

**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 (CWRs) as public lands;
 - b) safeguard the functions performed by CWRs;
 - c) address the unauthorized occupations that exist on CWRs; and
 - d) discourage future unauthorized uses.
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2.0 Scope and Application

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

3.0 Background

- 3.1.1 CWRs 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 CWRs were one chain deep (20 m) and 860 were three chains deep (60 m).
 - 3.1.2 Presently, there are approximately 680 contiguous CWRs under the Department of Natural Resources' (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** CWRs complement a variety of provincial and federal resource management programs and statutes related to conservation, environmental protection and sustainability. If managed properly, CWRs:
- 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.

CWRs 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 CWRs 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, to:

- a) protect environmentally significant features and landscapes;
or
 - b) allow for the rehabilitation and recovery of a CWR that has been disturbed.
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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 CWRs.

4.5 Utilities and Access

Notwithstanding subsections 4.1 and 4.2, utilities, access roads, public streets, or public access (i.e., path or walkway) to a water body may be permitted to cross a CWR where no significant environmental concerns exist.

Authorization may be via an easement, right-of-way (ROW) or licence of occupation provided all applicable requirements of this policy are met.

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4.0 Policies, Continued

4.6 Erosion Control Structures or Works

Notwithstanding subsections 4.1 and 4.2, new erosion control structures or works may be permitted, if necessary, to:

- a) protect the environment and/or public health/safety/welfare;
 - b) protect public assets;
 - c) prevent significant property loss; or
 - d) serve a clear public interest or benefit.
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4.7 Vegetation on CWRs

Unless specifically authorized to do so under the provisions of the *Crown Lands and Forests Act*, no person shall modify or remove vegetation located on a CWR.

4.8 Authorization of Unauthorized Occupations

Notwithstanding subsections 4.1 and 4.2, unauthorized occupations within CWRs may be authorized where the occupant applies for a grant or authorization and one of the following conditions is met:

- a) The occupation is a non-abandoned utility, access road or public street, where no significant environmental concerns exist; or
 - b) The occupation is needed to protect the environment, public health or safety, to prevent significant loss of property, or to protect public assets and where no other practical means exist to address a problem(s); or
 - c) A commitment was made to authorize the occupation or dispose of the CWR prior to the original effective date of this policy (January 29, 2007); or
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4.0 Policies, Continued

4.8 Authorization of Unauthorized Occupations (continued)

- d) The occupation was established prior to the effective date of this policy (March 24, 2011), and all of the following conditions must be met:
 - i. the occupant submits valid documentation showing that the occupation occurred prior to the effective date of this policy. Documentation that may be accepted by DNR includes but is not limited to: aerial photo(s); building permit with inspection dates; property assessment notice; legal survey plan; etc. Acceptance and validation of documentation is at DNR's discretion;
 - ii. there is no evidence that the occupant was aware or should have been aware that the occupation was on Crown lands;
 - iii. the occupation does not threaten public health, public safety, or the environment;
 - iv. the occupation does not consist of a mobile structure¹:

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¹ A mobile structure means a structure constructed and finished offsite and transported or driven to the site in one piece whether by means of its own motor, drawn by a motor vehicle, or on the back of a flatbed trailer or truck, (regardless if the chassis and wheels are attached or removed) or a structure constructed and finished onsite that is not on a permanent foundation. Mobile structures includes, but are not limited to camps, garages, baby barns, sheds, recreational vehicles, and travel trailers that are not on a permanent foundation, but excludes modular homes, mini homes, mobile homes, garages or any structures that are on a permanent foundation.

4.0 Policies, Continued

4.9 Instruments of Authorization

Unauthorized occupations may be authorized via:

- a) a grant where 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;
- 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;
- e) on a case by case basis via an appropriate type of tenure where the unauthorized use is an access road, public street, or public access (i.e. path or walkway).

4.9.1 Discontinuance

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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4.0 Policies, Continued

4.10 Removal of Unauthorized Occupations

Unauthorized occupations shall be removed or destroyed if:

- a) the occupation does not meet the criteria for authorization in section 4.8;
 - b) they are endangering public health, public safety, the environment or property;
 - c) the occupant has failed to apply for authorization of the occupation within one month of being requested to do so;
 - d) the applicant fails to fulfill the requirements for approval within the time frame specified;
 - e) the occupants were advised, prior to the adoption of this policy, that their improvements must be removed;
 - f) the unauthorized occupation occurred after the effective date of this policy; or
 - g) the occupant knowingly placed or built a structure within a CWR
 - without the proper authority or permission(s), or
 - despite advice or instruction(s) not to do so.
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4.11 Division of a CWR by a Public Road

When a CWR is divided by a public road, the portion landward of the road may be granted by DNR regardless of whether or not it contains an occupation provided that:

- a) it does not possess any significant resource feature that would be of interest to the Crown;
- b) is not required by the Crown for any departmental programs; and
- c) all applicable requirements of this policy are met.

