

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

1.0 Goals and Objectives

1.1 Goal

To achieve effective stewardship of public land and to protect Crown interests from activities occurring on adjacent, privately owned shore lands through the review of applications for and the issuance of work permits.

1.2 Objectives

- 1) To treat clients fairly by:
 - a) reviewing and responding to applications in a reasonable period of time;
 - b) having regard for the property rights of land owners (e.g. the right of a riparian property owner to enjoy riparian rights, including the protection of his/her riparian property from being eroded or invaded by water), subject to applicable regulations and legislation;
 - c) applying conditions to work permits that are reasonable and are not unduly onerous or unnecessary, having regard to the nature and location of the proposed work;
 - d) advising applicants of their right to a hearing if they consider any condition in the work permit as unduly onerous or unnecessary; and
 - e) advising applicants of their right to a hearing before an officer refuses to issue a work permit or cancels a work permit.
- 2) To ensure that the interests of neighbouring property owners and stakeholders are considered when reviewing applications that may have an adverse impact on those interests by requiring the applicant to obtain written comments from those who may be impacted.
- 3) To ensure that the occupation of public land is authorised by appropriate means, when applicable. A work permit is not a form of land use occupational authority. Where a work permit will authorise an activity that will create a requirement for a form of land use occupational authority, the issuance of that authority should be considered in conjunction with, or in advance of, the issuance of the work permit. However, if a form of land use occupational authority has been issued to authorise the occupation of Crown land, a work permit is no longer required to authorise the work needed to create the occupying structures. See Subsection 3.1.1 (5) of this policy.
- 4) To clarify the criteria for determining when a work permit is or is not required (see section 3.1 of this policy).

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- 5) To ensure that the Crown’s legal duty to consult and accommodate Aboriginal peoples is met where the issuance of a work permit has the potential to adversely impact established or asserted Aboriginal or treaty rights.
- 6) To apply special criteria to the review of work permit applications for activities that may significantly affect shore processes (Section 3.7 of this policy).
- 7) To ensure that work permit applications are reviewed in accordance with PL 4.02.01 Application Review and Land Disposition Process - Section 3.3, Part A) as the issuance of a work permit is, in some cases, considered to be an “undertaking” for the purposes of the *Class Environmental Assessment for MNR Resource Stewardship and Facility Development Projects*.
- 8) To ensure that for all applications for work permits, where the activity may impact on fish habitat, the application is referred to federal Department of Fisheries and Oceans (DFO) (or conservation authority reviewing on behalf of DFO) for advice or authorisation for protecting fish habitat (Section 3.6 of this policy).
- 9) To ensure that MNR’s obligations under the *Freedom of Information and Protection of Privacy Act* are considered.
- 10) To ensure that MNR’s obligations under the Environmental Bill of Rights (EBR) are addressed when reviewing work permit applications (Section 3.9 of this policy).
- 11) To provide the criteria under which work permit applications may be refused pursuant to subparagraph 2(1)(b)(iv) of Regulation 975(Section 3.11 of this policy).
- 12) To provide procedural direction for the implementation of this policy. Officers will have regard to Procedure PL 3.03.04 when implementing this policy.

2.0 Public Lands Officers

2.1 Appointment of Officers

For the purpose of work permit administration, officers are appointed under subsection 5 (1) of the *Public Lands Act*. The authority to appoint officers is delegated to District Managers. Refer to Procedure PL 9.02.01 Appointment of Public Lands Officers for more detail.

2.2 Powers and Duties of Officers

Under the PLA and Regulation 975, officers have the:

- 1) obligation to issue a work permit to any person who applies for one, unless the grounds specified in subsections 2(1) and 2(1.1) of Regulation 975 apply;
- 2) obligation to give the applicant for, or holder of, a work permit, notice in writing of the officer’s intent to refuse to issue, or to cancel, a work permit, before doing so (subsection 4(2), Regulation 975);

