

Subject Disposition of Public Land At Less Than Market Value		Policy PL 6.01.03	
Compiled by - Branch Lands & Waters	Section Land Management	Date Issued July 15, 2005	
Replaces Directive Title Same	Number Same	Dated April 1, 2005	Page 1 of 9

1.0 DEFINITIONS

In this policy,

"Director" means the Director of Lands and Waters Branch;

"federal agency" means any agency or Crown corporation of the federal government, but does not include a federal department;

"federal government" means the government of Canada or one of its departments, but does not include a federal agency;

"municipality" means a city, town, village, township, county, regional municipality or district municipality, that is incorporated;

"provincial ministry" means any ministry of the Government of Ontario, but excludes a provincial Crown agency;

"Schedule" when describing a Schedule I, II, or III agency refers to a classification assigned by Management Board Secretariat as indicated in Management Board of Cabinet Directive 6-2-2; and

"township" means a township as defined in subsection 64(2) of the Municipal Act, S.O. 2001.

2.0 INTRODUCTION

The Ministry of Natural Resources is responsible for the management of Ontario's public lands. This important role includes the disposition of rights to occupy public lands.

Public land is an asset of considerable strategic and fiscal value to the government of Ontario. Revenues from the disposition of rights to Ontario's public lands go to the Consolidated Revenue Fund to provide funding for government programs.

General direction as to how sale prices, rents and fees are to be levied has been outlined in Management Board Guidelines 1-6-1. In accordance with this government direction, dispositions will normally be at prices, rents or fees based on market value. Dispositions at less than market value deprive the Consolidated Revenue Fund of revenues to fund government priorities. In isolated cases however, social or economic benefits to Ontario, or other intrinsic values, may warrant relief from a market value approach to prices, rents or fees.

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Staff shall comply with and promote the direction of the government and this Ministry when reviewing applications for the disposition of public lands. It is recognized, however, that, from time to time, applicants will seek relief from market value approaches claiming social and economic benefits to Ontario, or that other intrinsic values warrant such relief. This policy will guide the treatment of such requests.

3.0 PROGRAM DIRECTION

3.1 Application

This policy applies provincially to guide the treatment of requests to dispose of ungranted public lands at prices, rents and fees which are inconsistent with approved Ministry policy (i.e. market value).

This policy does not deal with the disposition of rights to acquired property.

3.2 Guiding Principle

The approval of the Director or the Minister must be obtained when disposing of public lands at a price, rent or fee which is not in accordance with policy, except as otherwise expressly provided in this policy.

3.3 Goal

To ensure that the disposition of Ontario's public lands are consistent with the policy direction of the government.

3.4 Policy Objectives And Strategies

3.4.1 General

- A) To generally obtain market value prices or rents/fees based on market value when disposing of rights to public lands.

Ministry staff should strive to follow a business like approach to the disposition of rights to public lands to maximize non-tax revenues for the Province. Staff are not to make commitments on non-market value prices, rents or fees unless the price, rent or fee is specified in policy or approval is obtained in accordance with this directive.

The Ministry of Natural Resources does not have a mandate to subsidize individuals, corporations, charitable organizations, non-profit groups, education groups, or government agencies, regardless of how deserving those groups might be.

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Dispositions not based on market value principles may result in unfair competition with the private sector, where other equal or better sites might be available.

Certain exceptions to market value policies are provided for in this or other policy directives.

- B) To identify circumstances under which lands may be transferred for the administrative fee prescribed by Policy PL 6.02.01 Administrative Fees for Public Lands Transactions for reasons of cost avoidance, program objectives, or social or economic benefit.

Circumstances are prescribed elsewhere in this policy where the sale or transfer of administration and control of public lands may be made, without further approvals, at the prescribed administrative fee. Refer to sections 3.4.2 to 3.4.6.

- C) To ensure that decisions to sell public land which are inconsistent with market value approaches do not set undesirable precedents or create new policies which compromise non-tax revenue objectives of the government.

This will be achieved by centrally reviewing transactions which are inconsistent with approved Ministry policy.

Dispositions which can be supported on their merits from a program perspective will be approved by the Director. Those which cannot be supported from a staff perspective may be referred by the Director to the Minister for a decision.

- D) To ensure that decisions to sell public lands that do not conform to market value approaches and which are not expressly provided for in this or other policies are made with all relevant information.

Submissions seeking approval to deviate from policy shall be in the form of “Submission Seeking Approval to Reduce Sale Price/Rent/Fee” to the Director.

- E) To ensure that qualifications and land use conditions are not used to justify charging market value or rents based on market value.

When lands are disposed of at less than market value, title to the lands is not to contain a land use condition or qualification limiting the use of the land. When the Ministry makes a decision to dispose of land at less than market value, it will not encumber title to the land, simply to confine the use of the property to that which the disposition was made for. If applicable, see also PL 4.09.01 Disposition of Public Land to Other Governments or Government Agencies.

