

# **GUIDELINES FOR THE PREPARATION OF CROWN LAND LEASE APPLICATIONS**

**VERSION:** 1.1

**DATE:** 2015-09-21

**PUBLICATION NUMBER:** LS 2013-001

**APPROVED AMENDMENTS**

<b>Effective Date</b>	<b>Version</b>	<b>Reviewed By</b>	<b>Summary of Changes</b>
2013-05-03	1.0	Reviewed by Executive Directors and approved by Deputy, Department of Natural Resources	Initial release
2015-09-21	1.1	Director, Land Services Renewal, Land Services Branch	Included a reference to the online forms included in CrownLINC Release 3.0

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# 1 GENERAL INFORMATION

## 1.1 Introduction

The Department of Natural Resources (DNR) administers activities conducted on Crown lands pursuant to the *Crown Lands Act*. Crown lands are considered public assets which can be used for a variety of beneficial uses including recreation, conservation and for economic development purposes. DNR has adopted a proactive approach to land asset management and has identified that availability of Crown lands can be an important component for economic and social enterprises and for community development.

One of the authorities used to manage Crown lands are long-term land leases. Leases can be issued in response to an application or as a result of a public tendering process initiated by DNR. The Guidelines for the Preparation of Crown Land Lease Applications has been developed to explain the process and requirements for applying for a Crown land lease. The Guideline does not apply to tendering situations.

The Guideline outlines the following topics:

- how to make an application;
- the application review process followed by DNR;
- requirements of a development plan;
- an explanation of fees and other requirements such as land surveys, land market value appraisals and financial securities and/or performance bonds;
- the monitoring process for lease compliance; and
- how to renew or transfer a lease.

## 1.1 What is Crown Land?

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.

Of the 5.53 million hectares of land in Nova Scotia, about 1.54 million hectares (3.8 million acres) or about 28% of the province is DNR Crown land (as of March 2013). Most of the submerged lands (the seabed) along the Province's 9,000 km of coastline and beds of fresh water lakes are also considered Crown land.

The Province owns other land across Nova Scotia, including wilderness protected areas, highways, roads, schools, housing developments, and provincial buildings; however, land that is managed and administered by other departments is not considered Crown land and is not covered by this Guideline.

## 1.2 What is a Crown Land Lease?

A Crown land lease is a long-term authority issued to allow for specific activities on Crown land. The Crown Land Leasing Policy, administered by the DNR Land Services Branch, sets out conditions for the use of Crown land under a lease agreement. Crown land is a resource to be used for the benefit of all Nova Scotians; therefore, a number of considerations must be evaluated prior to the issuance of a Crown land lease.

Examples of activities that may be conducted under a Crown land lease are set out below:

- **Agriculture:** Maple syrup production, blueberry cultivation or cranberry harvesting.
- **Wind-energy Generation:** Construction and operation of a wind farm.
- **Communication:** Construction, maintenance, and operation of telecommunications towers and related equipment.
- **Submerged Land:** Marina operations, tidal power generation or utility cable landing sites.
- **Mineral Resources Development:** Mineral production operations.

**Note:** Crown lands are not leased for residential purposes.

A Crown land lease may be granted for a term of up to 20 years and can be renewed for an additional 20 year period, depending on the activity. A lease provides authority to conduct activities on Crown lands; however, additional authorities and approvals may be required depending on the activity and resource being developed. It is the lessee's responsibility to obtain any permission from other government agencies to execute their undertaking.

A sample Crown land lease agreement can be downloaded from the DNR website.

### 1.3 Accessing Crown Land

There are two ways to access Crown land for the purpose of leasing.

1. **Application:** DNR will review applications for Crown land leases. Applicants must complete and submit an Application for the Use of Crown Land (see Section 3 - How to Apply). The lease application must be limited to the area required for the proposed activities.
2. **Tender:** DNR may evaluate opportunities for leasing of Crown land for specific purposes. The areas of Crown land identified as part of this process are 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 development or wind-energy conversion). A detailed description of the process for responding to an RFP and a description of the evaluation criteria will be included in the RFP document. This Guide does not apply to tender situations.

