

# PROVINCIAL PROTECTED AREA BOUNDARY ADJUSTMENT POLICY, PROCESS AND GUIDELINES

March 2010

## 1. BACKGROUND:

Provincial protected areas<sup>1</sup> are set aside to provide a wide range of opportunities that support tourism and recreation while maintaining the integrity of the natural environment. Most protected areas have been created through comprehensive land use planning processes that included consultation with the public, First Nations and local governments in providing recommendations to government on land use objectives, including establishing protected areas.

Periodically, there are proposed developments which involve activities which are prohibited within protected areas. The Minister<sup>2</sup> may recommend to Cabinet and the Legislature a boundary adjustment where it meets the principles associated with this Policy. This determination requires policy and guidelines for maintaining the integrity of protected area values as well as a clear process for evaluation and decision making.

Protected area boundary adjustments fall within one of three categories:

1. “Administrative housekeeping” adjustments undertaken where there have been errors in the initial legal description of the boundary or an area was captured that clearly was not intended to be captured at the designation stage.
2. Adjustments intended to alleviate a human health and safety concern.
3. Adjustments where a proponent (private or public) is interested in a boundary adjustment to allow for a development or activity not allowed by authorization under the protected area legislation.

The *Provincial Protected Area Boundary Adjustment Policy, Process and Guidelines* (the Policy) applies to private or public sector development proposals that conform to Category 3 adjustments referenced above. The Policy does not apply to Category 1 or 2 boundary adjustments<sup>3</sup>.

## 2. GUIDING PRINCIPLES:

In recognition of the public interest in the establishment and management of protected areas, and the integral role protected areas play in supporting local economies and community-based recreation, government has afforded protected areas a high level of legislative protection.

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<sup>1</sup> For the purpose of this Policy, protected areas include Class A, B and C parks, recreation areas, conservancies, ecological reserves, and protected areas established under the *Environment and Land Use Act*.

<sup>2</sup> Under this Policy, “Minister” refers to the Minister responsible for the *Park Act*.

<sup>3</sup> Category 1 and 2 boundary adjustments will be managed using internal procedures involving case-by-case analysis and decisions forwarded to the Minister.

Consideration of proposals for protected area boundary changes will be guided by the following principles:

- The BC Government is committed to the protection of provincial protected areas and the integrity of their associated ecological, recreational and cultural values.
- Proposals for protected area boundary adjustments will be considered on a case by case basis where there are compelling provincial economic, environmental and social benefits that collectively exceed maintaining the existing protected area boundary and values.
- The review and evaluation process will be timely and transparent.
- The proponent must establish the case to adjust a protected area boundary (including meeting the provisions of this Policy) and bear the associated costs.
- Where feasible, consultation will occur with participants that were involved in a public planning process where that process resulted in the establishment of the protected area.
- Consultation with First Nations and local governments will be required.
- Suitable public consultation will be required, consistent with the significance of the proposed change.

### **3. REQUESTS FOR BOUNDARY ADJUSTMENTS:**

Proponents may be First Nations, other levels of government, private individuals, companies or agencies/ministries. A proponent considering a project within a protected area should contact BC Parks as early as possible in the proposal development stage to determine if the proposed use is compatible with legislation, regulations and protected area management objectives. If the proposal would require an adjustment to protected area boundaries in order to proceed, the proponent will be advised of the following two-stage process:

#### **Stage 1: Initial Proposal:**

The proponent submits an initial proposal to the Director responsible for protected area planning, BC Parks. The initial proposal should include:

1. Proponent information and contact details.
2. Type and purpose of project (e.g. wind power generation, mining, road, pipeline, etc.).
3. Project location.
4. Project footprint (inside and outside the protected area) including all project components such as access routes.
5. Preliminary description of economic, social and environmental impacts and benefits of the project.
6. Preliminary assessment of alternatives that would avoid the use of protected lands and the reasons those alternatives are not considered feasible.
7. First Nations and local governments potentially affected by the project, and status of any discussions with these governments.
8. Known community groups with an interest in the protected area, and the status of any discussions with these groups.
9. Any known environmental issues (e.g. species at risk impacts, fish habitat).
10. Anticipated project schedule.
11. Maps and illustrations as appropriate.