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- F) To assess existing policies for appropriateness, and to take required action to keep those policies current and effective.

This will be achieved by scanning those transactions where approval to deviate from policy has been approved and to make revisions to existing policies where appropriate.

3.4.2 Federal Government And Federal Agencies

- A) To generally obtain market value for the transfer of administration and control of public lands to the federal government or a federal agency.

On December 11, 1979, Cabinet ratified a Management Board Minute which approved the charging of market value for unpatented lands to be transferred from MNR to other governments or government agencies. The approach ratified by Cabinet has not been changed.

Dispositions of public lands to the federal government will be governed by the six principles included in Appendix A attached hereto, which the Ministry negotiated with Treasury Board of Canada in 1991.

- B) To ensure that requests for relief from the policies on disposition of public lands based on market value are consistent with the principles 2 to 6 contained in Appendix A attached hereto.

Requests for relief from market values will be submitted to the Director for approval. These requests must be supported with the following information:

- a) a market value appraisal of the lands in question, provided by the federal government so that the value of the lands is considered when making a decision on the disposition of the lands (see principles 4 and 6 in Appendix A);
- b) the manner of payment (see principle 2 in Appendix A);
- c) any qualifications or conditions to be imposed (see principle 3 in Appendix "A");
- d) social or economic benefits that will accrue to Ontario as a result of the transaction prepared by the federal government (see principle 4 in Appendix A);
- e) federal commitment to acknowledge the contributions of the Government of Ontario in any media communications (see principle 4 in Appendix A);
- f) a business case for price/rent/fee relief (i.e. cost savings to Ontario);
- g) any other relevant information; and
- h) the recommendation of the District Manager.

- C) To discourage federal agencies from seeking relief from market value principles.

Requests from federal agencies for relief from market value policies should generally not be considered as the objects of these agencies are frequently business oriented, or government rules indicate that the agencies are not intended to receive government assistance.

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Dispositions to federal agencies should be at market value, free of qualifications or land use conditions.

3.4.3 Provincial Government

- A) To dispose of public lands required by Schedule I or III agencies, or other ministries except the Ministry of Transportation (MTO), at the fee prescribed by Policy PL 6.02.01 Administrative Fees for Public Lands Transactions.

Where any provincial ministry, except MTO, requires administration and control of public land an administrative fee shall be charged.

In the case of the Ministry of Transportation, subsection 5 (1) of the Public Transportation and Highway Improvement Act allows that Ministry to acquire unpatented public land by depositing a Crown land plan. Responsibility to administer the land on behalf of Her Majesty the Queen automatically transfers from MNR to MTO once the plan is deposited.

The Ministry of Natural Resources will treat Schedule I and III agencies as it would other ministries since these agencies are funded in whole or in part out of the Consolidated Revenue Fund or from monies collected from the public by means of levies.

Transfers to Schedule I and III agencies may be by Minister's Order; or by sale and patent, lease, or land use permit, dependant on the agencies corporate/statutory ability to hold land. (See Policy PL 4.09.01.)

- B) To discourage Schedule II agencies from seeking relief from market value policies.

Schedule II agencies (e.g. Ontario Hydro group of companies or Ontario Northland Transportation Commission) are operational agencies of a commercial nature that are or are intended to be completely funded out of the revenue generated by their own programs. These agencies are not intended to be funded by government.

3.4.4 Municipal or Quasi-Municipal Governments

- A) To generally obtain prices, rents or fees based on market value when transferring rights to public lands to incorporated municipalities, improvement districts, or Local Services Boards.

On December 11, 1979, Cabinet ratified a Management Board Minute which approved the charging of market value for unpatented lands to be transferred from MNR to other governments or government agencies. The approach ratified by Cabinet has not been changed.

Disposition of rights should normally be:

- a) at market value for sales;

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- b) at a rent/fee based on market value, for leases, licences of occupation, or land use permits; or
- c) at a fee prescribed by policy.

B) To identify circumstances under which lands may be sold for an administrative fee prescribed by Policy PL 6.02.01 Administrative Fees for Public Lands Transactions for reasons of cost avoidance, program objectives, or social benefit.

