

Subject Disposition of Crown Land to a Ministry Employee		Policy PL 4.11.06	
Compiled by - Branch Natural Heritage, Lands and Protected Spaces	Section Lands and Non-Renewable Resources	Date Issued January 23, 2011	
Replaces Directive Title Same	Number PL 4.13.01	Dated February 21, 2000	Page 1 of 6

## 1.0 **DEFINITIONS**

In this policy,

"employee" means any person employed by the Government of Ontario in the Ministry of Natural Resources, whether on classified staff, probationary staff, unclassified staff, term staff, and any person holding an office in the Ministry;

"former public servants" means a former public servant as defined by section 3 of the Public Service of Ontario Act (PSOA);

"non-private use" means a use which is not a private use and includes commercial or industrial use (e.g. a commercial use is a non-private use);

"right, title or interest in public land" means the acquisition of a freehold estate, a leasehold estate or an easement but does not include interests less than estates (i.e., licenses of occupation or land use permits);

"spouse" as outlined in O.Reg.381/07 of the Public Service of Ontario Act:

- (a) means a spouse as defined in section 1 of the Family Law Act , or
- (b) either of two persons who live together in a conjugal relationship outside marriage.

## 2.0 **INTRODUCTION**

Section 39 of the Public Lands Act states:

(1) "No person holding an office in or under the Ministry and no person employed in or under the Ministry shall, directly or indirectly, purchase any right, title or interest in any public lands either in the person's own name or by the interposition of any other person or in the name of any other person in trust for the person without the approval of the Lieutenant Governor in Council."

(2) "Subsection (1) does not apply when a purchase is made of a right, title or interest in public lands for private use at a public auction or when the purchase is made for private use and the purchaser is selected by public draw.

Other than the exceptions outlined in section 39(2) of the Public Lands Act and further clarified in section 3.5 of this policy, approval of the Lieutenant Governor in Council is required, by Order in Council, when an employee seeks purchase a right, title or interest in public land.

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### **3.0 PROGRAM DIRECTION**

#### **3.1 Application**

This policy applies provincially to the disposition of a right, title or interest in public land that is under the jurisdiction of the Ministry of Natural Resources to a ministry employee.

In respect of the purchase of surplus acquired property, the Ontario Realty Corporation's (ORC) *Real Estate Sales Policy* applies and ORC should be consulted for any additional requirements on the purchase of surplus real property by government employees. Sales of ORC's Surplus Real Property Assets also require approval of the Lieutenant Governor in Council and, if required, Management Board / Treasury Board of Cabinet approval.

#### **3.2 Guiding Principle**

Special rules apply with respect to the purchase of a right, title or interest in public lands by an MNR employee.

#### **3.3 Goal**

To ensure that section 39 of the Public Lands Act is fully complied with when MNR employees seek a right, title or interest in public lands.

#### **3.4 Policy Objectives and Strategies**

- A) To identify requirements that apply where an MNR employee is seeking to obtain a right, title or interest in public lands.

Order in Council requirements are imposed to ensure compliance with Section 39 of the Public Lands Act and to ensure that MNR employees seeking to purchase a right, title or interest in public lands do not receive any preferential treatment, or benefit from special knowledge, by virtue of their employment or office in MNR.

Table A of this policy identifies Order in Council requirements and/or special rules that apply when the disposition of a right, title or interest in public land is being made to an MNR employee, unless the exceptions contained in section 3.5 (Exceptions) apply. The approval of the Lieutenant Governor in Council should not be assumed.

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- B) To ensure that the approval of the Lieutenant Governor in Council is obtained before tenure for a right, title or interest in public lands is issued.

Except as provided in section 3.5 (Exceptions), the Area Supervisor is responsible to ensure that a requisition for a tenure document to convey a right, title or interest in public land is not submitted to the Crown Land Registry, without the approval from the Lieutenant Governor in Council for the employee to obtain the land.

See Internal Operating Procedure PL 4.01.01 entitled "Obtaining Orders in Council" for details on obtaining an Order in Council under section 39 of the Public Lands Act.

### **3.5 Exceptions**

This policy does not apply if:

- a) An employee obtains a right, title or interest in public lands by will or inheritance. In this case there is no "purchase" of the right, title or interest, the employee is simply owning the right, title or interest of the deceased previous owner.
- b) The spouse of the employee, who is also not an employee, makes an application to purchase a right, title or interest in public land. In this case the following paragraph **must** be added to the application:

"I make this application on my own behalf. I am neither interposing for an employee (or officer) of the Ministry of Natural Resources, nor intend to hold the subject lands in trust for an employee (or officer) of the Ministry."

It should be noted that, although spouses making the above declaration do not require approval of the Lieutenant Governor in Council to acquire an interest in public land, the employee still needs to meet their obligations to declare potential conflict of interest situations (see section 4.0).

- c) An employee acquires a right, title or interest in public lands, when the public lands are disposed of for private use, by public auction or public draw. This acknowledges that the employee would not have any undue advantages in these types of dispositions.

### **4.0 CONFLICT OF INTEREST**

Under the Public Service of Ontario Act, current and former public servants are required to advise their ethics executive if they think they have an actual or potential conflict of interest. The Ministry of Natural Resources has a very thorough process for investigating conflict of interest concerns. This process

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ensures that MNR employees are making appropriate decisions where their private interests may be in conflict with their public service responsibilities.

