

**SUBJECT: CROWN WATERFRONT
RESERVES POLICY**



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1.0 Policy Objectives

The objectives of this policy are to:

- a) retain, insofar as reasonable, Crown Waterfront Reserves (CWR's) as public lands;
 - b) safeguard the functions performed by CWR's;
 - c) address the unauthorized occupations that exist on CWR's; and
 - d) discourage future unauthorized uses.
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2.0 Scope and Application

This policy applies to Crown Waterfront Reserves administered under the *Crown Lands and Forests Act*.

3.0 Background

3.1.1 Crown Waterfront Reserves are waterfront lands that the Crown retained along the shorelines of certain lakes, rivers and streams when land grants were issued between 1884 and 1981. Four hundred and forty (440) of these CWR's were one chain deep (20 m) and 860 were three chains deep (60 m).

3.1.2 Presently, there are approximately 680 contiguous CWR's under DNR's administration and control. These have a combined length of 570 km and a total land area of 2 562 ha. The majority are located in central, eastern and northern New Brunswick.

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3.0 Background, Continued

3.1.3 CWR's complement a variety of provincial and federal resource management programs and statutes related to conservation, environmental protection and sustainability. If managed properly, CWR's

- a) serve as essential buffers along streams, rivers and lakes;
- b) provide important habitat for flora and fauna;
- c) support high levels of biodiversity;
- d) maintain water quality;
- e) moderate water temperatures for fish and other aquatic life;
- f) prevent siltation and runoff from entering watercourses;
- g) maintain the structural integrity of stream and river banks;
- h) provide public access along the shorefronts of water bodies;
- i) have recreation potential, e.g., fishing, rest areas, trails; and
- j) maintain scenic vistas.

CWR's also have a high propensity to contain historic, cultural and archaeological features.

4.0 Policies

4.1 Conservation and Access

CWRs shall be retained as public lands and shall be used for such purposes as:

- a) wildlife and riparian habitat and biodiversity conservation;
 - b) watercourse buffers and environmental protection;
 - c) public access to waterways;
 - d) conserving aesthetic and scenic vistas along waterways; and
 - e) conserving cultural, heritage and archaeological resources.
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4.0 Policies, Continued

4.2 Recreational Uses Low impact recreation may take place on CWR's provided that this does not compromise their environmental and ecological integrity, and may include such uses as:

- a) canoe rest stops and boat anchoring;
 - b) hunting, fishing and trapping;
 - c) walking, hiking, snowshoeing and cross country skiing;
 - d) picking fiddleheads, nuts and berries;
 - e) tenting; and
 - f) nature interpretation, wildlife observation and sightseeing.
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4.3 Prohibition of Activities Recreation activities may be prohibited on a CWR, if necessary, to¹:

- a) protect ecologically and environmentally sensitive features and landscapes; or
- b) allow for the naturalization of a CWR that has been disturbed.

4.4 Agreements DNR may enter into agreements for any purposes identified in sections 4.1 and 4.2 and for scientific research pertaining to CWR's.

4.5 Utilities and Access Notwithstanding subsections 4.1 and 4.2, utilities, access roads or public streets may be permitted to cross a CWR where there are no other viable location options and all environmental impacts have been mitigated. Authorization may be via an easement, right-of-way or licence of occupation provided all applicable requirements of this policy are met.

4.6 Protective Works and Structures Notwithstanding subsections 4.1 and 4.2, structures and works needed to protect the environment, public health or safety or to prevent significant loss of property may be permitted. Authorization may be via a lease or licence of occupation provided all applicable requirements of this policy are met.

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¹ This can be done by enacting a regulation under section 95(s) of the *Crown Lands and Forests Act*.

4.0 Policies, Continued

4.7 Regularization of Unauthorized Occupations

Unauthorized Occupations may be regularized where:

- a) the occupant applies for a grant or authorization to use the CWR; and
- b) the continued occupation would pose no more of a threat to the environment or public health or safety than if it were to be removed;
- c) the occupation is not by way of a mobile home, or what was once mobile; and
- d) all the requirements of this policy with respect to grants or authorizations are met, and at least one of the following criteria is met:
 - i) the occupation involves a non-abandoned structure that is either someone's principal residence, or that has an approximate value of \$10 000 or more; or
 - ii) the occupation is needed to protect the environment, public health or safety, or to prevent significant loss of property; or
 - iii) a previous commitment was made to dispose of the CWR.

