

**SUBJECT: CROWN RESERVED
ROAD POLICY**



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1.0 Purpose

The purpose of this policy is to provide a framework for the management of Crown Reserved Roads (CRRs).

2.0 Policy Statement

As Crown Reserved Roads are lands that were set aside to provide access to land and thereby support the orderly development of the Province, the primary use of these lands shall be for roads. Other uses of CRRs or disposal of CRRs may be considered only where the lands intended to be served by a CRR have other legal access.

3.0 Background

Background

During the original surveying and granting of Crown lands it was the practice of the provincial surveyors to identify and reserve Crown Reserved Roads at regular intervals between or within granted lands. The intent was to provide access for the Crown or private citizens through eventual construction of roadways on CRRs. In many cases, however, the reserved roads are not needed for access and, in some cases, a road could never be built on the CRR due to physical limitations such as cliffs or water bodies.

There is rarely clear evidence on the ground of the location of an undeveloped CRR. As a result, there are situations where adjacent landowners have inadvertently occupied the CRR, including the establishment of permanent improvements such as houses and other buildings. This unauthorized occupation often first becomes evident during a mortgaging process or in preparation for a property sale, in which case, the occupant generally approaches the Crown seeking some form of legal tenure of a portion of the CRR.

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3.0 Background, Continued

Background
(continued)

The *Crown Lands and Forests Act* addresses the need for legal tenure by allowing the Crown to either grant a section of a CRR to an individual, or to discontinue its interest in that section of the CRR. The ambiguity of ownership following discontinuance, and the introduction of the *Land Titles Act*, which does not allow registration of discontinuances, has reduced the utility of this disposal option. In addition, DNR has an obligation to the people of New Brunswick to ensure that appropriate value is derived for Crown land. Unlike discontinuances, grants require financial consideration for the land; reflecting that Crown land has value.

4.0 Objectives

The objectives of this policy are to:

- a) retain CRRs identified as required to meet Provincial needs, municipal needs or needs for the orderly development of the land;
 - b) permit construction of roads and trails on CRRs where needed to provide access to Crown lands and resources, and private lands;
 - c) dispose of CRRs not required to meet the previous objectives, in accordance with the *Crown Lands and Forests Act* and consistent with all other Provincial legislation.
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5.0 Definitions

Crown Reserved Road	A Crown Reserved Road is a narrow strip of land, usually 20.1 metres (66 feet) in width, located between or within granted or reconveyed Crown lands and reserved by the Crown for access to and from other granted lands or Crown lands. In some cases, portage roads, tote roads, forest roads, old military roads and some old public highways may be CRRs. In many cases, no actual roads were ever built on the reserved lands, but they are still considered to be reserved roads with a public right of passage under the <i>Crown Lands and Forests Act</i> .
Discontinuance	A discontinuance is the process by which the Crown discontinues a CRR as set out in Section 83 of the <i>Crown Lands and Forests Act</i> .
Grant	A grant, when used as a noun, means the initial transfer of Crown lands from the Crown to a person, and, when used as a verb, means to transfer an interest in Crown lands.

6.0 Construction of Roads on Crown Reserved Roads

6.1 No Public Assumption of Responsibility

Construction of a road on a CRR does not imply that the Department of Transportation (DOT) or a municipality will assume responsibility for that road, nor does it imply that DNR will maintain the road.

6.2 Authorization to Construct

6.2.1 CRRs under DNR Administration

All construction, repairs and upgrades to roads on CRRs must first be authorized by the Department. Anyone wishing to construct, repair or upgrade a road or driveway on a CRR must apply for permission to construct.

If warranted, DNR may make provisions for the removal of timber from a CRR prior to construction (i.e., a harvesting permit). Furthermore, Crown Timber Licensees wishing to construct roads on CRRs are not subject to this policy so long as the road construction is contained in an approved Operating Plan and where the construction complies with the criteria in section 6.3.

6.2.2 CRRs under DOT Administration

If the CRR is considered to be a public highway under the administration and control of DOT, then the upgrading or repair must be authorized by DOT.

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6.0 Construction of Roads on Crown Reserved Roads,

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6.3 Criteria for Issuing Licences to Construct

The Department may authorize the construction of a road on a CRR pursuant to section 84 of the *Crown Lands and Forests Act* where:

- a) Construction of a Crown Reserved Road will not increase DNR's management costs (administration, resource management and protection, etc.).
- b) Construction of a road on a CRR would not significantly impact species at risk, natural resources, archaeological resources, or protected or environmentally significant lands (e.g., Protected Natural Areas, environmentally sensitive areas, etc.).
- c) Any access afforded by construction on a CRR, including the construction of driveways serving private property, would be available to the public unless the Minister has closed the CRR or a portion thereof under section 82.1 of the *Crown Lands and Forests Act*.
- d) There are no structures occupying the portion of the CRR on which construction of a road is proposed.

