

Subject <b>FREE USE POLICY</b>		Policy <b>PL 3.03.01</b>	
Compiled by - Branch <b>Lands &amp; Waters</b>	Section <b>Land Management</b>	Date Issued <b>September 20, 2004</b>	
Replaces Directive Title <b>Same title</b>	Number <b>Same number</b>	Dated <b>September 5, 2003</b>	Page <b>1 of 12</b>

## 1.0 Definitions

In this policy,

“camping” means the temporary occupation of Crown land using a camping unit, but does not include commercial tourism occupations;

“camping unit” means equipment used for the purpose of outdoor accommodation and includes a tent, trailer, tent-trailer, recreational vehicle, camper-back and any watercraft equipped for overnight accommodation;

“commercial tourism non-revenue producing water lot” means a water lot from which a commercial tourism operation (i.e. outpost camp, lodge, campground, store) derives little or no direct income;

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

“motorized off road vehicle event” an organized event which brings together a group of motorized vehicles(i.e. 4X4’s, ATV’s) for off road use;

“permission” means a work permit, letter of authority or other agreements (e.g. boat cache agreement);

“posted” means the placement of signs under subsection 28(1) of the Public Lands Act to prohibit, control, or govern the possession, occupation or any use or uses, or parking of vehicles on public lands;

“private uses” means structures and activities normally associated with a single private recreational or residential property;

“public lands” means lands under the control and management of the Ministry of Natural Resources, but excludes provincial parks and lands where land use occupational authority has been granted;

“site” means a location used for recreational camping, and may be referred to locally as an access point or campground;

“vessel” means watercraft (e.g. sailboat, cabin cruiser, fishing boat, houseboat) designed for navigation.

## 2.0 Introduction

The public (refer to Section 3.4.1 - Aboriginal and Treaty Rights) has no legal “right” to occupy public land (e.g. camp on public land). In fact, subsections 26(1) and 27(1) of the Public Lands Act (PLA) make it an offence to take possession of public lands without lawful authority or to place any material, substance or thing on public lands without written consent. However, notwithstanding that it is an offence under the PLA to place anything on public lands without authority, administrative discretion is to be exercised to allow certain activities in accordance with this policy.

This policy identifies activities or uses of public lands under the control of the Province of Ontario which do not require land use occupational authority, permission<sup>1</sup>, or the payment of a fee under the PLA or the Regulations made thereunder. Consistent with this policy, permitted free uses constitute written consent under subsection 27(1), PLA where applicable. This consent carries with it the implicit responsibility of all users of public land to undertake their activities in an ecologically sound and socially responsible manner, accepting the risks associated with such activities. Some free uses (e.g. public right of navigation) are by virtue of the provisions of other legislation or rights as noted in this policy.

### **3.0 Program Direction**

#### **3.1 Application**

Except as expressly provided herein, this policy applies provincially to the free use of Ontario's public lands by residents and non-residents of Canada.

#### **3.2 Guiding Principles**

It is an offence to enter into possession of public lands without lawful authority or to place any material, substance or thing upon public lands without written consent or other lawful authority.

The free temporary use of Ontario's public lands is a privilege which may be controlled to a greater or lesser extent, from place to place, and from time to time, depending on what is perceived by the Area Supervisor to be in the broad public interest. To ensure effective stewardship of public lands controls in the form of access restrictions by posting or gates, or as directed in land use plans (e.g. District Land Use Guidelines, Ontario's Living Legacy Land Use Strategy) may be used to define and perhaps limit public use.

The provisions of this policy do not apply to property abandoned on Crown land, as per Section 27.1 of the PLA.

#### **3.3 Goal**

To ensure the continuing availability of ecologically sustainable outdoor recreational opportunities and limited free uses of public land consistent with this policy.

### **3.4 Policy Objectives and Authorized Uses**

#### **3.4.1 Aboriginal and Treaty Rights**

To ensure aboriginal and treaty rights related to the use of provincial Crown land are respected.

