

Subject <b>RENEWABLE ENERGY ON CROWN LAND</b>		Policy <b>PL 4.10.06</b>
Compiled by <b>Renewable Energy Program, Biodiversity Branch</b>		Date Issued February 10, 2014
Replaces Policy Directives Waterpower Site Release – Crown Land Onshore Windpower Development - Crown Land	Number PL 4.10.05 PL 4.10.04	Dated April 16, 2010 July 5, 2010

## 1.0 Introduction

This document establishes the policy framework for how the Ministry of Natural Resources (the Ministry) will manage access to Ontario’s Crown lands for renewable energy specific to water power, onshore wind power and solar power development.

In this policy, “access” refers to the acceptance of an application under the direction of this policy to use Crown land for potential renewable energy development. This initial access does not guarantee long-term Crown land tenure or approvals. In addition to the requirements identified in this policy that must be met in order to gain access to Crown land and advance a renewable energy development, other provincial, federal and local agency regulatory and permitting processes apply.

On behalf of the Province of Ontario, the Ministry manages provincial Crown land, which includes the beds of most lakes and rivers. These Crown lands represent a significant part of the provincial land base, particularly in central and northern Ontario.

Ontario’s Crown lands have long played an important role in helping to support the province’s energy needs, given that most water power development was located on the province’s waterways. More recently, Crown lands have been developed to support other types of renewable energy development including onshore wind power.

Renewable energy plays an important role in Ontario’s energy supply mix. It provides benefits at the local and provincial levels by creating economic opportunities for investment, manufacturing and resource development. It also supplements fossil fuel based forms of energy production that contribute to climate change and poor air quality. Renewable energy development on Crown land may also have environmental and social effects which must be considered through land use planning, regulatory reviews and permitting processes.

This policy framework establishes a number of requirements that must be met to gain access to Crown land to advance a renewable energy development proposal including:

- alignment with government energy plans, programs and goals, including ability to connect to available or planned transmission or distribution,
- consistency with legislation, Crown land use plans and policies, and

- alignment with the Aboriginal, provincial and/or community economic development objectives contained herein.

When making decisions on the suitability of Crown land for renewable energy development through land use planning, regulatory reviews or permitting processes, the Ministry will use best available natural resource, ecological and socio-economic information and science, as well as Aboriginal Traditional Knowledge, where it is available and where its use is supported by local Aboriginal communities.

## **2.0 Goal**

To provide clear policy direction on how access to Crown land and resources will be managed to support the province's renewable energy objectives.

## **3.0 Policy Objectives**

### **3.1 Provincial Energy Needs**

Renewable energy development on Crown land must be consistent with provincial energy policy contained in energy plans, programs or goals, including the types, amounts, and/or location of renewable energy supply required to support provincial energy needs.

Renewable energy development on Crown land must also be located where generation is enabled by available or planned transmission or distribution capacity. For purposes of this policy, planned transmission or distribution capacity shall generally include electricity system upgrades as identified in provincial energy plans, or in a transmitter's or distributor's filed or approved plans. The Ministry will look to guidance from provincial energy regulators to assist in this requirement.

Crown land applications will generally not be accepted where they do not align with provincial energy plans, programs or goals.

Where there is a need for renewable energy, but no available or planned transmission or distribution capacity, access to Crown land may be granted for renewable energy development to support:

- provincial economic development priorities (e.g., mining development, regional economic development plans),
- off-grid Aboriginal community use, or
- small scale use for local resource management or other activities (e.g., forestry, mining, remote tourism).

## 3.2 Crown Land Management Direction

Renewable energy development on Crown land must be consistent with the Ministry's Crown land use planning direction, legislation and policy.

### Land Use Plans

Renewable energy development on Crown land must be consistent with land use planning direction in:

- the Crown Land Use Policy Atlas,
- Community Based Land Use Plans approved under the *Far North Act*, or in the absence of a Community Based Land Use Plan approved under the *Far North Act*, only be made available for renewable energy development in a manner consistent with the *Far North Act*, or
- other approved Ministry Crown land use plans and guides, where there is no direction in the Crown Land Use Policy Atlas.

