

THE CORPORATION OF THE TOWNSHIP OF LAKE OF BAYS



REPORT

TO: Mayor & Members of Council
FROM: Stefan Szczerbak, Planner
DATE: March 24th, 2009
RE: Public Lands Act and Crown Roads

RECOMMENDATION:

None. For information and Council direction.

ORIGIN:

At their January 27th, 2009 meeting, Council directed staff to prepare a report to clarify and describe "Crown Roads" and the applicable provincial policies related to the Crown roads located throughout the Township's jurisdiction.

ANALYSIS:

Approximately 40% of all lands within the jurisdictional boundaries of the Township are owned and managed by the Province of Ontario. The Ministry of Natural Resources (MNR) is the provincial agency responsible for the management of these lands. The MNR has developed and implements area-specific land use policies to regulate the use of Crown lands throughout the Province. The majority of Crown Lands located within the Township are designated as "General Use Areas" and subject to Policy No. G362 (copy attached). These policies include a list of permitted uses and activities (i.e. forestry and aggregate extraction) which may occur on the Crown lands within this area-specific land unit. In addition, this policy also includes provisions for access to Crown Lands as well as a description of the general maintenance requirements for Crown roads.

Most of the Crown roads located throughout the Township are located within and provide access to remote tracts of Crown land. Where these roads traverse remote and privately owned lands, they are typically described on a Reference Plan and the ownership of the road by the Crown is similar to Township ownership of a municipal road allowance. Crown roads are generally managed by the MNR as forest access roads pursuant to the Public Lands Act (relevant sections of the Act are attached). Although the Public Lands Act permits any person to travel on a Crown Road at any time, it also absolves the Crown of any liability with respect to construction, maintenance, repair or closing of such a road. The Act may also permit the Crown to close any portion of the road at any time, for an extended period of time. The maintenance of Crown roads is typically the responsibility of the user (i.e. the forestry company conducting harvesting activities on Crown lands).

As Land Use Policy No. G362 permits some limited tourist commercial uses on Crown Lands, these types of proposals are reviewed by the MNR for conformity with Provincial land use and access policies. However, the Township through its Official Plan and Zoning/Development Permit By-laws regulates new uses proposed on private lands. While the Official Plan encourages the consideration of remote tourism, there are a variety of policy tests that must be considered when reviewing new development proposals (i.e. the location, type, extent of built form, legal access and financial impact

on the Township) in remote areas of the Township. With respect to a proposal seeking access via a Crown road, there may be situations where access by such a road to certain uses is appropriate.

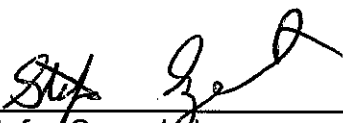
Ministry staff have advised that if the Township chooses to approve development on private lands which rely on Crown road access, and upgrades to that Crown road are required, it is likely that the Province would transfer the ownership and maintenance of that road to the Township.

While the assumption of Crown roads does not appear to be specifically contemplated in the Township's Official Plan, it is instructive to review policies respecting the assumption of private and Township roads. In this regard, the Official Plan states that private roads should not be assumed unless the Township considers it to be within the public interest (C.83). Similarly the development and maintenance of public roads will be at the discretion of the Township (C.85). It would appear that the intent of the Plan would be to exercise prudence if consideration is being given to the assumption of a road. Respecting Crown roads, the Township's Director of Public Works has advised that it would not be in the Township's best interest to assume responsibility for considerable lengths of these roads especially in remote locations. This is due to the considerable costs of continued long-term maintenance of such roads as well as the liability related to the safety issues with resource extraction and tourist commercial traffic using the same road.

When discussing Crown roads generally at the meeting of January 27th, 2009, Council expressed concerns respecting their assumption. If Council wished to avoid the assumption of Crown roads, one approach may be to recommend to the MNR that Crown road usage within the Township be restricted to resource management use. However, this would preclude consideration of remote tourism development and negatively impact the Township's recreational and tourism business, as many snowmobile and ATV users currently utilize these roads.

In view of the foregoing, when evaluating a new development proposal in remote areas within the municipality, a key consideration for Council would be its financial impact on the municipality.

Respectfully submitted by,



Stefan Szczerbak, M.Sc, RPP, MCIP
Planner



Ministry of Natural Resources
Crown Land Use Policy Atlas
Policy Report
G362: Multiple Resource Management

ID: G362
Area Name: Multiple Resource Management
Designation: General Use Area
Category: N/A
District(s): North Bay, Parry Sound, Algonquin Park, Bancroft
Area (hectares): 469005
Date Policy Last Updated: January 31, 2006

DESCRIPTION:

This is the largest management area and occurs throughout the Bracebridge Area of Parry Sound District. This area is located within the Great Lakes Heritage Coast Signature Site, one of 9 such areas featured in the Ontario's Living Legacy Land Use Strategy (1999). Signature Sites are identified for their range of natural and recreational values and their potential to contribute to future recreation and tourism.

LAND USE INTENT:

Within this area, resource management will be directed toward multiple use management. Standard management practices combined with the concept of sequential use will enable MNR to take full advantage of the potential of the natural resources. Management of this area is also governed by the general policies contained in Bracebridge District Land Use Guidelines (1983).