Many aboriginal communities have aboriginal and treaty rights that may be exercised on public land. Members of such communities may have rights to hunt, fish or carry out other activities on public land depending on traditional practices and the terms of treaties that they have entered into

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<sup>1</sup>The Free Use Policy does not negate the work permit requirement for specific activities (e.g. road construction). Refer to Policy PL 3.03.04 - Public Lands Act Work Permits (Section 14).

with the Crown.

### 3.4.2 Transient Activities

To facilitate transient visitation and travel on Ontario's public lands, subject to the exceptions contained in Section 3.4.5 of this policy.

Subject to the exceptions contained in Section 3.4.5 of this policy, any person may freely travel about on public lands (including public lands under water) for transient activities such as hiking, boating, canoeing, cross country skiing, water skiing, swimming, the operation of off-road vehicles (e.g. snowmobiles and all terrain vehicles), bird watching, horse-back riding, non-regulated resource harvesting (e.g. berries, mushrooms, spruce boughs and other non-timber forest resources that are not regulated under the Crown Forest Sustainability Act) as well as hunting and fishing in accordance with the game and fish laws and applicable municipal bylaws and other legislation (e.g. Off Road Vehicles Act, Motorized Snow Vehicles Act).

Car rallies and motorized off road vehicle events (i.e. 4X4 trucks, ATV's) on Crown land access roads and/or trails require written authorization from the Area Supervisor. Authorization will normally be in the form of an agreement signed by both parties. Note: This agreement is considered a "disposition of rights to Crown resources" for which MNR is subject to the requirements of the Class EA for MNR Resource Stewardship and Facility Development (Class EA-RSFD). Refer to Section RA 2-14 of the Access Roads Manual and the Land Management Intranet Site for additional direction and generic agreements.

### 3.4.3 Recreational Camping on Public Land

Subject to section 3.4.5 "Exceptions to Free Use", the provisions of Ontario Regulation 326/94, Crown Land Camping Permit and the following requirements, any person may camp and/or leave camping equipment for recreational purposes on any public lands in Ontario without the requirement for land use occupational authority, permission or the payment of a fee,:

- > an individual site may only be occupied for a maximum of 21 days in a calendar year
- > the person and the camping unit must move a minimum of 100 metres to a new site after 21 days
- > unless otherwise posted. <sup>2</sup>

### 3.4.4 Other Free Uses

To identify those uses in column B of Table A that, subject to section 3.4.5 "Exceptions to Free Use", may occur without the payment of a fee or the requirement for land use occupational authority. The activity categories in Column A are provided as a finding aid only for the permitted activities.

**NOTE: The activities listed in Table A may be subject to other approval requirements/permission (e.g. Public Lands Act Work Permits) .**

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<sup>2</sup> If the demand for Crown land camping sites is high and the availability of locations is at a premium, the 21 day period for single locations may be reduced by the Area Supervisor. In fairness to the many campers who have become accustomed to 21 day stays, it is important that, where a shorter period will be imposed, the camping area be clearly posted to that effect.

