



Subject Work Permits – Section 14 Public Lands Act		Policy PL 3.03.04	
Compiled by - Branch Lands & Waters	Section Land Management	Date Issued May 14, 2007	
Replaces Directive Title Same	Number PL 3.03.04	Dated August 13, 2003	Page 1 of 16

1.0 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;

“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;

“instrument” for the purposes of this policy an instrument is defined to be any of the following documents issued under the Public Lands Act: lease, licence of occupation, easement, land use permit, work permit, or an agreement to purchase a summer resort location;

"land claim" means an aboriginal land claim which has been acknowledged by Ontario as having merit and for which Ontario is actively, or intends to actively, negotiate;

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

"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 Ontario Regulation 453/96, as amended, 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;

Policy No. PL 3.03.04 Work Permits – Section 14 Public Lands Act	Date Issued May 14, 2007	Page Page 2 of 16
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1.0 Definitions (cont'd)

"Regulation 975, as amended" means Regulation 975, R.R.O. 1990, as amended by Ontario Regulations 16/93, 336/93, 327/94 and 334/00;

“seasonally inundated” means the area between the high water mark or the flood control elevation and the water’s edge which is covered with water on a regular (within the last 12 months) basis;

“shore lands” means shore lands as defined in section 1. of Ontario Regulation 453/96, as amended (see also section 5.4 of this policy); and

"work permit" means a work permit issued under Ontario Regulation 453/96, as amended, made under the Public Lands Act and excludes any other approval.

2.0 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 Ontario Regulation 453/96 was approved and filed on October 3, 1996. This regulation was later amended by O.Reg. 335/00.

Section 2, Clauses 2(1)(a) to (g) of Ontario Regulation 453/96, as amended, 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, as amended; and Ontario Regulation 453/96, as amended, 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.

Policy No. PL 3.03.04 Work Permits – Section 14 Public Lands Act	Date Issued May 14, 2007	Page Page 3 of 16
--	-----------------------------	----------------------

3.0 Goals and Objectives

3.1 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.

3.2 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 regulatory 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 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 an instrument 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 5.1.1 (5) of this policy.

Policy No. PL 3.03.04 Work Permits – Section 14 Public Lands Act	Date Issued May 14, 2007	Page Page 4 of 16
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3.2 Objectives (cont'd)

- 4) To clarify the criteria for determining when a work permit is or is not required (see section 5.1 of this policy).
- 5) To ensure that consultation is had with First Nations, where applicable concerns exist, such as in a land claim or traditional use area (Section 5.9 and 5.10 (9) of this policy).
- 6) To apply special criteria to the review of work permit applications for activities that may significantly affect shore processes (Section 5.7 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 most cases, considered to be a “disposition” 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) for advice or authorisation for protecting fish habitat (Section 5.6 of this policy).
- 9) To ensure that MNR’s obligations under the *Freedom of Information and Protection of Privacy Act* are considered. For more information, the Regional Information and Privacy Advisor should be consulted.
- 10) To ensure that MNR’s obligations under the Environmental Bill of Rights (EBR) are addressed when reviewing work permit applications (Section 5.8 of this policy).
- 11) To provide the criteria under which work permit applications may be refused pursuant to clause 2(1)(b)(iv) of Regulation 975, as amended (Section 5.10 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.

4.0 Public Lands Officers

4.1 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.

Policy No. PL 3.03.04 Work Permits – Section 14 Public Lands Act	Date Issued May 14, 2007	Page Page 5 of 16
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4.2 Powers and Duties of Officers

Under the PLA and Regulation 975, as amended, officers have the:

- 1) obligation to issue a work permit to any person who applies for one, unless the grounds specified in subsection 2(1) of Regulation 975, as amended, 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);
- 3) obligation to give the applicant for, or holder of, a work permit, an opportunity for a hearing to express their objection to the officer's intent to refuse to issue, or to cancel, a work permit, before doing so (subsection 4(3) Regulation 975);
- 4) obligation to give the applicant for, or holder of, a work permit, an opportunity for a hearing to express their objection to any condition in the permit as being unduly onerous or unnecessary, having regard to the nature or location of the work to be performed (subsection 4(4) Regulation 975);
- 5) 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);
- 6) authority to order an activity described in subsection 2(1) of Regulation 453/96, as amended, 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;
- 7) authority to cancel a work permit (subsection 4(1) Regulation 975, as amended);
- 8) 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).
- 9) 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);
- 10) 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.