## 2 ELIGIBILITY

1. An Applicant must be one of the following:
  - a. an individual at least 19 years of age;
  - b. an organization 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. An application from an organization listed in item b above must include up-to-date business registration information, which indicates that it is considered to be in good standing.

## 3 HOW TO APPLY

### 3.1 Submitting an Application

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. 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.

Requests for Crown land areas may be initiated by submitting an Application for the Use or Sale of Crown Land online. For more information about how to submit an application online, please go to <http://novascotia.ca/natr/land/application.asp>. The form can also be downloaded from the DNR website.

#### STEP 1 Application Submission and Initial Review

1. Requests for Crown land leases are reviewed following DNR receiving an Application for the Use or Sale of Crown Land. The completed application form must be submitted to the DNR Land Services Branch.
2. DNR will complete an initial review of the application (normally completed in 10 business days) to determine:
  - a. if the area requested is under the administration of the DNR,
  - b. whether any legal encumbrances exist on the area that would interfere with the proposed activity, and
  - c. if the proposed activity fits within the department's policies and programs related to the use of Crown land.
3. DNR will inform Applicants of the outcome of the initial review indicating that:
  - a. the application cannot proceed for the reasons stated following the review;
  - b. the application can proceed to the next step; and/or
  - c. if necessary, provide interim authority to the Applicant for access to the land for further evaluation of resources (see Section 3.2 - Letter of Authority and Comfort Letter Requests).

**STEP 2 Development Plan Submission and Review**

1. When Step 1 is successfully completed, the Applicant will be provided up to 60 days to submit a Development Plan describing the proposed activity in detail. The requirements for a Development Plan are outlined in Section 4.
2. Development Plans are evaluated based on the potential to conduct an acceptable activity and, if applicable, operate a viable business. The Applicant may be asked to provide additional information if the Development Plan is considered incomplete or if DNR requires clarifications.

In order to assess the Development Plan, DNR will:

- a. initiate an Integrated Resource Management (IRM) review, which is a planning and decision-making process used by the department to consider all of the potential uses of land, and determine whether the requested activity optimizes land use;
- b. where necessary, refer the application to other provincial departments or agencies for review and recommendation (for example, the Department of Agriculture for a request to lease land for agricultural purposes);
- c. conduct aboriginal consultations to evaluate the potential impact of the proposed activity on aboriginal rights and interests. As part of the consultation process, the Applicant may be required to do one or more of the following:
  - o conduct studies or research regarding Mi'kmaq interests within and in the vicinity of the requested Crown land;
  - o modify activities proposed for the requested Crown land to accommodate adverse impact(s) on aboriginal and treaty rights;
  - o 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;
  - o provide continued access to the Mi'kmaq for traditional activities (fishing, hunting and harvesting for domestic purposes);
  - o respect culturally significant areas important to the Mi'kmaq and provide them with continued access to those sites.

**STEP 3 Obtain Approval and Issue Lease**

1. When Step 2 is successfully completed, DNR will send a Letter of Offer to the Applicant which sets out the conditions and identifies any further requirements (for example, provincial environmental assessment requirement, additional consultations with the Mi'kmaq of Nova Scotia, the need for a survey plan or land appraisal).
2. The Letter of Offer will include an expiry date by which time the Applicant must have signed and returned the Letter of Offer.
3. When the Applicant has met all the conditions and any further requirements described in the Letter of Offer, DNR will prepare the appropriate documents for final approval by the Minister or Executive Council.

4. If final approval is granted, a lease will be sent to the Applicant for signature. The lease will outline all the obligations of the lessee including reference to the Approved Development Plan which sets out the authorized activities.
5. Once the signed lease is received from the Applicant, it will be signed by the Minister or his delegate and a copy will be returned to the Applicant.
6. The department will record the lease at the Land Registry.

### **3.2 Letter of Authority and Comfort Letter Requests**

1. Letters of Authority may be issued to allow interim access to Crown land. Anytime after Step 1 has been completed successfully, an Applicant may request a Letter of Authority to authorize access to the requested Crown land to confirm the quality and quantity of the resources expected to be developed or to confirm other attributes of the requested land.
2. An Applicant may request a Comfort Letter to confirm that their Application for the Use of Crown Land has been received by DNR and is under review.

