



MEMORANDUM

File No.0125.01

To: Okanagan Basin Water Board
From: Inge van Oostveen
Date: August 30, 2007
Subject: Ramifications of Land Act Reserves

Staff was asked to prepare a report on the various Land Act Reserve tenures, the ramifications of such Reserves, and their effect on existing tenures.

Land Act:

Issuance of Leases & Sale of Crown Land

2.1.5 Lease (Section 22)

A lease should be issued where long term tenure is required, where substantial improvements are proposed, and/or where definite boundaries are required in order to avoid land use and property conflicts. A legal survey will be required at the applicant's expense to define the tenured area.

The tenure holder has the right to modify the land and/or construct improvements as specified in the tenure document. The tenure holder is granted the right to exclusive use and enjoyment of the area. The tenure holder also has the right to exclude or charge the public for use of the land and/or improvements, when this is consistent with the terms of the lease. The lessee may, in accordance with section 65 of the *Land Act*, take legal action against trespassers to the lease area.

The standard term for a lease is 30 years. A maximum term of 60 years is available in some land use programs.

Leases of area over 520 ha must be approved by the Minister of the authorizing agency.

In most cases, tenure holders may apply for a tenure replacement at any time following the mid-term of the tenure. Replacement of tenures is at the authorizing agency's discretion. The authorizing agency may decline to replace a tenure, or may alter the terms and conditions of a replacement tenure, if the existing tenure is not in good standing, if development contemplated in an approved management plan has not been completed, or where it is deemed to be in the public interest.

2.2 Sale

2.2.1 Crown Grant

Fee simple dispositions, or sales of Crown land, are made either under the *Land Act* (restricted to Canadian citizens and permanent residents) or the *Ministry of Lands, Parks and Housing Act*.

Crown grants to any individual or corporation for more than 520 ha, except for commercial, industrial, railway, or airport purposes (*Land Act* section 20(2)), must be approved by the Minister of the authorizing agency.

Fee simple disposition of Crown land conveys surface rights only. This includes the right of the land owner to any sand and gravel, earth, soil, peat and marl and construction rock on the land. Rights to sub-surface resources (e.g. minerals, petroleum and natural gas) as well as water resources are retained by the Crown (*Land Act* section 50). A disposition of Crown land will also require payment to the government for the value of the timber on that land.

2.2.2 Lease purchase

Some Crown Land programs allow the conversion of *Land Act* tenures to private ownership.

Reserves

Administrative Instruments to Prevent Alienation of Crown Land

2.4 Reserves, Withdrawals and Transfers

Reserves, withdrawals and transfers are carried out through a variety of administrative instruments. Administrative instruments are formal legal mechanisms, or informal administrative measures, employed by the province to provide for the optimal management or use of Crown land. Administrative instruments include written procedural agreements between agencies; mechanisms used to reserve, withdraw, designate, or record an interest in Crown land; as well as devices used to transfer Crown land and/or the authority to manage Crown land to other agencies.

2.4.1 Reserves

Federal and provincial government agencies and government corporations may apply for the establishment of reserves over high value sites required for public purposes, including research and education. Reserves may authorize a government body to place, construct, maintain or operate any works, structures or other improvements on the reserved land.

Order in Council Reserve (Section 15)

An Order in Council (O.I.C.) reserve is established by authority of the Lieutenant Governor in Council in order to withdraw Crown land from disposition in recognition of a specific value or attribute. It is established pursuant to Section 15 of the *Land Act*. An O.I.C. reserve is an absolute reservation during its term and can be cancelled or amended only by another Order in Council.

An O.I.C. reserve is used in special circumstances where a temporary withdrawal (Section 16) is insufficient to safeguard an acknowledged public interest or concern. Such circumstances include, but are not limited to, the following:

- the resource or potential use of the land is unique, critical, or has provincial or regional significance which should be conserved over the long term;
- long term conservation or maintenance of future options on the land is in the public interest.

An O.I.C. reserve is established for a specific term, with a minimum term of 5 years.

