

**SUBJECT: COMMERCIAL AND INDUSTRIAL
 LEASING POLICY**



Policy Number: CLM-015-2005
File Number: 415-00-0003

Effective Date: August 17, 2005
To Be Reviewed: August 17, 2009

Approval: Original Signed by W. David Ferguson, Deputy Minister, August 17, 2005

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1.0 Purpose

The purpose of this policy is to:

- provide guidelines for staff to review and approve new commercial and industrial lease applications;
 - provide guidelines for staff to review and approve renewals and transfers of existing commercial and industrial leases;
 - determine when Crown Land under the administration of the Minister of Natural Resources will be made available for commercial and industrial leases; and
 - identify general terms and conditions of commercial and industrial leases.
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2.0 Definitions

Commercial lease	A lease associated with the wholesale or retail sale of goods or services as described in Section 3 of the <i>Leasing Regulation – Crown Lands and Forests Act, New Brunswick Regulation 89-32</i> .
Crown Lands	Lands administered by the Minister of Natural Resources under the <i>Crown Lands and Forests Act</i> .
DNR lands	Lands administered by the Minister of Natural Resources under the <i>Crown Lands and Forests Act</i> and the <i>Parks Act</i> .
Industrial lease	A lease associated with manufacturing, processing or disposal operations as described in Section 3 of the <i>Leasing Regulation – Crown Lands and Forests Act, New Brunswick Regulation 89-32</i> .
Park lands	Lands administered by the Minister of Natural Resources under the <i>Parks Act</i> .

3.0 Background

3.1 Commercial leases on DNR lands

There are 91 commercial leases on DNR Land according to the Resource Allocation System (RAS).

- 68 commercial leases are issued under the *Crown Lands and Forests Act*; and
- 23 commercial leases are issued under the *Parks Act*

The commercial leases occupy approximately 150 ha:

- 10 ha on Park Lands; and
- 140 ha on Crown Lands.

Commercial leases generate approximately \$50,000 annually in rent.

3.2 Industrial leases on DNR lands

There are 26 industrial leases on DNR Lands according to the RAS. They are all issued under the *Crown Lands and Forests Act*.

These industrial leases occupy approximately 552 ha.

Industrial leases generate approximately \$27,000 in rent annually.

3.3 Non-conforming classification

The statistics reported should be viewed with caution, as not all leases have been classified in accordance with the Leasing Regulation. Also, there is no regulation under the *Parks Act* that establishes lease categories.

4.0 Objectives

The objectives of this policy are to

- (a) ensure the orderly and efficient establishment of commercial and industrial leases on DNR lands;
 - (b) determine what kind of commercial and industrial leases will be allowed on DNR Lands;
 - (c) ensure consistency and fairness in the review of commercial and industrial lease applications;
 - (d) ensure that all leases on Crown Lands are classified in accordance with the lease categories established by Regulation 89-32, *Leasing Regulation – Crown Lands and Forests Act* and that their annual rental rates correspond to the fees established by the same regulation; and
 - (e) ensure that DNR’s Crown Land management principles are adhered to when making Crown land available for commercial and industrial purposes
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5.0 Policy

5.1 Leasing of Crown Lands for commercial use

It is the policy of the Department of Natural Resources (DNR) that suitable Crown Lands may be leased for commercial use, provided that the use is associated with the extraction, use or management of natural resources such as outfitting and outdoor recreation, and

5.1.1 Exception

Crown Lands may also be leased for commercial uses not associated with the extraction, use or management of natural resources if

- (a) there is no freehold land available in the area; or
 - (b) it is shown that for safety¹ or aesthetic reasons², there is a need for the activity to be located in a remote area such as can be provided by Crown Lands.
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¹ For example, DNR may authorize the establishment of a gas bar in a remote area on Crown Land in order to ensure the safety of motorists.

² Aesthetic reasons include commercial activities that generate loud noises, foul odours, dust or heavy traffic.

