



Subject EASEMENTS (GRANTS OF)		Policy PL 4.11.04	
Compiled by - Branch Lands & Waters	Section Land Management	Date Issued April 7, 2006	
Replaces Directive Title Easements (Grants Of)	Number PL 4.11.04	Dated July 8, 2002	Page 1 of 4

1.0 DEFINITIONS

In this policy,

"dominant tenement" means the property which benefits from the easement;

"easement" means a right or interest of use or passage of persons, vehicles and animals over another person's owned or leased property created through an express registered grant of easement; and

"servient tenement" means the land over which the easement runs.

2.0 INTRODUCTION

Section 21 of the *Public Lands Act* provides that the Minister may grant easements in or over public lands for any purpose.

Crown easements are commonly granted for rights-of-way for communication lines, pipelines, water intakes, effluent discharge pipes, roads, etc. An easement is also the preferred form of tenure to authorize the right to flood Crown land and for contaminant, leachate, or attenuation zones associated with waste disposal sites. Since an easement grants only a specific right (e.g. to install and maintain a pipeline) the land traversed by it may be subsequently sold, leased, or otherwise disposed of, provided the conveyance is made subject to the previously granted easement. Because an easement does not grant exclusive possession, the holder of an easement cannot stop others from using the easement area for purposes, which are not inconsistent with the purpose of the easement.

The law currently indicates that to be valid, an easement must have four characteristics:

- (a) there must be both a dominant and a servient tenement;
- (b) the dominant tenement must benefit from the easement;
- (c) the dominant and servient tenements must be owned by different persons; and
- (d) a right over land cannot amount to an easement unless it is capable of forming the subject of a grant, i.e. it must be capable of definition and not vague and uncertain.¹

¹ The Dictionary of English Law, Sweet & Maxwell Limited, London

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The granting of an easement, as an alternative to other forms of land tenure, should be considered where a client, who holds other land, wishes to obtain access across Crown land and does not require or should not be provided with exclusive possession of the servient tenement.

The granting of easements over Crown lands in Ontario first became common in the 1950's when province spanning gas pipelines were being built. Tenure by lease, licence of occupation, etc... was considered inappropriate because such authority was considered to be "exclusive possession", which placed the pipeline companies in a position to interfere with public travel across, or along the right of way.

3.0 PROGRAM DIRECTION

3.1 Application

This policy applies provincially to all right of way situations or where flooding rights are required, or where the applicant does not require, or where MNR does not wish to grant, exclusive possession of: ungranted public lands; acquired property which has been deemed to be public lands in accordance with subsection 38 (2) of the Public Lands Act; and common and public highways in territory without municipal organization.

When considering the disposition of public lands by easement, regard shall be had for the disposition review process provided in directive PL 4.02.01 Application Review and Land Disposition Process.

3.2 Guiding Principle

Easements are the preferred method of granting tenure for right-of-way purposes (e.g. hydrocarbon pipelines and fibre optic cable corridors), or where flooding will occur (e.g. hydro power development), since easements provide for other uses of the land that are not inconsistent with the purpose of granting the easement.

3.3 Goal

To use easements in granting tenure to Crown land that is fair, reasonable and consistent across the Province.

3.4 Objectives and Strategies

A) To encourage the return of the easement interest to the Crown when no longer required.

To facilitate the return of the easement interest in the servient tenement to the Crown when it is no longer required by the grantee, or when the grantee neglects to pay the annual rent, easements will be issued with a term usually not exceeding twenty (20) years. However, where the land traversed by the easement is to be subsequently sold to a third party, the easement will be granted in perpetuity.

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- B) To collect an administrative fee for the preparation of all easement documents to help offset the Ministry's administrative costs.

The issuance of an easement involves substantial work for the Ministry including application review, site inspection, survey examination, document preparation, execution and registration. To recover these costs a one time, up front administrative fee will be charged in addition to annual rent. Consistent with directive PL 6.02.01 Administrative Fees for Public Land Transactions, this fee is \$1,000.00.

- C) To charge an annual rent for all easements and generally not make easements available at a onetime fee, subject to the exceptions noted below*. The annual rent is to be determined by one of the following three methods:

- a) land value/hectare (\$) x area (ha) x impact on fee simple (50%) x % of market value (10%), subject to a minimum rent of \$200.00;
- b) in the case of utility corridors, as set out in Policy PL 4.10.03 Utility Corridor Management; or
- c) in the case of flooded lands, consult with Land Management Section staff.

* An easement will be issued for the onetime administrative fee only when an easement is to be issued:

- 1) to protect the interest of an owner/user of an existing occupation for the sole reason that the underlying land is to be disposed of by the Crown to a third party;
- 2) for a contamination attenuation zone associated with an existing MNR or municipally operated waste disposal site (see policy PL 6.01.03 Disposition at Less Than Market Value); or
- 3) for a water treatment plant intake or a sewage disposal pollution control plant outfall if the project is being subsidized by the Province (see policy PL 6.01.03 Disposition at Less Than Market Value).

- D) To ensure that all rents for easements are based on the market value of the fee simple interest of the underlying land.

Zonal land values for the Province on a "value per hectare" basis have been estimated through MNR commissioned zonal appraisal reports (see Appendices A and B of Policy PL 4.10.03 Utility Corridor Management). These values will be used as the market value of the fee simple interest of land underlying easements where more site specific market value information is not available. However, where an easement is to be issued for a small occupation in high value areas (e.g. southern Ontario large urban areas), a site specific appraisal should be commissioned.

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E) To ensure that the Ministry is compensated for any aggregate used by the grantee located near or on the easement area.

Permits as prescribed by the Aggregate Resources Act will be obtained by all easement holders and the appropriate fees and/or royalties will be collected.

F) To provide the proper documentation needed to prepare and register an easement.

Staff must ensure that the following documentation is obtained from the client:

- a Crown land plan of survey of the servient tenement;
- a legal description of the dominant tenement on legal sized paper, entitled Schedule "B", in duplicate (unless the easement is for a public utility provided by a municipality, Sec. 91 of the *Municipal Act*);
- a *Corporation Profile Report* (when applicable);
- a completed *Form 1 - Land Transfer Tax Act, Affidavit of Residence and Value of the Consideration*, in triplicate, together with, when applicable, land transfer tax (0.5% of the one-time consideration) in the form of a separate cheque made payable to the Minister of Finance. *Do not cash the cheque*; and
- the one time administrative fee and the rent to December 31 of the current year (including back rent, if applicable) plus HST in the form of a separate cheque made payable to the Minister of Finance. *Do not cash the cheque*.

Staff must submit the above noted documentation together with the following to Crown Land Registry, Land Management Section:

- a legal description of the servient tenement, entitled Schedule "A"; and
- a Requisition for a Grant of Easement.

4.0 **REFERENCES**

4.1 **Legislative Cross References**

- Public Lands Act, Sections 21, 38(2)
- Aggregate Resources Act
- Municipal Act, Section 91

4.2 **Policy Cross References**

- PL 4.02.01 (POL & PRO) Application Review and Land Disposition Process
- PL 4.08.01 (BUL) Land Use Occupational Authority for Waste Disposal Sites
- PL 4.10.03 (POL & PRO) Utility Corridor Management
- PL 6.01.03 (POL) Disposition of Public Land at Less than Market Value
- PL 6.02.01 (POL) Administrative Fees For Public Land Transactions