The initial proposal will be reviewed by Ministry staff and submitted to the Minister for consideration. The Minister will consider the information provided and any other information the Minister considers relevant. The proponent will then be contacted to either:

1. Be advised that the Minister declined the application, and be provided with reasons; or
2. Be advised that the Minister will consider a detailed Stage 2 proposal as outlined below.

**Stage 2: Detailed Proposal:**

If the initial proposal is not declined, the proponent may proceed to stage 2. At this stage a detailed proposal is required. A proponent should maintain contact with BC Parks staff during development of the detailed proposal, which must include the information required by this Policy, along with a covering letter addressed to the Director responsible for protected area planning, BC Parks, requesting a review of the proposal for a boundary adjustment.

**4. GUIDELINES FOR DETAILED PROPOSALS:**

Implementing a boundary adjustment requires approval of the Minister, Cabinet, and usually the Legislature<sup>4</sup>. Proponents should ensure that the information they submit with their detailed proposal addresses the following considerations to the satisfaction of the Minister:

**1. Alternatives to avoid the protected area have been considered.**

Proponents must consider and document alternatives that would avoid a protected area boundary adjustment. Clear supporting rationale for supporting or rejecting an alternative must be provided.

**2. Overall economic benefits to the Province have been documented.**

An overall economic analysis of the economic benefits and costs, if any, associated with the proposed boundary adjustment will inform the assessment process. The economic analysis should include a summary of the short-term and long-term employment benefits, regional infrastructure impacts, and potential revenues to Government.

**3. Social and environmental impacts have been documented.**

All potential impacts of the proposed development on the social and environmental values of the protected area must be identified. This should include consideration of how the proposal may impact or benefit traditional user activities, visitor enjoyment and safety, identification and impacts to natural values in the area and associated risks to natural values. Broader environmental impacts or benefits, beyond the protected area, should also be identified. The assessment of the social and environmental impacts will assist in identifying potential mitigation, restoration or compensation measures that would preserve the recreation and/or conservation values of the protected area.

**4. Mitigation and restoration measures have been identified.**

Proponents will identify ways to avoid, minimize or compensate for the impacts the proposed development may have on protected area values. This will inform the assessment process of opportunities to retain or add to protected area values.

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<sup>4</sup> The final decision on a protected area boundary adjustment rests with either the Cabinet or the Legislature depending on the level at which the protected area boundary is originally established. A protected area boundary established by Order in Council is amended at the Cabinet level and a protected area boundary established by an Act of the Legislature can only be amended by the Legislature. Most boundaries are established by an Act of the Legislature.

**5. First Nations have been adequately consulted.**

Proponents need to discuss the proposed development and potential impacts on protected area boundaries and values with the appropriate First Nations and include a summary of the discussions with the detailed proposal. This will provide an indication of the degree of First Nations acceptance (or lack thereof) of the proposal. Inclusion of this information in the proposal will assist Ministry staff in meeting the Crown's duties to consult with First Nations, and if necessary, accommodate any infringement on asserted rights or title.

**6. Local community (including local governments) have been consulted.**

Proponents must assess the level of support or opposition among the key community, local government and public groups that may have an interest in the potential impacts of the proposed development on protected area boundaries. The proponent should identify whether this indication of public response was obtained through direct consultation or through indirect means such as review of media reports, interest group newsletters, or other appropriate means. This information will assist in identifying whether adequate public and/or local government consultation has occurred.

**7. Provincial and Federal Agencies have been consulted.**

The proponent, with advice from BC Parks, should make contact with appropriate federal and provincial agencies that may have an interest in the proposal and seek input or comment.

If the proposed boundary adjustment is related to a reviewable project under the British Columbia *Environmental Assessment Act*, BC Parks and the Environmental Assessment Office will coordinate their respective information requirements to the greatest extent possible. While the boundary adjustment and environmental assessment processes involve independent decisions by Government, the intent is to identify means for the proponent to collect and report on information required by both processes in an effective and efficient manner.