5.0 Policy, Continued

5.2 Leasing of park lands for commercial use

In keeping with the *Parks Act*, suitable Park Lands may be leased for commercial use, only if the use provides or serves outdoor recreation.

Where non-recreation commercial development of Park Land is deemed acceptable, the lands may be transferred to the *Crown Lands and Forests Act* (CLFA), provided the remaining Park Lands are not adversely affected.

5.3 Leasing Crown Land for industrial use

Suitable Crown Lands may be leased for industrial use under this policy, provided that the use is associated with the extraction, use or management of natural resources such as a sawmill or a mining operation.

5.3.1 Lease associated with other legislation

An industrial lease may be issued under the *Crown Lands and Forests Act* to an individual or a business, for uses associated with a lease under the:

- *Bituminous Shale Act*
- *Mining Act*
- *Oil and Gas Act*
- *Quarriable Substances Act*
- *Underground Storage Act*

5.3.2 Exceptions

Crown Lands may also be leased for industrial uses not associated with the extraction, use, or management of natural resources if:

- (a) there is no freehold land available in the area; or
 - (b) it is shown that for safety³ or aesthetic reasons⁴, there is a need for the activity to be located in a remote area such as can be provided by Crown Lands.
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³ For example, DNR may authorize the establishment of an explosive manufacturing/storage plant in a remote area on Crown Land if a proper site cannot be found on private land.

⁴ Aesthetic reasons include industrial activities that generate loud noises, foul odours, dust or heavy traffic.

5.0 Policy, Continued

5.4 No leasing of park lands for industrial use

In keeping with the *Parks Act*, Park Lands will not be leased for industrial use. Where industrial development of Park Land is deemed acceptable, the lands may be transferred to the CLFA, provided that the remaining Park Lands are not adversely affected.

5.5 Granting of DNR lands for commercial or industrial use

When reviewing a commercial or industrial lease application, if it is shown that the parcel is located along a designated highway or a municipal street; and that the parcel meets DNR disposal criteria, DNR may offer to convey land to the applicant, where allowed under the CLFA, or may declare the property as surplus for disposal by tender through the Department of Supply and Services.

6.0 Evaluation of Lease Applications

6.1 Basic eligibility

Commercial and industrial lease applications will be considered for evaluation only if the proponents meet the basic eligibility requirements:

- proponents are at least 19 years of age and
 - businesses are registered with Corporate Affairs in New Brunswick and have provided a copy of their Certificate of Incorporation.
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6.0 Evaluation of Lease Applications, Continued

6.2. Location criteria

The location of commercial and industrial leases on DNR Lands shall conform to:

- (a) the applicable regulation or by-law, where the lands are located in an area subject to a plan adopted under the *Community Planning Act*;
- (b) the Designation Order, where the site is located within an area designated as a watershed protected area under Regulation 2001-83, *Watershed Protected Area Designation Order – Clean Water Act*;
- (c) the Designation Order, where the site is located within an area designated as a wellfield protected area under 2000-47, *Wellfield Protected Area Designation Order – Clean Water Act*;
- (d) the *Coastal Areas Protection Policy*, where the site is located in a coastal area;
- (e) all other requirements that are imposed by legislation, whether Federal, Provincial or Municipal, that apply to the use and development of lands under lease.

6.2.1 Setbacks

DNR may require commercial or industrial leases that may pose threats to public health or safety, or that may generate nuisances such as loud noises, foul odours, dust, or heavy traffic, to be located:

- (a) 500 metres or more from schools, residences, camps, hospitals, parks, playgrounds, churches, other institutions, and known habitat of rare, threatened or endangered animal species;
- (b) 500 metres or more from undeveloped lands that are designated in a plan approved under the *Community Planning Act* for the above purposes or in Crown Lands designated by DNR for camps and public use areas;
- (c) 500 metres or more from national wildlife refuges, migratory bird sanctuaries, protected natural areas designated under the *Protected Natural Areas Act*, deer wintering areas and non-motorized recreational trails.

