



Subject <b>Withdrawal and Reopening of Surface and/or Mining Rights - Section 35, Mining Act</b>		Policy <b>PL 3.03.03</b>	
Compiled by - Branch Lands & Waters	Section Land Management	Date Issued February 11, 1997	
Replaces Directive Title Public Land Reserves	Number LM 7.02.01	Dated Nov. 30, 1983	Page 1 of 4

## 1.0 DEFINITIONS

In this policy,

"claim holder" means the holder of an unpatented mining claim, recorded under the Mining Act;

"Mining Recorder" means the local Mining Recorder of the Ministry of Northern Development and Mines;

"withdrawal order" means an order under section 35 of the Mining Act to withdraw from prospecting and staking out, and from sale or lease, any lands, mining rights or surface rights that are the property of the Crown;

"program interests" means any resource interest of the Ministry of Natural Resources, including activities of the Ministry in support of initiatives of the Ontario Government and its ministries;

"reopening order" means an order under section 35 of the Mining Act to reopen for prospecting and staking out and from sale or lease and lands, mining rights or surface rights that have been withdrawn under the Mining Act.

## 2.0 INTRODUCTION

Most dispositions of public lands are within the discretionary control of the Ministry. Public lands are either pre-selected by the Ministry for disposition (e.g. cottage sites); or are selected by the applicant, subject to the approval of the Ministry. As a result, the disposition of public lands is generally within the control of the Ministry. Any refusal to concur to site selection and disposition should of course be based on MNR program interests or other non-arbitrary rationale.

One exception to this are public lands staked as mining claims under the Mining Act that, upon the completion of prescribed assessment work, are eligible for the non-discretionary issuance of a mining lease.

Once a mining claim is staked, as provided by section 51 of the Mining Act, the claim holder has the right prior to any subsequent right to the user of the surface rights for prospecting and the efficient exploration, development and operation of the mines, minerals and mining rights. Therefore, any subsequent disposition of the surface rights under the Public Lands Act, or any subsequent requirement to retain the surface rights for Crown or public use, requires the consent of the claim holder. If the claim holder does not consent, the Minister of Northern Development and Mines may refer the matter to the Mining and Lands Commissioner for a determination.

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Once a staked claim proceeds to lease, the only option to regain the lands for Crown or other public use is through acquisition of the rights of the lessee.

If program interests (e.g. tentative land claim settlements; or the protection of candidate provincial parks, Conservation Reserves, ANSI's, or significant wildlife habitat {e.g. eagle nesting sites}), require that non-discretionary disposition of public lands be precluded, the lands should be withdrawn from staking under clause 35 (1) (a) of the Mining Act. This can usually be achieved by withdrawing the surface rights only. In some situations, it may however be necessary to withdraw both the surface and mining rights or, in isolated cases, the mining rights only.

These requests should be used only where necessary for essential areas so as not to unduly interfere with legitimate mineral exploration activities.

If an application is received for public lands which are not on a staked mining claim, it is unnecessary to withdraw the lands from staking as the application for public lands disposition will take priority over the subsequent recording of a mining claim in respect of priority to the mining rights, if applicable (authority - clause 30 (b), Mining Act). However, in accordance with Policy Directive PL 4.02.01 entitled "Application Review and Land Disposition Process" the Mining Recorder should be advised of the pending disposition as soon as possible. This will allow the Mining Recorder to note the disposition on the appropriate G-Plan so that the exploration community is made aware of values that may warrant protection thus avoiding potential conflicts/compensation in the future.

It is also unnecessary to withdraw lands for forest management purposes as all timber and trees along with the right to enter the lands, to cut and remove timber and trees, and to make necessary roads for those purposes are reserved to the Crown in Mining Act dispositions (subsection 92 (1), Mining Act). It should be noted, however, that the claim holder has certain rights with respect to the use of trees as specified in section 92 of the Mining Act.

Withdrawal orders pertain only to Mining Act disposition of the lands involved and do not prevent dispositions under the Public Lands Act or the issuance of aggregate permits under the Aggregate Resources Act. If a disposition under the Public Lands Act or the Aggregate Resources Act is not inconsistent with the purposes for which the withdrawal was made, that disposition may occur without the necessity of reopening the lands under the Mining Act. To preclude program interests from being impacted through other unwanted dispositions (i.e., under the Public Lands Act), control maps should be updated to identify the program interests.

The creation of a withdrawal order does not extinguish any previous dispositions made under the Public Lands Act or the Mining Act.

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### **3.0 PROGRAM DIRECTION**

#### **3.1 Application**

This policy applies provincially to the withdrawal and reopening of surface and/or mining rights under the Mining Act.

#### **3.2 Guiding Principles**

Withdrawal of surface and/or mining rights is required to preclude the non-discretionary disposition of public lands.

#### **3.3 Goal**

To protect program objectives from being interfered with by unwanted dispositions under the Mining Act, through the orderly withdrawal of surface and/or mining rights under the Mining Act, and to ensure that such withdrawals are rescinded when no longer required.

#### **3.4 Objectives and Strategies**

- A) To attempt to ensure that program interests are not compromised through the non-discretionary disposition of mining lands.

This will be achieved by empowering Area Teams to pursue withdrawals of surface and/or mineral rights where required. Withdrawal of surface and/or mining rights will protect program interests from being compromised by a third party obtaining any rights through staking (i.e., the disposition of rights to mining lands, including the first right of refusal to the surface rights).

Withdrawal orders will be processed in accordance with Procedure Directive PL 3.03.03 entitled "Withdrawal and Reopening of Surface and/or Mining Rights - Section 35, Mining Act".

The final decision as to whether or not a withdrawal order is approved rests with Senior Management of the Ministry of Northern Development and Mines. That decision will be made following consideration of MNDM's Statement of Environmental Values under the Environmental Bill of Rights, a geological review of the proposed withdrawal area and other considerations.

- B) To eliminate unnecessary withdrawal orders.

Area teams should advise the local Mining Recorder as soon as a withdrawal order is no longer required so that a reopening order may be made.

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C) To minimize areas to be withdrawn.

Area teams should ensure that areas to be withdrawn are kept to the minimum necessary to protect program interests. Withdrawals result in avoidance, delays or loss of staking opportunities and hence the loss of mineral development and resulting economic development.

#### **4.0 REFERENCES**

##### **4.1 Legal References**

- Mining Act, Sections 30 (b), 35 (1) (a), 51 and 92

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

- PL 3.03.03 (PRO) Withdrawal and Reopening of Surface and/or Mining Rights - Section 35, Mining Act