

Subject <b>APPLICATION REVIEW AND LAND DISPOSITION PROCESS</b>		Policy <b>PL 4.02.01</b>	
Compiled by - Branch <b>Lands &amp; Waters</b>	Section <b>Land Management</b>	Date Issued <b>July 24, 2008</b>	
Replaces Directive Title <b>Same</b>	Number <b>Same</b>	Dated <b>June 7, 2005</b>	Page <b>1 of 20</b>

## 1.0 DEFINITIONS

In this policy,

"communities" includes incorporated municipalities, clusters or hamlets in unorganized territory, aboriginal communities, and their inhabitants;

"disposition" means the granting of property (e.g. freehold or leasehold title) or personal rights (e.g. land use permit) to public lands, as defined and described in this policy and its accompanying procedure;

"EMA's" mean enhanced management areas – a land use category in the Ministry's Crown Land Use Policy Atlas;

"environment" means,

- a) air, land or water,
- b) plant and animal life, including human life,
- c) the social, economic and cultural conditions that influence the life of humans or a community,
- d) any building, structure, machine or other device or thing made by humans,
- e) any solid, liquid, gas, odour, heat, sound, vibration or radiation resulting directly or indirectly from human activities, or
- f) any part or combination of the foregoing and the interrelationships between any two or more of them, in or of Ontario; and

"land use occupational authority" includes a Minister's Order under Subsection 37.1(1), Order in Council transferring administration and control, sale, conditional sale, Crown lease, water lot lease, licence of occupation, land use permit, beach management agreement, or easement, but excludes a work permit;

## 2.0 INTRODUCTION

The vision of the Ministry of Natural Resources (MNR) is sustainable development. *"The ministry envisions a healthy environment that is naturally diverse and supports a high quality of life for the people of Ontario through sustainable development."*<sup>1</sup>

Under the concept of sustainable development, Ontario's natural resources constitute natural "capital". Resources over and above those essential for long-term sustainability

<sup>1</sup> Ministry of Natural Resources, Our Sustainable Future - Strategic Directions 2005, p.6

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requirements become available over time as “interest” for use, enjoyment and development. Development which maintains the natural capital and allows for the accumulation of this natural interest is sustainable.

The Ministry strives to achieve this vision through a mission of ecological sustainability. *“The Ministry’s mission is to manage our natural resources in an ecologically sustainable way to ensure that they are available for the enjoyment and use of future generations”.*

Ecological sustainability focuses on safeguarding the province’s natural capital and nature’s capacity to renew itself. It is directed toward resource management practices that protect and maintain “interest” to meet Ontario’s present and future needs.

*“The ministry is committed to the conservation of biodiversity and the use of natural resources in a sustainable manner”.*

Maintaining the diversity of life on Earth is a fundamental premise for sustainable development. Biodiversity conservation is a commitment to ensure healthy ecosystems, protect our native species and sustain genetic diversity. A diverse “investment portfolio” supports our natural capital and interest for sustainable uses, and also ensures a wealthy inheritance for future generations.

Approximately 87% of Ontario's land base is public land administered by the Ministry of Natural Resources.

Public land is viewed by the Ministry as a non-renewable resource and a platform that with wise management will support the long term health of ecosystems (e.g. aquatic resources, forest and wildlife resources as well as their biological foundations).

Effective management of the public land base is critical to successfully meeting the Ministry's vision. This requires MNR to integrate consideration of the purposes of the Environmental Bill of Rights with social, economic and scientific considerations required by the Environmental Bill of Rights, when making decisions that might significantly affect the environment.

*“MNR will favourably consider disposition of public land to accommodate opportunities for socio-economic development that are compatible with environmental and ecological integrity.”*<sup>2</sup> This will be done in the context of MNR’s obligations and commitments under the Constitution, the Environmental Assessment Act, the Environmental Bill of Rights (including consideration of the Ministry’s Statement of Environmental Values whenever MNR decisions are made that might significantly affect the environment), and other administrative practices.

*“When requests for public land are received from individuals, private enterprise or government agencies, the merits of the development initiatives are evaluated along with factors which might warrant the land's restricted use and/or retention by the province. Conversely, reasons to deny or limit disposition might include anticipated MNR land needs,*

<sup>2</sup> Ontario Ministry of Natural Resources, Strategic Direction for the Management of Ontario Crown Land, February 1993, p4

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*projected land requirements of other government agencies, local community interests, compatibility with adjacent land uses and environmental risks.”<sup>3</sup>*

As well, a disposition might be denied due to the existence of an Aboriginal land claim or due to issues regarding aboriginal or treaty rights. When actively disposing of lands through the work planning process (e.g. disposition of surplus lands), these same merits and factors must be considered.

This policy formalizes existing MNR practices and conventions.

### **3.0 PROGRAM DIRECTION**

#### **3.1 Application**

This policy applies provincially to the discretionary disposition of:

- ungranted public lands;
- acquired property, except in the case of the issuance of a sale, lease, or easement;
- acquired property which has been deemed to be public lands in accordance with Subsection 38 (2) of the Public Lands Act (including the issuance of a sale, lease or easement);
- common and public highways in territory without municipal organization; and
- lands granted pursuant to the land granting provisions of the Beds of Navigable Waters Act.