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6.0 Evaluation of Lease Applications, Continued

- 6.3 Risk assessment** A risk assessment may be conducted if the proposed commercial or industrial land use:
- (a) is classified as a level three complexity by the Land Use Application Service Centre;
 - (b) constitutes a new use of DNR lands;
 - (c) presents potential or perceived environmental concerns;
 - (d) presents potential or perceived public safety issues;
 - (e) presents a large financial risk; or
 - (f) has a high potential for controversy.
- The risk assessment will be conducted as per the Risk Assessment Process described in the Crown Lands Branch Risk Management Framework.
- 6.3.1 Results of risk assessment The result of the risk assessment exercise may lead to:
- (a) the approval of the application;
 - (b) the rejection of the application;
 - (c) increased set back requirements for site location from the ones specified under sub-section 6.2 (b); and/or
 - (d) other mitigating measures being imposed on the lease.
- 6.3.2 When risk assessment not required A risk assessment may not be required if an Environmental Impact Assessment will be undertaken.

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6.0 Evaluation of Lease Applications, Continued

6.4 Conformity to EIA regulation

Any commercial or industrial lease 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 an environmental impact assessment is required.

For any commercial or industrial lease 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.

If the Lieutenant-Governor in Council does not approve the undertaking, DNR will reject the commercial or industrial lease application.

6.5 Conformity to existing plans and zoning by-laws

If the commercial or industrial lease application is located in an area where a municipal plan, a rural plan, a basic planning statement, zoning by-laws or regulations are in effect, the proponent will have to show conformity to them or apply for an amendment.

For any commercial or industrial lease application that requires an amendment, DNR may undertake the evaluation of the application but will not make a final offer to the applicant until the amending by-law or regulation has been enacted.

Where the application to amend a plan and/or zoning by-law or regulation is rejected, DNR will reject the commercial or industrial land use application.

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6.0 Evaluation of Lease Applications, Continued

6.6 Site Development Plan

The proponent must submit, for approval, a Site Development Plan containing the following information:

- (a) the approximate size of the proposed lease area;
 - (b) a map or aerial photograph showing:
 - i) the boundaries and dimensions of the proposed lease area;
 - ii) all watercourses, roads and trails within or near the proposed lease area;
 - iii) the location and dimensions of all proposed improvements and facilities;
 - iv) the location of the water supply;
 - v) the location of the sewage disposal system;
 - vi) the location of any fuel storage tanks; and
 - vii) the traffic pattern and parking space.
 - (c) the proposed type of water supply;
 - (d) the proposed type of sewage disposal system;
 - (e) the proposed type of fuel storage tanks and safeguards to be put in place to prevent leakage;
 - (f) a schedule indicating when each of the proposed improvements will commence and when each will be completed; and
 - (g) any other requirements that DNR deems necessary.
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6.7 Business Plan

For commercial or industrial lease applications not falling under s. 5.3 (b), the proponent must provide a Business Plan that

- (a) provides complete financial information on cost estimates and funding requirements for the proposed plan; and
 - (b) demonstrates that capital required to develop the site is secured, e.g., letter of credit from a bank.
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6.8 External review agencies

DNR may call upon the expertise of any governmental and non-governmental review agencies it considers necessary for the evaluation of a commercial or industrial lease application, including the evaluations of the Site Development Plan and Business plan.

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6.0 Evaluation of Lease Applications, Continued

6.9 Public consultation

For commercial or industrial lease applications that have the potential to generate nuisance, or pose a threat to public health or safety, DNR may require that public consultation take place with respect to the lease proposal.