5.0 Directions and Strategies

5.1 Determining When a Work Permit is Required

The following activities are subject to PLA work permit requirements (clauses 2(1)(a) to (g) of Ontario Regulation 453/96, as amended) unless one of the exceptions below (5.1.1) applies:

- a) construct or place a building, or cause a building to be constructed or placed, on public land;
- b) construct a trail, water crossing or road, or cause a trail, water crossing or road to be constructed on public land;
- c) dredge shore lands or cause shore lands to be dredged;
- d) fill shore lands or cause shore lands to be filled;
- e) remove aquatic vegetation, or cause aquatic vegetation to be removed from shore lands located in the area set out in Schedule 1;
- f) remove more than 100 square metres of aquatic vegetation annually, or cause more than 100 square metres of aquatic vegetation to be removed annually, from shore lands located in the area set out in Schedule 2;
- g) construct or place a structure or combination of structures, or cause a structure or combination of structures to be constructed or placed, that occupies more than 15 square metres of shore lands.

5.1.1 Exceptions to the Work Permit Requirements Listed Above

The following is the list of exemptions, as provided for in O. Reg. 453/96, as amended, to the above noted 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 ones that have been authorized under a Forest Management Plan under the *Crown Forest Sustainability Act* (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 relating to the installation of service cables, heat loops, or water intakes for private residences;

Policy No. PL 3.03.04 Work Permits – Section 14 Public Lands Act	Date Issued May 14, 2007	Page Page 7 of 16
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5.1.1 Exceptions to the Work Permit Requirements Listed Above (cont'd)

5. any “activity” that is done under the authority of an instrument granted under the PLA is exempt from work permit requirements. Construction of, as well as repairs and additions to, buildings or structures on public land including Crown owned shore lands, currently authorized by an instrument under the PLA are regulated by the terms and conditions of these documents and are not subject to work permit requirements. These activities may require approval by “letter of permission”. Activities subject to the work permit requirements that are not authorized by the instrument still require a work permit (e.g. dredging in a water lot authorized under a Crown lease for marina purposes).

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 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 “Certificate of Conditions” issued by the National Energy Board. Activities not regulated by federal legislation (e.g. road construction not covered in the “Certificate of Conditions”) 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 regulated 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 railways (e.g. CNR, CPR) within or adjacent to a railway right of way (per Section 95 of the Canada Transportation Act). Similarly, the Ontario Northland Railway is work permit exempt as it is a Crown agency.
- 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 5.7 of this policy) on shore lands, unless the total area of the structures occupies more than 15 square metres of shore lands;
- 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;

5.1.1 Exceptions to the Work Permit Requirements Listed Above (cont'd)

- 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 is required for the extraction of aggregate, land use occupational authority is required to extract peat);
- 10) logging and mineral exploration. Notwithstanding that mineral exploration is exempt from work permit requirements, if an officer receives an application or 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: Ontario Regulation 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.

5.2 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 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).

5.3 Roads & Trails

Subsection 2 (1) (b) of O. Reg. 453/96, as amended, states that a work permit is required for the construction of a road, trail or water crossing on public land. This section is subject to the exemption related to the CFSA contained in subsection 2 (3).

The regulation 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.

Policy No. PL 3.03.04 Work Permits – Section 14 Public Lands Act	Date Issued May 14, 2007	Page Page 9 of 16
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5.3 Roads & Trails (cont'd)

As a result, there is a need to be able to differentiate between roads and trails when the construction of those roads or trails are 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 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 and engineering standards.

Minor maintenance of an existing road that is not considered construction and does not require a work permit includes those day to day activities necessary to maintain the road for the present traffic using it, which would include the following:

- culvert cleaning;
- minor bridge repairs such as partial redecking, repairing railings, applying preservatives to the structure, if controls are in place to prevent the disposition of preservatives into a waterbody;
- grading as required;
- ditch line clearing where no erosion and sediment control measures are required;
- spot gravelling (filling of small potholes);
- clearing road surface right of way obstacles - i.e. windfalls;
- light brushing along roadsides, around signs, etc..;
- snow plowing;
- sanding and salting; and
- dust control.