MANAGEMENT DIRECTION:

COMMERCIAL ACTIVITIES		
Activity	Permitted	Guidelines
Aggregate Extraction	Yes	
Bait Fishing	Yes	
Commercial Fishing	Yes	
Commercial Fur Harvesting	Yes	
Commercial Power Generation Development	Yes	
Commercial Timber	Yes	

Activity	Permitted	Guidelines
Harvest		
Commercial Tourism (services and/or facilities), Existing	Yes	
Commercial Tourism (services and/or facilities), New	Yes	
Mineral Exploration and Development	Yes	
Peat Extraction	Yes	
Wild Rice Harvesting	Yes	

LAND AND RESOURCE MANAGEMENT ACTIVITIES

Activity	Permitted	Guidelines
Crown Land Disposition	Yes	
Crown Land Disposition, Cottaging	No	Authorization will not be granted, nor will disposition of Crown lands be considered for seasonal recreation, rural residential, or remote cottage development.
Crown Land Disposition, Rural Residential	No	Authorization will not be granted, nor will disposition of Crown lands be considered for seasonal recreation, rural residential, or remote cottage development.
Crown Land Disposition, Seasonal Recreation Camp, Existing	No	Authorization will not be granted, nor will disposition of Crown lands be considered for new private recreation camps (i.e. hunting, fishing); or commercial outpost camps for the purpose of hunting.
Crown Land Disposition, Seasonal Recreation Camp, New	No	Authorization will not be granted, nor will disposition of Crown lands be considered for new private recreation camps (i.e. hunting, fishing); or commercial outpost camps for the purpose of hunting.
Road Development and Maintenance, Existing	Yes	Temporary roads will be rendered inoperative when intended uses are fulfilled.
Road Development	Yes	Temporary roads will be rendered inoperative when intended uses are fulfilled.

Activity	Permitted	Guidelines
and Maintenance, New		

RECREATION ACTIVITIES AND FACILITIES

Activity	Permitted	Guidelines
Crown Land Recreation	Yes	
Hunting	Yes	Authorization will not be granted, nor will disposition of Crown lands be considered for new private recreation camps (i.e. hunting, fishing); or commercial outpost camps for the purpose of hunting.
Road Use (public), Existing	Yes	<u>Temporary roads will be rendered inoperative when intended uses are fulfilled.</u> Access roads may be closed temporarily or seasonally to the public for resource management and/or public safety reasons.
Road Use (public), New	Yes	Temporary roads will be rendered inoperative when intended uses are fulfilled. Access roads may be closed temporarily or seasonally to the public for resource management and/or public safety reasons.
Sport Fishing	Yes	

*Closed **

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ADDITIONAL INFORMATION:

Note: MNR will consider the Land Use Intent and Management Direction outlined in this policy report when reviewing applications for permitted activities that require licenses, leases, permits, or other forms of approval. The review of individual applications involves the consideration of a variety of factors and requirements on a site-specific basis in addition to land use policy.

SOURCE OF DIRECTION:

Amendment to Area-specific Crown Land Use Policy #2003-13 (2003)
Bracebridge District Land Use Guidelines (1983)

This policy report is available online at the following address:

English Policy Report: <http://crownlanduseatlas.mnr.gov.on.ca>
 Rapport d'orientation en français: <http://crownlanduseatlas.mnr.gov.on.ca/french/index.html>

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and Maintenance, New		

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PART II ROADS ON PUBLIC LANDS

Definitions

48. In this Part,

"private forest road" means a road occupied under the authority of a document issued under this Act or the regulations; ("chemin forestier privé")

"public forest road" means a road, other than a private forest road, that is designated by the Minister as a public forest road; ("chemin forestier public")

"road" means a road or part of a road on public lands and includes the bridges, shoulders, ditches and right-of-way thereof, but does not include the King's Highway or a secondary highway, a tertiary road, a resource road or an industrial road designated under the *Public Transportation and Highway Improvement Act*, or a road under the jurisdiction of a statute labour board or a local roads board. ("chemin") R.S.O. 1990, c. P.43, s. 48.

Public right of passage

49. Except as otherwise provided in this Act, any person may exercise a public right of passage on a road other than a private forest road. R.S.O. 1990, c. P.43, s. 49.

No liability for damages

50. (1) No civil action shall be brought against the Crown or any person in respect of misfeasance, non-feasance or negligence in connection with the construction, maintenance, repair or closing of a road. R.S.O. 1990, c. P.43, s. 50 (1).

Exception

(2) Subsection (1) does not apply to an action based on a contract between the parties to the action for the construction, maintenance or use of a road. R.S.O. 1990, c. P.43, s. 50 (2).

Public forest roads

51. (1) The Minister may designate a road other than a private forest road as a public forest road. R.S.O. 1990, c. P.43, s. 51 (1).

Application

(2) Part III (Regulations) of the *Legislation Act, 2006* does not apply to a designation made under subsection (1). R.S.O. 1990, c. P.43, s. 51 (2); 2006, c. 21, Sched. F, s. 136 (1).