This policy does not deal with the disposition of acquired lands by sale, lease or easement, unless the lands are deemed to be public lands pursuant to Subsection 38(2) of the Public Lands Act. The responsibility for the disposition of acquired property lies with the Ontario Realty Corporation. Exceptions to this rule apply where a certificate has been registered in the Land Registry Office deeming the property to be public lands in accordance with Subsection 38 (2) of the Public Lands Act, or where other protocols have been developed between the Ontario Realty Corporation and MNR. For the disposition of acquired property, refer to Policy PL 8.03.01 Acquired Vacant Land and Land With Buildings.

This policy also does not deal with the issuance of quit claims. Quit claims are issued pursuant to Section 17 of the Public Lands Act to acknowledge that all of the Crown's right, title and interest has been extinguished under the Real Property Limitations Act (refer to Policy PL 2.02.01 Quit Claim Letters Patent).

#### **3.2 Guiding Principle**

When disposing of rights to use public land (e.g. land use permits or licence of occupation), or interests in public lands (e.g. easement, Crown lease, or sale), MNR will:

- consult with Aboriginal communities where a requested disposition may result in the infringement of an existing aboriginal or treaty right, or where a disposition involves lands that are subject to an aboriginal land claim;
- meet its requirements under the Environmental Assessment Act; and

<sup>3</sup> *ibid*

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- integrate consideration of the purposes of the Environmental Bill of Rights with social, economic and scientific considerations when making decisions that might significantly affect the environment.

### **3.3 Goal**

To ensure that the disposition of public lands, or common and public highways in unincorporated territory, contributes to the environmental, social and economic well being of the province by providing for orderly use and sustainable development of Ontario's public land.

### **3.4 Objectives and Strategies**

The objectives contained in this section define the direction that MNR will take to achieve the goal of this policy. In individual cases, these objectives may appear to be in conflict. The challenge for MNR will be to strike a balance in implementing the objectives that will integrate the environmental, social and economic well being of the province by providing for orderly use and sustainable development of Ontario's public land.

- A) To consult with Aboriginal communities where a requested disposition will infringe on the exercise of existing Aboriginal or treaty rights, or where the disposition involves lands that are subject to an aboriginal land claim.

Constitutionally protected treaty and Aboriginal rights, such as traditional harvesting activities, are often exercised on/in provincial Crown lands and waters. Some dispositions may, therefore, affect areas that are traditionally used by Aboriginal communities who hold existing Aboriginal or treaty rights. Any disposition of Crown lands that will infringe on the exercise of these rights must be justified and in that regard, the Crown has a duty to consult with the affected community.

Therefore, it is advisable that consultation with Aboriginal communities occur with respect to proposed dispositions where there will be an infringement of an existing Aboriginal or treaty right if the disposition proceeds. Any consultation process undertaken will vary with the circumstances of each individual case and disposition. In most cases, where consultation is required, it will involve, to varying degrees, a process of information exchange and consideration. If an agreement can be reached with respect to a proposed disposition by the end of the consultation process, this is a preferred outcome but is not a requirement.

The MNR or the local office of the MNR may have agreements with specific First Nations as to notice, disclosure, or consultation processes regarding MNR projects, including land dispositions. Where any such agreements are in place, the consultation process set out therein is to be followed, if appropriate. The development of local agreements is encouraged where such agreements do not exist.

In the event that an Aboriginal community, organization or First Nation identifies a land claim issue during the consultation process, or MNR is otherwise aware of a potential land claim issue, the Aboriginal Affairs Unit and Legal Services Branch should be consulted. If, as discussed above, a local protocol or agreement is in place and applies, the process set out therein should be followed.

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- B) To comply with MNR’s legal obligations under the Environmental Assessment Act and the Environmental Bill of Rights.

The Ministry is subject to obligations under the Environmental Assessment Act. The Ministry’s obligations with respect to the disposition of land are identified in the Class Environmental Assessment for Resource Stewardship and Facility Development Projects. Staff are responsible for ensuring that the Ministry’s obligations are complied with.

When deciding whether or not to approve applications for public lands, which could have a significant effect on the environment, consideration will be given to MNR’s Statement of Environmental Values.

- C) To utilize an ecosystem management approach in reviewing applications and making decisions on land disposition.

“An ecosystem approach to managing our natural resources enables a holistic perspective of social, economic and ecological aspects, and provides the context for integrated resource management”<sup>4</sup> The Application Review and Land Disposition Process requires that an ecosystem management approach be taken to achieve the optimum sustainable level of benefits from the disposition of Ontario’s land.

- D) To promote environmental protection, including the protection of specific and significant natural resource values.

In order to achieve sustainable development, environmental protection must be an integral part of the development process and cannot be considered in isolation.<sup>5</sup>

MNR will consider the effect of land disposition on the environment, including the compatibility of dispositions to:

- a) protection of human life, property and natural resource values from hazards such as forest fires, floods and erosion;
- b) sustain/enhance both terrestrial and aquatic ecosystems;
- c) rehabilitate degraded lands; and
- d) to avoid social disruption.