**TABLE A - FREE USES OF PUBLIC LANDS**

COLUMN A ACTIVITY CATEGORY	COLUMN B PERMITTED USES/LIMITATIONS
Forest Industry	<ul style="list-style-type: none"> <li>• Transitory occupation by equipment such as mobile slashers and chippers, mobile harvesting equipment and supporting <u>mobile</u> accommodation trailers (e.g. individual recreational trailers or similar mobile structures), etc. that are directly involved in and move with an active forest harvesting and management operation. Excluding locations extensively used by the transient public (e.g. public camping areas and access points).</li> <li>• Gates approved and located as per the road use strategy in an approved Forest Management Plan.<sup>3</sup></li> </ul>
Buildings constructed and used consistent with R. v Sundown decision.	<ul style="list-style-type: none"> <li>• The Ministry of Natural Resources recognizes that an aboriginal person may require a building/cabin if the building/cabin is reasonably incidental to the exercise of an aboriginal or treaty right.</li> <li>• Refer to the Incidental Buildings on Crown Land Policy – PL 3.03.07 for detailed background and direction.</li> </ul>
Mining Activities	<ul style="list-style-type: none"> <li>• Buildings constructed/placed on an unpatented mining claim used by the holder of the claim (as allowed under the Mining Act, subsection 50(2)). Land use occupational authority is required for buildings constructed within shoreline reserves (i.e. maximum 400 feet) of a unpatented mining claim where the surface rights have been reserved to the Crown.</li> <li>• Camping on Crown land while undertaking mineral exploration activities as allowed under subsection 50(2) of the Mining Act. Camping is limited to 21 days per year or as otherwise posted in areas extensively used by the transient public (e.g. campgrounds, public access points). Approval from the Area Supervisor may be obtained to camp beyond 21 days at such locations. Refer to section 3.4.3 of this policy.</li> </ul>
Navigational Uses	<ul style="list-style-type: none"> <li>• Activities enjoyed while <u>travelling</u> on navigable waterways as provided for under the public right of navigation which includes the right of reasonable moorage. As a guideline, the following may be interpreted as reasonable moorage:</li> </ul>
Navigational Uses (continued)	<ol style="list-style-type: none"> <li>a) vessel mooring over the Crown bed of a navigable waterway for a period not to exceed 21 days (at the discretion of the Area Supervisor based on local circumstances) except b);</li> <li>b) unlimited vessel mooring over the Crown owned bed of a</li> </ol>

<sup>3</sup> Note: Access beyond such gates may be permitted for activities authorized by the Crown (e.g. mineral exploration, trapping) subject to MNR approval.

navigable waterway by the owner of adjacent waterfront property, or property fronted by a road allowance or Crown reserve (Note: This right does not extend to floating cottages, residences, etc. unless the operator is exercising the right of reasonable moorage while travelling);

- c) any mooring in addition to items a or b above required due to weather, mechanical or life threatening emergency only, length of time determined by circumstance.
- Water-ski slalom courses. Applies to the placement of buoys and other related improvements (e.g. ski jump platforms) over and/or anchored to a Crown lakebed. Note: the operation of water-ski slalom courses is subject to the Navigable Waters Protection Act and the Boating Restriction Regulations.
  - Navigational buoys on public land under water to mark submerged boating hazards (as allowed under the Canada Shipping Act).
  - The installation of mooring blocks (e.g. mooring blocks placed to protect marine heritage resources from being damaged by indiscriminant anchoring) and buoys for public or private use, where the associated mooring will be consistent with the principle of reasonable moorage under the public right of navigation.

#### Wild Rice Harvesting

Authorized buildings used by the holder of a licence during the harvest of wild rice on Crown land.

#### Commercial Bait Harvesting

Camping by a licensed bait harvester and or his/her designate within or adjacent to (i.e. where access to block is limited) a bait harvest block in support of active bait harvesting operations (as per a Commercial Bait Licence and the Commercial Bait Industry Licence Issuing Guidelines). Excluding locations extensively used by the transient public (e.g. public camping areas and access points).

#### Hunting

- Bear baiting stations established for licenced bear hunting.
- Tree stands during licenced hunting season (e.g. bear, deer).

#### Ice Fishing

Ice fishing huts located over the Crown owned lake or river bed. The present day legal opinion, based on case law, is that the occupation of the surface of a waterway by ice fishing huts can not be regulated under the Public Lands Act, unless it can be demonstrated that said occupation interferes with the use of the Crown bed.

