

A Guide to the Acquisition of Crown Land to Support Municipal Economic Development



Disclaimer: This guide provides a summary of the disposition process and the role of a municipality and various government ministries and agencies. It is not to be used as a legal reference. The relevant statute, regulation and policies must be referred to for complete direction.

© 2009

Cover Photo Credits:

*Cottage lot on Kapkichi Lake, Township of Pickle Lake – MNR
Weyerhaeuser - Trus Joist Plant, Kenora – www.cityofkenora.ca*

Table of Contents

A Guide to the Acquisition of Crown Land to Support Municipal Economic Development

Introduction

Section 1: Roles and Responsibilities in the Disposition Process

- Municipalities
- MNR
- Other Government Ministries and Agencies

Section 2: Considerations that Effect the Availability of Crown Land for Development

- First Nation/Aboriginal and Treaty Rights
- Natural Heritage Values
- Species at Risk
- Fish and Wildlife Habitat
- Crown Resource Allocation and Land Use

Section 3: Identification of Crown Land Opportunities

- Municipal development objectives
- Map showing potential areas of study

Section 4: Disposition Process

- Step 1- Withdrawal of lands under the Mining Act
- Step 2- Consultation/Modification
- Step 3- Screening of Environmental effects
- Step 4- Disposition information
- Step 5- Sale of Crown Land

Section 5: Disposition approaches available to Municipalities

- Direct Sale
- Municipally led RFP
- Joint MNR/Municipal RFP

Appendix 'A': Examples of Disposition Process Options

Appendix 'B': Enclosed CD with a copy of the Guide and other reference materials

A Guide to the Acquisition of Crown Land to Support Municipal Economic Development

Introduction

Crown land disposition has provided the economic basis for the development of our communities through the range of resource activities including agriculture, forestry and mining. Today, Crown land serves a multitude of roles from the protection of key elements of our natural heritage to supplying opportunities for renewable energy and resource based tourism. Many economically valuable resources such as forests and minerals are located on Crown land. These resources are allocated and managed to the benefit of many communities and the province. Across the province, many communities rely on Crown land for their existence and its contribution to their quality of life.

After World War II the disposition of Crown land for recreational uses such as private cottage lot development accelerated. The Ministry of Natural Resources (MNR (formerly Department of Lands and Forests)) disposed of Crown land for recreational purposes including remote cottage lots in a reactive manner. During the 1960's, MNR commenced a proactive cottage lot development program that saw MNR act as the developer and marketer. By the 1980's changes in planning and environmental legislation and government priorities led to the end of MNR's role as a "developer".

The disposition of Crown land for a wide variety of uses continues today. The process is generally reactive, where MNR receives an application and processes it. In these situations the applicant or proponent drives the process and is required to provide information and undertake tasks (e.g. fisheries studies) that will enable MNR to fulfill its obligations under policy and legislation (e.g. Environmental Assessment Act). In response to requests from communities, MNR also makes Crown land available through proactive processes such as a request for proposals (RFP).

Over the past 10 years Municipalities have been successful in acquiring Crown land. The following initiatives have been completed or are underway:

- Elliot Lake – ongoing cottage lot development;
- Pickle Lake – 2 cottage lot initiatives;
- Ignace – land for cottage lots;
- Sioux Lookout – land for cottage lots and residential development;
- land for a variety of municipal infrastructure projects and industrial/commercial development.

Additional proposals by the municipalities of Greenstone, Temagami and Atikokan are in the disposition or planning process. Municipalities interested in acquiring Crown land are encouraged to contact these municipalities to discuss the disposition process and best practices in that regard.

The economic well-being of much of Ontario over the past 5 years has been challenged by downturns in the forestry, mining and manufacturing sectors. Crown land is viewed by many as an important component of the economic renewal of much of the province. Together with financial capital, sound business plans and expertise, and community leadership, Crown land can form part of a successful undertaking. Several Provincial Government Ministers (e.g. MNR, MMAH, and MNDM) can play the role of facilitator and enabler through a development process.

Crown land in both municipally organized areas and unincorporated territory can contribute to the economic development objectives of municipalities, subject to the applicable provincial policies (e.g. Provincial Policy Statements under the Planning Act) and legislation.

The Province also acknowledges the importance of Crown land in supporting the economic development objectives of First Nation communities. MNR is committed to working with First Nations to enhance community economic health and sustainability.

This guide is designed to:

- 1) define the role and responsibilities of municipalities/private sector developer, MNR and other government ministries and agencies in the disposition process;
- 2) identify the considerations that influence Crown land availability;
- 3) provide a clear and consistent process for the identification of Crown land to support economic development initiatives;
- 4) provide a clear and comprehensive outline of the Crown land disposition process and related approvals;
- 5) provide options for municipalities to adopt a leadership role in the acquisition of Crown land to support economic development.