### Land Use Direction for the Northern Rivers

Crown land use policy direction since 1993 has provided for a 25 megawatt limit on water power development at individual sites within the Northern Rivers watersheds (Figure 1). This 25 megawatt policy limit on individual water power sites may be reviewed through:

- community based land use planning processes in the Far North, or
- land use planning or other processes for areas south of the Far North.

A review of the 25 megawatt development limit will include broader landscape and watershed level considerations and provide for dialogue with First Nations located within the subject river basin. In the absence of a land use planning review, the 25 megawatt limit on individual water power sites shall remain in place.

### Crown Land Use Planning

When the Ministry is undertaking Crown land use planning, consideration will be given to the province's energy plans, programs and goals, and to the suitability of Crown lands for renewable energy development to support provincial energy plans and priorities.

Crown land use planning activities and documents represent an important opportunity to establish landscape and site level land use considerations and decisions about the suitability of Crown land for potential renewable energy development, as well as considerations of the impacts of renewable energy development upon the broader provincial land and water base.

Consistent with the Ministry's *Guide for Crown Land Use Planning*, when undertaking land use planning that involves renewable energy, the Ministry will engage the public, stakeholders, other provincial ministries and agencies, municipalities, federal agencies, conservation authorities and Aboriginal communities. Such involvement in land use planning ensures that provincial, regional and local interests are considered when making land use decisions about the suitability of Crown lands for potential renewable energy development.

### Legislation and Crown Land Policy

In addition to areas identified by the Ministry through Crown land use planning as being unsuitable for renewable energy development, the following Crown lands are not available for renewable energy development:

- an area regulated or recommended as a provincial park or conservation reserve, where the project would not qualify as an exception under the *Provincial Parks and Conservation Reserves Act*,
- an area designated as a dedicated protected area in the Far North, where the project would qualify as an exception under community based land use plans or the *Far North Act*,
- greenfield water power development (including any reservoirs, impoundments and water control structures or weirs) on a naturally reproducing lake trout lake, or
- an area where existing authorizations or dispositions under the *Public Lands Act*, *Aggregate Resources Act*, *Oil Gas and Salt Resources Act*, or *Mining Act* would prohibit development.

### Other Considerations

Prior to granting access to Crown land for potential renewable energy development, the Ministry will, at its sole discretion, consider whether the area of the proposed project is subject to protocols with Aboriginal communities, land claim processes or settlement agreements, or other exceptional circumstances that may preclude development.

### **3.3 Crown's Duty to Consult Aboriginal Peoples**

The Crown has a legal duty to consult and, where appropriate accommodate, Aboriginal communities when it contemplates conduct or activities that may adversely affect Aboriginal or treaty rights.

The duty to consult rests solely with the Crown, however the Ministry may delegate procedural aspects of consultation to third party proponents.

These consultation obligations are separate from specific direction in this policy that encourages Aboriginal community economic benefit opportunities from certain types of renewable energy projects on Crown land.

The duty to consult obligation, and the opportunity to engage Aboriginal communities in decision making about renewable energy development on Crown land, may occur at multiple stages and opportunities including:

- Crown land use planning,
- the review of applications to access Crown land for the purposes of development, and
- through regulatory approval processes for proposed projects.

Engaging Aboriginal communities identified by the Crown early on, will help project proponents and Aboriginal communities develop relationships built on mutual trust and good faith.

### **3.4 Aboriginal Community Economic Benefits**

The Ministry will encourage Aboriginal community economic benefits from renewable energy development on Crown land. This policy commitment will be achieved in a number of ways as detailed in this policy including:

- geographic specific resource allocation decisions,
- policy commitments associated with either the location and type of the proposed development, and
- working with provincial energy procurement agencies to contribute to competitive energy procurement decision making that demonstrate a preference for projects with Aboriginal community involvement.

The following specific policy commitments will help to enable Aboriginal community economic benefits.

#### Far North

In the *Far North Act* area (Figure 1), access to Crown land for water power, wind power and solar power development opportunities will only be granted to local Ontario First Nation communities and/or their partners.