6.4 Consultation and Notification

6.4.1 Planning Authorities

DNR will consult the relevant planning authority on all CRR construction requests

6.4.2 Adjacent Landowners

- a) All owners of land adjacent to the section of CRR on which road construction is proposed will be notified and given an opportunity to forward comments within a specified time period.
- b) DNR will consider objections to the construction of a CRR only if they pertain to section 6.3.b) or 6.3.d) (See section 11 for situations where there are encroachments on CRRs).

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6.0 Construction of Roads on Crown Reserved Roads,

Continued

6.5 Requirements

6.5.1 Survey

Where the CRR has not been surveyed, DNR may require a survey of the portion of the CRR on which road construction is proposed.

If a survey is required, the applicant must, at their own expense, have a New Brunswick Land Surveyor prepare a coordinated plan of survey or a subdivision plan on which coordinates shown were derived from ties to adjusted NB Monuments or HPN Monuments, along with a legal description of the surveyed area, and submit these to DNR for approval.

6.5.2 Other Approvals

Prior to proceeding with construction the applicant must obtain:

- a) any required development permits;
- b) DOT approval for any access points onto a highway managed by DOT; and
- c) The municipality's approval for any access points onto a municipal street.

6.5.3 Terms and Conditions

The authorization to construct a road on a CRR shall be subject to any terms and conditions deemed appropriate by the Minister, and those contained in the Lands Administration Regulation, *Crown Lands and Forests Act*.

7.0 Use of CRRs for Roads on Subdivision Plans

7.1 CRRs as Private Roads

If a proponent wishes to use a CRR as a private road they must obtain a grant of the CRR. The CRR may be granted only if all the requirements of this policy pertaining to grants are met.

7.2 CRRs as DOT Highways

A CRR (or any other Crown land) may become a designated highway, as defined under the *Highway Act*, by the filing of an appropriate subdivision plan in accordance with section 55(5) of the *Community Planning Act*. Upon the filing of the subdivision plan mentioned above, the Crown land involved is transferred to the administration and control of the Minister of Transportation and ceases to be Crown land under the administration and control of the Minister of Natural Resources.

7.3 CRRs as Municipal Streets

A CRR (or any other Crown land) may become the property of a municipality or rural community by the filing of an appropriate subdivision plan in accordance with Section 56(4) of the *Community Planning Act*.

8.0 Use of CRRs for Trails

8.1 No Public Assumption of Responsibility

Establishment of a trail on a CRR does not imply that DNR or any other public authority will assume responsibility for that trail, will police the trail or maintain the trail.

8.2 Criteria for Trail Construction

DNR may issue dispositions in accordance with the *Crown Lands and Forests Act*, to Ministerially appointed trail managers to establish trails on CRRs provided that:

- a) Establishment of a trail on a CRR would not significantly impact species at risk, natural resources, archaeological resources, or protected or environmentally significant lands (e.g., Protected Natural Areas, environmentally sensitive areas, etc);
 - b) Establishment of a trail would not deprive adjacent owners of viable legal access to their properties;
 - c) Use of the trail for its intended purposes would be available to the public, under any conditions that may be established by the Trail Manager, unless the Minister has closed the CRR or a portion thereof under section 82.1 of the *Crown Lands and Forests Act*; and
 - d) There are no structures or other occupations of the portion of the CRR on which construction of a trail is proposed. (See section 11 for situations where there are encroachments on CRRs).
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8.3 Consultation and Notification

8.3.1 Planning Authorities

DNR will consult the relevant planning authority on all CRR trail construction requests.

8.3.2 Public Notification

DNR may require that public consultation take place and may specify how the public consultation will be conducted, where it appears that an application for a disposition to establish a trail on a CRR, if approved, may

- a) pose a threat to public health or safety;
 - b) create a serious nuisance;
 - c) otherwise have serious adverse effects on owners and users of nearby lands.
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8.0 Use of CRRs for Trails, Continued

8.3.2 Public Notification (continued)

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

- a) publishing public notices (e.g., Notice of Intended Action) in French and/or English newspapers that serve the area in which the use is proposed.
- b) obtaining written consent from adjacent landowners confirming that they do not have any concerns with the proposed trail use, and/or;
- c) holding public consultation sessions to assist in making a decision on whether or not to issue a disposition.

