



LAND EXCHANGE POLICY

Revised April 1, 2008

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1. Policy Statement

It is the policy of the Department of Natural Resources that Crown Land may be exchanged for privately held land where the acquisition of the privately held land has a clear benefit to the Province of Nova Scotia.

2. Definitions

- (a) "Crown" means Her Majesty in right of the Province;
- (b) "Crown Lands" means all or any part of land under the administration and control of the Minister, as stated in the *Crown Lands Act*;
- (c) "Department" means the Department of Natural Resources;
- (d) "Director of Surveys" means the Director of Surveys appointed pursuant to the *Crown Lands Act*;
- (e) "grant", means the initial transfer of Crown lands from the Crown to a person or registered entity;
- (f) "Minister" means the Minister of Natural Resources;
- (g) "IRM" means the Department's Integrated Resource Management process;
- (h) "Province" means the Province of Nova Scotia.

3. Background

The Department owns and manages Crown lands for all the citizens of Nova Scotia. Because it is entrusted to manage lands for public use, the Department must ensure that responsible and sustainable management, and public use and benefit, take priority over individual or private use. There is no statutory obligation to exchange lands. Land exchanges should rather be viewed as the Department's opportunity to broaden and/or increase the resource base and the land values significant to Nova Scotians.

An inclusive and consistent land exchange policy is needed for future considerations of land exchange proposals. The following policy will assist applicants and department personnel in evaluating the merits of a particular exchange. The goal is to promote exchanges which produce an advantage to the Province and to discourage those which do not produce an advantage. The process of submitting a land exchange application is costly and time consuming. The evaluation of land exchange proposals creates a substantial demand on Department personnel.

Applicants are encouraged to thoroughly canvass the private sector real estate market for suitable lands before submitting an exchange proposal to the Crown. Applicants who study this policy and evaluate the merits of a proposal prior to submitting an application will be prepared for the process and delays, and the uncertainty of obtaining approvals.

4. Policy Objectives

To establish criteria to guide Department staff: in advising prospective applicants; in reviewing applications; and in making recommendations regarding exchanges of privately held lands for Crown lands.

5. Application

This policy applies to all land exchanges involving Crown Lands.

6. Policy Guidelines

Examples of privately held land that may have potential for acquisition by the Crown through exchange would include those that:

- a. consolidate with existing Crown land holdings;
- b. reduce boundary line maintenance;
- c. contribute to Departmental programs (ie, forestry, wildlife, parks, minerals);
- d. offer significant resource features to the Crown such as:
 - i. wildlife or wetland habitats,
 - ii. recreational opportunities,
 - iii. coastal habitats,
 - iv. ecologically significant areas,
 - v. access to Crown lands or water-based resources, or
 - vi. forest and geological resources.

7. Authority

Subsection 7(c) of the *Crown Lands Act* provides that:

“With the approval of the Governor in Council, the Minister may exchange Crown lands for privately owned lands;”

8. Land Exchange Policy Directives

A. Land Acquisition Criteria:

Exchanges may be made only where the lands to be acquired by the Crown meet the following criteria:

- i. at least one of the following:
 - (1) they have more than 50% of their boundary in common with Crown land,
 - (2) they border on Crown land and utilize boundaries not requiring periodic maintenance (e.g. roads, rivers) such that the length of the boundary requiring maintenance is reduced, or
 - (3) they adjoin other privately held land located within a major block of Crown land such that acquisition would lead to future consolidation of land units;
- ii. have free and clear title that can be obtained by the Crown under the *Land Registration Act*;
- iii. have no associated undue restrictions imposed on the conveyance, which the Department is not prepared to accept;
- iv. have no known or suspected environmental liabilities, contamination, or public safety issues; and,
- v. must be of equal or greater monetary value (as determined by appraisal or timber cruise prepared in accordance with the Terms of Reference found in the Appendix) than the Crown land being exchanged.

B. Exceptions to A i:

Exceptions may be made where the lands to be acquired by the Crown meet any one of the following criteria:

- i. they provide access to Crown land (including submerged land) or Crown resources;
- ii. they would facilitate the implementation of Departmental programs or projects;
- iii. they have ecological, cultural, scientific, or economic importance; or
- iv. their acquisition would provide a significant environmental, social, or economic benefit.

