

Subject <b>WATERPOWER SITE RELEASE – CROWN LAND</b>		Policy <b>PL 4.10.05</b>	
Compiled by Renewable Energy Program		Date Issued April 16, 2010	
Replaces Directive Title Same	Number Same	Dated May 21, 2007	Page 1 of 9

## 1.0 INTRODUCTION

Ontario has placed a priority on expanding the use of clean and renewable sources of energy. Developing these substantial resources is a cornerstone of the province's future prosperity and its commitment to protecting the environment.

Renewable energy projects provide environmental and economic benefits at the local, provincial and global level. They reduce threats to biodiversity from the impacts of climate change. They also create new opportunities for manufacturing and resource development activities. Finally, renewable energy generation boosts the long-term reliability and adequacy of Ontario's electricity system, by putting in place sustainable sources of energy.

Ontario has a long history of generating clean, affordable electricity from waterpower, with the first facilities installed in the late 1800's. The bulk of the province's current installed capacity was in service by the mid-1970's, and provides both base and flexible power generation to Ontario's electricity grid.

The potential to increase the amount of electricity generated from waterpower in Ontario arises from:

- redevelopment and upgrades of existing waterpower facilities;
- new greenfield opportunities where there are no existing water control structures; and
- retrofitting and redesigning of existing water control dams.

The Ministry of Natural Resources (the Ministry) supports development of new waterpower energy through disposition of greenfield opportunities on Crown land and through retrofitting Crown owned water control structures.

Disposition and development of potential waterpower sites is governed by provincial and federal statutes and regulations. The final decision concerning the disposition and development of potential waterpower sites on Crown land rests with the Ministry.

This policy and the supporting procedure applies to anyone wishing to pursue a waterpower project on Crown land/bed.

Under authority of Section 2(1) of the Public Lands Act, the Minister has the sole authority to approve or deny any application for the use of Crown land

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## 2.0 PROGRAM DIRECTION

This policy applies to the discretionary disposition of Crown land including:

- unalienated Crown land;
- acquired property which has been deemed to be public land in accordance with subsection 38 (2) of the Public Lands Act (including the issuance of a sale, lease, or easement);
- lands under water which are deemed public lands under provisions of the Beds of Navigable Waters Act;
- the release of greenfield waterpower opportunities on Crown land;
- the release of Crown owned water control structures; and
- individual developments less than 25MW on the Severn, Winisk (Weenusk), Attawapiskat and Albany Rivers and proposed by a Local Aboriginal community(ies) and/or their partner.

The Ministry will not release sites for the development of waterpower projects that are:

- within the Moose River Basin, North of Highway 11. The development of these sites may be negotiated at a later date;
- a individual waterpower project greater than 25 megawatts (MW) within the basins of the Severn, Winisk (Weenusk), Attawapiskat and Albany Rivers (the “Northern Rivers Commitment”);
- within a provincial park or conservation reserve where the project would not qualify as an exception under section 19 of the Provincial Parks and Conservation Reserves Act, 2006; or
- a greenfield waterpower facility on a naturally reproducing lake trout lake.

Development of a waterpower project on Crown land may also be limited by statute, regulation or policy including, but not limited to:

- habitat or species protected under the Endangered Species Act, 2007;
- areas recommended or designated for regulation as provincial parks or conservation reserves and areas regulated under the Wilderness Areas Act;
- area-specific prohibitions identified in the Ministry’s Crown Land Use Policy Atlas;
- lands under surface tenure and/or mineral rights tenure issued under the Mining Act or Public Lands Act (e.g. leases); areas regulated under the Conservation Authorities Act Section 28 regulations;
- areas subject to protocols between Ontario and Aboriginal communities;
- Ontario’s Far North; and
- areas where there are existing legal agreements or other exceptional legal circumstances that would prevent release.

### 2.1 Goal

This policy will contribute to the environmental, social and economic well being of the people of Ontario, including Aboriginal communities, through the provision of opportunities for

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waterpower development and the sustainable development of Ontario's Crown land, while recognizing the Ministry's mission of ecological sustainability.

## **2.2 Guiding Principles**

When disposing of rights to use Crown land or interests in Crown land, the Ministry will:

- apply a fair, open and standardized approach to the allocation of resources, granting of tenure, and charging of rents and fees;
- follow effective and efficient land management, sustainable development, environmental assessment and stakeholder consultation practices;
- fulfill its duty to consult with Aboriginal peoples where its actions may adversely affect an established or asserted Aboriginal or treaty right; and
- support creation of environmentally sustainable economic opportunities for Aboriginal communities through the disposition of Crown land for greenfield sites. The Ministry will demonstrate a preference for proposals that provide benefits to the Identified Aboriginal communities.