District Managers may approve the following transactions at the prescribed administrative fee:

- a) the sale of a waste fill area and the buffer zone and the issuance of an easement for the contaminant attenuation zone occupying public lands to a municipality and/or Certificate of Approval holder of existing MNR operated waste disposal sites;
- b) the sale of a waste fill area and the buffer zone and the issuance of an easement for the contaminant attenuation zone occupying public lands to a municipality and/or Certificate of Approval holder of existing municipally operated waste disposal sites;
- c) the sale of public lands for roads to a municipality or local services board, with the exception of those public lands for roads which may be acquired under authority of section 64(1) of the Municipal Act, by a township surveyed without road allowances but in which 5% of the area is reserved for roads;
- d) the issuance of an easement for the purposes of a water treatment plant intake or a water pollution control plant outfall, if the project has been otherwise subsidized by the Province of Ontario; and
- e) the sale to a municipality of public lands which have been specifically approved as part of a larger government initiative approved by a central agency for economic development purposes.

In addition to the above, District Managers may also approve the sale of public lands to a municipality at a fee prescribed by a previous policy, where a commitment was made based on that fee.

C) To ensure that decisions to allow relief from market value approaches, not otherwise allowed under this policy, are made with all relevant information.

Submissions seeking approval of the Director to deviate from policy shall be submitted using the "Submission Seeking Approval to Reduce Sale Price/Rent/Fee".

3.4.5 Conservation Authorities

A) To obtain market value prices or rents/fees based on market value for the disposition of rights to public lands, except where those lands are required for shoreline protection works.

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Except for lands needed for shoreline protection works, disposition of rights should be:

- a) at market value for sales;
- b) at a rent or fee based on market value for leases, licences of occupation and land use permits (rents/fees as prescribed by PL 6.01.02 Crown Land Rental Policy; or
- c) at a fee prescribed by policy for easements (PL 4.11.04 Easements (Grant of)).

B) To support shoreline protection programs undertaken by Conservation Authorities.

Some conservation authorities have been given planning and development responsibilities by the province. These projects represent a partnership between the province, conservation authorities and municipalities.

Public lands required for shoreline protection programs may be sold to conservation authorities for the administrative fee prescribed in Policy PL 6.02.01 Administrative Fees for Public Land Transactions.

3.4.6 Charitable, Non-Profit, Religious, Or Educational Groups

A) To generally obtain market value prices or rents/fees based on market value for the disposition of rights to public lands.

The Ministry of Natural Resources does not have a mandate to subsidize education groups, non-profit groups, charitable organizations or government agencies regardless of how deserving those groups might be.

Where public lands are required by registered charitable or non-profit groups exclusively to provide free or subsidized services to Ontario's mentally or physically handicapped, the infirmed, the elderly, or the disadvantaged, a 10% reduction in purchase price, rent or fee 3.4.6 will apply, in recognition of the social and/or economic benefit that the group provides to Ontario.

The Ministry's contribution of 10% to such projects will be made only where the applicant and/or the private sector values the proposal to be of such worthy significance that it will provide 90% of the required funding.

4.0 **REFERENCES**

4.1 **Legal References**

- Public Transportation and Highway Improvement Act
- Municipal Act, ss 64(2)

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4.2 **Directive Cross References**

- Management Board of Cabinet Directive 6-2-2
- Management Board of Cabinet Guideline 1-6-1
- PL 4.08.01 (Bulletin) Land Use Occupational Authority for Waste Disposal Sites on Crown Land
- PL 4.09.01 (POL) Disposition of Public Land to Other Governments or Government Agencies
- PL 4.11.04 (POL) Easements (Grants of)
- PL 6.01.02 (POL) Crown Land Rental Policy
- PL 6.02.01 (POL) Administrative Fees for Public Lands Transactions

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APPENDIX A

PRINCIPLES GOVERNING THE TRANSFER OF ADMINISTRATION AND CONTROL OF PUBLIC LANDS BETWEEN DEPARTMENTS OF THE FEDERAL GOVERNMENT AND THE ONTARIO MINISTRY OF NATURAL RESOURCES.

1. The transfer of the administration and control of public lands between federal departments and the Ontario Ministry of Natural Resources shall occur at market value.
2. Prior to transfer, discussions shall occur among our appropriate officials as to the manner of payment (e.g. land exchange, cash, etc.) and any qualifications or restrictions on use.
3. Where transfers occur at market value, these transfers shall normally be unqualified containing no conditions, reservations or other restrictions as to the use of the land.
4. In instances where a significant financial or social benefit to the general public may result from a transfer, the administration and control of the lands in question may be transferred at less than market value. In these cases, the transferring government would have to be satisfied that a discount is appropriate, based upon an appraisal of the lands and an assessment of the public benefit intended. Any media communications or other public relations efforts with respect to the use of the lands would acknowledge the contributions of the transferring government to the development.
5. Where transfers occur for less than market value, or where a priority interest to acquire (such as the right of first refusal) has been granted to either party, they may be qualified as to the use of the lands and may contain provision for the revision of the lands when the prescribed use ceases.
6. The recipient government will normally provide survey and appraisals required to complete the transaction. The transferring government will be responsible for reviewing and accepting the appraisal and survey evidence.