject to periodic performance or compliance audits throughout the duration of the lease. The required Annual Activity Report submission from the lessee will serve as a compliance monitoring tool and are referenced during audits or site inspections. Audits are initiated by the Director, Land Administration and will include advice received from Regional Services staff.

Performance will be evaluated based on the terms and conditions of the lease and information submitted in the Annual Activity Report. If a lessee fails to comply with the terms and conditions, the lease may be terminated or a directive for corrective action may be issued by the Director, Land Administration as per the requirements of the lease agreement.

7.2 Monitoring for Compliance with the Policy by Staff

Land Services Branch senior management will monitor staff compliance with the policy.

7.3 Monitoring for Effectiveness of the Policy in Meeting Objectives

Periodic reviews of the policy will be led by the Manager, Acquisitions and Disposals. Effectiveness will be evaluated based on the following information:

1. advice received on the policy from the Land Administration Officers;
2. advice received on the policy from other DNR branches;
3. the amount of time it takes to process Crown land lease applications and public tenders;
4. the number and types of Crown land leases issued annually;
5. the number of enquiries received related to the interpretation and application of the policy annually; and
6. the revenue generated from Crown land leases annually.

8.0 References

- *Crown Lands Act*
- *Court and Administrative Reform Act* - Ministerial Land Transactions Regulations
- *Beaches Act*
- Mi'kmaq-Nova Scotia-Canada Framework Agreement for the Made-in-Nova Scotia Process
- Guidelines For The Preparation Of Crown Land Lease Applications

9.0 Enquiries

Enquiries related to the interpretation and application of this policy and related procedures may be directed to:

Director, Land Administration
Department of Natural Resources
PO Box 698
Halifax, Nova Scotia B3J 2T9

Phone: 902.424.4006

Locations of DNR Field Offices and contact information can be found in the department directory located on the DNR website.