#### Northern Rivers

Access to Crown land for water power development opportunities within that portion of the Northern Rivers watersheds south of the *Far North Act* boundary (Figure 2) will only be granted to local Ontario Aboriginal communities and/or their partners.

## Moose River Basin

This policy acknowledges and recognizes the continued Ontario government commitment to co-planning with certain First Nation communities about the potential future water power development within the Moose River Basin, north of Highway 11 (Figure 3).

## Water Power on Other Crown Lands

South of the boundaries of the *Far North Act* area, the Northern Rivers and the Moose River Basin north of Highway 11, the Ministry supports the creation of community economic benefits and the participation of Ontario Aboriginal communities in the development of greenfield water power sites on Crown land:

- that have a capacity of between 1 megawatt and 10 megawatts, and
- where the adjacent bank(s) of the river are Crown owned.

These opportunities for Aboriginal community economic benefits from greenfield water power development of sites with a capacity of between 1 and 10 megawatts shall apply to those Ontario Aboriginal communities situated within or adjacent to the tertiary watershed of the greenfield water power development site.

While the Ministry may accept applications and grant access to Crown land for potential water power development for these sites, final approvals will be contingent on the applicant meeting the Aboriginal community economic benefit objectives of this policy.

The Ministry is committed to collaborating with Aboriginal communities and organizations, government agencies, and the water power industry, to review the mechanisms by which tertiary watershed based Aboriginal community economic benefits can be achieved from greenfield water power development of Crown land sites with a capacity between 1 and 10 megawatts, including applications with energy procurement contracts that pre-date this policy.

Where the Ministry is considering competitive applications for greenfield water power development for sites larger than 10 megawatts, development proposals that provide economic benefits to Ontario Aboriginal communities will be prioritized through the alignment of provincial Crown land application processes with provincial energy procurement initiatives and/or through the Ministry's Crown land application processes.

Finally, where the Ministry deems that the decision making criteria in a provincial energy procurement process meets the Aboriginal community economic development objectives of this policy, the Ministry may utilize that provincial energy procurement process to implement this policy objective and Crown land renewable energy applicants and energy procurement agencies will be advised accordingly by the Ministry through procedural guidance.

### **3.5 Crown Land Access**

#### Application Processes

To ensure that access to Crown land for renewable energy development is consistent with provincial energy policy, including generation and transmission needs, the Ministry will seek to align Crown land access processes with broader government energy procurement and application processes. Where the Ministry deems that the decision making criteria in a provincial energy procurement process meets the multiple objectives of this policy, the Ministry may utilize that provincial energy procurement process to implement this policy.

In considering access to Crown land for potential renewable energy development, the Ministry may demonstrate a preference for applications with local municipal, community or Aboriginal community involvement, either through provincial energy procurement programs delivered by other agencies, or through the Ministry's Crown land application processes.

Access to Crown land for renewable energy development may be enabled through either competitive or non-competitive processes.

Application processes involving Crown land access may also include requirements such as:

- information and data,
- land tenure and ownership,
- confirmation of business and economic viability,
- alignment with provincial energy plans, programs and priorities, and transmission connection considerations, and
- other matters deemed appropriate by the Ministry.

While access to Crown land will be aligned with provincial energy procurement programs to the extent possible, access to Crown land for potential renewable energy development does not presuppose that a proposed project will receive provincial or federal regulatory approvals or long-term Crown land tenure.

The Ministry will work closely with the Ministry of Northern Development and Mines to ensure clarity where procedural aspects of Crown land application and disposition processes for renewable energy development may impact the withdrawal or return of staking rights.

#### Application Status

An application to access Crown land for potential renewable energy development that has been received and reviewed by the Ministry does not provide any right, title, or interest in land, and is non-transferable. There is no ability to mortgage or charge such an application.

Where the Ministry has received and reviewed an application and then granted access to Crown land for potential renewable energy development, this application is not a disposition of Crown land under the *Public Lands Act*. Granting access to Crown land is solely the Ministry's acknowledgement that the applicant can seek regulatory approvals for a renewable energy project on those Crown lands. During this time, the Ministry will not accept another application under this policy for the same lands at the same time.