- Roads Roads open to public travel, including public parking areas and associated signs. Refer to section 3.4.2. & 3.4.5. for exceptions. Refer to Section RA 2-14 of the Access Roads Manual for car rally proposals.
- Trapping Authorized buildings on public lands in accordance with Policy Directive PL 3.03.06 - Trapline Buildings on Public Lands.
- Trails
- Trails which are open to public travel, notwithstanding the provisions of the Motorized Snow Vehicles Act. Refer to section 3.4.2 & 3.4.5 for exceptions.
  - Shelters established and maintained by organized groups, along recreational trails, which are designed for day use and/or emergency shelter, and are open to use by all trail users.
- Waterfront and Waterway Uses
- Boat mooring buoys, positioned in front of the owner's property, which are for private use.
  - Caching a non-commercial boat, canoe, etc. on public land adjacent to public waterways, except on a public road, trail, access point or portage. Authorization is required to cache all boats in that portion of the NW Region that is subject to the boat cache program.
  - Docks, breakwalls\erosion control structures with only minor<sup>4</sup> backfill, single storey boathouses provided they are used strictly for private use or commercial tourism non-revenue producing purposes and are in substantial compliance with the following:
    - a) are mutually considered to be a necessary adjunct to the use and enjoyment of the adjoining upland property;
    - b) are situate directly in front of the owner's/occupier's dry upland parcel or a road allowance or Crown shoreline reserve abutting the dry upland parcel (generally between the projected lot lines) and do not interfere with neighbour's use and enjoyment of their waterfront property (e.g. blocking view of lake),
    - c) have been approved or exempted by Canadian Coast Guard under the Navigable Waters Protection Act, if applicable,
    - d) in the case of a boathouse, it is used only for the storage and docking of boats. Refer to Appendix 1 for examples of multi-use structures combining free use and that which requires land use occupational authority.
    - e) have complied with applicable permitting requirements.

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<sup>4</sup> Minor backfill is defined as fill that generally follows the contour of the existing shoreline and does not create dry land at the expense of the Crown lake/river bed.

Waterfront and water way uses  
(cont'd)

- Swimming rafts seasonally occupying Crown lands that are located directly in front of the owner's property
- Thermal lake loops (heat loops) located in front of the owner's property.
- Water crossings (e.g. bridges, culverts). Refer to section 3.4.5. for exceptions.
- Water intakes, positioned in front of the owner's lawfully occupied land, used only for individual household or cottage use.

### **3.4.5 Exceptions to Free Uses**

The exceptions are:

- a) public lands on which land use occupational authority has been granted;
- b) public lands which are posted or otherwise marked to prohibit all or some activities;
- c) road and trails which are under land use occupational authority (these groups may allow public use, possibly subject to the payment of a user fee);
- d) water crossings where the bed of the watercourse is Crown but the abutting uplands are private land;
- e) a Restricted Travel Zone declared under the Forest Fires Prevention Act.

### **3.4.6 Authorization of Free Use Activities**

Although not required, land use occupational authority may be granted to an occupant who seeks land use occupational authority for the occupied area. Such authority should only be granted and the required fee assessed if, in the opinion of the District Manager, the granting of such authority is not detrimental to the public interest.

Land use occupational authority that grants exclusive use of roads or trails on public land should generally not be granted unless the roads and trails are not accessible to the public. This will ensure that most roads and trails are available for public use. Refer to Policy LM 7.01.06 - Authorization of Recreational Trails on Crown Land regarding situations where control over roads or trails may be granted. Refer to section RA1-5 of the Access Roads Manual when considering the issuance of land use occupational authority.

## **4.0 References**

Access Roads Manual, 1992

#### 4.1 **Legal References**

Forest Fires Prevention Act, RSO 1990  
Mining Act 50(2), RSO 1990  
Public Lands Act, Subsections 26 (1), 27 (1), and 28 (1), RSO 1990  
Canada Shipping Act  
Navigable Waters Protection Act  
Motorized Snow Vehicles Act, RSO 1990  
Off Road Vehicles Act, RSO 1990  
R. v Sundown, March 1999

#### 4.2 **Directives Cross References**

- PL 3.03.06 (POL) Trapline Buildings on Public Lands
- PL 3.03.04 (P&P) Public Lands Act Work Permits (Section 14)
- PL 3.03.07 (POL) Non-resident Crown Land Camping - Northern Ontario
- LM 7.01.06 (POL) Authorization of Recreational Trails on Crown Land