Specific Crown land disposition policy direction for the following natural resource values are found in the Appendices to this directive including:

- Appendix A – Crown Land Disposition and Lake Trout Lakes

- E) To support development.

Economic growth and renewal through development and diversification will benefit Ontario's economy. The disposition of public land to facilitate development opportunities can stimulate investment, job creation, and tax and non-tax revenues. The availability of

<sup>4</sup> Our Sustainable Future, Ministry of Natural Resources Strategic Directions, 2005, p.7.

<sup>5</sup> Our Sustainable Future, Ministry of Natural Resources Strategic Directions, 2005, p.7.

public land can also be important to the social development of communities to accommodate institutional and infrastructure elements.

When considering the disposition of public lands, the Ministry will have regard to the following economic considerations such as:

- a) contribution to economic renewal (i.e. jobs created/investment stimulation);
- b) effects on tourism industry;
- c) effects on resource extractive industries;
- d) expansion of the municipal tax base; and
- e) suitability of applicant's business plan, if applicable (i.e. MEDT and MNDM Regional Economic Development Branch concurrence).

F) To provide support for the resolution of Aboriginal land claims.

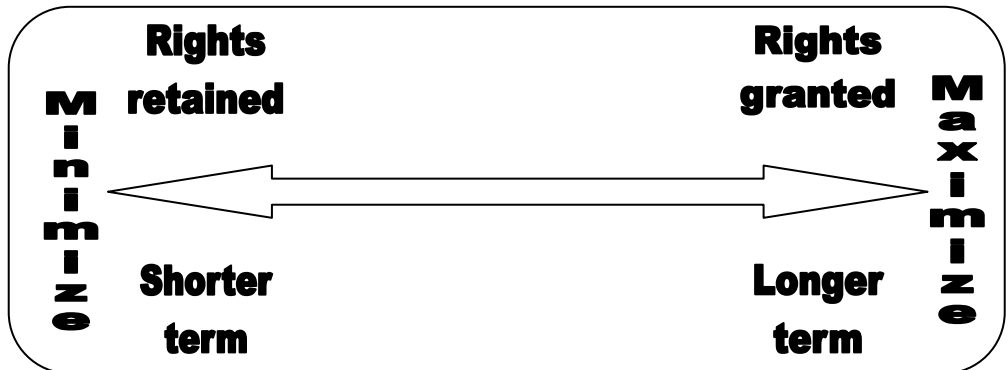
The Ontario government is working to address land claim issues. MNR has a significant role to play in contributing to the government's agenda, particularly since land requirements generally are a significant component of Aboriginal issues. Examples of MNR actions to support the resolution of land claims may include a disposition to a First Nation or Canada, or a refusal to dispose of lands subject to a land claim to the general public.

G) To maximize non-tax revenues.

The Crown, representing the people of Ontario, should receive fair compensation when rights to public land are disposed of. Revenues from the disposition of Crown land go to the Province's consolidated revenue fund and are used to fund the management of natural resources and to provide essential public services such as health and education.

When making decisions about land use occupational authority, consideration will be given to approaches that will maximize non-tax revenue. Factors that will maximize revenue include the granting of greater rights and longer term (or fee simple) documents. Conversely, factors that will minimize revenue to the Crown include the retention of rights (e.g. restrictions on the use of the premises, such as not allowing a recreation camp to be used for angling purposes) and shorter term documents (e.g. a short land use permit rather than a long term lease). The following model sets out the impact of these considerations on revenue.

**Effect of Land Use Occupational Authority on Crown Land Revenues**



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Management decisions may, however, warrant action that will detract from the maximization of non-tax revenues (e.g. the granting of a short term land use permit rather than a long term lease to maximize future management options).

Other factors that will maximize non-tax revenues may include valuation processes that reflect a market value based on utility vs. land, the use of current appraisals, indexed rents, valuing resources on the land (e.g. trees, sand and gravel), etc..

H) To provide quality customer service.

MNR's customers include not only applicants, but the people of Ontario. Response to customer requests should be handled as promptly as possible. Service must be delivered on the basis of rational, realistic standards and priorities. When requests for public land are denied, applicants will be advised of specific reasons for the Ministry's decision. Fair treatment of customers requires that applicants, and the public where appropriate, be provided with clear and relevant reasons to demonstrate that decisions are made with reference to identifiable standards and criteria, when this information is available, and are thus made objectively and without bias. Where possible, reasons should not be limited to general policy considerations, but should include more specific information to assist customers in determining the validity of MNR's position.

MNR marketing practices will be fair to all, in keeping with site specific circumstances. Marketing options include first come - first served, public offerings, direct offerings and restricted offerings. When considering marketing options to be used, regard will be had to Section 4 of this policy.

Tenure (i.e. type of land use occupational authority) and term (i.e. rental period and renewal commitments) decisions will have regard to the security requirements, investment, and financing requirements of the applicant. Regard shall also be had to other land management considerations indicated in this policy.

Regard will be had to the Ministry's obligations under the Freedom of Information and Protection of Privacy Act.