Map Reserve (Section 16)

A map reserve is a withdrawal from disposition, established by the authorizing agency on behalf of the Minister, to temporarily withdraw or withhold Crown land from alienation for all purposes under the *Land Act*. It is established pursuant to Section 16 of the *Land Act*. A map reserve can be established to suit a variety of circumstances, including:

- to permit agencies to undertake operational planning and/or to facilitate market development for a specified use;
- to provide temporary protection of the land base and its resources from use and development; and

- to permit the province to temporarily maintain options on the future use of the area
- to authorize a government body to use the land for public purposes.

A map reserve is established on Crown land within or outside a municipal boundary for a specific term, with a maximum term of 5 years.

2.4.2 Land Act Designation (Section 17)

Conditional withdrawals can designate a portion of Crown land for a particular use or for the conservation of natural or heritage resources. In this case, the land is withdrawn from dispositions under the *Land Act* except for the designated use(s) and any compatible use(s). Uses identified as compatible or associated with the designated use may be authorized by the province, subject to the specifications of the notice used to establish the area.

Conditional withdrawals are established pursuant to Section 17 of the *Land Act*. A *Land Act* designation may be amended or cancelled by the Minister of the authorizing agency.

A *Land Act* designation may be established to permit the orderly development of a designated area for a specified use (or uses) through the Crown land application process. They may also be used to implement a planned disposition project (including Crown land planning projects) for a variety of non-forest uses. Examples include:

- intensive agriculture *Land Act* designation;
- controlled recreation (ski) *Land Act* designation;
- commercial development *Land Act* designation.

A *Land Act* designation is normally established for a specific term, with a maximum term of 5 years.

2.4.3 Notation of Interest

A Notation of Interest is a recording on provincial reference maps of an interest in Crown land by another provincial ministry or agency. It is not a reserve, withdrawal or designation under the *Land Act*, and does not preclude the acceptance of land applications or disposition of Crown land.

A notation of interest may be used to ensure referral of land applications to agencies or ministries whose mandate, programs or interests dictate a concern with the nature, extent and/or conditions associated with Crown land disposition in a specific area. It may also be used to ensure the involvement of such agencies in planned disposition projects. A notation of interest may be recorded over an area for which a crown land planning project is proposed or has been initiated, in order to bring the planning project to the attention of relevant provincial staff. A notation of interest can also record such long term interests in Crown land as the location of trails, timber sale areas, grazing licences and woodlot licences.

A notation of interest-short term has a maximum term of 2 years, while a notation of interest-maximum term has a maximum term of 5 years.

Leases – 1979 to present

	Purpose	Provisions	Lease Payment	
1979	A Summer Cabinsite – Personal I (b)	<p>Permittee must</p> <ul style="list-style-type: none"> • submit a plan prior to cutting timber or erecting buildings . • repair all damage, except ordinary wear and tear, to roads, trails, irrigation ditches and other improvements on Crown land that results from his use of the permit area 	\$30	<p>Special Use Permit (SUP)</p> <p>Ministry of Forests</p> <p>Yearly permit, renewed annually</p>
1982	Article I: To use and occupy it for non-commercial recreational purposes	<ul style="list-style-type: none"> • To observe, abide by and comply with all laws, by-laws, orders, directions, ordinances and regulations of any competent governmental authority in any way affecting the Land and improvements situated thereon, or their use and occupation • Not to use or occupy the Land for any purpose not permitted under Article 1 • Not to commit or suffer any willful destruction on the Land or do or suffer to be done thereon anything that may be or become a nuisance or annoyance to Owners or occupiers of adjoining land 	\$130	<p>Licence of Occupation – SUP Conversion – Recreational and Residential</p> <p>Ministry of Lands, Parks and Housing</p> <p>5-year term</p>
1986	Article I: Personal recreational use	<ul style="list-style-type: none"> • To observe, abide by and comply with all laws, by-laws, orders, directions, ordinances and regulations of any competent governmental authority in any way affecting the Land and improvements situated thereon, or their use and occupation • To keep the Land in a safe, clean and sanitary condition satisfactory to the Lessor, and on written notice from the Lessor, to make safe, clean and sanitary any portion of the Land or any improvements that, in the opinion of the Lessor, contravenes the provisions of this covenant. 	\$200	<p>Lease – Recreational Lot</p> <p>Ministry of Lands, Parks and Housing</p> <p>15-year term</p>