The above acknowledgement is subject to any timelines and milestones that must be met to retain access to Crown land. Failure to meet timelines and milestones may result in access to Crown land being rescinded.

Where an application for access to Crown land has been approved, this application may be transferable to another party only with the consent of the Ministry.

The Ministry reserves the right to determine if an area of Crown land is appropriate for renewable energy development and/or revise or establish the process which will apply. The Ministry reserves the right to limit (e.g., quantity, timing) Crown land applications for potential renewable energy development on a geographic or administrative basis.

#### Other Considerations

Access to Crown land for renewable energy development to generate electricity for community use (i.e., not connected to the provincial transmission grid) will be considered by the Ministry at any time, and need not be associated with any broader provincial energy procurement plan or program.

Application fees for renewable energy development on Crown land will reflect the financial costs associated with processing applications by the Ministry.

### **3.6 Energy Sector Specific Policy**

#### Wind Power

Wind energy testing will generally be permitted as a temporary activity on those Crown lands where the Ministry's land use plans or legislation do not prohibit wind power development. Wind energy testing will be subject to:

- the Ministry's Approval and Permitting Requirements Document (APRD) for Renewable Energy Projects, and
- applicable *Public Lands Act* procedures established by the Ministry for other types of similar temporary uses of Crown lands.



Wind energy testing facilities may include short-term moveable structures (e.g., LiDAR) or temporary use semi-permanent structures (e.g., three to four years) such as meteorological towers. Wind energy testing facilities will be encouraged to locate in areas where new roads or clearings are not required.

In developing procedural guidance for wind energy testing on Crown land, the Ministry will seek to align wind energy testing with provincial energy procurement programs or plans.

### Water Power

Water power development on Crown land may include the following development types:

- peaking facilities or run of river facilities which require the construction of dams or infrastructure,
- in stream flow technology,
- greenfield development,
- retrofit of water control structures and redevelopment of water power facilities, and
- pumped storage generation, where pumped storage generation is supported by provincial energy needs or specific economic development objectives.

The Ministry will encourage retrofitting of MNR water control structures, where it meets other Ministry program objectives, and contributes to provincial energy plans, programs or goals.

Applicants retrofitting Ministry water control structures for water power purposes may be required to assume partial or full responsibility for maintenance, operational control, long-term structural integrity and liability for such water control structures. The Ministry may also require the applicant to assume responsibility for operational control of other associated Ministry water control structures to ensure appropriate water management regimes.

## **4.0 Policy Implementation**

Under authority of Section 2(1) of the *Public Lands Act*, the Minister of Natural Resources has authority to approve or deny any use of Crown land, including the use of Crown land for renewable energy development.

Crown land renewable energy development applications, with a power purchase agreement from an Ontario government energy procurement program, and proceeding through a regulatory approvals review process as of the date of approval of this policy, will continue to be considered by the Ministry, consistent

with the Crown land site access policies and procedures in place at the time the energy procurement was awarded.