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- 3) obligation to notify the applicant for, or holder of, a work permit after a hearing of the officer's decision and the reasons therefor (subsection 4(5) Regulation 975), and to advise that the applicant or permittee may, within 15 days of the date of mailing of the notification, request the Regional Director to reconsider the decision of the officer by filing written submissions with respect thereto (subsection 4(6) Regulation 975);
- 4) authority to order an activity described in subsection 2(1) of O. Reg. 239/13, to cease until a work permit is obtained (subsection 14(5) PLA). Refer to Policy PL 9.03.01 (Stop Work Orders) for more detail;
- 5) authority to cancel a work permit, in the situations specified in subsection 4(1) of Regulation 975;
- 6) authority to cancel a work permit without affording the holder thereof an opportunity to be heard if continuation of the work under the permit is, in officer's opinion, an immediate threat to the public interest and the officer gives written notice, with reasons, to the holder (subsection 4(9) Regulation 975).
- 7) obligation to refer the matter to the Regional Director for review immediately after cancelling a work permit in accordance with subsection 4(9) Regulation 975 (subsection 4(10) Regulation 975);
- 8) authority to enter and inspect any private land for the purposes of the PLA at all reasonable times and upon producing proper identification (subsection 5(2) PLA). Refer to Policy PL 9.02.02 Entry Onto Private Land for more detail.

3.0 Directions and Strategies

3.1 Determining When a Work Permit is Required

The following activities are subject to PLA work permit requirements (paragraphs 2(1) 1 to 6 of O. Reg. 239/13) unless one of the exceptions below (3.1.1) applies:

- a) construct or place a building on public land;
- b) construct a trail, water crossing or road on public land;
- c) dredge shore lands;
- d) fill shore lands;
- e) remove invasive aquatic vegetation or native aquatic vegetation by mechanical means or by hand from shore lands;
- f) construct or place a structure or combination of structures that occupies more than 15 square metres on shore lands.

3.1.1 Exceptions to the Work Permit Requirements Listed Above

The following is the list of exemptions, as provided for in O. Reg. 239/13, to the above noted

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requirements:

1. “building” construction does not include floating structures, docks, boathouses, tents or ice huts, unless the supporting structure or structures occupy more than 15 square metres in total of shore lands.
2. “trail, water crossing and road” construction does not include those that have been authorized under a forest management plan under the *Crown Forest Sustainability Act, 1994 (CFSA)* or constructed as part of a forest operation to which the CFSA applies;
3. “trail” construction does not include trails used for mineral exploration or extraction (the construction of associated water crossings, however, is subject to work permit requirements);
4. “dredge” does not include removal or displacement of material for the purpose of installing service cables, heat loops, or water intakes for private residences;
5. any “activity” that is done under the terms and conditions of a form of land use occupational authority granted under the PLA, is exempt from work permit requirements. For example, construction of, as well as repairs and additions to, buildings or structures on public land including Crown owned shore lands, are not subject to work permit requirements, provided that this activity is currently permitted under the terms and conditions of a form of land use occupational authority that has been granted under the PLA. These activities may require approval by “letter of permission”. Activities subject to the work permit requirements that are not authorized by a form of land use occupational authority still require a work permit (e.g. dredging in a water lot authorized under a Crown lease for marina purposes).
6. Minor maintenance activities carried out on a trail, water crossing or road, including the following activities:
 - a. Water crossing cleaning for the purpose of maintaining the flow of water
 - b. Superficial grading of trails or roads
 - c. Clearing of existing ditches
 - d. Spot gravelling
 - e. Clearing or brushing of existing road or trail surface – note that this applies only to roads that are open to the public and over which vehicles can safely travel OR are passable, but not those that have been decommissioned or are planned for decommissioning (e.g., as documented in road use management strategy)
 - f. Snow plowing
 - g. Sanding or dust control
 - h. Repair or replacement of posted signage
7. The following activities are exempt from work permit requirements provided that the proponent follows the rules outlined in O. Reg. 239/13. If the proponent cannot follow any or all of the rules, a work permit is required to conduct the activity.
 - 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

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*activity requires registration with MNR

Additional agencies and activities exempt from PLA work permit requirements are:

- 1) the federal or provincial Crown (e.g. Ministry of Transportation, Ontario Northland Railway , Management Board Secretariat), including agents of the Crown and contractors working on their behalf, as the PLA is not binding on the Crown;
- 2) activities carried out by TransCanada Pipelines. Most activities are regulated by the National Energy Board (e.g. works within approved right-of-way, including installation of pipe and cathodic protection facilities) and are documented in the authorizations issued by the National Energy Board (NEB). Activities not regulated by federal legislation (e.g. road construction not covered by NEB authorizations) will require a work permit;
- 3) any activity on federal lands or waterways (e.g. Rideau Canal);
- 4) any activity on land subject to a lease of the surface rights issued under the *Mining Act*, except to the extent that such lands are shore lands, as these activities are governed by the terms and conditions of the lease as administered by the Ministry of Northern Development and Mines;
- 5) All construction and maintenance activities carried out by federally regulated railway companies (e.g. CNR, CPR) within or adjacent to a railway right of way (under the authority of Section 95 of the *Canada Transportation Act*).
- 6) the filling of shore lands when the filling consists of rock being placed into a crib(s) for a dock, boathouse, etc. This activity is considered to be part of the construction of a structure on shore lands and is not subject to work permit requirements unless the crib(s) will occupy more than 15 square metres of shore lands;
- 7) repairs and additions to structures (subject to section 3.7 of this policy) on shore lands, unless the total area of the structures occupies more than 15 square metres of shore lands. Note that this exemption does not apply to the filling of Crown land (including a new erosion control structures, see definition);
- 8) the removal of aquatic vegetation from shore lands by means of a herbicide. This type of removal is regulated by the Ministry of Environment. Only removal by physical and/or mechanical means requires a work permit;
- 9) exploration and evaluation work with respect to aggregates and peat, except where the subject lands are shore lands. Activities within an aggregate permit area which would be subject to a work permit are to be addressed through the site or operating plan or site, or operating plan amendment submitted by the aggregate permittee; (Note: an aggregate permit under the *Aggregate Resources Act* is required for the extraction of aggregate, a form of land use occupational authority under the *Public Lands Act* is required to extract peat);
- 10) logging and mineral exploration, however; if an officer receives an application or

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other notification involving underground mineral exploration, the officer should refer the applicant to the local office of the Ministry of Northern Development and Mines for their action.

NOTE: O. Reg.349/98 requires that a work permit be obtained to undertake certain “disruptive” mineral exploration activities in specified areas. These work permits are issued by MNDM staff through a special arrangement with that ministry. The areas to which this regulation applies are described in a Schedule to the regulation. Currently, the regulation applies only to areas around Lake Temagami.

3.2 Eligible Work Permit Applicants

Work permits will only be issued to an applicant who will receive a “direct benefit” from the proposed work, or a contractor or other person who has written authorization, from the person who will receive a direct benefit, to act as their agent or on their behalf.

For example, in the case of work on shore lands, the owner of the shore lands or of private land adjacent to the shore lands (water front property) would be an eligible applicant. In the case of an application to construct a trapline cabin on public land, the holder of a registered trapline would be an eligible applicant.

In addition, when some or all of the land that is the subject of an application is not owned by the applicant (e.g. shore lands that include a flooded municipal road allowance), or is separated from the applicant's property (e.g. by a municipal road allowance), then the applicant must provide written consent from the other land owner (e.g. the municipality).

3.3 Roads & Trails

Paragraph 2 (1) 2 of O. Reg. 239/13, states that a work permit is required for the construction of trail, water crossing or road on public land. This section is subject to the exemption related to the CFSA contained in subsection 4 (1) of O. Reg. 239/13.

O. Reg. 239/13 also defines a trail as a path over public lands not used for mineral exploration or extraction. Therefore the construction of a trail for mineral exploration does not require a work permit. However, the construction of a road for mineral exploration purposes does require a work permit. Construction of all water crossings, whether they are part of a trail or a road, requires a work permit.

As a result, there is a need to be able to differentiate between roads and trails when the construction of those roads or trails is for mineral exploration or extraction. For the construction of all other types of roads or trails we simply need to know if the construction proposed is so minor that it would not be considered a trail.