5.3 Roads & Trails (cont'd)

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).

Minor maintenance of an existing trail that is not considered construction and does not require a work permit includes grooming or brushing, minor surface repairs such as filling ruts and evening out the trail surface and similar activities generally considered part of regular maintenance.

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.

5.4 Privately Owned Shore Lands

Regulation 453/96 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. PLA work permits for the dredging, and filling of privately owned shore lands and the construction or placement of a structure that occupies more than 15 square metres of shore lands are required only 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); and
2. the proposed works are to be carried out below the ordinary high water mark or flooding contour (regulated waters), and has been covered by water (excluding freshet) during the past 12 months; and
3. the private shore lands are not characterized predominantly by terrestrial plants (e.g. Ash, Cedar...); and
4. the proposed work has the potential to affect public land (e.g. Crown lake bed).

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.

Policy No. PL 3.03.04 Work Permits – Section 14 Public Lands Act	Date Issued May 14, 2007	Page Page 11 of 16
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5.4 Privately Owned Shore Lands (cont'd)

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.

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

5.5 Structural Occupation of Shore Lands

When determining the amount of shore lands that will be occupied by a proposed structure pursuant to clause 2(1)(g) of Regulation 453/96, as amended, 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).

5.6 Fisheries Concerns

The following direction is based upon the “A Protocol Detailing the Fish Habitat Referral Process in Ontario” dated August, 2000. Refer to this document for detailed processes.

5.6.1 For districts with Conservation Authorities (CA) that have signed a Level I, II or III agreement with DFO

Once it has been determined that the proposed activity requires a work permit and there is the potential for Habitat Alteration, Disruption or Destruction (HADD), the proponent is advised by letter that before a work permit can be issued, CA review of the project is required. MNR makes this referral to the CA, forwarding all available fisheries and fish habitat information to the CA with copies to the proponent. Once CA/DFO provides advice or authorisation, MNR issues work permit with appropriate conditions.

5.6.2 For districts with CA's that do not have signed agreements in place or where there are no CA's in place

Once it has been determined that the proposed activity requires a work permit and there is the potential for HADD, the proponent is advised by letter that before a work permit can be issued, DFO review of the project is required. MNR makes this referral to DFO, forwarding all available fisheries and fish habitat information to DFO with copies to the proponent. Once DFO provides advice or authorisation, MNR issues work permit with appropriate conditions.

Policy No. PL 3.03.04 Work Permits – Section 14 Public Lands Act	Date Issued May 14, 2007	Page Page 12 of 16
--	-----------------------------	-----------------------

5.6.2 For districts with CA's that do not have signed agreements in place or where there are no CA's in place (cont'd)

Separate circulation to the CA is required, if through the normal exemption order 26/7 review process, it has been determined necessary to contact the applicable CA.

5.7 Proposed Work Affecting Shore Processes

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 5.6 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, R.R.O.1990, as amended. When required, navigational issues will need approval from the Canadian Coast Guard which is now 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).

Repair or Replacement Work

Repair or replacement of existing groynes should be carefully considered on an individual basis, depending on the existing impacts to updrift and downdrift shoreline. If there are no evident adverse impacts to adjacent shoreline and no change is proposed in the extent, height, width, or material, and the structure was previously approved by MNR, then repair or replacement may be approved without the benefit of a coastal engineers' advice. If the design of the groyne will change or the groyne was not previously approved by MNR it should be treated as a new structure or work as above.

Policy No. PL 3.03.04 Work Permits – Section 14 Public Lands Act	Date Issued May 14, 2007	Page Page 13 of 16
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5.7 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 occupational authority as appropriate;

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

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

Applications for work permits that apply to private shore lands or Crown land and that could affect a Crown resource are considered dispositions 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.

5.9 Special Considerations When Applications Involve Aboriginal Concerns

Indemnity Release

An officer may, in appropriate circumstances, make it a term and condition of a work permit that the permittee indemnify the Ministry from any claims of First Nations as a result of the issuance of the work permit and/or release the Ministry from any claims the permittee may have against the Ministry. Consult with Legal Services Branch when considering such a release.

