

Subject DEPATENTING OF ACQUIRED LAND		Procedure PL 2.09.03	
Compiled by - Branch Lands & Waters	Section Land Management	Date Issued August 30, 2006	
Replaces Directive Title Same	Number LM.12.02.01	Dated August 15, 1989	Page 1 of 7

1.0 PROGRAM GUIDANCE

1.1 Purpose

To provide procedural guidelines to implement Policy PL 2.09.03 Depatenting of Acquired Lands.

1.2 Procedural Flexibility

A high degree of compliance to this directive is required

2.0 PROCEDURE

The depatenting of land is accomplished by the filing of a Section 38 certificate in the proper Land Registry Office, issued under Section 38 of the Public Lands Act. This procedure details the actions to be carried out by the District Manager and the Coordinator of the Crown Land Registry to obtain and file a certificate.

Responsibility

Action

District Manager:

1. Upon determining a clear MNR program need for the issuance of a Section 38 certificate or upon request from the Senior Manager, Mining Lands Section:
 - searches MNR records to determine that the property has been acquired for the program purposes of MNR and
 - determines whether the lands are held in the name of the Minister of Natural Resources (including Lands and Forests).
2. If the lands are not held in the name of the Minister of Natural Resources, withhold further action until such time as administration and control of the lands is transferred (i.e. by Order-in-Council) to the Minister of Natural Resources from Ontario Realty Corporation or the controlling ministry.
3. Obtains an up to date title search for the property specifically:
 - Property Identification Number (P.I.N) printout; or
 - if no P.I.N. has been created, obtain a copy of the parcel register (Lands Titles Division); or
 - Registry abstract and acquisition instrument (Registry Division).

4. Reviews title information to determine the existence of easements, restrictive covenants, registered leases, or agreements of other interests.

An easement that is appurtenant to or affects land described in a Section 38 certificate is not affected by registration of the certificate (i.e. the Crown's subsequent management of the depatented public land will be burdened by the continued existence of the easement). For purposes of Section 38, a restrictive covenant running with the land is considered to be an easement.

5. If the property is located within an organized municipality, MNR must notify the municipality in writing and advise the municipality of the Ministry's intention to depatent and provide the reasons for the depatenting and the impact (if any) upon future municipal taxes derived from the property (i.e. property will be re-sold and no impact to taxation, or simply depatented and not subject to future municipal taxation).
6. Undertakes a site inspection of the property to determine if there are any:
 - unregistered easements (e.g. utility lines);
 - encroachments (e.g. buildings, fences) by neighbouring property owners, or;
 - other unauthorized occupations.

Prepares inspection report.

OR

If due to size or remoteness of the lands, it is impractical to carry out a thorough site inspection, undertakes public consultation by:

- directly contacting any abutting property owner, if applicable; and/or
- places a public notice in a local newspaper.

Sixty (60) day notification is to be given for any person to make representation as to why MNR should not proceed with the depatenting. The sixty day notification period commences on the later of the date of direct mail or the newspaper notice.

While not a legal requirement, this notice is provided so that any person who may have an occupational or property interest in the land may have an opportunity to advise MNR as to what action, or inaction, should occur with respect to their interest. The notice may be in the form of that provided in Appendices A or B.

Procedure No. PL 2.09.03 Depatenting of Acquired Land	Date Issued August 30, 2006	Page Page 3 of 7
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7. Following the inspection and or termination of the 60 day notification period, reviews the input from any person claiming an interest in the lands and determines:
 - what action to take with respect to any property or occupational interests claimed (i.e. seek removal, negotiate authorization, seek to depatent only a portion of the land, etc.) and
 - whether or not to proceed with the depatenting process.

Advice may be sought with respect to any unresolved impediments to clear title from Regional Lands Specialists, Legal Services Branch or Crown Land Registry staff.

8. If the decision is to proceed with the depatenting, prepares routing and requisition (Requisition for the Issuance of Certificate for the Depatenting of Acquired Land) and forward same to the Crown Land Registry with:
 - copy of parcel register (land titles system); or
 - Registrar's abstract and copy of deed by which MNR took title (registry system); or
 - Property Identification Number (PIN) printout.