MNR rulings on Conflict of Interest are made by the Deputy Minister (ethics executive). Employees have a responsibility to read and understand requirements set out in the *Conflict of Interest Rules for Public Servants and Former Public Servants*, in [Part IV](#) of the *Public Service of Ontario Act, 2006* (PSOA) and in [O. Reg. 381/07](#) of the PSOA.

The responsibility to disclose a potential Conflict of Interest rests with the employee. If an employee feels that they may be in a potential Conflict of Interest situation, they must complete the [Conflict of Interest Declaration Form](#), submit the form to the Deputy Minister, and allow sufficient time for the process to be completed. The employee must not proceed with the activity until a Conflict of Interest ruling had been made. Any employee who doesn't follow a direction provided in a Conflict of Interest ruling is subject to disciplinary measures, up to and including dismissal.

## **5.0 REFERENCES**

### **5.1 Statutory References**

- Public Lands Act, Section 39
- Part IV of Public Service of Ontario Act, 2006 (PSOA)
- PSOA Regulation O.Reg. 381/07 – Conflict of Interest Rules for Public Servants and Former Public Servants

### **5.2 Directive Cross References**

- PL 4.01.01 (PRO) Obtaining Orders in Council
- PL 4.02.01 (P&P) Application, Review and Land Disposition Process
- MNR Conflict of Interest Declaration Form

TABLE A  
Order in Council requirements and/or Special Rules

Acquisition Method	Order in Council Requirements/Special Restrictions or Rules
Assignment from another party	An Order in Council is required prior to consenting to the assignment of a sale, Crown lease or summer resort lease from one party to a Ministry employee.
First Come-First Served	<p>1. Where public lands are being disposed of on a first-come, first-served basis, without first having been offered to the public by tender, auction or draw, an employee's application shall not be accepted until one year has passed from the first date on which the lands were advertised as being available to the public. There must be ample evidence that the lands have been sufficiently advertised to the public. Approval of the Lieutenant Governor in Council must be obtained before the employee's application can be processed.</p> <p>NOTE: – Crown shoreline reserves, road allowances and title enlargements are not First Come - First Served dispositions. (See Restricted Offering).</p>
	<p>2. Following a public auction, draw or tender, where an undisposed lot remains, an employee may apply for the lot after a minimum waiting period of 60 days. During the 60-day period the lot must have been available to the public on a first come, first served basis. The application <b><u>shall not</u></b> be processed until the approval of the Lieutenant Governor in Council is obtained.</p>
MNR Advertisement	Where Crown land has also been offered through MNR Advertisement, and not on a first come, first serve basis (see PL 4.02.01 Sec. 4.1.6), no offers are accepted for 30 days, and all offers are irrevocable for 45 days from the date of offer. While this process is open and competitive, it is not at total "Arm's Length". As a result Offers to Purchase will not be accepted from a MNR employee until after an initial advertising of a minimum of 60 days. Any acceptance of an Offer to Purchase from a MNR employee must be conditional on being able to obtain an Order In Council. Only the deposit that accompanies the Offer to Purchase is required at the time of the request for the OIC being submitted. Once a request for OIC is being requested, the land should no longer be considered as available for disposition.
Public Auction for <u>Non-private Uses</u>	An Order in Council is required when disposing of a right, title or interest in public land to an MNR employee, for <u>non-private uses</u> .

Acquisition Method	Order in Council Requirements/Special Restrictions or Rules
Public Draw <u>for Non-private Uses</u>	An Order in Council is required when disposing of a right, title or interest in public land to an MNR employee, for <u>non-private uses</u> .
Public Tender	An Order in Council is required when disposing of a right, title or interest in public land to an MNR employee.
Realty Listing	<p>As a form of alternate service delivery, public lands are made available through the services of a private real estate broker. Under the listing agreement, no offer from any purchaser is to be accepted for a period of 30 days after the commencement of formal advertising. This process is considered to be open and competitive. The Ministry employee would not enjoy any benefit as a result of the position. As a result a Ministry employee can make an offer to purchase Crown land through the real estate broker, but that offer shall not be accepted until after the 30 day initial advertising period, and only if, at the expiration of that time, it is the highest offer.</p> <p>If and when accepted the acceptance must be conditional on the approval of the Lieutenant Governor in Council (by Order in Council) being obtained. Only the deposit required in accordance with Policy and Procedure Directives PL 4.02.01 need be collected with the application. The balance of the purchase price owing, plus HST, on the total purchase price/lease rent must be collected following the approval of the Lieutenant Governor in Council.</p>
Restricted Offering (i.e. shorelines reserves, road allowances, waterlot to riparian owner, title enlargement - leasehold to freehold)	There is no requirement to make the lands available to the public. However, the approval of the Lieutenant Governor in Council is required before the application is processed.
Upgrade of Tenure	Where an employee or officer has existing tenure to Crown land obtained without the authorization of an Order In Council (i.e. land use permit, license of occupation, or by inheritance, by auction or draw) and subsequently makes application to increase tenure to sale, lease or easement, the approval of the Lieutenant Governor in Council is required before the application is processed. There is no requirement to make the lands available to the public.

Note: Where the acceptance of an employee's application is conditional on approval from the Lieutenant Governor in Council, and that application will be accepted if the approval is granted, further applications for the same Crown land will not be considered.