1998	Article I: Personal recreational use	<ul style="list-style-type: none"> • To observe, abide by and comply with all laws, by-laws, orders, directions, ordinances and regulations of any competent governmental authority in any way affecting the Land and improvements situated thereon, or their use and occupation • To keep the Land in a safe, clean and sanitary condition satisfactory to the Lessor, and on written notice from the Lessor, to make safe, clean and sanitary any portion of the Land or any improvements that, in the opinion of the Lessor, contravenes the provisions of this covenant. • Not to commit or suffer any willful destruction on the Land or do or suffer to be done thereon anything that may be or become a nuisance or annoyance to Owners or occupiers of adjoining land • To use and occupy the Land in accordance with the provisions of this lease and any Special Proviso Schedule 	\$3990	Lease – Recreational Lot Ministry of Environment, Lands and Parks 15-year term
2003	Section 2.1: Personal recreation purposes	<ul style="list-style-type: none"> • To observe, abide by and comply with (i) all applicable laws, bylaws, orders, directions, ordinances and regulations of any competent governmental authority in any way affecting the Land and improvements situated thereon, or their use and occupation and (ii) the provisions of this Agreement • In respect of the use of the Land by you or anyone you permit to use the Land, keep the Land and the Improvements in a safe, clean and sanitary condition satisfactory to us, and at our written request, make the Land and the Improvement safe, clean and sanitary. • Not commit any willful or voluntary waste, spoil or destruction on the Land or do anything on the Land that may be or become a nuisance or annoyance to an owner or occupier of land in the vicinity of the Land • Use and occupy the Land only in accordance with and for the purposes set out in Section 2.1 	\$1500	Lease Ministry of Sustainable Resource Management 15-year term

Ramifications of Land Act Reserves

- **No further alienation of Crown land around reservoir lakes.**
 - No increase in the number of lease lots on reservoir lakes.
- **The property values of lease lots currently in existence are expected to increase.**
 - Lease fees are tied to property values.
 - Higher property values will result in higher lease fees.
- Higher property values, coupled with higher lease fees, may provide further incentive for the leaseholder to request the option to purchase, and then potentially sell, the leased lot.
 - The new owner may not follow the same stewardship principles as the original owner.
 - Sale of leased lots transfers ownership to the new owner, which removes the ability of the Lessor to place covenants or conditions on the leases.

Effect of Land Act Reserves on Existing Tenures:

- None.

Other Options:

- Relocation of leased lots to non-reservoir lakes.
- Expropriation: when a public agency takes property for a purpose deemed to be in the public interest, even though the owner of the property may not be willing to sell it.
 - **Water Act Section 27**
 - Legal fees and compensation
 - **Expropriation Act**
 - Legal fees and compensation

Elimination of risks due to human inhabitation:

- Creation of Land Act Reserves AND
- Expropriation of current lease lots
 - Under the Water Act
 - Under the Expropriation Act

Management of risks:

- Lease lots
- Private lots
- Other watershed activities:
 - Cattle
 - Forestry
 - Mining
 - Recreation

Summit Environmental

Draft Report

ILMB contracted Summit Environmental to draft a report, whose purpose was “to develop/consolidate mechanisms for preventing risks of hazards to water quality from property development, land use, occupation and activities (e.g. fertilizer use, fuel storage) in the vicinity of drinking water reservoirs in the Okanagan”.

- **Does not address water quality impacts from domestic wastewater and sewage.**
 - Oland Engineering is evaluating septic disposal capacity of leased lots.
- Implies that lot impacts on water quality are negligible, but does not provide any substantiation.
 - Does not establish whether existing use and occupancy of the properties is causing a deterioration of water quality
- Does not present a mechanism for preventing risks of hazards to water quality from property development, land use, occupation and activities in the vicinity of drinking water reservoirs in the Okanagan.
- **States that leases, by their nature, provide options and control to landlords, while transfer of ownership transfers control to the new owner.**

Risks exist, whether the lots are sold or not.