After considering the intent of the Regulation when written and in order to provide clarification on this matter, staff will be guided by the following:

1. Construction of a road would involve the construction of a travel corridor that is reasonably capable of allowing travel by motor vehicles licensed to operate on a King’s Highway as defined in the *Highway Traffic Act* (e.g. personal or commercial cars and trucks).
Construction of the road would normally involve the removal of trees and vegetation and the

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addition of aggregate material to make the corridor passable by the vehicles mentioned above. Construction includes non-routine maintenance operations, which result in a marked improvement to the condition of an existing road, which would include the following:

- changing the standard of an existing road to a higher one, such as widening of the driving surface, realigning bad corners or flattening a hill;
 - ditching where erosion and sediment control measures are required;
 - re-application of gravel (or other materials) to replenish material lost due to time and traffic;
 - brushing by mechanical or chemical means to remove unwanted vegetation from the road right of way; and
 - replacement or upgrading of a deteriorated culvert or bridge water crossing structure to meet current engineering standards.
2. Construction of a trail would involve the construction of a travel corridor that is more minor in nature than a road. Construction of a trail would normally involve the removal of trees and vegetation to allow the passage of certain vehicles (e.g. ATVs, snowmobiles, skidders).

Generally there would be no addition of aggregate material. Portions of the trail may be levelled out with machinery. It is not the intent of the Regulation to attempt to regulate pedestrian travel. Likewise the creation of trails that do not include construction would not be affected by the regulation (e.g. where the trail is created by repetitive use and no actual construction has occurred). Construction of a trail also includes upgrades to an existing trail where the trail is being significantly altered (e.g. widening or relocation of trail).

Construction of all water crossings, whether they are part of a trail (including trails for mineral exploration) or a road, requires a work permit. Replacement of a water crossing is also considered construction and will require a work permit.

3.4 Privately Owned Shore Lands

O. Reg. 239/13 defines shore lands as lands covered or seasonally inundated by the water of a lake, river, stream or pond. This definition includes public and private land. Requirements for PLA work permits (or work permit exemptions) for the dredging and filling (includes an erosion control structure) of privately owned shore lands and the construction or placement of a structure that occupies more than 15 square metres of shore lands are only triggered when the following criteria are met:

1. the private shore lands are contiguous with public land or an unopened municipal shoreline road allowance(in the case of flooded lands);
2. the proposed works are to be carried out within a “seasonally inundated” area. For example, a waterfront property is subject to a work permit requirement for filling (e.g. constructions of a break wall) on shore lands where the proposed work is located at a low water position which restricts the normal movement of the ambulatory water boundary within the shore lands.
3. the private shore lands are not characterized predominantly by terrestrial plants(e.g. Ash, Cedar...);
4. the proposed work has the potential to affect public land (e.g. Crown lake bed); and
5. the activity is not exempted by the regulation from requiring a work permit.

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For example, on a riparian property, a work permit would be required for the construction of a breakwall on private shore lands during a period of low water levels that would in times of higher water levels prevent the ambulatory boundary between private and Crown land from taking its normal course, providing the site has been covered by water during the past 12 months.

A work permit is not required to fill the privately owned portion of a shore land that is inundated by the water of a lake or river only as a result of a freshet.

Other examples of privately owned shore lands not subject to work permit requirements include:

- artificially created municipal drains;
- wetlands not associated with a navigable water body; and
- non-navigable streams, rivers, ponds and lakes as the bed of these are not Crown land (refer to Policy PL 2.02.02 Ownership Determination – Beds of Navigable Waters).

Note: Authorization may still be required for these works under the *Lakes and Rivers Improvement Act*, *Fisheries Act* or other legislation.

3.5 Structural Occupation of Shore Lands

When determining the amount of shore lands that will be occupied by a proposed structure pursuant to paragraph 2 (1) 6 of O. Reg. 239/13, only the portion of the structure (e.g. crib) that will be in contact with the shore lands is to be considered, not the overall size of the structure.