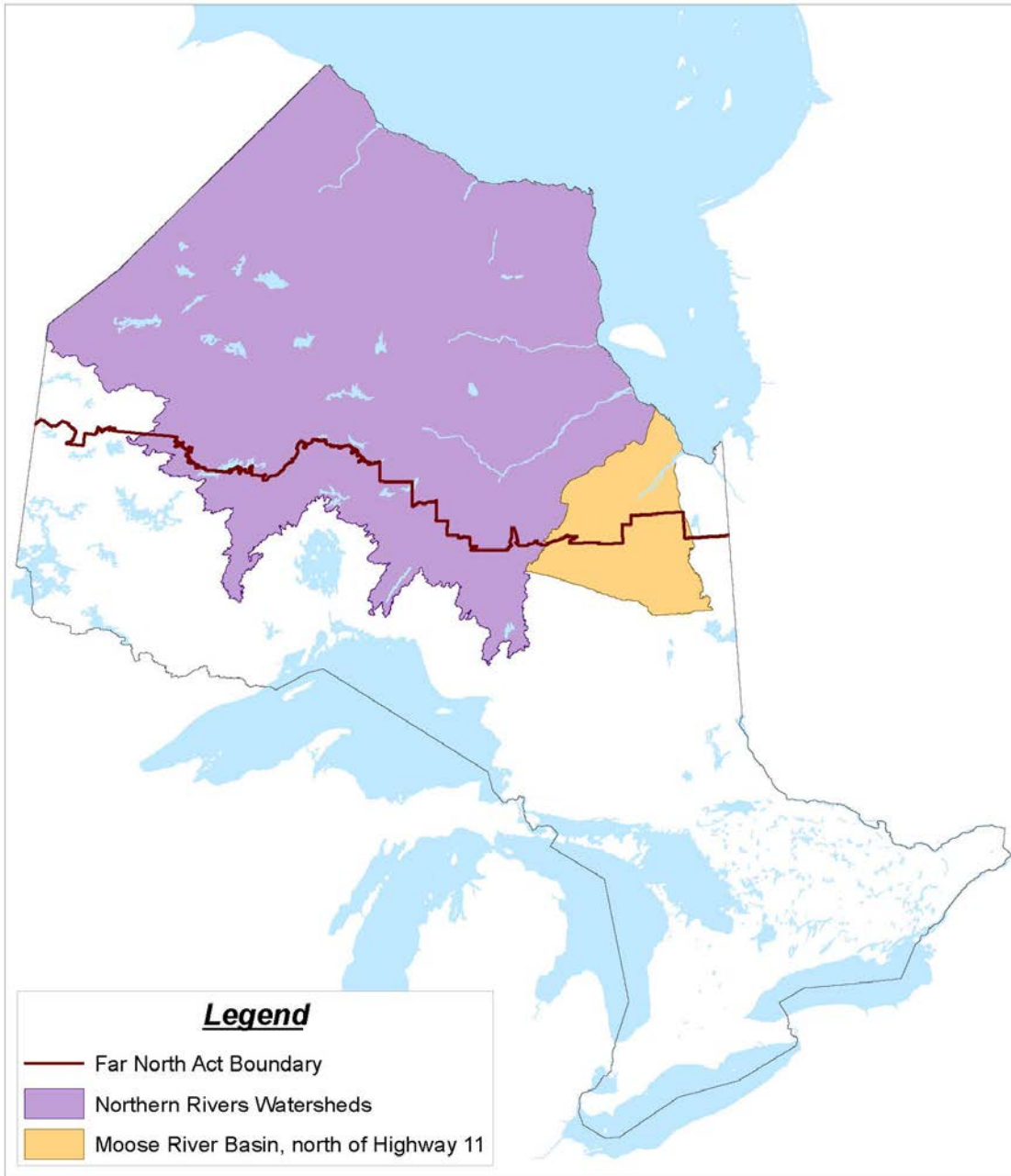
The Ministry will work with renewable energy applicants granted Applicant of Record status under the Ministry's previous procedural approach to granting access to Crown land, but that do not currently have a provincial energy procurement contract, to transition their applications to the Ministry's current policy approach to Crown land access for renewable energy.

All other applications for renewable energy development on Crown land that were not granted Applicant of Record status through the Ministry's previous policy approach to access to Crown land will be reviewed by the Ministry consistent with this policy. Where these applications for access to Crown land for renewable energy development are not consistent with this policy, the Ministry may deny/return the application and close the file.

This policy framework will be supported by procedural and technical direction.