## **4 PREPARING A DEVELOPMENT PLAN**

Development Plans must clearly describe the activities proposed during the term of a lease. An Approved Development Plan will be referenced in the lease document indicating what activities are authorized and when they will occur.

The detail required in the plan is dependent on the scale and scope of the proposed activities. The plan must include information to support a sustainable business or activity from a social, technical, economic, and environmental perspective.

At the end of the lease term the area leased must be rehabilitated or reclaimed as closely as possible to its original state or to an agreed upon alternate use. A detailed plan will be required for decommissioning and reclaiming the site to a condition suitable to DNR once the undertaking has been completed.

For applications related to agriculture and wind-energy use, further guidance on specific information requirements is available in Appendix B.

The following describes the information that must be included in the Development Plan:

### **4.1 Information about the Applicant**

1. Include the Applicant Name and describe any changes to Applicant information provided in the Application for the Use of Crown Land form.
2. Provide a personal or corporate history indicating past experience and how this is relevant to the proposed undertaking.
3. Provide the names of individuals who will manage the operations on a day to day basis and who are expected to be familiar with the lease obligations.



4. Provide two (2) personal or professional references including the reference contact names, along with his/her phone number, fax number and email address. The information provided should identify why the references are relevant to the proposed undertaking.

#### **4.2 Description and Schedule**

1. Indicate current land use(s) on and adjacent to the requested Crown areas.
2. Describe the proposed activity and schedule to be conducted under a lease agreement, including but not limited to:
  - a. Areas (hectares or acres) to be developed annually,
  - b. Products and production expected annually,
  - c. Equipment and human resources required for various undertakings,
  - d. Financial investments required for each major phase of development.
3. Methods to be employed including forest management silviculture practices.
4. Total estimated staffing requirements including position descriptions and skills required.
5. Sources of financing for the project.
6. Provide a statement indicating knowledge of and compliance with applicable federal, provincial and municipal rules and by-laws. For example the *Forests Act* and Wildlife Habitat and Watercourses Protection Regulations made under Section 40 of the *Forests Act*.
7. Provide proof of insurability for required liability insurance as specified in the Liability and Insurance paragraph of the Lease Agreement.

#### **4.3 Marketing Plans**

1. Describe the marketing plan for all products produced.

#### **4.4 Site Access and Preparation**

1. An illustration is required showing the entire Crown land application area and required infrastructure. Refer to the pertinent illustrations in the Application for the Use of Crown Land form; if necessary add updated illustrations to this section of the Development Plan.
2. Provide proof of permission from adjacent or other landowners regarding any required access over private land or from the owner of the up-land adjacent to the shore if the application is for activity on submerged Crown land.
3. Describe existing infrastructure and services available to be utilized (for example, water supply, sewage treatment facilities, roads, electrical power access) and any new trails, roads, or services required to be constructed.

#### 4.5 Environmental Considerations

1. Provide a description of applicable environmental legislation and policies that may apply to the proposed activities.
2. Describe predicted environmental impacts including mitigation methods to be applied to minimize impacts on land, air, water, wildlife and plants.
3. Provide a management plan for any process wastes or by-products produced.
4. Provide a materials management plan and a response strategy or contingency plans for environmental emergencies (on-site and during transportation activities), such as the accidental spillage of fuels, herbicides, pesticides, etc.
5. Describe site traffic flow with expected volumes and types of vehicles;
6. Describe fire prevention and control measures (including acknowledgement of the requirement to notify DNR prior to on-site burning activity).

#### 4.6 Site Reclamation

1. Provide a plan for decommissioning and reclaiming the site to a condition suitable to DNR following termination of the lease. The plan must detail how the leased area will be re-integrated into the surrounding landscape, including:
  - a. A schedule of the activities.
  - b. A high-level cost estimate of the major components of the reclamation plan (for example, removal of infrastructure and buildings and re-vegetation).