6.9.1 Requirements

The public consultation will be at the applicant's expense and may include:

- (a) public notifications in a French and English newspaper that serves the area in which the commercial or industrial lease is proposed. The notification shall:
 - i) describe the proposed use;
 - ii) show the location of the proposed commercial or industrial lease;
 - iii) indicate to whom and where comments are to be forwarded;
 - iv) indicate that the names of individuals who have concerns with the proposal will be kept confidential; however, DNR may share the concerns that were identified with the applicant, and
 - v) identify a deadline for submitting comments.
- (b) sending a letter to land owners located within one kilometre distance of the site on which the commercial or industrial lease is being proposed. The letter shall:
 - i) describe the proposed use;
 - ii) show the location of the proposed commercial or industrial lease;
 - iii) indicate to whom and where comments are to be forwarded;
 - iv) indicate that the names of individuals who have concerns with the proposal will be kept confidential; however, DNR may share the concerns that were identified with the applicant, and
 - v) identify a deadline for submitting comments.
- (c) holding public consultation sessions to assist in making a decision on whether or not to issue authorization.

6.9.2 When consultation not required

Public consultation is not required for:

- (a) a commercial or industrial lease application if public consultation is required as part of an EIA process or as part of a re-zoning request; and
 - (b) lease renewals or lease transfers, provided that the use is not changing.
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7.0 Requirements of Lessee

7.1 Leasing regulation The lessee must abide by all the requirements of Regulation 89-32, *Leasing Regulation – Crown Lands and Forests Act*.

7.2 Liability insurance The lessee must carry liability insurance in the amount of \$2,000,000.00 per incident.

“Her Majesty the Queen in Right of the Province of New Brunswick” must be named as an “additional-insured” in the policy.

A copy of the policy and a certificate of insurance must be provided to DNR upon request.

7.3 Storage of petroleum products The lessee shall abide by Policy CLM-004-2002, *Interim Policy on the Storage of Petroleum Products on Crown Lands*.

7.4 Surveys A boundary line survey will be required:

- (a) for all new leases;
- (b) any time there is an addition or a withdrawal of land from a lease; and
- (c) for all renewed leases if:
 - i) the boundaries of the lease have been changed;
 - ii) the boundaries of the lease are no longer visible on the ground; or
 - iii) if it is unclear what the boundaries are.

7.4.1 Survey standard The applicant or lessee 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.

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7.0 Requirements of Lessee, Continued

7.5 Registration of leases

Before a lease is issued, the Department may require the applicant 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.

7.5.1 Transferring from Registry to Titles

Where the lessee desires to enter into an undertaking that requires the transfer of the leased lands from the Land Registry System to the Land Titles System, such as mortgaging the lease, the lessee will be responsible for arranging the transfer and bearing all associated costs.

7.6 Site development

The lessee must develop the site according to the approved Site Development Plan.

The site must be fully developed within three years of issuance of the lease.

A Site Development Plan will form part and parcel of the lease.

The Site Development Plan has to be amended and re-approved by DNR,

- (a) any time the lease area is modified; or
 - (b) before any works, other than the works approved in the original Site Development Plan, are undertaken on the site.
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7.7 Harvesting of wood

Before any trees are harvested from the site, the lessee must obtain a cutting permit.

The requirements of policy TM-002, *Issuing of Permits Under Section 56 of the Crown Lands and Forests Act*, must be met.

The lessee shall keep all royalty accounts current (net 30 days).

7.8 Water- course and Wetland Alteration permit

If a watercourse or wetland is present on a lease, the lessee must obtain a Watercourse and Wetland Alteration Permit from the Department of Environment and Local Government to conduct any work within 75 m of the watercourse where the lease is located within a municipal water supply watershed, and within 30 m of a watercourse elsewhere.

7.9 Building permit

The lessee will have to obtain a building permit from the proper planning authority before constructing any building on the lease.

7.10 Permits and approvals - general

Any other applicable permits and approvals must be obtained by the lessee for the land use in question.

8.0 Site Inspections

8.1 New commercial and industrial leases

All new commercial and industrial leases will be inspected by DNR staff once they are fully developed.

8.2 Existing commercial and industrial leases

Existing commercial and industrial leases will be inspected by DNR staff:

- (a) Prior to renewal;
 - (b) Upon cancellation; and
 - (c) At any other time DNR deems necessary.
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9.0 Renewal and Assignment of Leases

9.1 Renewals under *CLFA*

Upon renewal, all commercial and industrial leases will be subject to the terms and conditions of this policy.

