

Subject Unauthorized Occupations of Public Land		Policy PL 3.03.02	Page 1 of 5
Compiled by - Branch Lands & Waters	Section Land Management	Date Issued April 5, 2007	
Replaces Directive Title Unauthorized Occupations – Control and Removal	Number Same number	Dated February 11, 1997	

1.0 DEFINITIONS

In this policy and the corresponding procedure:

“abandoned” means deserted, surrendered, forsaken, ceded or discarded;

“court order” means an order made by a judge of the Ontario Court (General Division)

“Minister” means the Ontario Minister of Natural Resources;

“Minister’s Warrant” means an authorization issued by the Minister requiring public lands to be vacated and improvements to be removed, whose authority to issue is delegated to the District Manager;

“personal property” means movable, portable things that are not attached to land;

“possession” means the right of control and disposal of a building or thing, regardless of actual possession, which is obtained:

- a) by a Minister’s Warrant, per section 24(3) of the Public Lands Act, where there is no expectation of privacy
- b) by a court order, per section 24(2) of the Act, where there is an expectation of privacy
- c) by abandonment of personal property, per section 27.1 of the Act

“occupier” means a person or persons who are occupying Crown land and or are the owner of a building, structure or thing that is on Crown land;

“public land” means all lands under the control and management of the Minister of Natural Resources, except Provincial Parks.

“unauthorized occupation” means an occupation of public land by means of a building, structure, thing that is not under lawful authority (e.g. Crown lease or a specific provision of legislation) or for which the Ministry of Natural Resources has not given permission (e.g. Free Use Policy).

2.0 BACKGROUND

The Ministry of Natural Resources (MNR) is responsible for the stewardship and management of public land that make up 87% of the province, as per section 2 of the Public Lands Act. In managing public land in the best interests of the long term needs of the people of Ontario, it is essential to protect the integrity of Crown ownership and provide for the stewardship of public land in order to:

- ensure proper planning and management of Crown resources;
- provide for environmental sustainability and public safety, and
- provide the opportunity for non-tax revenues.

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This responsibility requires that unauthorized occupations of public land be addressed.

3.0 PROGRAM DIRECTION

3.1 Goal

MNR will protect the title integrity of the Crown's ownership and provide for the stewardship of public land through a risk assessment based approach to the prevention, management and resolution of unauthorized occupations

3.2 Objectives

The following objectives support the prevention, management and resolution of unauthorized occupations of public land.

- A) Proactively discourage and prevent unauthorized occupations of public land.

Recognizing that the unauthorized occupation of public land can represent a liability to the Crown and damage the environment and that the resolution of established unauthorized occupations can often result in lengthy, complex administrative and legal proceedings, the Ministry will seek to discourage and prevent additional unauthorized occupations of public land by:

- a. fostering in all public land users a stewardship ethic and an understanding of the need for the necessary approvals from the Ministry to occupy and/or use public lands through Ministry communications and regular contact with stakeholders and the public;
- b. undertaking regular monitoring of public lands by Ministry staff.

- B) Protect the Crown's ownership of public land.

Through extended periods of unauthorized occupation the Crown can lose its title to public land. All right, title and interest of the Crown in public land is extinguished after an individual, through his/her and his/her predecessors have occupied public land continuously, exclusively and openly for a period of 60 years. Under subsection 3(1) of the Real Property Limitations Act the Ministry's right to bring action for the recovery of public land occupied or rent due for 60 years is barred.

Accordingly, the Ministry will undertake lawful action in accordance with this policy to prevent the loss of Crown ownership of public land.

- C) Use a risk based approach to limit environmental and civil risks and liabilities to the Crown.

The unauthorized occupation of public land can result in significant environmental, civil and public safety risks and liabilities to the Crown (e.g. hazardous waste deposition, substandard water crossings, unsafe structures, impacts to other users, etc.)

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The Ministry will focus its efforts on the prevention, management and resolution of those unauthorized occupations that through a risk based assessment approach, pose the highest environmental, civil and public safety risk to the Crown and to other users of public lands.

- D) Recognize aboriginal and treaty rights that may exist, when reviewing and considering potential unauthorized occupations of public land.

Section 35 of the Constitution Act (1982) provides that existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

- E) Recognize an individual's right to privacy under the Canadian Charter of Rights and Freedoms.

Part 1 (Canadian Charter of Rights and Freedoms) of the Constitution Act (1982), considers privacy rights to be of primary importance. Section 8 of the Act states: "Everyone has the right to be secure against unreasonable search or seizure."

Accordingly, a court order must be obtained per section 24(2) of the Public Lands Act, where the resolution of an unauthorized occupation may involve taking possession of a home, cottage, shed, trailer or other structure which a person could be using as a dwelling or have a reasonable expectation of privacy.

- F) Ensure that the Crown obtains possession prior to taking action to authorize, sell, dispose of or destroy any unauthorized building or thing remaining on public lands.