#### 4.7 Illustrations

1. Include as many illustrations as are necessary to support the Development Plan. Examples of what should be shown on a site illustration include the following:
  - a. Indicate the current uses of all areas shown on the plan.
  - b. Schedule and location of development and production areas.
  - c. Proposed structures, including processing equipment.
  - d. Water supply wells and pipelines.
  - e. Sewage treatment services.
  - f. Roads (new and existing).
  - g. Electrical power infrastructure.
2. Site illustrations must be at an appropriate scale for clarity and include a north arrow and legend.

**Note:** Additional illustrations are not required when there has been no change in the site map submitted with the initial Application for the Use of Crown Land form.

## **5 OTHER REQUIREMENTS**

### **5.1 Fees**

Applicable fees and rents are detailed in the DNR “Guidelines for Fees for Activities on Crown Land” document, which is posted on the DNR website. Rental rates may be revised at specified times as indicated in the lease agreement.

### **5.2 Land Survey Requirement**

1. In most cases a survey of the prescribed boundaries of a lease is required. If a pre-existing land parcel description is available, a new survey may not be required. The Applicant will be advised if a survey is not required.
2. If a survey is required, the lease will not be issued until a copy of the survey plan has been received by DNR.
3. Surveys must be prepared by a Nova Scotia Land Surveyor who is a member of the Association of Nova Scotia Land Surveyors.
4. The cost of any required survey is the responsibility of the Applicant.

### **5.3 Land Appraisal**

1. A market valuation is normally required to determine the rental rate for the lease. In most cases, the market value of the Crown land involved in the lease will be determined through an appraisal conducted by an Accredited Appraiser Canadian Institute (AACI) appraiser. The Applicant will be advised if an appraisal is not required.
2. The appraisal must be conducted with the duty of care of the appraiser to DNR as land owner. A copy of the appraisal must be submitted to the DNR prior to the issuance of a lease agreement.
3. The cost of any required appraisal is the responsibility of the Applicant.

### **5.4 Financial Security and/or Performance Bond**

1. A financial security and/or performance bond may be required from the Applicant 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(s) will be established by DNR and incorporated into the lease.

## 6 AFTER A LEASE IS AWARDED

### 6.1 Merchantable Wood (Stumpage Rates)

1. Merchantable wood remains the property of the Province and no wood may be removed or used without the prior written approval of DNR. If permission is granted for removal or use of wood products, all merchantable wood must be saved by the lessee and paid for at the DNR stumpage rates in effect at the time of cutting (see Removal of Trees in sample Crown land lease agreement).
2. For details on the current stumpage rates and how to submit fees, contact the DNR Regional Services Branch (see Section 8 – Enquires for Field Office contact information).

### 6.2 Monitoring for Lease Compliance

1. DNR will monitor the activities of lessees through periodic performance or compliance audits and site checks throughout the duration of the lease. The lessee is obliged to cooperate and be available during audits and site checks, if requested by DNR to attend.
2. A lessee must submit an Annual Activity Report to DNR no later than 60 days after the day and month of the anniversary date of the lease. This report will serve as a compliance monitoring tool during the term of the lease.
3. The Annual Activity Report form can be downloaded from the DNR Website. Paper copies are also available at Natural Resources Offices (see Section 8 – Enquires for contact information).

### 6.3 Termination of a Lease

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.

### 6.4 Renewing a Crown Land Lease

To initiate a renewal of an existing lease an Application for the Use of Crown Land form must be submitted to DNR at least six (6) months prior to the expiration of the lease together with a revised Development Plan.

The following checklist describes the information that must be included in the revised Development Plan:

1. Proposed site activities (if changed) for the next lease term or a statement that the site activities remain the same – as per Section 4.2.
2. Production schedule (if applicable) for the next lease term - as per Section 4.2.
3. Environmental considerations (if changed) – as per Section 4.5.

4. Site reclamation (if changed) – as per Section 4.6.
5. Revised illustrations (if required) which show the proposed activities, including any construction planned for the additional lease term - as per Section 4.7.