5.10 Work Permit Application Refusals

Regulation 975, as amended, requires 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, as amended.

One of those criteria for refusal (clause 2(1)(b)(iv), as amended) is if the work applied for is inconsistent with or does not conform to is a policy or procedure directive of the Ministry of Natural Resources. This criteria would include any relevant policy or procedure of the Ministry.

Policy No. PL 3.03.04 Work Permits – Section 14 Public Lands Act	Date Issued May 14, 2007	Page Page 14 of 16
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5.10 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 5.2);
- 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;
- 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) where Aboriginal concerns exist, an officer may refuse to issue a work permit, based on the following criteria:
 - i) where an Interim Measures Agreement or similar type of agreement is in place requiring notification of the First Nations, the work permit shall not be issued until the process agreed to in such agreements has been carried out and following that if in the opinion of the issuing officer, it is not inconsistent with the public interest to issue such work permit;
 - ii) where no such Interim Measures Agreement or similar type of agreement is in place, and the work sought to be authorized has, in the opinion of the officer, the potential to significantly impact on an aboriginal community, a work permit shall not be issued until the officer is satisfied the applicant has notified and consulted with the aboriginal community and has attempted to address any legitimate concerns raised and the officer is of the opinion that it its not inconsistent with the public interest to issue the said work permit;
 - iii) if, in a situation other than that covered in i) and ii) above, the officer is aware of known objections to the issuance of the work permit by an affected aboriginal community, or is of the opinion that the proposed work may have some, but not a significant impact on the aboriginal community, the officer shall not issue the work permit until satisfied that the applicant has consulted with the affected aboriginal community and has then determined that it is not inconsistent with the public interest to issue the said work permit;

Policy No. PL 3.03.04 Work Permits – Section 14 Public Lands Act	Date Issued May 14, 2007	Page Page 15 of 16
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5.10 Work Permit Application Refusals (cont'd)

- iv) if an officer is aware of the fact that a proposed work is in the area of a claim relating to aboriginal or treaty entitlements, a work permit shall not be issued until the officer has assessed (after consultation with the MNR Aboriginal Affairs Unit, if required) the impact of the proposed work on the land claim or the land claim negotiations and has determined that it is not inconsistent with the public interest to issue the work permit;
- v) if the proposed work is in an area covered by a tentative or final land claim settlement agreement or co-management agreement, the officer shall determine the appropriateness of issuing a work permit in light of the tentative or final settlement or co-management agreement (after consultation with the MNR Aboriginal Affairs Unit, if required). The officer shall not issue the work permit if he/she determines that issuance would violate the spirit and intent of such agreements and/or if the officer determines that it is inconsistent with the public interest to issue such work permit;
- vi) in an emergency situation, an officer may issue a work permit without regard to (i) to (v) above, and in such a case the officer shall notify the aboriginal community as soon as is reasonable following issuance of the work permit.

6.0 References

6.1 Legislation

- *Crown Forest Sustainability Act* SO 1994, Chapter 25
- Freedom of Information and Protection of Privacy Act
- *Mining Act*, RSO 1990, Chapter M. 14
- *Public Lands Act*, sections 5 and 14 RSO 1990
 - Regulation 975, as amended
 - Ontario Regulation 349/98
 - Ontario Regulation 453/96, as amended
 - Ontario Regulation 326/94

6.2 Policy Directives

- 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

Policy No. PL 3.03.04 Work Permits – Section 14 Public Lands Act	Date Issued May 14, 2007	Page Page 16 of 16
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6.3 Case Law

- Reg. v. Lord (1864), 1 P.E.I. 245
- County of York v. Rolls (1900), 27 O.A.R. 72
- Lorraine v. Norrie (1912) 46 N.S.R. 177
- Gerrard v. Crowe (1921) 1 A.C. 395
- Kennedy v. Husband (1923) 1 D.L.R. 1609
- Attorney General of British Columbia v. Neilson (1956) S.C.R. 819, per Rand J.
- Reg. V. Sundown, Sask. (1999)
- Reg. V. Marshall, (1999)

6.4 Literature Review

- Water Law in Canada, Gerard V. LaForest, Q.C. and Associates, Information Canada, 1973.