Possession may be obtained through:

- a) written release provided by occupier;
- b) a Minister's warrant per subsection 24(3) of the Public Lands Act;
- c) a court order per subsection 24(2) of the Public Lands Act.

- G) Comply with Ministry's Environmental Assessment Act and land disposition policy provisions and requirements.

Where the resolution of an unauthorized occupation results in a disposition of Crown resources, the disposition review will be undertaken consistent with the Class EA for Resource Stewardship and Facility Development Projects and the Ministry's disposition policies and procedures including PL 4.02.01 – Application Review and Land Disposition Process.

Other methods of resolution such as destruction by burning and demolition are also considered to be projects and are subject to the Class EA for Resource Stewardship and Facility Development Projects.

- H) Resolve unauthorized occupations of public land through a variety of means including: removal, destruction, retention and authorization.

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Section 4.0 – Authority for the Resolution of Unauthorized Occupations provides a list of the Public Lands Act provisions that may be exercised by the Ministry and criteria for determining when each provision may be used.

- I) Ensure a fair return to the Crown for the use of public land, in situations where the unauthorized occupation is to be resolved through disposition and authorization.

In situations where unauthorized occupations will be resolved by authorization such disposition decisions must consider the following:

- a) sale price or rent/fee must be in adherence with PL 6.01.01 – Sale Price Policy and PL 6.01.02 – Crown Land Rental Policy;
- b) back rent shall be charged for a period of occupation to a maximum of 5 years; and
- c) a suit may be initiated to impose a penalty of twice the market value of the land in accordance with subsection 26(1) of the Public Lands Act. If such penalty is obtained, letters patent should be issued to the occupant for an administrative fee per PL 6.02.01 – Administrative Fees for Public Land Transactions.

4.0 AUTHORITY FOR THE RESOLUTION OF UNAUTHORIZED OCCUPATIONS

This policy and its associated procedure will be implemented by the Ministry as per the following Public Lands Act legislative authority:

Where the unauthorized occupation is a work that is subject to the Work Permit, per Section 2(1) of Ontario Regulation 453/96, as amended:

- Section 14(5) – if construction is in progress, obtain a stop work order, to be followed up by authorization, removal, destruction or charges
- Section 14(7) – charge the occupier under subsection 14(4) and seek a court order to dismantle and remove improvements, and rehabilitate the site subject to the limitations period under section 70.2 of the Act;

Where the occupation is to be authorized, the Ministry will use various sections of the Act or Regulation 973 under the Act to authorize occupation by sale/patent, lease, licence of occupation or land use permit. A building or thing may be authorized by any means provided under the Act, provided such authorization, in the District Manager’s opinion, would not be seen as giving preferential treatment to the claimant or encouraging future unauthorized occupations as a means of seeking authority.

Where the Ministry will seek possession by Crown and/or removal, the Ministry will use:

- Section 24(2) or 24(3) to obtain possession of by court order or Minister’s Warrant and dispose of the building or thing; or

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- Section 27.1 to remove and dispose of abandoned personal property; or
- Section 27 to charge the occupier under subsection 27(1) and remove and dispose of material, substance or thing, and recover costs through court (27(2)), subject to section 70.2 of the Act.

If the Ministry does not wish to take possession the Minister may by order declare that a building or thing is not the property of the Crown, per section 25 of the Act.

The Public Lands Act does not apply to lands forfeited under the Business Corporations Act, unless administration and control has been transferred to MNR by the Public Guardian and Trustee or the lands are mining lands. Buildings or things situated on surrendered, cancelled, abandoned, forfeited (under the Business Corporations Act, and per section 2 of the Escheats Act) or terminated mining land tenure, the Ministry of Northern Development and Mines is responsible for the removal of said works from these Crown lands, consistent with the provisions of Section 53(1) Mining Act.

5.0 REFERENCES

5.1 Legal References

- Constitution Act (1982), Part 1 – Canadian Charter of Rights and Freedoms
- Mining Act (RSO 1990) – subsection 53(1)
- Ministry of Natural Resources Act (RSO 1990) – subsection 7(1)
- Public Lands Act (RSO 1990) – sections 14, 24, 25, 26 27, Regulations 973 and 453/96 as amended
- Real Property Limitations Act (RSO 1990) – subsection 3(1)

5.2 Directive Cross References

- PL 3.03.01 Free Use Policy
- PL 3.03.02 Unauthorized Occupations of Public Land Procedure
- PL 3.03.04 Public Lands Act Work Permits (Section 14) Policy and Procedure
- PL 4.02.01 Application Review and Land Disposition Process Policy and Procedure
- PL 6.01.01 Sale Price Policy
- PL 6.01.02 Crown Land Rental Policy
- PL 7.01.02 Forfeiture Acquisitions Policy and Procedure
- PL 9.03.01 Stop Work Orders Policy and Procedure