The portion of the CWR between the road and the waterway shall be retained by the Crown unless it meets the criteria for authorization in section 4.8.

5.0 Grants

5.1 Area to be Granted

Only the area required to accommodate the unauthorized occupation may be granted.

The area to be granted shall only include a sufficient amount of land required to authorize the following:

- a) permanent structure(s),
- b) septic system(s),
- c) well(s), and
- d) driveway(s).

Additional lands may be granted in situations where not granting these lands, would result in isolated slivers of ungranted Crown lands less than 0.2 hectares in size.

5.2 Erosion Control Structures

If an erosion control structure or related works is:

- located above the bank or shore and is contiguous with a parcel being granted to authorize improvements in section 5.1, the parcel shall be granted up to the bank or shore;
- partially located above the bank or shore and is contiguous with a parcel being granted to authorize improvements in section 5.1, the parcel shall be granted up to the bank or shore and any portion of the structure located below the bank or shore must be authorized via a lease;
- located on all or a portion of a CWR the Department wishes to retain or is not contiguous with a parcel being granted to authorize improvements in section 5.1, the parcel must be authorized via a lease.

In situations where a grant and a lease will be issued, the grant offer must be conditional upon the grantee entering into a lease agreement with the Department to legalize the erosion control structure or related works.

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5.0 Grants, Continued

5.3 10-metre wide Right-of-Way (ROW)

Where the area to be granted includes the shoreline, DNR shall retain a 10-metre wide Right-of-Way for the public to pass and re-pass.

5.4 Market Value and Appraisal

Before a grant is issued, the occupant shall pay the market value of the area to be granted. Market value will include the value of the land plus any resources that run with the land, such as timber, quarriable substances or aggregates, and excludes the value of the unauthorized occupation/structure.

5.4.1

Market value shall be determined through an appraisal prepared by an appraiser registered to practice in New Brunswick by the New Brunswick Association of Real Estate Appraisers.

5.4.2

The appraisal will normally be prepared by an appraiser employed by the Province. Where provincial staff is unavailable, the Department may arrange for a registered appraiser to prepare an appraisal in accordance with the Department's *Terms of Reference for Property Appraisals* found in Appendix 1.

5.4.3

The Department will arrange for and assume the cost of appraising the area to be granted including a timber cruise, if required.

5.5 Survey

Before a grant is issued, the occupant shall, at his or her expense 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 High Precision Network Monuments, along with a description of the surveyed area, and submit these to the Department for approval

5.6 Registration

The grantee must register the grant and submit proof of registration to the Department 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 authorized pursuant to section 4.8 may be leased.
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- 6.2 Erosion Control Structures** Authorization may be via a lease provided all applicable requirements of this policy are met, including the criteria outlined in section 4.6.
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- 6.3 10-metre wide Right of Way (ROW)** Where the area to be leased includes the shoreline, the Department shall retain a 10-metre wide ROW for the public to pass and re-pass. Where the occupation is such that there is not enough land for a 10-metre wide ROW, the Department shall retain as wide a ROW width as possible.
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- 6.4 Survey** Before a lease is issued, the occupant shall, at his or her 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 High Precision Network Monuments, along with a description of the surveyed area, and submit these to the Department for approval.
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- 6.5 Registration** The occupant must register the lease and submit proof of registration to the Department within a specified time period.
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6.0 Leases, Continued

6.6 Terms and Conditions of Lease

In addition to the requirements of the *Lands Administration 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 the Department's Policy on Cutting Permits;
 - c) 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 or her contractors, servants, agents, or employees; and
 - d) obtain all required permits and approvals before undertaking any work.
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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 CWRs shall be discouraged.

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

7.2 Conformity to Environmental Impact Assessment 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 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 environmental impact assessment, DNR may undertake the evaluation of the application but will not make a final offer to the applicant until:

- a) the Minister of Environment 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 or her 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 High Precision Network Monuments, along with a description of the surveyed area, and submit these to the Department for approval.

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

7.5 Terms and Conditions In addition to the requirements of the *Lands Administration Regulation*, a lease 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 or her 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 CWRs – 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 2009-32 – *Lands Administration 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

10.3 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.

Appendix 1
Department of Natural Resources (DNR)
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 (excluding the unauthorized occupation/structure):
 - 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, 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.