

Subject DEPATENTING OF ACQUIRED LAND		Policy PL 2.09.03	
Compiled by - Branch Lands & Waters	Section Land Management	Date Issued August 30, 2006	
Replaces Directive Title Same	Number LM.12.02.01	Dated August 15, 1989	Page 1 of 3

1.0 DEFINITIONS

In this policy,

“depatenting” means the process involving the registration of a certificate under Section 38 of the Public Lands Act that restores acquired land to the status of unpatented land;

“Crown” means Her Majesty the Queen in right of Ontario as represented by the Minister of Natural Resources or its predecessor;

“acquired lands” means the Crown is the registered owner of land that was patented or otherwise disposed of, or when land reverts to or vests in the Crown; and

“Section 38 certificate” means a certificate issued by the Minister under Section 38 of the Public Lands Act stating that the land is deemed to be public lands.

2.0 INTRODUCTION

Depatenting refers to the administrative process by which patented lands which have been acquired by the Ontario government, may be legally restored to the status of unpatented land. There are various reasons why the Ontario Government may wish to depatent such lands.

Acquired lands that are registered in the name of Her Majesty the Queen as represented by the Minister of Natural Resources or its predecessor, may not be sold or leased under the Public Lands Act and such are not eligible for staking and recording or any other disposition under the Mining Act. Therefore, to allow for a potential disposition through either the Public Lands Act or the Mining Act, the Ministry must file a PLA Section 38 certificate to the appropriate Land Registry/Titles office, such that the lands described can be considered public and unpatented.

Furthermore, Management Board Directive *Real Property and Accommodation* (September 1998) provides that lands acquired by Management Board Secretariat may be held in name of or transferred to the Ministry of Natural Resources for the purpose of depatenting.

3.0 PROGRAM DIRECTION

3.1 **Goal**

To provide clear and consistent policy and procedural direction for the depatenting of patented or acquired land that is in the name of Ministry of Natural Resources or its predecessor.

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3.2 Application

This policy applies provincially to the depatenting of public lands that have been purchased or forfeited to the Crown, including forfeiture orders registered under subsection 18(4) of the Public Lands Act, the Provincial Land Tax, or Subsection 35(3) of the Statute Labour Act prior to January 1, 1963¹. It does not apply to patented lands forfeited to the Crown under the Mining Act.

This policy does not apply to land forfeited to the Crown (e.g. per the Business Corporations Act). With the exception of Mining Lands², such lands are under the control of the Public Guardian and Trustee (Ministry of the Attorney General) and may be dealt with by the Public Guardian and Trustee per the provisions of the Escheats Act).

A Minister's certificate does not affect an easement or restrictive covenant that is appurtenant to or affects land described in a certificate. Where title to acquired lands rests with another Ministry or agency, title to the lands (or administration and control of the lands) must first be transferred to the Ministry of Natural Resources before a certificate may be issued under section 38 of the Public Lands Act.

3.3 Objectives

A) To use the depatenting process as a means of opening acquired property for staking and recording under the Mining Act.

Mining activity has the potential to generate new wealth and benefits for the residents of Ontario. MNR will depatent acquired properties where mineral potential exists, subject to workload limitations, so that these lands may be made available for mineral staking and development.

Acquired properties are not eligible for prospecting, staking and recording under the Mining Act until the property has been depatented. The exception to this would be if the mineral rights had never been conveyed from the Crown, or reverted back to the Crown prior to the acquisition.

B) To use the depatenting process prior to consideration of any disposition of said lands.

MNR cannot entertain any disposition under the Public Lands Act on any acquired land, unless the land is first depatented.

¹ Subsequent to the implementation of the Provincial Land Tax Act, 1962-63, on January 1, 1963, it is unnecessary to "depatent" the lands as the amended Provincial Land Tax Act now provides for this automatically on registration of the certificate. These same provisions of the Provincial Land Tax Act also apply to lands forfeited under subsection 35(3) of the Statute Labour Act.

² Mining lands forfeited under the Escheats Act are dealt with in accordance with the disposition processes under the Mining Act (see section 2, Escheats Act).

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C) To use the depatenting process in situations where depatenting of acquired lands will allow the Ministry of Natural Resources to more easily manage property for various program needs including but not limited to: provincial parks and protected areas management, fish and wildlife management, forest management and Crown land management.

MNR will normally site inspect any acquired lands before those lands are depatented to determine amongst other things, if there are any improvements on the lands or other occupational interests in the lands. If such interests are discovered, the Area Supervisor will make reasonable efforts to contact the party before forwarding the Section 38 certificate to the appropriate land registry office.

D) Consideration should be given on the impact of depatenting acquired land located within an organized municipality.

MNR makes a payment in lieu of tax for acquired lands situated within organized municipalities. The depatenting of these lands may adversely affect the municipal tax base, because the reversion to unpatented status means that the lands would now be exempt from municipal taxation.

To avoid undue, adverse financial impact on a municipality, MNR will consider the impact (if any) of the depatenting upon the municipality and MNR will only depatent acquired land where there are compelling reasons to do so (e.g. high mineral potential, ease of management for other program needs, potential sale or lease under Public Lands Act).

4.0 REFERENCES

4.1 Legal References

- Business Corporations Act
- Escheats Act, Section 2
- Land Titles Act
- Mining Act
- Public Lands Act, Sections 38, 18(4)
- Registry Act
- Statute Labour Act, Section 35(3)

4.2 Directive References

- PL 2.09.03 (PRO) Depatenting of Acquired Land
- *Real Property and Accommodation* (September 1998), Management Board