Where it appears that there may be a way to resolve the concerns raised, DNR will request that the applicant work with the affected parties to resolve the concerns. Where this involves a dispute among landowners, DNR may further require the applicant to obtain signed releases from the disputing parties freeing the Province from future claims.

Where legitimate serious concerns raised through the public notification process are not resolved within a reasonable length of time, the Department will reject the application. Following this, the applicant may choose to continue to seek resolution and submit a new application once a successful resolution is reached.

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8.0 Use of CRRs for Trails, Continued

8.4 Requirements

8.4.1 Survey

Where the CRR is not already surveyed, DNR may require a survey of the portion of the CRR on which trail construction is proposed.

If a survey is required, the applicant must, at their own 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 legal description of the surveyed area, and submit these to DNR for approval.

8.4.2. Other Approvals

Prior to proceeding with the establishment of a trail the applicant must obtain:

- a) any required development permits;
- b) DOT approval for any access points onto a public highway managed by DOT; and
- c) the municipality's approval for any access points onto, or crossings of, a public street.

8.4.3 Terms and Conditions

Any DNR authorization shall be subject to any conditions deemed appropriate by the Minister, and those contained in the Lands Administration Regulation. In addition, right-holders shall agree that the Minister may terminate the disposition at any time in order to permit other uses on CRRs as set out in this policy.

9.0 Disposal of Crown Reserved Roads

9.1 Disposal DNR may dispose of CRRs by grant or discontinuance. In general, disposal of CRRs will be disposed of via a grant. Only under the circumstances identified in Section 9.5.1 may a CRR be discontinued.

9.2 Priorities for Disposal Provided that the other criteria of this policy are met, priorities for disposal are as follows:

- a) to DOT or a municipality for the purposes of establishing public streets and highways;
- b) where there is only one occupant of the CRR, to the occupant;
- c) where there is more than one occupant, based on agreement amongst the occupants or where there is no agreement, as determined by DNR;
- d) to adjacent property owners.

9.3 Disposal for Public Road Purposes

9.3.1 Transfers to DOT

Where DOT makes a request for a CRR in order to designate a highway, DNR will transfer the administration and control of the CRR to DOT or permit the registration of a survey to designate a highway; provided there are no encroachments on the CRR, or provided DOT is willing to resolve the encroachment.

9.3.2 Grants to Municipalities

Where a municipality makes a request for a CRR in order to designate a future street or to legitimize an existing public street, DNR will grant the CRR to the municipality or permit the registration of a survey to establish a public street or future street.

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9.0 Disposal of Crown Reserved Roads, Continued

9.4 Criteria for Disposal

The Department may dispose of all or part of a CRR where:

- a) Disposal of the CRR will not increase DNR's management costs (administration, resource management and protection);
- b) All properties intended to be served by the CRR have other viable and legal access;
- c) The CRR is not needed to provide access to Crown land and resources, even though construction may not occur in the foreseeable future;
- d) The CRR is not required for Departmental programs or to meet other Departmental needs;
- e) The CRR is not needed for a public street or highway by DOT or the municipality in which it is located;
- f) There are no occupations on it by someone other than the prospective grantee (See section 11 for situations where there are encroachments on the CRR);
- g) An existing recreational trail may either be re-routed or the authorization terminated altogether.

9.5 Discontinuances

DNR may discontinue a CRR:

- a) in response to an application, or
- b) on its own initiative where the public good would be served by the discontinuance.

9.5.1 Criteria

In addition to satisfying the criteria outlined in section 9.4 above, an application to have a CRR **discontinued** may only be approved where it is not possible to identify its location by survey plan due to the characteristics of the land or due to significant development.

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9.0 Disposal of Crown Reserved Roads, Continued

9.6

Consultation

9.6.1 Public Authorities

Before disposing of a CRR, whether by grant or discontinuance:

- a) DNR will consult the appropriate planning authority,
- b) DNR will consult with DOT, and
- c) where the CRR is located in a municipality, DNR will consult with that municipality.

9.6.2 Notification to Adjacent Owners

Before disposing of a CRR via a grant:

- a) DNR will ensure that all owners of land adjacent to the CRR being proposed for disposal are notified and given an opportunity to forward comments by a prescribed deadline;
- b) where disagreements exist among landowners adjacent to a CRR, DNR may require the disputing parties to resolve all legitimate concerns at their own expense before DNR will proceed with the disposal;
- c) following resolution of the dispute, the applicant will provide to DNR a release signed by the disputing landowners freeing the Province from future claims;
- d) where no resolution to valid objections can be reached, DNR will not dispose of the CRR.