The construction or placing of a structure that will occupy 15 square metres or less of shore lands does not require a work permit under the PLA however it may require land use occupational authority if it is not a free use of Crown land (refer to Policy PL 3.03.01 Free Use Policy). Note that this does not include erosion control structures, which require a permit as they are considered “filling” of Crown land.

3.6 Fisheries Concerns

The following direction is based upon the “*Fish Habitat Referral Protocol for Ontario, 2009*”. Refer to this document for detailed processes.

If the application involves work in or around water where fish habitat is likely to be altered, MNR will inform the applicant that a work permit cannot be issued until DFO has provided advice under the Fisheries Act. MNR will offer to make this referral to DFO on behalf of the applicant and copy the applicant. When projects are referred to DFO, MNR will forward all available fisheries and fish habitat information on the proposed project.

If the proposed project does not require a work permit or is exempt from the requirement of a work permit, but is in and around water, MNR will advise the proponent of the responsibility to obtain advice from DFO to meet obligations under the Fisheries Act.

3.7 Proposed Work Affecting Shore Processes

Erosion control structures including those constructed against the shoreline and those that extend

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well beyond, or are located remote from, the normal shoreline (e.g. groynes, breakwaters, beach sills, etc.) require registration if work is taking place on a previously constructed structure. A work permit is required if a new structure is being constructed at a location that has not previously had an erosion control structure or if an existing erosion control structure is being changed (e.g. smaller or larger than existing footprint).

Proposed works that will extend well beyond, or be located remote from, the normal shoreline (e.g. groynes, off-shore breakwaters, beach sills, etc.) can have a significant effect on shore processes, often to the detriment of neighbouring landowners and aquatic resources. In addition to the criteria referred to in section 3.6 of this policy, the review of applications for this type of work are also subject to the following requirements:

New Work

Shoreline structures that function as groynes can have serious impacts including accumulation of weeds, debris, and deposition of littoral material on the updrift side, as well as accelerated erosion in downdrift areas. Groynes also have navigation and environmental impacts. Because of these impacts and potential liability to the Crown, new groynes should be discouraged in preliminary discussions with an applicant. Applications for new groynes and other structures that extend out into the water should not be approved unless they are supported by detailed investigations by a coastal engineer according to site specific Terms of Reference provided by Engineering Services. This information should be forwarded to Engineering Services for review and approval. Refusals and appeals should be in accordance with Regulation 975, 1990. Navigational issues may require approval from the Canadian Coast Guard, part of Fisheries and Oceans Canada.

In addition, written comments are required from updrift and downdrift riparian landowners for a distance of 150 meters or 10 times the projection of the groyne into the lake, whichever is greater. The exception to this would be where the groyne will be situated between two existing groynes in which case only those landowners between the existing groynes need be contacted (provided the projection of the new groyne is equal to or less than the existing groyne).

Maintenance, Repair or Replacement Work

Maintenance, repair or replacement of existing erosion control structures (e.g. groynes, breakwalls), can proceed without a work permit from MNR provided that that rules in O. Reg. 239/13 are followed, including the requirement to register with the Ministry.

3.8 Proposed Work Affecting Shore Processes (cont'd)

Similarly, a municipality may take responsibility for co-ordinating the application for installation of and control of the proposed works. In these situations consideration should be given to having the municipality enter into a Beach Management Agreement with MNR (see Policy LM 8.07.01 Beach Management Agreements) or other land use occupational authority as appropriate;

When the issuance of land use occupational authority to any proposed works is being considered, refer to Policy PL 4.10.01 Water Lot Disposition.

3.9 Posting of Work Permits on the Environmental Bill of Rights Environmental Registry

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Applications for work permits that apply to private shore lands or Crown land and that could affect a Crown resource are considered “undertakings” under the *Class Environmental Assessment for MNR Resource Stewardship and Facility Development Projects*.

However, Section 32 of the Environmental Bill of Rights (EBR) states that if the permit being issued is a step towards implementing a project approved under the *Environmental Assessment Act* (e.g. through one of MNR’s exemption orders) then the activity does not need to be posted on the Environmental Registry. Since issuance of a work permit follows the *Class EA*, work permits applications are not required to be posted on the Environmental Registry.