## **5.0 References**

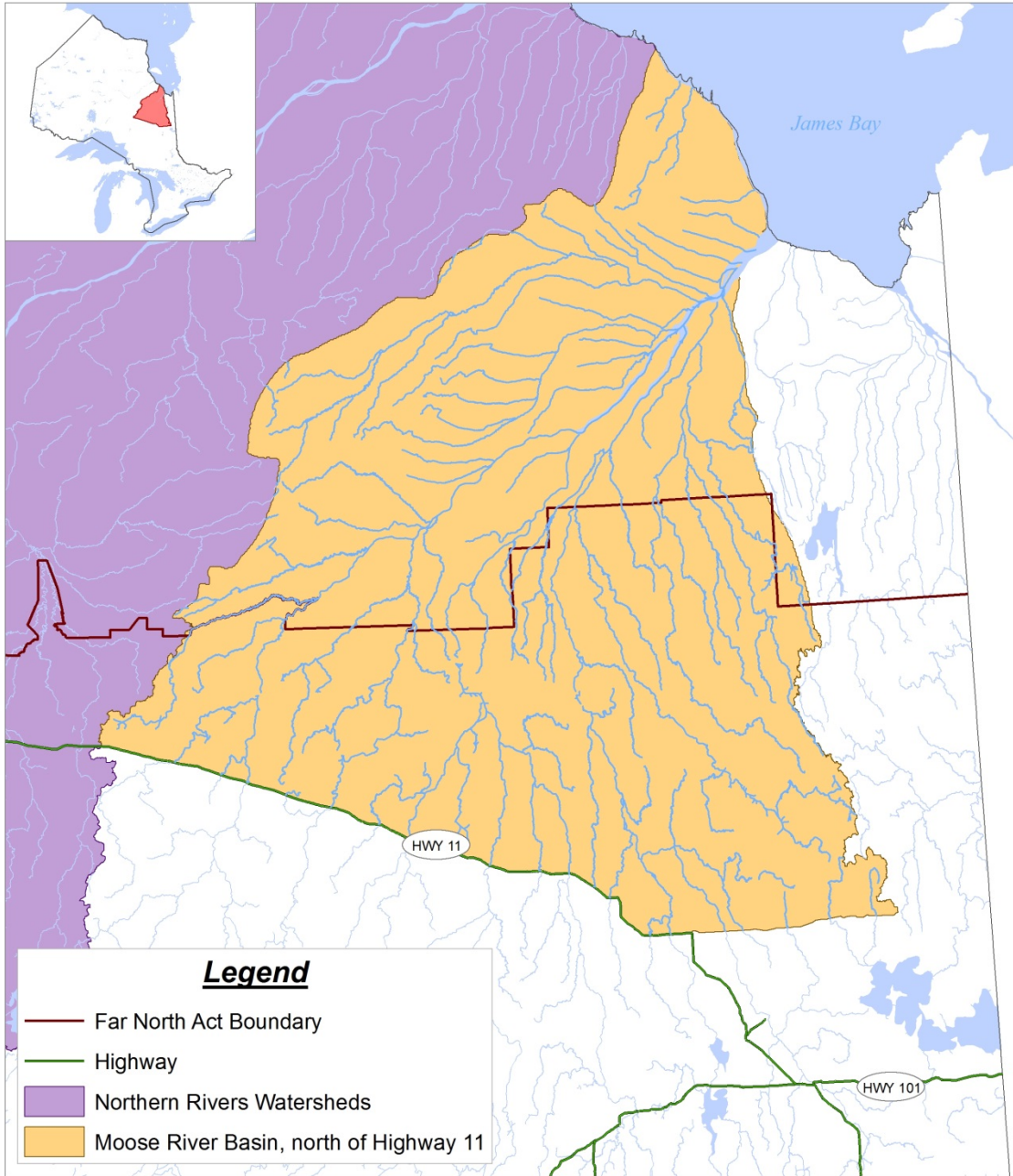
- Inland Ontario Lakes Designated for Lake Trout Management, Ontario Ministry of Natural Resources (May 2006 as amended)
- Guide for Crown Land Use Planning, 1<sup>st</sup> Edition, Ontario Ministry of Natural Resources (March 2011)
- Approval and Permitting Requirements Document for Renewable Energy Projects, Ontario Ministry of Natural Resources (2010)
- MNR Crown Land Use Policy Atlas:  
[http://www.mnr.gov.on.ca/en/Business/LUEPS/2ColumnSubPage/STDU\\_137972.html](http://www.mnr.gov.on.ca/en/Business/LUEPS/2ColumnSubPage/STDU_137972.html)



**Figure 1 – Areas referenced in Renewable Energy on Crown Land Policy**



**Figure 2 – Northern Rivers Watersheds**



**Figure 3 – Moose River Basin (North of Highway 11)**