I) To make public lands available through a variety of land use occupational authorities, and where appropriate, to use land use occupational authorities as a mechanism to preclude undesirable land use changes or liabilities to the Crown.

The Ministry will use a variety of options to authorize the use of public lands. When considering options to be used, regard will be had to land use authority options in Section 5 of this policy. Where appropriate, MNR will use the options available as land use occupational authorities to maintain options for future use (e.g. public lands may be leased rather than sold, so that MNR may control/prevent undesirable land use changes to a particular site or to a general area, from significant impacts on resources or from contributing to critical land use changes).



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On the other hand, where there is a potential for land to become contaminated or impaired as a result of the proposed activity (e.g. a waste management site), leases or short term land use occupational authority which will result in an eventual reversion of the land to the Crown should not be used. In such a case, to avoid potential future liabilities, consideration should be given to an outright sale of the required land so that MNR does not become a party to future liability.

J) To maintain effective land disposition records.

Area Supervisors shall ensure that effective land disposition records are maintained in accordance with Section 6.0 of this policy.

K) To develop and follow effective administrative disposition processes.

When considering the disposition of public lands, the Ministry will have regard to the application review process contained in Procedure PL 4.02.01 Application Review and Land Disposition Process.

### **3.5 Results Measures**

This policy is to support the following six categories of results measures:

- ecosystem health & natural resource sustainability;
- social and economic benefits;
- customer services;
- fiscal effectiveness;
- partnership effectiveness; and
- organizational excellence.

## **4.0 MARKETING OPTIONS**

This section will guide decisions as to whether lands should be marketed through a public offering, a restricted offering, or a direct offering.

### **4.1 Public Offerings (includes direct requests for Public Land)**

Public offerings may be made to applicants on the basis of first come, first served; request for proposals; public tender; public auction; public draw; MNR advertisement; or realty listings.

#### **4.1.1 First Come, First Served**

Disposition may be made on a first come, first served basis where:

- a) supply of like sites in close proximity is thought to exceed demand;
- b) the number of sites to be disposed of is fewer than five and each site or similar sites have been previously offered, but not taken up, in another type of previous public offering (e.g. auction, tender or draw, within the preceding five years; or



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- c) the site being disposed of is not otherwise viable for sale on its own and does not impede separate marketing of any residual Crown lands (e.g. additional lands required for a septic tile bed) provided that:
- d) the purchase price or annual rent/fee is established in accordance with applicable policy directives including:
  - PL 6.01.01 Sale Price Policy;
  - PL 6.01.02 Crown Land Rental Policy; and
  - PL 2.03.01 Appraisals/Evaluations of Public Land;
- e) in respect of a sale, lease or easement the prospective customer is not an MNR employee or spouse, unless the minimum waiting periods prescribed in Policy PL 4.13.01 Disposition of Crown Land to a Ministry Employee have lapsed; and
- f) disposition is not restricted to specific applicants (Section 4.2).

The Ministry may dispose of public lands on a first come, first served basis to a municipality, another ministry of the provincial government, federal government departments (but not federal Crown agencies) and hydrocarbon pipeline companies, notwithstanding that the above criteria does not apply, if the disposition is otherwise consistent with this policy.

Specific provisions may exist in other policies to use the first come, first served method as the preferred means of marketing.

#### 4.1.2 Public Request for Proposal

Subject to Section 39, PLA (see Policy PL 4.13.01 Disposition of Crown Land to a Ministry Employee), a request for proposal may be used where the Ministry pre-identifies a site for disposition and seeks a variety of options for development and/or use of the site. This option is not available where disposition is restricted to specific purchasers (Section 4.2).

The purchase price or annual rent/fee for lands made available by RFP shall not be less than that specified in policy directives:

- PL 6.01.01 Sale Price Policy; or
- PL 6.01.02 Crown Land Rental Policy.

#### 4.1.3 Public Tender

A public tender may be used subject to Section 39, PLA, where:

- a) it is administratively practical (the reconciliation of tender submissions may become difficult if more than ten sites are involved and individuals are tendering for more than one site but will follow through on only their preferred site) and sites are not subject to different terms and conditions;
- b) disposition is not restricted to specific applicants (Section 4.2);
- c) demand in the area is thought to exceed supply; and

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- d) a reserve bid is utilized to preclude a disposition from occurring at less than appraised market value or rents/fees based on market value, in accordance with:
- PL 2.03.01 Appraisals/Evaluations of Public Land;
  - PL 6.01.01 Sale Price Policy; and
  - PL 6.01.02 Crown Land Rental Policy.

Notwithstanding the above, if the sites have been extensively advertised and exposed on the open market and the bids received are not less than 85% of the appraised market value or rent/fee based on market value, then the highest of any such bids can be considered to be the market value or market rent/fee of the site.

#### 4.1.4 Public Auction

A public auction may be used where:

- a) it is cost effective;
- b) disposition is not restricted to specific applicants (Section 4.2);
- c) demand is thought to exceed supply;
- d) a professional auctioneer is available;
- e) a suitable venue for an auction is available; and
- f) the auction can be held on a day (e.g. Saturday) when most prospective customers could conveniently attend.