C. Land Disposal Criteria:

Exchanges may be made only where the lands to be disposed of by the Crown:

- i. have no known ecological, cultural, or scientific importance;
- ii. are not a coastal, riparian, or wetland resource;
- iii. do not border on navigable lakes or waterways;
- iv. are not required to provide access to Crown land (including submerged land) or Crown resources;
- v. are free of Departmental commitments;
- vi. have less than 50% of their boundary in common with other Crown lands; and,
- vii. will not sever a larger parcel of Crown land into two or more separate parcels, or otherwise diminish the integrity of the Crown block. (Revised April 1, 2008)

D. Exclusions:

The Crown will not consider:

- i. lands that an applicant intends to purchase to facilitate a land exchange;
- ii. a request to acquire Crown Land and "pay for it" with land in trade, or proposals that purport to provide social or economic benefit to the Province. Such requests are de facto requests to obtain Crown land and are more appropriately considered under the General Policy for the Sale of Crown Land;
- iii. land exchanges that involve an expense to the Department; and,
- iv. assembled land exchange proposals involving multiple parcels with multiple ownerships.

9. Procedures

A. Initiation and Application:

- i. Land exchanges may be initiated by the fee simple land owner or their authorized legal representative by filing an application.
- ii. Before a land exchange will be considered, an application, along with the requisite fee and required information, must be submitted to the Manager, Acquisitions and Leases Section, by the interested fee simple land owner.
- iii. A written exchange proposal (application) must include:

For the privately held lands:

- (1) name, address, and phone number of the applicant,
- (2) a sketch or map of the parcel indicating approximate acreage,
- (3) a copy of the deed with legal description,

- (4) Assessment Account Number or Parcel Identification Number,
- (5) if the applicant is a company or society, its proper name, registered office, address, and registered agent are to be identified. The Company or Society must be in good standing with the Registry of Joint Stock Companies,
- (6) the reason for the land exchange request.

For the Crown-owned lands:

- (1) the parcel desired must be clearly identified, (including approximate acreage) and located on a map.

- iv. There is a per parcel (plus Harmonized Sales Tax) application fee. This fee is non-refundable and is for processing the application only, and does not imply that the land exchange will be approved.
 - v. Applications that obviously do not conform to the criteria of this policy outlined above, may be rejected without review and the applicant advised of the reason for the rejection by the Director, Land Administration Division.
 - vi. Where the Crown land requested adjoins other privately held lands not owned by the applicant; the Crown, at its discretion, may provide notice of the land exchange proposal to the adjoining land owners. (Revised April 1, 2008)
- B. Environmental Liabilities:
- i. The applicant shall provide information on existing and past uses of the lands to be acquired and, where possible, those of adjacent properties.
 - ii. Where environmental contamination is suspected, the Department shall require the applicant, at their own expense, to conduct appropriate tests in accordance with the Department of the Environment and local government standards and to provide a certificate that the lands are free of suspected contaminants.
- C. Review:
- Exchanges are subject to review by the Department's Regional IRM team. Evaluations are conducted based on the Policy Directives described in Section 8. Should the IRM review determine that the exchange is not a clear benefit to the Crown, the exchange will be declined and the applicant advised of the reason for the rejection by the Manager, Acquisitions and Leases Section.
- D. Appraisals:
- Exchanges will be based on the fair market values of the properties.
- i. In order to determine fair market value, the applicant will, at the request of the Department and at the applicant's own expense, have an appraisal conducted for both the privately held land and the Crown property.
 - ii. All appraisals must be signed by an appraiser registered to practice in Nova Scotia and must be prepared in accordance with the Terms of Reference found in the Appendix.

- iii. Should the IRM review indicate that the best use of the lands or a portion thereof is as timberland for the production of wood fibre, then the market value shall be determined by a timber cruise conducted in accordance with the Terms of Reference found in the Appendix.
- iv. The appraisal or timber cruise is subject to review and acceptance by the Department of Natural Resources.

E. Letter of Offer:

A Letter of Offer (Agreement of Purchase and Sale) outlining the terms and conditions of the transaction is sent to the applicant if the land exchange receives an IRM recommendation.