Requisition and Routing forms are available on the Land Management Intranet site and can be accessed by clicking on the following URLs:

http://documents.mnr.gov.on.ca/Document/View.asp?Document_ID=1789&Attachment_ID=5047

http://documents.mnr.gov.on.ca/Document/View.asp?Document_ID=1790&Attachment_ID=5048

Crown Land Registry:

9. Reviews requisition for accuracy of information, composes description from information contained in parcel register or deed or PIN printout, prepares certificate and ensures the document is registered in the applicable land registry office.
10. Upon registration of certificate, provides MNR District and MNDM Provincial Mining Recorder with a copy of the instrument bearing registration details to update records.

District Manager:

11. Manages land as ungranted public land, subject to any existing easements or restrictive covenant that are not affected by the depatenting (see Subsection 38(5), PLA).

Procedure No. PL 2.09.03 Depatenting of Acquired Land	Date Issued August 30, 2006	Page Page 4 of 7
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3.0 REFERENCES

3.1 Legal References

- Mining Act
- Public Lands Act, Section 38

3.2 Directive References

- PL 2.09.03 (POL) Depatenting of Acquired Land

Appendix A

REGISTERED MAIL

NOTICE

**PUBLIC LANDS ACT
IN THE MATTER OF SECTION 38 OF THE
PUBLIC LANDS ACT;
R.S.O. 1990, as amended.**

**AND IN THE MATTER OF
(description of lands)**

To:

The above described lands are registered in the name of [name in which lands are held].

Subsection 38 (2) of the Public Lands Act, as amended, provides that:

“When the Crown becomes the registered owner of land that has been patented or otherwise disposed of or when land reverts to or vests in the Crown, the Minister may forward to the proper Land Registry office a certificate stating that the land is deemed to be public lands.”

TAKE NOTICE that the Ministry of Natural Resources intends to register a certificate under the said Subsection 38 (2) with respect to the above lands.

If you have acquired an interest in the above lands by possession or by making improvements thereto you may give notice of such interest to the undersigned by (60 days from the later of this direct mailing or of public notice).

NOTE: for your convenience, I have attached a copy of section 38 of the Public Lands Act, as amended.

DATES at (District Office community) this (day)day of (month), (year).

District Manager,

(full postal address) District

Procedure No. PL 2.09.03 Depatenting of Acquired Land	Date Issued August 30, 2006	Page Page 6 of 7
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Public Lands Act

Section 38

Certificate that land is public lands

Definition

38.(1) section,

“Crown” means Her Majesty the Queen in right of Ontario as represented by the Minister.

R.S.O.1990, c. P.43, s.38 (1).

Certificate forwarded for registration

(2) When the Crown becomes the registered owner of land that has been patented or otherwise disposed of or when land reverts to or vests in the Crown, the Ministry may forward to the proper land registry office a certificate stating that the land is deemed to be public lands. R.S.O. 1990, c. P.43, s. 38 (2).

Registration

(3) The land registrar shall, without fee or charge, register every certificate received under subsection (2). R.S.O. 1990, c. P.43, s. 38 (3).

Effect of registration

(4) Upon registration of a certificate under subsection (3),

(a) the *Land Titles Act* or the *Registry Act*, as the case may be, ceases to apply to the land described in the certificate and the land registrar shall note that fact in the appropriate register or abstract index; and

(b) the land described in the certificate may be granted, sold, leased or otherwise dealt with in the same manner as other public lands. R.S.O. 1990, c. P43, s. 38 (4).

Easements

(5) An easement that is appurtenant to or affects land described in a certificate registered under subsection (3) is not affected by registration of the certificate. R.S.O. 1990, c. P.43, s. 38 (5).

Restrictive covenants

(6) For the purposes of this section, a restrictive covenant running with land is considered to be an easement. R.S.O. 1990, c. P.43, s. 38(6).

Appendix B

[MNR Logo]

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TAKE NOTICE that the Ministry of Natural Resources intends to register a certificate under the said Subsection 38 (2) with respect to the above lands.

If you have acquired an interest in the above lands by possession or by making improvements thereto you may give notice of such interest to the undersigned by (60 days from later of the date of this notice or of any direct mailings).

DATED at (District Office community) this (day) day of (month), (year).

District Manager
_____ District
(full postal address)