## Appendix 1

### ILLUSTRATIONS SHOWING PORTIONS OF BOATHOUSE COMPLEXES THAT REQUIRE LAND USE OCCUPATIONAL AUTHORITY

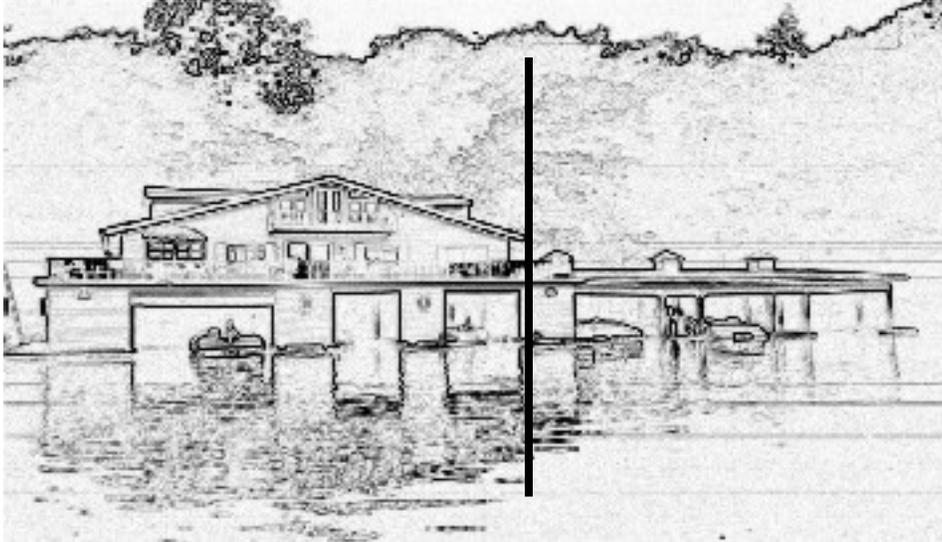


Diagram A

- area on left of dark line requires land use occupational authority
- area on right of dark line is free use as it is used for boat storage and docking only

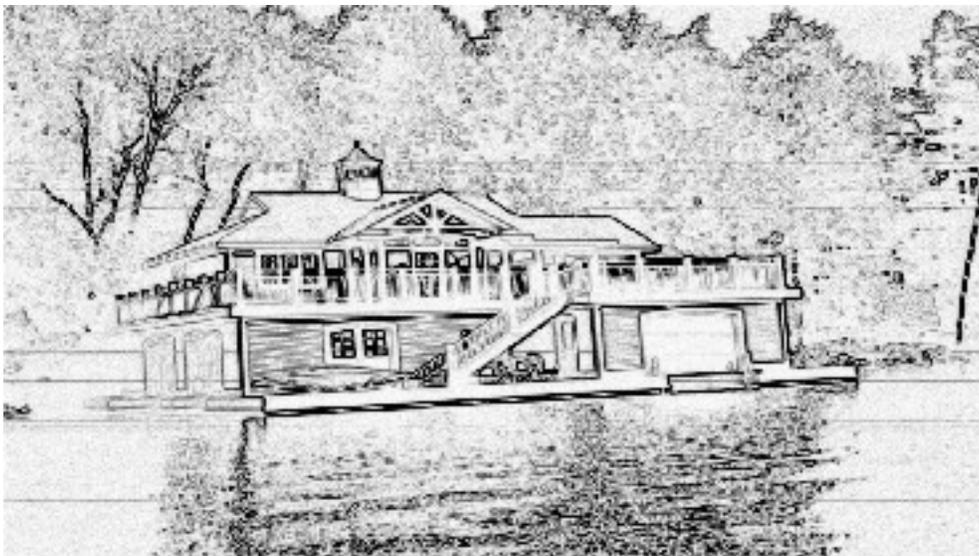


Diagram B

- structure requires land use occupational authority, with the exception of single storey boathouse