9.7 Requirements of Grantee

9.7.1 Survey

Where an application for a grant is approved, the applicant must, at their own 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 legal description of the surveyed area, and submit these to DNR for approval.

9.7.2 Registration

The applicant shall be responsible for obtaining all necessary approvals under the *Community Planning Act* for the registration of the grant and shall submit evidence of having obtained that approval to DNR, prior to the issuance of the grant.

9.7.3 Terms and Conditions

The grant of a CRR shall be subject to the terms and conditions contained in the Lands Administration Regulation, *Crown Lands and Forests Act*.

10.0 Offers of Grants

10.1

When during the course of:

- i) reviewing applications for construction of roads on CRRs;
- ii) reviewing applications for grants, or;
- iii) examining the management of lands in an area;

it becomes apparent that a CRR, or portions of a CRR, meet the criteria for granting as specified in section 9.4, DNR may make an offer of grant of the CRR to adjacent land owners subject to the adjacent landowner submitting an application.

10.2

The grants would be subject to all the requirements for grants as specified in section 9.7.

11.0 Unauthorized Occupation of CRRs

11.1 Grants to Unauthorized Occupants

Where the unauthorized occupation sits on a portion of a CRR which meets the criteria for disposal, as per section 9.4, the CRR may be granted to the unauthorized occupant, subject to the terms and conditions in section 9.7. Occupations which cannot be authorized by grant or land exchange will be addressed in accordance with the trespass provisions of the *Crown Lands and Forests Act*, and the Department's Unauthorized Occupation of Crown Land Principles and Crown Land Management Principles.

11.2 Land Exchanges

DNR may consider an application from an unauthorized occupant of a CRR, which is needed for access, for a land exchange that would ensure continuity of the CRR where

- i) the unauthorized occupation is a permanently affixed structure; and
- ii) the CRR meets all the other criteria in section 9.4 for disposal.

11.2.1 Verification of Ownership

The applicant(s) shall, at their expense, provide the Crown with a current:

- i) Certificate of Registered Ownership under the *Land Titles Act* for their land or a current deed for their land if it is in the Registry System which lists them as the current owner, at the time of application; and,
- ii) Certificate of Registered Ownership under the *Land Titles Act* for their land at the time of closing.

11.2.2 Survey Requirements

Where a review of the proposed exchange indicates that a survey of either the Crown lands and/or freehold lands is required, the applicant(s) must, at their own expense, have a New Brunswick Land Surveyor prepare a coordinated plan of survey or a subdivision plan on which coordinates shown were derived from ties to adjusted NB Monuments or HPN Monuments, along with a legal description of the surveyed area, and submit these to DNR for approval.

11.2.3 Conveyance Documents

If the application is approved, the Department will provide a grant from the Crown to the applicant(s), which will include any applicable reservations in accordance with section 15 of the *Crown Lands and Forests Act* and subsection 3(2) of the *Mining Act*, and/or any other exceptions or reservations, as required.

The freehold owner(s) shall, at their expense, provide the Crown with a transfer document pursuant to the *Land Titles Act*.

12.0 Scope and Application

This policy applies to all “reserved roads” as defined by the *Crown Lands and Forests Act*.

13.0 Authority

Authority

- Construction: section 84, *Crown Lands and Forests Act*
 - Grant: section 82, *Crown Lands and Forests Act*
 - Closure: section 82.1, *Crown Lands and Forests Act*
 - Discontinuance: section 83, *Crown Lands and Forests Act*
 - Licences of Occupation: section 26, *Crown Lands and Forests Act*
 - Unauthorized Occupation and Trespass: sections 70 and 71, *Crown Lands and Forests Act*
 - Municipal Streets: subsections 55(5) and 56(4), *Community Planning Act*
 - Public Highways: subsection 15(1), *Highway Act*
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14.0 Inquiries

14.1 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
New Brunswick, Canada, E3B 5H1

14.2 Phone Inquiries

Telephone inquiries concerning this policy may be made by calling the Land Use Application Service Centre at 1-888-312-5600.

14.3 E-mail Inquiries

E-mail inquiries concerning this policy may be made by e-mailing the Land Use Application Service Centre at CL_TCweb@gnb.ca.