Reservoir Lakes Committee

A Reservoir Lakes Advisory Committee was established in November 2006 and meets regularly. The Committee includes representation from the Regional Districts, water purveyors, the Interior Health Authority, recreational cottage owners and the ILMB, and members include OBWB Director Toby Pike, Mike Stamhuis, Lloyd Manchester, Brian Guy, Mike Adams, and Elizabeth Sigalet.

Potential Strategies

Reducing the risks to water quality on reservoir lakes in the Okanagan.

1. Lot-specific

a. Wastewater Management

- i. Expand parcel size to 1 ha or greater or provide additional lands for septic fields.
- ii. Limit use of septic fields by requiring composting toilets or other low-impact technologies
- iii. Integrate properties into stratas with single treatment systems, or consolidate treatment systems for multiple properties

b. Lot Relocation

- i. Relocate or realign parcel boundaries to increase riparian buffer
 - ii. Relocate parcels to non-reservoir lakes
- c. Bylaws, Ordinances, Lease Terms**
 - i. Limit building size
 - ii. Limit use
 - iii. Further define “personal recreational use”
- d. Establish riparian management guidelines for waterfront properties
- e. Upon lease expiration, offer first right of refusal to irrigation districts or regional districts

2. Okanagan-Shuswap LRMP (Land and Resource Management Plan)

- a. Promotes land use compatible with the objective in both provincial and local government activities
- b. The Okanagan-Shuswap LRMP is an approved strategic land use plan within the Province of British Columbia. The plan area is characterized by rapid population growth, a diversifying economy and unique environmental settings - resulting in a range of interests and potential expectations. In conjunction with other legislation, the plan sets an integrated overall strategic direction for the management of crown lands within the Okanagan/Shuswap (Okanagan TSA).
- c. The plan was developed by consensus among representative stakeholder groups over the period 1995 - 2000 and will be a living 'web based' plan - reflecting the ongoing consideration of research, management and environmental/social/economic expectations. Implementation, featuring public representation, is commencing during 2001.

3. Regional District and Crown Land Zoning

- a. Parcel and housing zoning
 - i. Parcel size
 - ii. Frontage
 - iii. Setbacks
 - iv. Coverage
 - v. Number, footprint and height of buildings
- b. Conservation land zoning
 - i. Limits further development outside of existing parcels
 - ii. Provides direction for recreation management, including location of infrastructure
- c. Commercial recreation zoning
 - i. Provides direction for the type and extent of commercial recreational development
- d. Regional park designation
- e. Land reserve zoning**
 - i. Section 15 Order-In-Council Reserve
 - ii. Section 16 Map Reserve
 - iii. Section 66 Prohibition of Use
 - iv. Section 17 Land Act Designation

- f. **Land Resource Management Plan (LRMP) Amendments**
 - i. Okanagan-Shuswap LRMP

4. Recreation Management Strategies

- a. Limit types and location of water-based recreation
- b. Eliminate or reduce wilderness camping in favour of designated sites with appropriate infrastructure
- c. Limit the size and type of outboard motors

5. Cattle Management Strategies

- a. Strategic fencing (funding & maintenance)
- b. Grazing management plans and realignment of range tenures to establish a buffer around reservoir lakes
- c. Provision of funds for construction of alternate water sources away from lakes/streams (requires a water licence)

6. Forestry Management Strategies

- a. Strategic fencing (funding & maintenance)
- b. Grazing management plans and realignment of range tenures to establish a buffer around reservoir lakes
- c. Provision of funds for construction of alternate water sources away from lakes/streams (requires a water licence)

7. Mining Management Strategies

- a. Mineral claim registration reserve on the reservoir lakes?

8. Water Quality Management and Protection Strategies

- a. Provision of resource to undertake risk assessments and management plans in support of source water protection from all potential risk factors.
- b. Provision of resources to develop treatment facilities
- c. Provision of resources to separate domestic and agricultural water

Recommendations:

- Do not sell leased lots.
- Establish Land Act Reserves to prevent further alienation of Crown Land around Okanagan reservoir lakes.
- Strengthen lease conditions.
- Lessor to enforce lease conditions.
- Determine actual impact of leased lots on water quality (Oland Engineering?)
- Employ other risk-reduction strategies.