Closure of public forest roads

52. (1) The district manager of the administrative district of the Ministry in which a public forest road is situate may, from time to time in his or her discretion and for such period or periods as he or she may determine, close the public forest road or part thereof to travel by the public generally or by any class or classes of the public or by the public generally with the exception of persons operating any class or classes of vehicles used for hauling forest products or other products designated by the regulations. R.S.O. 1990, c. P.43, s. 52 (1).

Methods of closure

(2) A closing of a public forest road under subsection (1) may be effected by the erection of signs or barricades. R.S.O. 1990, c. P.43, s. 52 (2).

Barricades

(3) Where a district manager closes a public forest road or part of a public forest road under subsection (1) by the erection of barricades, he or she shall cause to be erected at each end

of the public forest road or part so closed and at each intersection thereof with any other road a barricade upon which a red or flashing amber light visible for a distance of 150 metres shall be exposed and kept burning or operating continuously from sunset until sunrise, and at such ends and intersections shall cause to be erected a notice that the public forest road is closed. R.S.O. 1990, c. P.43, s. 52 (3).

Permits

(4) Despite the closure of a public forest road, the district manager may grant a permit for travel on the public forest road subject to such terms and conditions as he or she considers advisable. R.S.O. 1990, c. P.43, s. 52 (4).

Offence

(5) Every person who, without lawful authority, travels on a public forest road that has been closed to travel by the person under subsection (1) and who has had a reasonable opportunity of knowing that the road has been so closed or who removes or defaces any barricade, light or notice erected thereon by lawful authority is guilty of an offence and is also liable to the Crown in right of Ontario for any damage or injury occasioned by such wrongful use, removal or defacement. R.S.O. 1990, c. P.43, s. 52 (5); 2000, c. 26, Sched. L, s. 9 (9).

Partial closure

53. Where the district manager closes a public forest road to the public generally with the exception of persons operating vehicles used for hauling forest products or other products designated by the regulations, sections 80, 108, 109, 110, 111 and 114 of the *Highway Traffic Act* do not apply to the public forest road or to vehicles operated on the public forest road, as the case may be. R.S.O. 1990, c. P.43, s. 53.

Private forest roads

54. (1) Except as provided in subsection (2), a private forest road is not open to travel by the public. R.S.O. 1990, c. P.43, s. 54 (1).

Agreements

(2) The Minister may enter into an agreement with a person who occupies a private forest road under the authority of a document issued under this Act or the regulations for opening the private forest road or part thereof to travel by the public generally or by any class or classes of the public as may be agreed upon, and thereupon the private forest road is open to travel by the public generally or by the class or classes of the public agreed upon for such time or times and upon such terms and conditions as are set forth in the agreement, provided that a permit has been issued or validated under the *Highway Traffic Act* or the regulations made thereunder for any vehicle used in such travel. R.S.O. 1990, c. P.43, s. 54 (2).

Idem

(3) Without limiting the generality of subsection (2), an agreement may provide that the cost of constructing, reconstructing or maintaining a private forest road shall be shared in the proportions agreed upon. R.S.O. 1990, c. P.43, s. 54 (3).

Status of road

(4) Despite the use of a private forest road by the public or a class or classes thereof under subsection (2), a private forest road remains a private forest road and is not a highway within the meaning of the *Highway Traffic Act*, but the provisions of the *Occupational Health and Safety Act* and the regulations made thereunder that apply to haul roads apply with necessary modifications to the private forest road. R.S.O. 1990, c. P.43, s. 54 (4).

Closure of private forest roads

(5) Where an agreement has been made under subsection (2), the district manager of the administrative district of the Ministry in which the private forest road is situate may, from time to time in his or her discretion and for such period or periods as he or she may determine, close the private forest road or part thereof to travel by the public generally or by any class or classes of the public with the exception of persons operating any class or classes of vehicles used for hauling forest products or other products designated by the regulations, and thereupon section 52 applies with necessary modifications. R.S.O. 1990, c. P.43, s. 54 (5).

Regulations

55. The Lieutenant Governor in Council may make regulations designating products for the purposes of sections 52, 53 and 54. R.S.O. 1990, c. P.43, s. 55.

Stopping up certain roads

55.1 (1) In addition to the powers of the Lieutenant Governor in Council under section 29.1 of the *Public Transportation and Highway Improvement Act*, the Minister may, by order,

- (a) stop up any road that has been dedicated to public use by the Crown and is not within a municipality; or
- (b) stop up any road allowance that was laid out by a Crown surveyor and that is not within a municipality. 2000, c. 26, Sched. L, s. 9 (10); 2002, c. 17, Sched. F, Table.

Notice

(2) The Minister shall not make an order under subsection (1) unless the Minister has given notice, in such manner as the Minister considers appropriate, to those persons that the Minister considers will be affected by the proposed order. 2000, c. 26, Sched. L, s. 9 (10).

Soil and freehold

(3) The Minister may sell, lease or otherwise dispose of the soil and freehold of any road or road allowance that has been stopped up under subsection (1). 2000, c. 26, Sched. L, s. 9 (10).