An auction is an effective way of testing appraised market values. When auctioning a site, a reserved bid is to be utilized to preclude a disposition at an unrealistically low price. The reserved bid would normally be the appraised market value of the site, or the rent/fee based on market value. However, bids received at an auction are often a better indicator of actual market value. Accordingly, assuming that the auction has been extensively advertised, reserved bids can be set at no less than 85% of appraised market value or rents/fees based on market value, in accordance with policy directives:

- PL 2.03.01 Appraisals/Evaluations of Public Land;
- PL 6.01.01 Sale Price Policy, and
- PL 6.01.02 Crown Land Rental Policy.

#### 4.1.5 Public Draw

A public draw may be used where:

- a) demand is thought to exceed supply;
- b) appraised market value or rents/fees based on market value are established in accordance with policy directives:
  - PL 2.03.01 Appraisals/Evaluations of Public Land;
  - PL 6.01.01 Sale Price Policy; and
  - PL 6.01.02 Crown Land Rental Policy;

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- c) a suitable venue for a draw is available;
- d) participants agree in advance to pay the purchase price/annual rent, if successful;
- e) disposition is not restricted to specific applicants (section 4.2); and
- f) the draw can be held on a day (e.g. Saturday) when most prospective customers could conveniently attend.

#### 4.1.6 MNR Advertisement

Sites may be offered for sale or lease publicly by MNR advertisement (e.g. newspaper/periodical ads, MNR web site, offering signs on site, etc.), where MNR has work planned for the disposition of pre-identified sites, subject to Section 39, PLA, and:

- a) disposition is not restricted to specific applicants (Section 4.2);
- b) sites are market ready (i.e. surveyed, description prepared, environmental assessment requirements met; any ORC buildings have been declared surplus by ORC, etc.);
- c) minimum purchase prices or rents/fees based on market value are established in accordance with policy directives:
  - PL 2.03.01 Appraisals/Evaluations of Public Land;
  - PL 6.01.01 Sale Price Policy; and
  - PL 6.01.02 Crown Land Rental Policy;
- d) asking prices/rents/fees are determined in consultation with the Land Management Section;
- e) all offers are irrevocable for a period of 45 days from the date of the offer and no offer is accepted within the first 30 days after commencement of formal advertising;
- f) following the initial 30 day period, offers will be considered/negotiated beginning with the highest offer received (if offered/negotiated prices/rents/fees are less than minimum purchase prices/rents/fees, concurrence of Land Management Section is required);
- g) offers are accompanied by a minimum of 10% deposit in the form of a certified cheque or money order, which is non-refundable unless the offer is not accepted; and
- h) the balance of the purchase price or annual rent/fee, plus HST on the total purchase price or annual rent/fee if applicable, is paid on or before the closing date.

#### 4.1.7 Realty Listings

Sites may be offered for sale or lease publicly through the professional services of real estate firm where MNR has work planned for the disposition of pre-identified sites, subject to Section 39, PLA, and:

- a) directions for using private real estate firms are obtained from Land Management Section;
- b) disposition is not restricted to specific applicants (Section 4.2);
- c) sites are market ready (i.e. surveyed, description prepared, environmental assessment requirements met; any ORC buildings have been declared surplus by ORC, etc.);

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- d) purchase price or rents/fees based on market value are established in accordance with policy directives:
  - PL 2.03.01 Appraisals/Evaluations of Public Land;
  - PL 6.01.01 Sale Price Policy; and
  - PL 6.01.02 Crown Land Rental Policy;
- e) asking prices/rents/fees are determined in consultation with Land Management Section;
- f) all offers are irrevocable for a period of 45 days from the date of the offer and no offer is accepted within the first 30 days after the commencement of formal advertising;
- g) following the initial 30 day period, offers will be considered/negotiated beginning with the highest offer received (if offered/negotiated prices/rents/fees are less than minimum purchase prices/rents/fees, concurrence of Land Management Section is required);
- h) offers to the real estate firm are accompanied by a minimum of 10% deposit in the form of a certified cheque or money order, which is non-refundable unless the offer is not accepted;
- i) the balance of the purchase price or annual rent/fee less the commission, plus HST if applicable, is paid to the real estate firm on or before the closing date; and
- j) the client is responsible for the payment of the real estate commission, plus HST, directly to the realtor.

#### **4.2 Restricted Offering**

Disposition is restricted to a specific adjacent owner, subject to Section 39, PLA where:

- a) rights to a water lot are being disposed of to the adjacent riparian owner who fronts on the water lot;
- b) a road allowance in unincorporated territory or a Crown shoreline reserve is being disposed of to an abutting owner who fronts on the road allowance or Crown shoreline reserve;
- c) a subsequent disposition, including title enlargement (i.e. lease to sale), is being made to existing tenants; or
- d) the property has no legal means of access other than to the specific adjacent owner(s) (in the case of multiple owners surrounding a land locked property, the land may be sold to one owner if other owners sign-off).