This policy does not apply to work permits for work on private land issued under the authority of Section 13 of the Public Lands Act (Restricted Area Orders). For Sec.13 work permit posting requirements, refer to the regulation made under the Environmental Bill of Rights.

3.10 The Crown’s Duty to Consult

The Crown has a duty to consult, and if appropriate accommodate, Aboriginal communities where it is contemplating issuing a permit or authorization that has the potential to adversely impact on asserted or established Aboriginal or treaty rights. MNR must be satisfied that the duty to consult, and if appropriate, accommodate has been met before issuing a work permit.

3.11 Work Permit Application Refusals

Regulation 975 states that an officer shall issue a work permit to any person who applies therefor, unless the officer is of the opinion that the work will be inconsistent with one of the criteria listed in subsection 2(1) of Regulation 975.

One of the criteria by which a work permit may be refused, is if the activity is inconsistent and does not conform to a policy or procedure of the Ministry of Natural Resources (subparagraph 2(1)(b)(iv),) of Regulation 975.

3.11 Work Permit Application Refusals (cont’d)

In this policy, an officer may refuse to issue a work permit if, in the officer’s opinion:

- 1) the applicant is not an eligible applicant (see section 3.2);
- 2) the application, including maps, sketches or plans are of such poor quality that they do not provide sufficient information to locate the work site or to determine details of the work to be done;
- 3) the proposed work will result in a significant, unwanted change in access patterns over public land, such as the creation of access to a previously inaccessible area;
- 4) the proposed work will impact negatively on existing or potential public use of the work site or adjacent area;
- 5) the proposed work will be on public land and does not meet the criteria outlined in the Free Use Policy PL 3.03.01, resulting in a requirement for land use occupational authority which the applicant refuses to obtain, or MNR is not prepared to issue;
- 6) the proposed work will be on public land and the applicant is in arrears with respect to any rent or fee related to the occupation of any public lands under the PLA;

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- 7) the proposed work is inconsistent with the goals of a provincial policy statement issued under the *Planning Act*;
- 8) the proposed work is contrary to the public interest and/or may result in liability to the Provincial Crown.
- 9) the proposed work is inconsistent with the protection provided for existing Aboriginal or treaty rights.

4.0 Background

In 1988 the *Public Lands Act* (PLA) was amended. Included in those amendments was the introduction of work permit requirements on public and shore lands. These requirements became Section 14. Section 14 was enacted to enable better regulation of specified activities occurring on public land and to protect public land from being adversely impacted by activities undertaken on adjacent, privately owned shore lands (e.g. the obliteration of natural evidence of the common boundary between public and private land by filling or dredging projects occurring on land covered or seasonally inundated by water).

In 1996, Bill 26 (*Savings and Restructuring Act*) amended the PLA by repealing and replacing Section 14 to allow the Lieutenant Governor in Council to make regulations that prohibit certain activities from occurring on public land and shore lands unless the activity is carried out in accordance with a work permit. This amendment was proclaimed on October 4, 1996, after O. Reg. 453/96 was approved and filed on October 3, 1996. This regulation was later amended by O. Reg. 335/00. In 2013, O. Reg. 453/96 was revoked and replaced with O. Reg. 239/13 “Activities on Public Lands and Shore Lands – Work Permits and Exemptions”, effective January 1, 2014. The new regulation exempted some activities from requiring a work permit, provided that rules detailed in the regulation were followed. For some of these activities that no longer required a work permit, registration with the Ministry is required.

Paragraphs 2(1) 1 to 6 of O. Reg. 239/13, requires that specified activities on public land or shore lands be carried out only in accordance with a work permit. Section 14 of the PLA provides the statutory basis for the regulation and the means by which compliance with the regulation can be achieved through enforcement.

This policy applies provincially to the administration of work permits under Section 14 of the PLA; Regulation 975; and O. Reg. 239/13, all of which should be used as reference when implementing this policy.

This policy does not apply to permits or approvals required under other legislation (e.g. *Lakes and Rivers Improvement Act*), or to a permit required under Section 13 of the PLA (for restricted areas).