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4.0 Policies, Continued

4.8 Instruments of Regularization

Unauthorized occupations may be regularized via

- a) a grant where
 - the entire occupation is located at a distance of 10 meters or more above the ordinary high water mark,
 - all the requirements for registration under either the *Registry Act* or the *Land Titles Act* are met,² and
 - all other requirements of this policy with respect to grants are met;
- b) a lease where the conditions for obtaining a grant cannot be met, or where the occupant wishes to obtain a lease rather than a grant, and where all the requirements of this policy with respect to leases are met;
- c) an easement where the unauthorized use is a utility and all the requirements of this policy with respect to easements are met; or
- d) a licence of occupation where DNR does not wish to grant exclusive possession or as short term authorization pending the issuance of a grant, lease or easement.

4.8.1 Discon- tinuance

A CWR may be discontinued in lieu of issuing a grant only where

- a) the property boundaries cannot be determined on the ground; and
 - b) the discontinuance would not leave an unclear ownership situation with respect to the CWR.
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4.9 Removal of Unauthorized Occupations

Unauthorized occupations shall be removed or destroyed if

- a) they are endangering public health, public safety, the environment or property;
 - b) the occupant has failed to apply for regularization of the occupation within one month of being requested to do so;
 - c) a review of the application to authorize the occupation indicates that it does not meet the regularization criteria of section 4.7;
 - d) the applicant fails to fulfill the requirements for approval within the time frame specified; or
 - e) the occupants were advised, prior to the adoption of this policy, that their improvements must be removed.
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² Among other things, this requires that the occupant obtain, from the appropriate development officer, either an approval of a subdivision plan or an exemption from the subdivision requirements of the relevant bylaw or regulation.

5.0 Grants

5.1 Area to be Granted Only the area required to accommodate the unauthorized occupation and any additional lands, which if not granted would leave an isolated sliver of ungranted Crown Land less than 0.2 ha in size, may be granted.

5.2 10-m ROW Where the area to be granted includes the shoreline, DNR shall retain a 10-meter wide right-of-way for the public to pass and re-pass. If the occupation is such that a 10-meter right-of-way cannot be retained, a grant will not be issued.

5.3 Market Value and Appraisal Before a grant is issued, the occupant shall pay the market value of the land. The market value shall be determined through an appraisal conducted by an appraiser registered to practice in New Brunswick by the New Brunswick Association of Real Estate Appraisers.

5.3.1 The appraisal may be done by an appraiser employed by the Province, in which case, the applicant shall pay the appraisal cost recovery fee.

5.3.2 Where provincial staff are unavailable to carry out an appraisal, the Department may require the occupant to hire a qualified appraiser to carry out an appraisal in accordance with the Terms of Reference found in Appendix A. Such an appraisal will be subject to review and acceptance by the Department.

5.4 Survey Before a grant is issued, the occupant shall, at his expense

- a) have a New Brunswick Land Surveyor prepare a coordinated plan of survey, or subdivision plan on which co-ordinates shown were derived from ties to adjusted NB Monuments or HPN Monuments, along with a description of the surveyed area, and submit these to the Department for approval; and
- b) obtain either an approval or an exemption under the *Community Planning Act* for registration of the grant.

5.5 Registration The Department may require the grantee to register the grant and submit proof of registration within a specified time period.

6.0 Leases

6.1 Area to be Leased Only the area required to accommodate a structure or work permitted under section 4.6 or to accommodate an unauthorized use which may be regularized pursuant to section 4.7 may be leased.

6.2 Lease Class The class of lease issued shall correspond with the use being made of the CWR and shall be subject to the terms and conditions, fees, and rent applicable to that use.

6.3 10 m ROW Where the area to be leased includes the shore, the Department shall retain a 10-m right-of-way (ROW) for the public to pass and re-pass. Where the occupation is such that there is not enough land for a 10-m ROW, the Department shall retain as wide a ROW width as possible.

6.4 Survey Before a lease is issued, the occupant shall, at his expense, have a New Brunswick Land Surveyor prepare a coordinated plan of survey or subdivision plan on which coordinates shown were derived from ties to adjusted NB Monuments or HPN Monuments, along with a description of the surveyed area, and submit these to the Department for approval.

6.5 Registration Before a lease is issued, the Department may require the occupant to

- a) obtain either an approval or an exemption under the *Community Planning Act* for registration of the parcel created by the lease; and
- b) register the lease and submit proof of registration within a specified time period.

6.6 Terms and Conditions of Lease In addition to the requirements of the *Leasing Regulation*, a lease shall

- a) prohibit the erection of any new structures or the making of additions to existing structures, unless it is necessary to address a health or safety issue;
- b) prohibit the removal of trees from any areas not cleared at the time of the issuance of the lease, except if removal is necessary for health or safety reasons and a cutting permit has been obtained pursuant to Policy TM-002, *Cutting Permits*.

7.0 Licences of Occupation, Easements and Rights-of-way

7.1 Area to be Authorized Only the area required for an easement, licence of occupation or right-of-way shall be made available. The running of utilities and roads lengthwise through CWR's shall be discouraged.