## **3.0 STAGES OF CROWN LAND WATERPOWER DEVELOPMENT**

Distinct stages in developing waterpower projects on Crown land include:

Stage 1 – Waterpower Site Release

Waterpower Site Release Application

Application Review

Applicant Decision to Proceed

Stage 2 – Environmental Assessment and Approval Processes

Stage 3 – Issuance of Tenure and Charging of Taxes and Rents

### **3.1 Waterpower Site Release**

#### **3.1.1 Waterpower Site Release Application**

The Ministry will periodically establish windows of opportunity under terms and conditions as determined by the Ministry, for interested parties to apply for the opportunity to secure Crown land for waterpower development. These opportunities will be communicated to the waterpower industry and the public.

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Applications from off-grid communities to generate energy for community use and applications for small-scale waterpower facilities are not limited to the "windows of opportunity" established by the Ministry and said communities may apply at any time.

Once the Ministry has established a window of opportunity, applications will be received in the form prescribed by the Ministry.

The Ministry reserves the right to limit the number of applications received from any one Applicant.

The Ministry may from time to time, employ the services of other agencies and ministries in the decision making process related to site release.

The Ministry reserves the right to determine if a site is appropriate for release and/or change or establish the site release process which will apply.

### **3.1.1.1 Greenfield New Site Release**

Greenfield waterpower opportunities on Crown land will be released through one of three site release processes direct site release, non-competitive site release or, competitive site release

#### **Direct Site Release**

Applicants may participate in the direct site release process if the proposed project :

- has an installed capacity of less than or equal to 1MW, or
- is proposed by the riparian owner and/or their partner

Applications within the basins of the Severn, Winisk (Weenusk), Attawapiskat, Albany rivers will be considered within the direct site release process, if the project is proposed by a Local Aboriginal community(ies) and/or their partner and is 25 MW or less in size.

#### **Non-Competitive Site Release**

Applicants may participate in the non-competitive site release if the proposed project is greater than 1MW and less than 10MW, and does not otherwise qualify for a direct site release.

#### **Competitive Site Release**

The Ministry will release sites for potential waterpower projects 10 MW and greater and that do not otherwise qualify for direct site release through an Applicant driven, Ministry administered, competitive process.

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### **3.1.1.2 MNR Water Control Structure Site Release**

The Ministry will generally require that the successful Applicant retrofit an MNR water control structure for waterpower purposes and upon being granted development approval, assume full responsibility for the maintenance, operational control, long-term structural integrity and liability for the water control structure. The Ministry may also require the successful Applicant to assume responsibility for operational control of other associated MNR water control structures on the same reservoir, to ensure appropriate water management regimes.

### **3.1.2 Application Review**

The Ministry's review of the application includes:

**Eligibility:** Ensures site qualifies for the site release process under application and reasonably optimizes the site potential.

**Site Availability:** Ensures that the site is available for release and identifies if there are any areas that may be prohibited from release by existing land use and resource management statutes, regulations, or policies that would preclude a waterpower project as per Section 2.0 of this Policy.

This initial review by the Ministry for coarse or broad level issues is not a replacement for subsequent, more detailed input to the proposal, which will occur during the environmental assessment and approvals processes.

Where there is an Applicant associated with a potential site, the Ministry will not accept other applications for the same location.

#### **3.1.2.1 Site Information**

Once the Ministry has reviewed the application, the Ministry will develop a site information package to identify any known environmental, land use planning, resource, public or Aboriginal interest issues related to the site. The intent of this information is to provide the Applicant with available information to determine whether they wish to proceed with a waterpower project.

The Ministry will hold a site information meeting with the Applicant to discuss the site information package, the project, and procedural steps. The Ministry may invite other relevant agencies, and Aboriginal communities to attend this meeting.

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### **3.1.3 Applicant Decision to Proceed**

Following the site information meeting, the Applicant will indicate to the Ministry whether they wish to proceed with their application.

#### **3.1.3.1 Applicant of Record Status**

Through a letter from the District Manager, Applicant of Record status will be awarded to the Applicant. There is no right, title, interest or tenure associated with Applicant of Record status.

Applicant of Record status is not a disposition; it is the completion of a process to select an appropriate Applicant for potential development. The Ministry reserves the right to determine if the issuing of Applicant of Record is appropriate for a site.

### **3.2 Environmental Assessment and Approval Processes**

The Class Environmental Assessment for Waterpower Projects (2008) (Class EA) details the framework for reviewing the environmental effects of waterpower projects in Ontario. It is a proponent-led system to which regulatory agencies provide input and advice. Applicants undertaking greenfield site development or redevelopment of existing waterpower facilities on Crown or private land (including MNR water control structures) may be subject to the requirements of the Ontario Water Resources Act, Lakes and Rivers Improvement Act, Endangered Species Act, Public Lands Act, Canadian Environmental Assessment Act, Species at Risk Act and Fisheries Act. As stated in the Class EA, a key objective is to coordinate and integrate environmental approvals and public involvement processes that are relevant to planning a waterpower project. Adhering to the Class EA will facilitate meeting the core planning requirements for this array of approvals.

