

<b>Subject</b> <b>Work Permits – Section 14 Public Lands Act</b>		<b>Procedure</b> <b>PL 3.03.04</b>	
Compiled by - Branch Natural Heritage, Lands & Protected Spaces	Section Lands and Non-Renewable Resources	Date Issued September 27, 2013	
Replaces Directive Title Same	Number Same	Dated May 14, 2007	Page 1 of 6

## 1.0 Purpose

To provide procedural direction for the implementation of Policy PL 3.03.04 Work Permits – Section 14 Public Lands Act.

## 2.0 Activities Subject to Rules

In order to qualify for a work permit exemption for the activities listed below, the proponent must follow the rules listed in the regulation. MNR staff should direct proponents to online materials that describe the rules available at Ontario.ca.

- a. Construction or placement of buildings within unpatented mining claims\*
- b. Dredging of shore lands previously dredged
- c. Relocating rocks on shore lands
- d. Maintenance, repair or replacement of erosion control structures on shore lands\*
- e. Removal of invasive aquatic vegetation from shore lands
- f. Removal of native aquatic vegetation from shore lands as per Schedule 2

\*activity requires registration via MNR's Registry and Approval Service Centre at 1-855-613-4256, Email [mn.rasc@ontario.ca](mailto:mn.rasc@ontario.ca)

## Application Form

The work permit application consists of four individual pages, plus one (Part 5) specific to the Lakes and Rivers Improvement Act. Only the relevant forms below should be completed by the potential applicant, dependent on the type of work under consideration:

- Form 863 - Application for Work Permit Part 1
- Form 863-3 – Application for Work Permit Park 2: Building Construction
- Form 863-4 - Application for Work Permit Park 3: Work on Shore Lands
- Form 863-5 - Application for Work Permit Park 4: Roads, Trails and Water Crossings
- Form 863-6 – Application for Work Permit Park 5: Works within a Waterbody

## 2.1 Application Review

Upon receipt of a work permit application, the officer responsible for the review will ensure that the criteria in Sections 3.0 of Policy PL 3.03.04 Work Permits - Section 14 Public Lands Act are considered including:

1. proposed work is an activity requiring approval by work permit, and the location of the activity is on provincial public land and/ or shore land;
2. application is complete and has been signed by an eligible applicant;

3. application contains a sufficiently detailed sketch(s) showing the location and plans of the proposed work, including, when applicable:
  - the location and nature of the proposed and existing works in relation to the applicant's property boundaries;
  - common private/public land boundaries; and
  - the ordinary high water mark, or water's edge;
4. applicant has provided evidence that they have title/rights/interest in the land which will directly benefit from the proposed work;
5. ownership of the site on which the work will occur is determined. In the case of shore lands, if the work will not be on the applicant's property, or on public land, then the applicant must provide written consent from the landowner (e.g. the municipality in the case of a flooded road allowance). In the case of public land, the officer must determine whether or not the proposed work meets the criteria of the PL 3.03.01 Free Use Policy. If not, the officer must advise the applicant of the need for land use occupational authority. Such applications will then be considered as per Policy PL 4.02.01 Application Review and Land Disposition process.
6. MNR's obligations under MNR Class Environmental Assessment for Resource Stewardship and Facility Development Projects (RSFD).
7. Proposed work subject to the Navigable Waters Protection Act (NWPA).  
If the project may compromise the public right of navigation, MNR staff should direct the applicant to Transport Canada for review/approval. Appendix "A" specifies which types of activities may be subject to the NWPA.

In addition to the above requirements, the officer must ensure that the application is date stamped when it is received at the MNR office and that the applications and/or plans are not altered without the express written concurrence of the applicant. A log of all work permit applications received and any decisions made must also be documented.

## 2.2 Work Permit Issuance

If a decision is made by the Ministry to issue a work permit, the officer must ensure that:

1. the authority under which the permit is being issued is indicated on the face of the permit (in accordance with Regulation 975);
2. a term (start date and expiry date) is specified;
3. the purpose is per the regulation (e.g. "construct a road")
4. appropriate conditions are included;
5. a copy of the plans submitted with the application are attached to the permit; and
6. the permit is signed by the officer.

The term of the work permit can be for any length of time, but should normally be limited to a time period which will reasonably allow for completion of the work, given seasonal limitations and the conditions imposed.

Procedure No. <b>PL 3.03.04 Work Permits – Section 14 Public Lands Act</b>	Date Issued September 27, 2013	Page Page 3 of 6
---	-----------------------------------	---------------------

All conditions included in a work permit must relate to the *Public Lands Act*, or regulations made under it and must be worded in a manner which will be enforceable in a court of law. Phrases such as “should be avoided as much as possible,” should not be used.

In addition, the conditions pre-printed on the reverse side of the work permit should not be duplicated elsewhere or, more importantly, contradicted by other conditions.

In situations where a condition that relates to the use of a proposed work after it is constructed is desired, a separate agreement or memorandum of understanding should be considered since the work permit only relates to the performance of the work specified (e.g. the construction of a road), not to the use of the works after it is built.