7.2 Conformity to EIA Regulation Any application that corresponds to one of the undertakings described in Schedule A of Regulation 87-83, *Environmental Impact Assessment Regulation – Clean Environment Act*, must be registered with the Minister of Environment and Local Government to determine whether or not the completion of an environmental impact assessment is required.

7.2.1 For any application that must be registered for an EIA determination, DNR may undertake the evaluation of the application but will not make a final offer to the applicant until

- a) the Minister of Environment and Local Government has determined that the undertaking does not require the completion of an environmental impact assessment, or
- b) the Lieutenant-Governor in Council has given an approval for the undertaking.

7.2.2 If the Lieutenant-Governor in Council does not approve the undertaking, the Department will not issue a licence, easement or right-of-way.

7.3 Surveys Before an easement or right-of-way is issued, the occupant shall, at his expense, have a New Brunswick Land Surveyor prepare a coordinated plan of survey, on which co-ordinates shown were derived from ties to adjusted NB Monuments or HPN Monuments, along with a description of the surveyed area, and submit these to the Department for approval.

7.4 Registration The Department may require the applicant to register the easement or right-of-way and submit proof of registration within a specified time period.

7.5 Terms and Conditions Licensees and holders of easements and rights-of-way shall

- a) indemnify the Minister from all claims resulting from the use and occupation of the subject lands, save and except to the extent that such claims are caused by negligence of the Minister or his contractors, servants, agents, or employees.
- b) obtain all required permits and approvals before undertaking any work.

8.0 Public Consultation

8.1 Consultation

Where it appears that adjacent landowners or occupants may be adversely affected by the issuance of a grant, lease, licence, easement or right-of-way, the Department will inform adjacent owners and occupants of the application or require the applicant to do so at his or her expense.

8.2 Dispute Resolution

Where disagreements exist among adjacent landowners and / or occupants, the Department may require the disputing parties to resolve all legitimate concerns at their own expense before proceeding with the approval of the application.

8.2.1

Following resolution of the dispute, the applicant will provide the Department with a release signed by the disputing landowners freeing the Province from future claims.

8.2.2

Where no resolution to valid objections can be reached, DNR will not dispose of the CWR.

9.0 Authority

The following sections of the *Crown Lands and Forests Act* provide authority for this policy:

- Agreements – Section 4 of the *Crown Lands and Forests Act*
- Grants of CWR's – Section 16.1 of the *Crown Lands and Forests Act*
- Leases - Sections 23 and 24 of the *Crown Lands and Forests Act*
- Easements and Rights-of-way – Section 25 of the *Crown Lands and Forests Act*
- Licences of Occupation – Section 26 of the *Crown Lands and Forests Act*
- Reservation of 10-m Right-of-way – section 15 of the *Crown Lands and Forests Act*
- Discontinuances – section 16 of the *Crown Lands and Forests Act*
- Regulation 89-32 – *Leasing Regulation - Crown Lands and Forests Act*

10.0 Inquiries

10.1 Written Inquiries

Inquiries concerning this policy may be made in writing to:
Director, Crown Lands Branch
Department of Natural Resources
P.O. Box 6000, Fredericton, N.B., E3B 5H1

10.2 Phone Inquiries

Inquiries may be made by phone by calling the Land Use Application Service Centre at 1-888-312-5600

Appendix 1

Terms of Reference for Property Appraisals

- 1) Any appraisal assignment shall be prepared by an appraiser who is registered to practice as a real estate appraiser under the *New Brunswick Association of Real Estate Appraisers/Association des évaluateurs immobiliers de Nouveau-Brunswick Act*.
- 2) All appraisal reports shall meet the requirements of the Canadian Uniform Standards of Professional Appraisal Practice (“The Standards”) and shall be in a narrative format.
- 3) Should the Highest and Best Use of the subject property or portion thereof be estimated as timberland for the production of wood fibre, the market value shall be derived using a combination of:
 - a) the residual value for the land:
 - i) value of the land plus the non-merchantable wood volume on the property derived by the Direct Comparison Approach, and;
 - b) the value of the standing timber (Stumpage Approach):
 - i) based on the forest inventory estimate of the subject property prepared by a member, in good standing, of the Association of Registered Professional Foresters of New Brunswick, and;
 - ii) based on the current market tree length stumpage rates, i.e. softwood, cedar, hardwood, poplar, etc., and the market conditions within the Forest Products Marketing Board in the area of the subject property as of the date of the appraisal.
- 4) Should the subject property or portion thereof be estimated to have merchantable quarriable substance(s), i.e. aggregates, clay, gravel, peat, sand, soil, stones, etc., the market value of the property shall include the value of the quarriable substance(s).
- 5) All appraisal reports shall be submitted to DNR, Crown Lands Branch, for review and approval.