## **6.5 Transfer of a Lease**

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

## **7 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY**

Applications and applicant information submitted to the Province become the property of the Province and are subject to the provisions of the Freedom of Information and Protection of Privacy Act (the Act). We do not disclose your information to third parties except with your express permission or as permitted by the Act.

## **8 ENQUIRIES**

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

Director, Land Administration  
Land Services Branch  
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.

## APPENDIX A – DEFINITIONS

**Applicant:** A person, company or organization who applies for a Crown land lease through a public tendering process or through the application process.

**Comfort Letter:** A document that Applicants may request from the Land Services Branch confirming that the department has received a complete application and is currently reviewing the request to enter into a lease.

**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 the *Beaches Act*, including freshwater submerged areas.

**Director of Land Administration Division:** The person responsible for overseeing the administration of Crown land lease requests.

**Director of Surveys:** The person appointed pursuant to the *Crown Lands Act* as responsible for overseeing the surveying and management of the boundaries of Crown land.

**DNR:** The Department of Natural Resources.

**Executive Council:** The Provincial 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).

**Integrated Resource Management or IRM:** 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. IRM includes planning for minerals, forests, recreation, wilderness, energy, wildlife, parks, biodiversity and Crown land administration.

**Land Administration Division:** A division of the Land Services Branch of the Department of Natural Resources that is responsible for the acquisition, leasing and disposal of non-forestry related interests in Crown lands.

**Lessee:** The holder of a lease.

**Letter of Authority:** 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.

**Minister:** The Minister of Natural Resources or his or her authorized designate with respect to the administration of any portion of this policy.

**Province:** The Province of Nova Scotia.

**Regional Services Branch:** A branch of the Department of Natural Resources that is responsible for the day to day management of Crown land and delivers department programs and services through an extensive network of field offices. These programs and services include land administration, forest management, surveys, extension and education, enforcement and hunter safety, wildfire prevention, monitoring of forest insects and diseases, operation and maintenance of Provincial Parks, and resource conservation.

**Submerged Crown land:** The Province of Nova Scotia considers submerged land extending from the coastline of the Province to the edge of the continental shelf or to the border of another jurisdiction to be provincial Crown land, unless it has been sold by way of provincial or federal grant or it is considered to be a federal public harbour. Under the *Crown Lands Act*, the Minister of Natural Resources is responsible for Crown lands, including submerged Crown land. The landward boundary of coastal land owned by the Province begins at the ordinary high water mark on the shore – generally where plants and vegetation begin to be visible and the beach is not impacted by the water.

## **APPENDIX B – GUIDANCE FOR AGRICULTURE AND WIND-ENERGY APPLICANTS**

The following checklist outlines further guidance for those applying to use Crown land for agricultural purposes and wind-energy development.

### **Agriculture Use Applicants**

#### *Creating a Development Plan - Project Description*

1. When describing production method processes, Applicants must include intended plans for cultivation and harvesting the resources, such as methods of clearing, burning, harvesting, tapping trees, etc.

### **Wind-Energy Conversion Use Applicants**

#### *Creating a Development Plan - Project Description and Environmental Considerations*

1. When describing production method processes, Applicants must specify the types of towers to be installed and how many megawatts of energy they will produce.
2. Applicants must adhere to municipal by-laws for specific setbacks and management of sound requirements.
3. Wind-energy development will not be considered within 10 rotor diameters of any existing wind turbines owned by third parties. The rotor diameter used to calculate this distance will be the larger of the diameter(s) of the existing turbine(s) and any turbines proposed for the requested lease.
4. Applicants must show how their projects will connect to the power grid.
5. When summarizing the physical and biological components in the area likely to be affected by the project, include expected effects on migratory birds and bats.

#### *Power Purchase Agreement and Generator Interconnection Agreement*

1. Applicants applying for a Power Purchase Agreement (PPA) and Generator Interconnection Agreement through Nova Scotia Power Inc. (NSPI) may request a Comfort Letter from DNR confirming that their application is currently under review. A Comfort Letter can also be requested for security of tenure during a period when wind testing activities are being conducted under a Letter of Authority.
2. Prior to the approval of a lease, Applicants must provide proof that a PPA has been executed and a Generator Interconnection Agreement established with NSPI.