5.0 Definitions

In this policy and accompanying procedure,

“contiguous” means touching, adjoining or in contact with;

"direct benefit" means a benefit to the public interest, a private property interest or an interest in a licence, permit or other authority issued by the Crown;

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“erosion control structure” refers to filling of Crown land or shore lands through the construction of a breakwall, revetment, groyne, or other shoreline protection work.

“freshet” means the sudden rise in the level of a water body as a result of snow/ice melt, heavy rain or wind. Duration of high water level is usually short term and the level recedes quickly;

“groyne” means a rigid structure built out from a shore to protect the shore from erosion, to trap sand, or to direct a current for scouring a channel;

“[Lake Simcoe Watershed Boundary](#)” means the boundaries of the Lake Simcoe watershed as described in subsection 2 (1) of O. Reg.219/09 (General) made under the *Lake Simcoe Protection Act, 2008*.

“land use occupational authority” includes a lease, licence of occupation, land use permit, beach management agreement, and easement, but excludes a work permit;

“mechanical removal (vegetation removal)” includes removal by mechanical means such as with a rake, cutter-bar device or mechanical harvester, but does not include dredging.

"officer" means an officer appointed under subsection 5(1) of the *Public Lands Act*;

"ordinary high water mark" means the mark made by the action of water under natural conditions on the shore or bank of a body of water which action is so common and usual and so long continued that it has created a difference between the character of the vegetation or soil on one side of the mark and the character of the vegetation or soil on the other side of the mark;

"proposed work" means an activity identified in subsection 2(1) of O. Reg. 239/13, that is the subject of an application for work permit;

“public interest” means a paramount value, goal or objective supported or promoted by the Ontario;

"public land" means land under the control and management of the Minister of Natural Resources;

"Regulation 975" means R.R.O. 1990, Regulation 975, as amended ;

“seasonally inundated” means a dry area that has been covered by water (excluding periods of freshet) during the preceding 12 month period or, for regulated bodies of water, a dry area that is below the maximum regulated water level;

“shore lands” means shore lands as defined in section 1. of O. Reg. 239/13 (see also section 5.4 of this policy);

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“unpatented”, when referring to land or mining rights, means land or mining rights for which a patent, lease, licence of occupation or any other form of Crown grant is not in effect; and

"work permit" means a work permit issued under the Public Lands Act, O. Reg. 239/13 and excludes any other approval

6.0 References

6.1 Legislation

- *Crown Forest Sustainability Act, 1994*, S.O. 1994, c. 25
- *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31
- *Mining Act*, R.S.O. 1990, c. M.14
- *Public Lands Act*, R.S.O. 1990 c. P.43, sections 5 and 140
 - Regulation 975, as amended
 - O. Reg. 349/98
 - O. Reg. 239/13
 - O. Reg. 326/94

6.2 Policy Directives

- PL 2.02.02 Ownership Determination – Beds of Navigable Waters
- PL 3.03.01 Free Use Policy
- PL 3.03.04 Work Permits – Section 14 Public Lands Act Procedure
- PL 3.03.02 Unauthorized Occupations of Public Land Policy and Procedure
- PL 4.02.01 Application Review and Land Disposition Process Policy and Procedure
- PL 4.10.01 Water Lot Disposition Policy and Procedure
- LM 8.07.01 Beach Management Agreements Policy and Procedure
- PL 9.02.01 Appointment of Public Lands Officers Policy and Procedure
- PL 9.02.02 Entry Onto Private Land Policy and Procedure
- PL 9.03.01 Stop Work Orders Policy and Procedure
- PL 9.03.02 Court Orders for Removal and/or Restoration Policy and Procedure

6.3 Case Law

- *R v Lord* (1864), 1 PEI 245.
- *County of York v Rolls* (1900), 27 OAR 72 (CA).
- *Lorraine v Norrie* (1912), 46 NSR 177.
- *Gerrard v Crowe* (1920), [1921] 1 AC 395 (UKPC).
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- *Attorney General of British Columbia v Neilson*, [1956] SCR 819, 5 DLR (2d) 449, Rand J.
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6.4 Literature Review

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