#### **4.3 Direct Offering**

Subject to government pricing policies, the Ministry District Manager may choose to offer disposition directly to a government preferred recipient where:

- a) the broad public interest will be served (e.g. resolution of land claim);
- b) a development proposal for an innovative capital intensive project or new technology proposal is submitted to MNR which will potentially offer broad public benefits;
- c) cost avoidance to MNR will occur;
- d) social or economic benefits will accrue to a municipality or a First Nation (e.g. supply community infrastructure);
- e) for resource management purposes, the Ministry wishes to relocate tenants or to enter into a land exchange; or

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- f) disposition will satisfactorily resolve an unauthorized occupation; and/or
- g) disposition is not restricted to specific applicants (Section 4.2).

Direct offerings are generally limited to governments (i.e. other provincial ministries; Crown agencies or commissions; the federal government including its departments, agencies and commissions; municipalities; and First Nations), or situations where resource management interests may benefit.

## **5.0 LAND USE OCCUPATIONAL AUTHORITY CONSIDERATIONS**

When reviewing options for land use occupational authority, the Ministry will have regard to:

- a) existence of Aboriginal or treaty rights;
- b) security requirements, investment, and financing requirements of the applicant;
- c) economic life of required/associated improvements (e.g. the term of a rental should allow a sufficient term over which to capitalize the cost of improvements);
- d) desire by MNR to reconsider the use of the site at a future time (i.e. return of the site after the term of a document);
- e) needs to preclude critical unwanted land use changes (e.g. to prevent a conversion of an intended remote tourism site to private recreational purposes, thus losing remote tourism opportunities) and to use appropriate land use occupational authorities to preclude such critical unwanted changes where warranted (e.g. lease only, no sale);
- f) future disposition options (e.g. limit a pipeline to an easement to facilitate future use/disposition of the site for other purposes, subject to the easement);
- g) avoidance of future liabilities (e.g. public land required for municipal waste management sites will be sold rather than leased to prevent the Crown from having future environmental or financial liabilities related to the site after its planned use has been completed); and
- h) maximizing non-tax revenues.

Appendix A of Procedure PL 4.02.01 Application Review and Land Disposition Process provides a wide variety of land use occupation authorities. The choice of an appropriate land use occupational authority will be dependant upon case specific requirements and land management considerations.

## **6.0 RECORD KEEPING RESPONSIBILITIES**

### **6.1 Control Maps**

Accurate control maps are necessary to prevent making duplicated or overlapping commitments for the same site. Area Supervisors are responsible to ensure that control maps are maintained for their areas to illustrate the location of:

- a) previous dispositions of public lands (i.e. letters patent, Orders-in-Council or Minister's Orders transferring administration and control to other governments/government agencies/ministries, leases, easements, licences of occupation, land use permits, beach management agreements, Railway Act transfers, etc.);

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- b) resource concerns (e.g. provincial parks, conservation reserves, EMA's, hazard lands, etc..) which may preclude or require mitigation prior to proceeding with disposition;
- c) acquired property;
- d) lands declared surplus to MNR needs, that may be marketed by the ORC or centrally marketed by the Ministry's Land Management Section;
- e) Crown Land Plans under the Public Transportation and Highway Improvement;
- f) pending applications for land use occupational authority;
- g) selected structures and improvements previously authorized by work permits which may affect future dispositions or which otherwise may not be apparent from site inspections (e.g. trapline cabins);
- h) rights of way where the percentage reservation for road (i.e. 5% or 10%) has been exercised; and
- i) areas withdrawn from staking.

G plans are suitable to serve as control maps. M or T plans may be used as control maps in the absence of G Plans. These control maps should be replaced by electronic maps as they become available through Land Information Ontario, NRVIS (Natural Resources Value Information System) or MNDM electronic claim maps.

In Southern Ontario, where G, M or T plans are not available, Ontario Base Map Sheets, National Topographic Services maps or locally produced land status maps may be used as control maps. Alternatively, an inventory of public lands may be substituted for control maps where only isolated parcels of Crown land remain.

In Northern Ontario, where there are no G, M or T plans, Ontario Base Maps sheets or National Topographic Services maps may be used as control maps.

## **6.2 Files**

Area Supervisors are responsible to ensure that files are kept of pending and completed dispositions, which will include:

- a) applications;
- b) correspondence with applicants;
- c) pre-disposition consultation records including Aboriginal community consultation (e.g. correspondence, advertisements, meeting minutes, notice to timber licensee, etc.);
- d) financial records regarding land disposition activities, including post disposition activities (i.e. receipts of rent/fee payments, purchase price paid, etc.);
- e) pre-disposition approvals (e.g. Briefing Notes for a Decision);
- f) requisitions for land use occupational authorities; and
- g) current and previous copies of land use permits, licences of occupation, leases, etc.

Disposition records shall not be destroyed or transferred except in accordance with approved Records Retention Schedules.

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### **6.3 Freedom of Information and Protection of Privacy**

The Ministry will have regard to its obligations under the Freedom of Information and Protection of Privacy Act.

