

Subject <b>Waterfront Boundaries for Grants of Public (Crown) Lands</b>		Policy <b>PL 2.06.03</b>	
Compiled by - Branch Lands & Waters	Section Land Management	Date Issued January 22, 2001	
Replaces Directive Title Same	Number Same	Dated June 1, 1998	Page 1 of 3

## 1.0 **DEFINITIONS**

In this policy,

“flood contour elevation” means the highest contour of elevation to which a body of water can legally be flooded;

“highest regulated water level” means the highest contour of elevation to which the water level can be held by artificial means;

“maximum normal operating level” means the highest contour of elevation to which the water level is generally held or planned to be held, by artificial means, notwithstanding that a right to flood to a higher elevation may exist;

“natural hazard” means naturally occurring physical and ecological processes such as flooding, erosion, dynamic beaches, unstable soils and unstable bedrock.

## 2.0 **BACKGROUND**

In 1980, the Ministry adopted the practice of utilizing a straight line survey approximating as closely as practical the high water mark or the regulated water level on the dry side when disposing of road allowances, Crown shoreline reserves and other waterfront lands. This practice resulted in the retention of a narrow strip of public (Crown) land between the granted (private) property and the high water mark, regulated water level or flood contour elevation. In 1998 the Ministry ceased this practice.

## 3.0 **PROGRAM DIRECTION**

### 3.1 **Application**

This policy applies provincially to the disposition of all ungranted waterfront public lands.

### 3.2 **Guiding Principle**

Waterfront boundaries in the disposition of road allowances, Crown shoreline reserves or other waterfront properties will generally be along the water’s edge, highest regulated water level or flood contour elevation. Straight line frontage will generally not be used when disposing of waterfront lands.

### 3.3 **Objectives and Strategies**

- A) To generally create waterfront boundaries that are the water’s edge on unregulated water bodies, or the highest regulated level on regulated water bodies, unless special circumstances exist that warrant the use of straight line frontage.

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Special Circumstances may require the use of straight line frontage. For example, where a disposition would be in violation of Section 3, PLA (i.e. a requirement to retain a depth of shoreline for recreation and access purposes; refer to PL 3.02.01 - Shoreline Reservations for Recreation and Access - Section 3, PLA), or where natural hazards preclude a sale to the water's edge.

The Instructions Governing Ontario Crown Land Surveys and Plans, 1998, issued by the Surveyor General, instruct surveyors how to carry out surveys of shoreline boundaries on public (Crown) land.

**B)** To recognize existing or planned flooding rights when contemplating waterfront grants.

If there are existing or planned rights to flood on a regulated or unregulated water body, waterfront boundaries may be:

- the flood contour elevation;
- the water's edge of the unregulated water body, with a reservation to flood to the flood contour elevation; or
- the highest regulated level on the regulated water body, with a reservation to flood to the flood contour elevation.

In accordance with section 2.5.2 (Shoreline Boundaries) of Instructions Governing Crown Land Surveys and Plans, 1998, the applicant's surveyor is to consult with the MNR district/area office to determine its requirements with respect to surveying to the water's edge, (highest) regulated (water) level, flood contour (elevation) or straight line frontage. In determining district/area requirements, the Area Supervisor shall ensure regard is had to this policy.

The determination of the boundary in the case of existing or planned flooding rights will consider historical local practice and the existing or planned maximum normal operating level. If the maximum normal operating level is close to the flooding contour elevation, the boundary should be the flood contour elevation. If there is a substantial difference between the flood contour elevation and the highest normal operating level, consideration may be given to locating the boundary at the maximum operating level and reserving a right to flood to the flood contour elevation.

When disposing of land where a flooding right exists within the parcel (i.e. when disposing of land using existing survey, such as a lot on the original township plan (flooding rights to the appropriate level should be reserved, consistent with historical practice.

**C)** To rebut the presumption of "ad medium filum aquae", if the water body adjacent to the riparian lands is thought to be non-navigable and MNR wishes to retain the land under water.

Where a parcel of land abuts a non-navigable water body, the English Common Law doctrine of "ad medium filum aquae" may extend the ownership to the middle thread of the water body. Therefore, if a property is bounded by a non-navigable water body, consideration should be given to including a statement in the legal description which will expressly exclude the bed of the water body. This may be achieved by the Area Supervisor requesting Crown Land Surveys to include a statement in the legal description that reads "For greater certainty, the lands described herein exclude the bed of (name of bounding water body)".

It is not necessary to rebut the "ad medium filum aquae" rule on navigable water bodies because the English Common Law doctrine has been abrogated by the Beds of Navigable Waters Act.

- D)** To instruct the applicant to have the waterfront boundary surveyed as straight line frontage, if special and unique circumstances (e.g. natural hazards, refer to PL 4.0201 - Application Review and Land Disposition Process) warrant the creation of a boundary that is not consistent with this policy.

Where special circumstances dictate the establishment of a waterfront boundary inconsistent with this policy, the applicant should be instructed to have his/her surveyor prepare a survey and plan in accordance with the straight line frontage provisions contained in Instructions Governing Ontario Crown Land Surveys and Plans, 1998.

#### **4.0**      **REFERENCES**

##### **4.1**      **Literature Review**

- Instructions Governing Ontario Crown Land Surveys and Plans, the Surveyor General for Ontario, Ministry of Natural Resources, 1998.
- Road Allowances and Crown Shoreline Reserves - Disposition, Public Lands Directive PL 4.11.03
- Water Law in Canada, Gerrard V La Forest, Q.C., and Associates, Information Canada, 1973

##### **4.2**      **Directive Cross References**

- PL 2.02.02 (POL) - Ownership Determinations - Beds of Navigable Waters Act
- PL 3.02.01 (POL) - Shoreline Reservations for Recreation and Access - Section 3 PLA
- PL 4.02.01 (P&P) - Application Review and Land Disposition Process
- PL 4.11.03 (POL) - Road Allowances and Crown Shoreline Reserves - Disposition