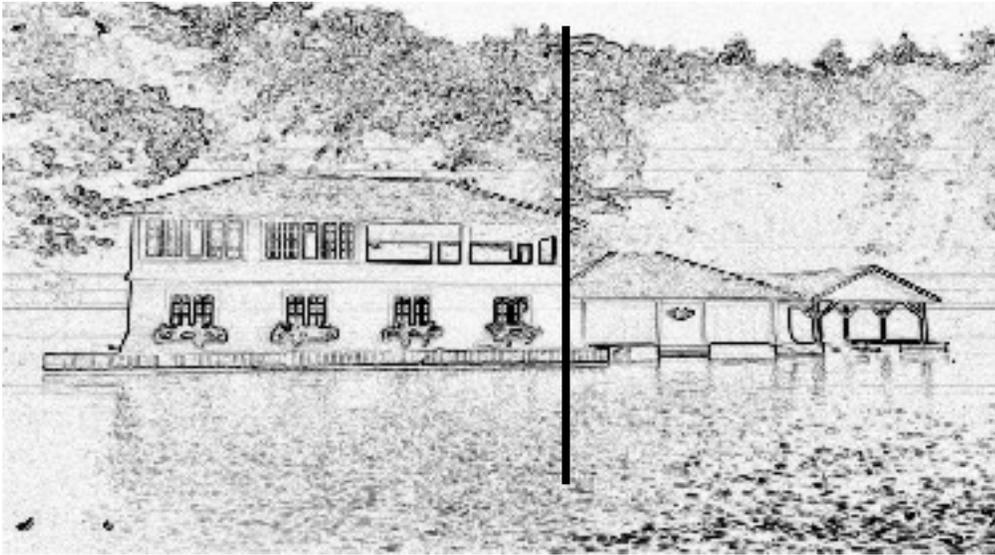


Diagram C

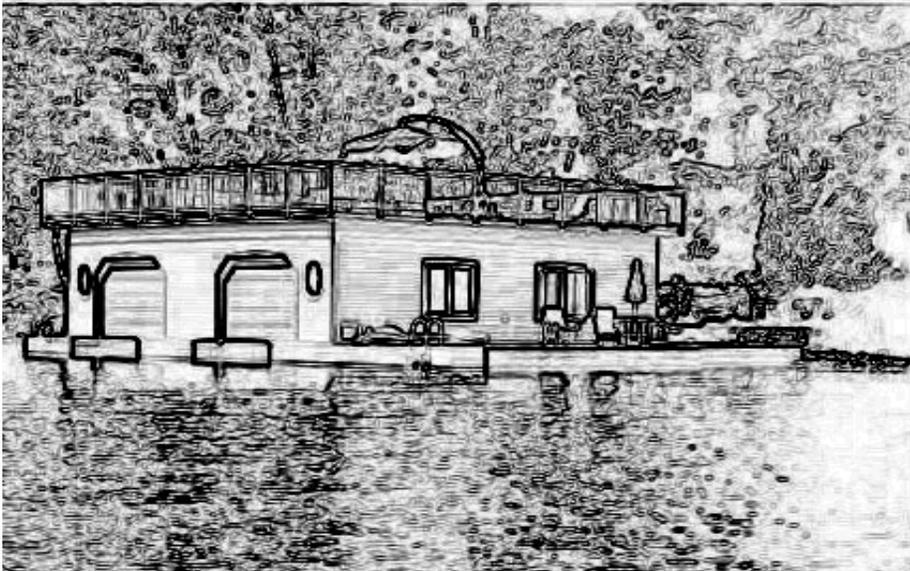
- all of area to left of dark line requires land use occupational authority
- area to right of dark line is free use as it is used for boat storage and docking only



Diagram D

- area to left of dark line requires land use occupational authority
- area to the right is free use as it is used for the storage and docking of boats

Diagram F



- single storey boathouse - free use as it is used for boat storage and docking