## **7.0 REFERENCES**

### **7.1 Legislative References**

- Class Environmental Assessment for Resource Stewardship and Facility Development Projects (MNR 2003)
- City of Elliot Lake Act, 2001
- Constitution Act, 1982
- Freedom of Information and Protection of Privacy Act
- Real Property Limitations Act
- Planning Act
- Public Lands Act, R.S.O. 1990 - Sections 17, 37.1(1), 38(2), and 39

### **7.2 Directive Cross References**

- PL 2.02.01 (POL) Quit Claim Letters Patent
- PL 2.03.01 (POL) Appraisal and Valuation of Public Land
- PL 4.02.01 (PRO) Application Review and Land Disposition Process
- PL 4.05.01 (POL) Administration of Crown Shelf Cottage Lots
- PL 4.11.03 (POL) Road Allowances and Crown Shoreline Reserves – Disposition
- PL 4.13.01 (POL) Disposition of Crown Land to a Ministry Employee
- PL 6.01.01 (POL) Sale Price Policy
- PL 6.01.02 (POL) Crown Land Rental Policy
- PL 8.03.01 (POL) Disposition of Acquired Vacant Land and Land With Buildings

### **7.3 Literature Review**

- OMNR 1993 Strategic Direction for Management of Ontario Crown Land, Ontario Ministry of Natural Resources, February 1993.
- OMNR 1995 Ministry of Natural Resources Statement of Environmental Values, Ontario Ministry of Natural Resources, 1995.
- OMNR 2002 Lake Nipigon Basin Signature Site Ecological Land Use and Resource Management Strategy, Ontario Ministry of Natural Resources, Thunder Bay.
- OMNR 2005 Our Sustainable Future, Ontario Ministry of Natural Resources Strategic Directions.



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- OMNR 2006a Inland Ontario Lakes Designated for Lake Trout Management, Ontario Ministry of Natural Resources, May 2006 Fisheries Section, Peterborough.
- OMNR 2006b Guidelines for the Application of a Dissolved Oxygen Criterion for the Protection of Lake Trout Habitat, Ontario Ministry of Natural Resources, Fisheries Section, Peterborough.

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## **Appendix A**

### **Crown Land Disposition and Lake Trout Lakes**

#### **A.1 Background – Why are Lake Trout Lakes Important?**

Lake trout lakes are rare. While only about one percent of Ontario’s lakes (i.e. approximately 2,280) are designated by policy and managed by the Ministry for lake trout, this resource represents 20-25% of all lake trout lakes in the world. The lake trout is an important fishery resource in Ontario and is a preferred species among many resident and non-resident anglers.

The lake trout is the only major, indigenous sport fish species in Ontario that is adapted to oligotrophic lakes (i.e. lakes with low levels of nutrients, high dissolved oxygen levels and typically deep areas with very cold water). The lake trout’s slow growth, late maturity, low reproductive potential and slow replacement rate make it a unique species in the province. As a top predator, the lake trout is an important part of the province’s natural heritage and an excellent indicator of the health of these fragile aquatic ecosystems.

Approximately 5% of the province's lake trout populations have already become extinct. Lake trout and lake trout lakes are particularly vulnerable to the impacts of human activities including harvesting, increased phosphorus inputs from cottage septic systems and other sources of nutrient enrichment, acidification, species introductions, and habitat destruction. Development on lake trout lakes may result in habitat degradation, diminished lake trout populations and a lower quality fishing experience.

Field and laboratory research has shown the detrimental effects of low dissolved oxygen levels on lake trout. In order to protect adult and juvenile lake trout habitat, the Ministry has adopted a 7 mg/L mean volume weighted hypolimnetic dissolved oxygen (MVWHDO) criterion to determine lakeshore development capacity on all inland lake trout lakes on the Precambrian Shield.

Given the importance and ecological sensitivity of lake trout lakes, the Ministry has historically worked to protect lake trout lakes from the adverse impacts of lakeshore development. Dating as far back to the early 1980’s, Ministry land use and resource management planning documents and guidelines have advanced a precautionary approach to the management of Crown land adjacent to lake trout lakes, including moratoriums on the sale of Crown cottage lots on lake trout lakes. The Ministry has also worked with municipalities and other ministries to advance the protection of lake trout lakes through the Planning Act and Ontario’s municipal land use planning process.

From a fisheries management perspective, the Ministry designates and manages lakes with lake trout populations as either “naturally reproducing lake trout lakes” or “put-grow-take lake trout lakes”.

Naturally reproducing lake trout lakes include those lakes that may have lost populations, but have been identified for rehabilitation. For example, recent water quality improvements have allowed the reintroduction of lake trout into previously acid damaged lakes in the Sudbury area, in order to re-establish viable self-sustaining populations.

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Put-grow-take lake trout lakes are managed to provide recreational fishing opportunities or to direct angling effort away from more sensitive naturally reproducing lake trout lakes. Put-grow-take lakes are generally less sensitive to potential impacts of development than lakes managed for naturally reproducing lake trout populations. In some put-grow-take lakes, the spawning habitat necessary to support a self-sustaining lake trout population is not and never has been present. In other lakes, habitat has degraded to the point where a self-sustaining population cannot be successfully re-established. In both cases, lake trout are present through continued stocking.