**5. PROCESS FOR REVIEWING DETAILED PROPOSALS:**

The ministry will review the completed Stage 2 detailed proposal. The review process will proceed as follows (see also Appendix 1: Boundary Adjustment Process Flow Diagram):

1. BC Parks staff contact relevant or interested Ministries to inform them of the proposal and the proposal will be posted on a government web site for public information<sup>5</sup>.
2. The economic, social and environmental implications of the proposal, along with the extent of public, First Nations<sup>6</sup>, and local government consultation identified in the proposal, are assessed.
3. An assessment and recommendations regarding the proposal are submitted by BC Parks to the Minister.

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<sup>5</sup> The proponent may be directed to make additional efforts (e.g. newspaper advertising, web-based notification) to ensure the public is aware of the application and able to submit their views on the proposal.

<sup>6</sup> First Nations consultation process will be determined between the proponent and the Ministry of Environment (or BC Parks) and outcomes will be assessed.

4. The Minister may, at any time during the review process, determine that adequate information has been provided to make a decision not to recommend the boundary adjustment to Cabinet. If the Minister decides not to recommend the proposal, then the proponent will be notified of the reasons for the decision in a timely fashion.
5. The Minister may recommend the proposal to adjust the boundaries to Cabinet. Cabinet may decide either to proceed with the boundary adjustment or to reject the proposal. If Cabinet rejects the proposal, the proponent will be notified in a timely fashion.
6. If Cabinet decides to support the proposal, a legislative amendment will be introduced and be subject to the normal process for Bills in the Legislature, if a legislative amendment is required to change the boundary. The final decision will then rest with the Legislature. In the event the existing boundary was established by Order in Council, then Cabinet may decide to amend the boundary by Order in Council.

***Process Notes:***

- BC Parks, the Minister or Cabinet may determine at any time during the process that additional consultation or information is required.
- Normally, a proposal that meets all information requirements will be considered within a six month time frame. However, legislative amendments may require considerable preparation and additional time.

**6. PROCEDURAL NOTES:**

In order to ensure clear understanding and application of these principles and guidelines, proponents should initiate early contact and maintain communications with BC Parks staff.

Decisions to consider a proposal for a protected area boundary adjustment are made by the Minister based on the economic, social and environmental considerations. There is an increased risk of a proposal being rejected at any time under one or more of the following circumstances:

- Viable alternatives exist;
- There is significant First Nations opposition;
- There is significant public or local government opposition;
- Significant adverse effects on environmental or social values cannot be avoided, mitigated or compensated for;
- There is insufficient overall benefit to the Province.

A decision to consider an application to adjust a protected area boundary to allow for a development does not constitute approval of the proposed project. The final decision to adjust a boundary rests with the Legislature (or Cabinet in the case of a protected area established by an Order in Council). As well, all proposed projects are subject to the normal provincial and federal regulatory review processes that apply to such projects. Protected area boundary adjustments, if approved by Cabinet or the Legislature, will only be brought into force if the proposed project has received all other approvals to proceed (*e.g.* Environmental Assessment Certificate).

## 7. AVAILABLE RESOURCES:

In preparing information to address these guidelines, proponents should consider the following sources of information which may be of assistance:

- The BC Parks *Impact Assessment Process* is used by staff to assess potential impacts of proposed actions in provincial protected areas – it offers processes and background information which can be used by proponents. The process is described in detail on the BC Parks website at the following address:  
<http://www.env.gov.bc.ca/bcparks/conserve/impact/>
- B.C.'s environmental assessment (EA) process provides a mechanism for reviewing major projects to assess their potential impacts and to ensure environmental, economic and social considerations are taken into account. This includes assessing issues and concerns raised by the public, First Nations, interested stakeholders and government agencies. More information is available at the Environmental Assessment Office website at: <http://www.eao.gov.bc.ca/index.html>

## Appendix 1: Boundary Adjustment Process Flow Diagram