F. Title:

The applicant, at their own expense, shall provide the Crown with an abstract of title, a tax certificate, and a Certificate of Title for their land. All title documents are subject to the review and approval of the Department of Justice.

G. Surveys:

Where a review of the proposed land exchange indicates that a survey of either the Crown and/or the privately held lands is required, the applicant shall seek direction from the Director of Surveys and shall, at their own expense, have a Land Surveyor, licenced to practice in the Province of Nova Scotia, conduct the survey(s) and submit the survey(s) and property description(s) to the Director of Surveys for approval.

No applicant should undertake appraisals, title searches, surveys, etc. in furtherance of an exchange without first receiving instructions from the Manager, Acquisitions and Leases Section.

H. Governor in Council:

- i. A submission is prepared for the Governor in Council (Cabinet) if a land exchange proposal receives IRM support, and after the Department receives, reviews, and approves the appraisal or cruise, and title documentation. **All land exchanges with the Department are subject to the review and assent of Cabinet.** Approval, received in the form of an Order in Council (OIC), is at Cabinet's discretion. In the event that the proposed land exchange does not receive Cabinet approval, the applicant will be notified by the Manager, Acquisitions and Leases Section, and the Crown will not be liable for any costs incurred by the applicant for any reason whatsoever.
- ii. The applicant shall have a period of two years from the issuance of the OIC to satisfy the terms and conditions of the Letter of Offer. Failure to comply may result in the OIC being rescinded without advance notice.

I. Expenses:

In addition to the application fee, the applicant must bear the costs of any applicable taxes and expenses, including but not limited to, Deed Transfer Tax, Harmonized Sales Tax, property taxes to the date of completion, and Registry of Deeds recording fees.

The applicant is also responsible for payment to the Department of any difference in land values (as determined by appraisal or timber cruise prepared in accordance with the Terms of Reference found in the Appendix) in favour of the Crown.

J. Conveyancing:

- i. For the conveyance from the Crown to the applicant, the Department will prepare either a Grant, which shall include any applicable reservations, or a Quit Claim Deed. The Crown does not issue a Warranty Deed; it is the responsibility of the applicant to confirm the sufficiency of the Crown's title.
- ii. For the conveyance from the applicant to the Crown, the Department will prepare a Warranty Deed.

K. Process:

Typically, it may take two to four years from the time the application is received through to completion of the transaction. In some cases, depending on the situation and the property, it may take longer.

10. Waiver

The Minister of Natural Resources reserves the right to waive any of the terms and conditions outlined above.

11. Inquiries

Inquiries concerning this policy may be directed to the Director, Land Administration Division, and those concerning land exchange applications should be directed to the Manager, Acquisitions and Leases Section, at the following address: Department of Natural Resources, Land Administration Division, P.O. Box 698, Halifax, Nova Scotia, B3J 2T9, Tel. (902) 424-4061.

12. Appendix

Department of Natural Resources (DNR)
Terms of Reference for Property Appraisals & Timber Cruises

1. Any appraisal report shall be signed by an Accredited Appraiser Canadian Institute (AACI) appraiser who is registered to practice as a real estate appraiser pursuant to the *Real Estate Appraisers Act*.
2. All appraisal reports shall meet the requirements of the Canadian Uniform Standards of Professional Appraisal Practice ("The Standards") and shall be in a narrative format.
3. The value of the Crown lands to be exchanged must be determined by the highest and best use of the land, not simply the present use. For example, if an exchange is proposed in which Crown lands used as recreational lands will be used by the applicant for commercial or residential development, then the exchanged Crown land is appraised considering its developed residential or commercial potential instead of its value as recreational land.
3. All timber cruises shall be undertaken, overseen, and signed by a member in good standing of the Registered Professional Foresters of Nova Scotia. The market value shall be derived using a combination of:
 - (a) the residual value for the land:
 - value of the land plus the non-merchantable wood volume on the property derived by the Direct Comparison Approach, and;
 - (b) the value of the standing timber (Stumpage Approach):
 - (i) based on the forest inventory estimate of the subject property, and;
 - (ii) based on the current market stumpage rates, and the market conditions within the area of the subject property as of the date of the cruise.
4. All appraisal and cruise reports shall be submitted to the Land Administration Division of the Department for review and approval.
5. In general, a report with an approved value has a "shelf life" of not more than two years.