### **3.3 Issuance of Tenure and Charging of Taxes and Rents**

#### **3.3.1 Tenure**

Tenure security has long been recognized as a critical issue for waterpower development. Accordingly, the Ministry has developed a generic waterpower lease agreement (WPLA) to provide security and long term tenure for Applicants. The WPLA is used to authorize new facilities on Crown land and will replace any existing waterpower lease agreements that expire in the future. The Ministry may authorize new facilities with an installed capacity of 75kW or less with a land use permit.

The WPLA has a rolling term that may continue in perpetuity.

Separate tenure documents (e.g. land use permits or easements) will be issued for access roads, flooding, utility corridors and any other infrastructure required beyond the leased area. Fees for

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these tenure documents will be established through application of the Crown Land Rental Policy PL 6.01.02 or other applicable policy.

### **3.3.2 Taxes and Charges on Gross Revenue and Land Rent**

Taxes, charges on gross revenue and land rents associated with waterpower development on Crown land are detailed in Procedure PL 4.10.05.

Where application or Applicant of Record status is terminated with cause by the Ministry, or where the Applicant withdraws from a site, all fees paid by the Applicant in support of the application(s) will be forfeited to the Crown.

## **4.0 TIMELINES**

Applicants are required to meet all timelines specified in this policy, the accompanying procedure or any other document or correspondence issued by the Ministry. Failure to meet timelines may result in a review and loss of application or Applicant of Record status. The Ministry reserves the right to extend timelines under exceptional circumstances.

## **5.0 TRANSFERABILITY**

A waterpower application does not provide any right, title, or interest in land and is considered by the Ministry to be non-transferable. There is no ability to mortgage or charge an application.

Applicant of Record status is transferable with the consent of the Ministry. There is no ability to mortgage or charge Applicant of Record status.

Requirements related to transferability and mortgage consent for tenure documents will be consistent with the conditions of the applicable tenure document.

## **6.0 REFERENCES**

### **6.1 Statutory**

- Beds of Navigable Waters Act
- Electricity Act
- Endangered Species Act
- Environmental Protection Act
- Lakes and Rivers Improvement Act
- Mining Act
- Provincial Parks and Conservation Reserves Act

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Public Lands Act  
Wilderness Areas Act  
Class Environmental Assessment for Waterpower Projects, October, 2008

## 6.2 Policies and Procedures

PL 4.10.05 Waterpower Site Release – Crown Land  
PL 6.01.02 Crown Land Rental Policy  
Inland Ontario Lakes Designated for Lake Trout Management (MNR 2006)

## 7.0 DEFINITIONS

“Applicant” means an individual or legal entity eligible to hold land in Ontario responding to a call for Expressions of Interest or a Competitive Release Package, or has submitted a bona fide application for Crown land for waterpower purposes.

"Applicant of Record" means the individual/company/community including an Aboriginal community that through a site release process, has been granted the ability by the Ministry to pursue required approvals and permits for waterpower development.

"District" means the Ministry district office, Manager or staff responsible for the geographic area within which the site or application area exists. This will include Zone office, Manager or staff where the site is within the boundaries of an area protected under the Provincial Parks and Conservation Areas Act as applicable.

“greenfield” means a new opportunity for waterpower development on Crown land where there is no existing water control structures.

“installed capacity” means the sum of the manufacturer’s rated power capacity of all turbines making up a waterpower facility measured in megawatts (MW).

“Identified Aboriginal community” means an Aboriginal community located within or adjacent to the tertiary watershed, where a potential greenfield waterpower development on Crown land may be located.

“Lake trout lake” means, for purposes of this policy, a lake designated by policy by the Ministry for management as a lake trout lake. The list of lakes in Ontario designated by Ministry policy for management as naturally reproducing lake trout lakes are identified in Inland Ontario Lakes Designated for Lake Trout Management, May 2006 (as amended).

“Local Aboriginal community” means an Aboriginal community(ies) that may claim the area contemplated for site release as their traditional land use area.

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“MNR water control structure” means a water control structure operated and maintained by the Ministry or by a third party under agreement (not under Crown tenure) on behalf of the Ministry.

“off-grid community” means a community which does not have access to the IESO-controlled electricity grid.

“riparian owner” means any owner of land in fee simple directly bounded (lapped) by water; or through which a body of water flows.

“site” means a reach of a river or an individual location for the purposes of this policy. The site will be defined on a case-by-case basis to allow for local flexibility when considering new site release.

“site release” means the completion of the process to select an Applicant of Record for a potential waterpower project.

“small-scale waterpower facility” means a waterpower facility that does not require a dam or any other permanent structure.

“water control dam” means a structure that holds back water in a river, lake, pond or stream to raise the water level, creates a reservoir, or diverts the flow of water.

“waterpower facility” means any number or combination of electrical energy producing water-powered turbines and supporting infrastructure, including pump storage facilities, reservoirs and water control dams.

“waterpower project” means the construction, installation, use, operation, changing or retiring of a waterpower facility.