While the risk of harm from additional development may be less on put-grow-take lakes because the lake trout population is not dependent on spawning habitat, a healthy environment and abundant suitable juvenile and adult habitat is required to maintain the population.

## **A.2 Lake Trout Lake Designation**

For purposes of applying this policy, a lake must be designated by policy by the Ministry for management as a lake trout lake.

The list of lakes in Ontario designated by Ministry policy for management as either a naturally reproducing lake trout lake or a put-grow-take lake trout lake are identified in *Inland Ontario Lakes Designated for Lake Trout Management*, May 2006 (OMNR 2006a) as amended and revised.

## **A.3 Crown Land Disposition**

The principle of this policy is that the Ministry will not dispose of vacant, undeveloped Crown land, where the disposition of Crown land could subsequently lead to impacts to habitat or lakeshore carrying capacity for lake trout.

The Ministry may however dispose of Crown land on lake trout lakes through application of the *Class Environmental Assessment for MNR Resource Stewardship and Facility Development Projects* and consideration of other Land Management policy directives in the following situations:

- where there is adequate lakeshore development capacity on put-grow-take lake trout lakes;
- the disposition relates to an existing occupation of Crown land with occupational authority (e.g. land use permit, lease, licence of occupation) as referred to in Section A.3.2 of this Appendix; or
- the disposition is recognized as not having a significant impact upon lake trout habitat (e.g. shore road allowances) as referred to in Section A.3.2 of this Appendix.

Nothing in this policy appendix is intended to prevent or adversely affect the settlement of First Nation land claims involving Crown land or the addition of Crown land to existing Indian Reserves.

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Appendix A does not apply, nor relate to the Ministry's review of proposals for roads over Crown land to access private lands located on designated lake trout lakes. The review of proposals for roads over Crown land is subject to the Ministry's Class Environmental Assessment for Resource Stewardship and Facility Development Projects (MNR 2003) and applicable Public Lands Act policies and procedures.

For policy direction on the disposition of Crown land related to water power development on lake trout lakes, refer to PL 4.10.05 Water Power Site Release and Development Review and associated water management planning procedures and guidelines.

Further details on Crown land disposition are provided in the following sections.

### **A.3.1 Disposition Not Permitted**

Crown land on naturally reproducing lake trout lakes will not be disposed of including:

- shelf cottage lots contained in an existing plan of subdivision or established by a Crown land survey; and
- other undeveloped, vacant Crown lands (including the surface rights of lands identified on surveys and in letters patent as 200 foot or 400 foot reservations fronting patented mining lands) where the disposition to other parties (e.g. municipality, private developer, resource based tourism industry) could lead to subsequent development that could have negative impact to habitat or lakeshore carrying capacity for lake trout.

### **A.3.2 Disposition Permitted**

#### **Put-Grow-Take Lake Trout Lakes**

Crown land may be disposed of on put-grow-take lake trout lakes where it has been determined that the lake has sufficient lakeshore development capacity to accommodate the anticipated development impacts.

In these situations, lakeshore development capacity will be determined through application of the Ministry's criterion of 7 mg/L Mean Volume Weighted Hypolimnetic Dissolved Oxygen (MVWHDO). Application, data collection protocols and interpretation of the 7mg/L dissolved oxygen criterion will be consistent with the *Guidelines for the Application of a Dissolved Oxygen Criterion for the Protection of Lake Trout Habitat* (OMNR 2006b).

#### **All Lake Trout Lakes**

Crown land on all lake trout lakes (both naturally reproducing and put-grow-take lake trout lakes) may be disposed of in the following situations:

- minor expansion; improvement to; or land tenure or land use occupational authority upgrade (including sale) associated with existing occupations of Crown land authorized by land use permit, licence of occupation or lease (e.g. recreation camp, cottage lot under summer resort lease, commercial outpost camp, boathouse and other structural development), where tenure upgrade or sale would otherwise be permitted;

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- disposition of shore road allowances and Crown shoreline reserves as defined in PL 4.11.03 Road Allowances and Crown Shoreline Reserves - Disposition;
- disposition related to wind power development (e.g. turbine location, support infrastructure);
- disposition related to commercial and industrial utility and telecommunication distribution and transmission corridors and support facilities, along with utility cables, heat loops, etc.. associated with residential and commercial uses;
- disposition of small parcels of Crown land to an abutting patented landowner where additional land is required to:
  - meet the minimum lot size requirements of the local planning authority and the amount of Crown land sold is not of sufficient size to enable the patented land to be divided into two or more lots;
  - replace a poorly functioning sewage disposal system, as approved by MOE or the local health unit; or
  - obtain title to long standing major structural improvements (e.g. principle dwellings) encroaching on adjacent Crown land;
- disposition of Crown land on lake trout lakes associated with the below land use planning and land disposition projects which pre-date the approval of his policy:
  - *Lake Nipigon Basin Signature Site Ecological Land Use and Resource Management Strategy* (MNR 2002); and
  - disposition of Crown land in the City of Elliot Lake for recreational waterfront development, consistent with the community economic development intent of the City of Elliot Lake Act (2001).