9.1.1 Commercial leases

If the actual use of a commercial lease corresponds to the definition of a commercial lease, a new commercial lease may be issued subject to the requirements of this policy.

9.1.2 Industrial leases

If the actual use of an industrial lease corresponds to the definition of an industrial lease, a new industrial lease may be issued subject to the requirements of this policy.

9.1.3 Misclassified leases

If the actual use of a lease **does not correspond** to its current classification, a new lease may be issued to reflect the actual use of the land, subject to the requirements of any policy dealing with that type of land use and the annual rent will be in accordance with that established under Regulation 89-32, *Leasing Regulation – Crown Lands and Forests Act* for the use being made of the land

9.2 Renewals under *Parks Act*

Upon renewal, all commercial and industrial leases will be subject to the terms and conditions of this policy.

9.2.1 Permitted commercial leases

If the actual use of a commercial lease is related to the provision or servicing of outdoor recreation, a new lease may be issued subject to the requirements of this policy.

9.2.2 Non-permitted leases

If the actual use of the lease is for industrial purposes or a commercial use not related to the provision or servicing of outdoor recreation, the lands will have to be transferred from the *Parks Act* and a new lease issued under the *Crown Lands and Forests Act* to reflect the actual use being made of the land and subject to the requirements of any policy dealing with that type of land use.

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9.0 Renewal and Assignment of Leases, Continued

9.3 Assignment of leases	A fully developed lease may be assigned only if the assignee agrees to abide by all the terms and conditions as set out in the lease.
9.3.1 No assignment of vacant sites	A lease cannot be assigned if: <ul style="list-style-type: none">(a) no structures have been placed on site; or(b) very little development has been completed (less than five percent); or(c) former structures have been removed so as to leave the site vacant or nearly vacant.
	The lessee has the option to cancel.
9.3.2 Partly developed leases	Where the site development has been started, but not completed, a lease may be assigned only if the assignee agrees to complete the development in accordance with the Site Development Plan and the terms and conditions of the lease.
9.3.3 Terms and conditions not met	Where terms and conditions of the lease have not been met, a lease may be assigned only if the lease is brought into compliance or if the assignee agrees in writing to bring the lease into compliance with the terms and conditions within a specified time.

10.0 Lease Cancellation

Failure to abide by any of the requirements of this policy may lead to lease cancellation.

Failure to abide by any applicable Acts and/or Regulations may lead to lease cancellation.

11.0 Scope and Application

11.1 Lands to which policy applies

This policy only applies to:

- lands administered by the Minister of Natural Resources under the *Crown Lands and Forests Act*; and
- lands administered by the Minister of Natural Resources under the *Parks Act*.

11.1.1 Lands to which it does not apply

This policy **does not apply** to lands administered by the Minister of Natural Resources under the *Protected Natural Areas Act*.

11.2 Uses to which policy applies

This policy applies to:

- new commercial and industrial leases issued under the *Crown Lands and Forests Act* and new commercial leases issued under the *Parks Act* that are not currently covered by another policy;
- the renewal of existing commercial and industrial leases not currently covered by another policy; and
- existing leases, upon renewal, if a review of the lease determines that the actual use fits the definitions of a commercial or industrial lease as per the *Leasing Regulation*.

11.2.1 Uses to which policy does not apply

This policy does not apply to any industrial or commercial uses that are covered by other DNR policies or legislation administered by DNR.

12.0 Authority

- Section 24, *Crown Lands and Forests Act*
 - Regulation 89-32, *Leasing Regulation – Crown Lands and Forests Act*
 - Subsection 8(3), *Parks Act*
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13.0 Inquiries

13.1 Written Inquiries

Inquiries concerning this policy may be made in writing to:
Director of Crown Lands Branch
or Manager of the Upland and Coastal Planning Section
Department of Natural Resources
P.O. Box 6000
Fredericton NB E3B 5H1

13.2 Phone Inquiries

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