

Subject <b>Incidental Buildings on Public Land (Interim)</b>		Policies <b>PL 3.05.01 PM 10.03</b>	
Compiled by - Branches Lands & Waters Ontario Parks	Sections Land Management Planning & Research	Date Issued October 4, 2006	
Replaces Directive Title n/a	Number n/a	Dated n/a	Page 1 of 3

## 1.0 Introduction

This policy and its accompanying procedure express how the Ministry of Natural Resources will seek to implement the intent of the *R. v. Sundown* decision on public lands in Ontario, including those lands managed under the Public Lands Act and the Provincial Parks and Conservation Reserve Act.

The 1999 Supreme Court of Canada decision in *R. v. Sundown* provided that Aboriginal people have a right to construct or occupy buildings on public land that is “incidental” to the exercise of existing Aboriginal or treaty rights. Incidental building, as contemplated by the *Sundown* decision, means a cabin, building or structure used for shelter associated with or reasonably related to the exercise of an Aboriginal or treaty right. The Supreme Court’s decision also recognized compelling public objectives with which those rights must be balanced.

The Ministry recognizes that many Aboriginal communities have Aboriginal and treaty rights that may be exercised on public land. Community members may have rights to hunt, fish or carry out other activities (e.g. gathering) on public land, depending on traditional practices and the terms of treaties they entered into with the Crown.

Aboriginal and treaty rights have been found to be communal in nature and as such, are held collectively by the community. Similarly, the Ministry understands the right to construct a building incidental to the exercise of Aboriginal and treaty rights as also being communal in nature and held or exercised by or on behalf of the community.

A key component of this policy is Ministry recognition of the benefit of working closely with Aboriginal communities on the implementation of this policy and the *R. v. Sundown* decision, including the opportunity to enter into consensus arrangements with Aboriginal communities and organizations where it would be mutually beneficial.

## 2.0 Goal

The goal of this policy, accompanying procedure and any arrangement which the Ministry may enter with an Aboriginal community or organization pursuant to this policy, is to provide clear and consistent direction on how the Ministry will accommodate the construction and occupation of buildings on public land incidental to the exercise of Aboriginal and treaty rights as contemplated by *R. v. Sundown*.

This direction will seek to ensure that the location, construction and occupation of incidental buildings on public land is consistent with, for instance, natural resource conservation, public safety, other public interests or land management objectives.

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### **3.0 Principles**

The following section provides a description of the principles that are key to the Ministry's understanding of and application of the intent of *R. V. Sundown* on public lands in Ontario.

#### **3.1 Crown's Obligations and Responsibilities**

The courts have recognized that the Crown has the authority and responsibility to manage natural resources and their use, consistent with for instance, natural resource conservation, public safety, other public interests or land management objectives.

As per the Public Lands Act (Section 14 and Regulation 453/96) and Provincial Parks and Conservation Reserves Act (Section 22 ), a work permit must be obtained prior to construction of any building on public land. Work permits are used by the Ministry to ensure that sound planning and conservation decisions are made before any types of buildings are constructed on public land.

In accommodating the exercise of existing Aboriginal and treaty rights on public lands, the Ministry will use the work permit process as the administrative mechanism to ensure that the location, construction and occupation of incidental buildings on public lands by Aboriginal persons, as contemplated by *R. v. Sundown*, is consistent with the goal of this policy.

#### **3.2 Approach to Aboriginal Communities**

The Ministry recognizes the benefit of working with local Aboriginal communities (and possibly tribal or treaty organizations) on the implementation of this policy. The benefits of this approach may include:

- hearing the comments and views of community leaders on the exercise of their Aboriginal rights, so that the Ministry may be sensitive to Aboriginal perspectives on these rights;
- determining the need, number, location and nature of any incidental shelters that may be necessary for the exercise of those rights; and
- determining who may apply for a work permit to construct or occupy an incidental building.

#### **3.3 Consensus Arrangements with Aboriginal Communities and Organizations**

This policy recognizes that the preferred approach to implementing this policy includes the opportunity (as discussed above) for the Ministry and Aboriginal communities (and/or organizations) to work together to reach acceptable arrangements on the implementation of *R. v. Sundown* in Ontario.

Consensus arrangements (e.g. local agreements with individual Aboriginal communities) regarding, for instance, processes or approaches (e.g. involvement of band councils, community screening of applications) to be used at the local level to implement this policy, will be preferred where they can be achieved. Where consensus regarding an alternative arrangement cannot be reached, the Ministry will implement the process in the accompanying procedure.

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Where consensus cannot be reached, the Ministry will implement this policy as otherwise contemplated herein and in the accompanying procedure.

#### **4.0 References**

#### **4.1 Legislation**

- Public Lands Act RSO 1990
  - O. Regulation 975, as amended
  - O. Regulation 453/96, as amended by O. Reg. 335/00
- Provincial Parks and Conservation Reserves Act (S.O. 2006)

#### **4.2 Case Law**

- R. v Sundown, March 1999
- R. v. Marshall, 1999

#### **4.3 Directive Cross References**

- PL 3.05.01 and PM 10.03.01 (PRO) Incidental Buildings on Public Lands (Interim)