## **2.3 Application Refusal/Permit Cancellation/Appeal Process**

If a decision is made to refuse to issue a work permit, or to cancel a work permit (refer to Section 3.11 of Policy 3.03.04 Work Permits - Section 14 Public Lands Act), before doing so, the officer must notify the applicant/permittee in writing of their intention to do so, with reasons, and give the applicant an opportunity to express their objection in a hearing before the officer.

In accordance with subsection 4(5) and subsection 4(6) of Regulation 975, after the hearing is held, the officer must:

- notify the applicant in writing of their decision;
- notify the applicant of the reasons therefore; and
- notify the applicant that they may request the Ministry’s Regional Director to reconsider the decision of the officer by filing written submissions within 15 days of the date of mailing of the officer’s post-hearing decision.

The Regional Director’s review of the officer’s decision is based solely on written materials provided by the applicant and the officer. The Regional Director’s decision will be conveyed to the applicant by the Regional Director or a delegate thereof. The Regional Director’s decision is final.

A permittee who objects to one or more conditions imposed in a work permit has the same right to a hearing before the officer, and, if necessary, a review by the Regional Director as outlined above.

## **2.4 Stop Work Orders**

A Stop Work Order is a written or verbal instruction to an individual or contractor to immediately stop an activity that contravenes subsection 13(2) or subsection 2(1) of O. Reg 239/13 of the Public Lands Act. For direction regarding stop work orders, refer to Policy and Procedure PL 9.03.01 Stop Work Orders

## **3.0 References**

### **3.1 Legislation**

- Navigable Waters Protection Act
- Public Lands Act, R.S.O. 1990 c. P.43,

### **3.2. Directive Cross References**

- PL 3.03.01 Free Use Policy
- PL 3.03.04 Work Permits – Section 14 Public Lands Act Policy
- PL 4.02.01 Application Review and Land Disposition Process Policy and Procedure
- PL 9.03.01 Stop Work Orders Policy and Procedure
- Class Environmental Assessment for Resource Stewardship and Facility Development Projects (MNR 2003)

## Appendix “A”

### **APPROACH FOR DEALING WITH MARINE ACTIVITIES THAT ARE ALSO SUBJECT TO NAVIGABLE WATERS PROTECTION ACT (NWP)**

In 1991, the Ministry of Natural Resources and Transport Canada made an agreement to the following approach within the work permit review process. The rationale for the agreement is to ensure that approvals provided by MNR do not create conflict with the (NWP) or the Federal Environmental Assessment Review Process (EARP).

#### **A) PRIVATE APPLICATIONS:**

##### **Category I**

Projects which will require NWP approval prior to MNR considering any application for work permit.

The following activities fall into this category: dams, booms, causeways and bridges. MNR field staff should whenever possible, consult with (Department of Transport) DOT staff and possibly share information and co-ordinate joint inspections.

##### **Category II**

In cases where a work permit application has been received for a project where it is suggested that public right of navigation may be compromised, the applicant should be directed to contact the DOT for approval. (This requirement is a printed notice on the work permit forms). In addition, MNR will forward to DOT a copy of the application for their information but will not defer approval of the permit while awaiting DOT comments (unless the District Manager decides otherwise on a case by case basis).

Projects under this category include:

- a. Culverts;
- b. All marine works involving commercial, municipal or industrial construction, e.g. marinas, intake and outfall structures, etc;
- c. All dredging proposals involving the development of new public channels and/or maintenance of existing public channels and maintenance of marina basins;
- d. Any marine proposal/construction considered to be economically, socially and environmentally sensitive;
- e. Any marine construction considered to require marking in the interest of navigation safety;
- f. Private shoreline protection construction for erosion control (e.g. rip rap, retaining walls, revetments, gabion baskets constructed on the shoreline) where land reclamation is involved;
- g. Private maintenance dredging where spoil is to be disposed in open water; and
- h. All maintenance and repairs to existing structures where no alterations are proposed.

##### **Category III**

Procedure No. <b>PL 3.03.04 Work Permits – Section 14 Public Lands Act</b>	Date Issued September 27, 2013	Page Page 6 of 6
---	-----------------------------------	---------------------

This category includes activities which are not likely to have any effect on the public right of navigation. MNR shall process work permit applications for projects in this category while advising applicants that their projects may require other approvals including DOT and NWPA approval. (This requirement is a printed notice on the work permit forms).

Projects in this category include:

- a. Private works common to cottage, residential and recreational construction (e.g. boathouse, docks, boat slips, launching ramps, water intake pipes) including:
  - i) works (e.g. docks, excluding structures that are solid, boathouse, launching ramps, etc.) that are located a minimum of 4.58 metres (15 feet) inside the property line extension;
  - ii) works consistent with other structures in the immediate vicinity;
  - iii) works that do not restrict access to adjacent properties orientation/configuration is such that access is not in front of adjacent properties; and
  - iv) works located a safe distance away from marked and unmarked navigation channels.
- b. Private shoreline protection construction for erosion control (e.g. rip rap, retaining walls, revetments, gabion baskets constructed on the shoreline) where land reclamation is not involved;
- c. Private maintenance dredging, where spoil is not disposed in open water; and
- d. All maintenance and repairs to existing structures where no alterations are proposed.

**B) MNR PROJECTS:**

Any project undertaken by MNR which may have an impact on navigation must be referred to the DOT for NWPA approval prior to commencing.