Section 1: Roles and Responsibilities in the Disposition Process

Municipalities

- Municipal governments create the vision of their community's future by identifying the focus of future development
- Municipal governments plan in accordance with the Planning Act via Official Plans and zoning by-law's
- Municipal governments lead the planning and implementation of economic development initiatives with the involvement of or in partnership with the private sector and support of the provincial government

Municipalities with input from their constituents articulate to the province their economic objectives in a comprehensive and planned manner. The ability for municipalities to deliver this varies. Some municipalities have the expertise or financial resources to develop and implement their economic objectives. For those who are challenged to do so, support in the form of expertise and funding is available from the provincial and federal governments:

- Northern Ontario Heritage Fund (NOHFC) –
The NOHFC offers six unique programs to help create sustainable jobs for northerners and foster hope and opportunity across Northern Ontario. Copies of the program brochures are included in Appendix 'B' on the enclosed CD. For more information and application forms refer to:
http://www.mndm.gov.on.ca/nohfc/default_e.asp
- The Ministry of Northern Development and Mines, Regional Economic Development Branch, is the lead ministry in support of economic development in Northern Ontario, with offices in many communities and is the lead for discussions regarding Northern Ontario Heritage Fund and other programs. Program advisors provide advice and support to municipalities and other interested parties that may be pursuing an economic development proposal, including accessing government funding programs. Funding may be available for activities such as the development of certain infrastructure, and the development of strategic plans. Funds may be accessed via a number of programs including: the Northern Community Investment Readiness Fund; the Build Canada Fund; and, Rural Economic Development Program.

Ministry of Natural Resources

The Ministry of Natural Resources under the authority of the Public Lands Act is responsible for the management and disposition of Crown land. MNR's activities are governed by a variety of policies and other legislation. The key policy governing the disposition of Crown land is Public Lands Directive No. 4.02.01. The primary legislation that directs how the environmental effects of proposals for the use of Crown land are reviewed is the Environmental Assessment Act (EAA). Under the authority of the EAA, the Class Environmental Assessment Act for MNR Resource Stewardship and Facility Development Projects (RFSD) provides

the process for the evaluation and mitigation of the environment effects of a proposed disposition. A copy of PL 4.02.01 and the Class EA RSFD are included on the enclosed CD.

MNR is legally obligated to consult with First Nations when considering a disposition of Crown land or resources. The nature and extent of consultation is dependent on a number of factors including: the nature of the disposition and the existence or lack of local consultation protocols. Crown land may not be available in certain parts of the province from time to time where active land claims are being negotiated or litigation involving Crown land is underway.

Crown land must be disposed of in a fair and open manner. MNR may dispose of Crown land through a variety of methods, including direct sale to a municipality or First Nation. For dispositions to other parties such as private developers MNR is generally required to follow a public process (e.g. tender, request for proposals). Crown land may be disposed of directly to a private developer where the proposal is for a unique and innovative development proposal which is deemed to offer broad public benefits (e.g. local economic, social).

Where municipalities wish to acquire Crown land, MNR will facilitate the disposition process. Municipalities will have the lead role in providing the information to MNR, undertaking public and stakeholder consultation and meeting any obligations under the Environmental Assessment Act. MNR will make a decision to approve or deny the disposition application based on an evaluation of all information provided and a balancing of values and interests.

Other Government Ministries and Agencies roles with regard to the development of Crown land include:

- Ministry of Municipal Affairs and Housing (MMAH) is the lead ministry for the review and approval of undertakings under the Planning Act, and for the administration of the Municipal Act
 - is the province's lead ministry (One-Window Process) for the review and approval of applications (e.g. subdivisions) made under the Planning Act and coordinates all ministries' comments and input
 - provides support to municipalities with planning approval authority
 - responsible for ensuring consideration of the Provincial Policy Statements

- Ministry of Northern Development and Mines (MNDM) is responsible for the administration of the Mining Act
 - administers the non-discretionary dispositions (e.g. unpatented mining claims, some leases) under the Mining Act
 - collects and maintains information regarding mineral resources in Ontario
 - administers various Acts and Regulations in support of economic development in Northern Ontario
 - provides support to applicants for funding from the Northern Ontario Heritage Fund

- reviews applications under the Planning Act with regard for the sound management of mineral resources and abandoned mine hazards
- Ministry of the Environment (MOE) is responsible for the granting of approvals under the Environmental Assessment Act, the Water Resources Act and the Environmental Protection Act
 - reviews applications for and issues Certificates of Approval for a variety of waste management systems (e.g. municipal landfills, large septic waste systems)
 - approves and monitors the implementation of class environmental assessments such as the Class EA RSFD
 - reviews applications under the Planning Act with regard to impacts on water quality and quantity, waste disposal and hydrogeology; reviews lake capacity calculations
- Ministry of Transportation (MTO) is responsible for the administration of the Public Transportation and Highway Improvement Act
 - administers provincial highways
 - requires permits for proposed entrances and building construction adjacent to provincial highways
 - refer to the following website for detailed direction:
<http://www.mto.gov.on.ca/english/engineering/management/corridor/index.shtml>
 - reviews applications under the Planning Act with regard to implications for existing highways and future requirements
- Ministry of Culture (MCL) is responsible for the administration of the Ontario Heritage Act
 - the Ontario Heritage Act binds the Crown, therefore MNR must adhere to the Act when considering the disposition of Crown land
 - responsible for the conservation, protection and preservation of the cultural heritage of Ontario. This includes built heritage (i.e. buildings, other structures) and archaeological heritage (e.g. burial mounds, pictographs, earthworks)
 - reviews applications under the Planning Act with regard to the conservation of cultural heritage
- Ontario Realty Corporation (ORC) is responsible for the disposition of real property owned by the Ontario government
 - MNR cannot sell or lease real property (referred to as acquired land¹ in MNR policy)
 - MNR may facilitate applications for real property, but ORC undertakes the transfer of these lands
 - where acquired lands are of interest the municipality should consult with

¹ Acquired land – real property that is owned by the Province of Ontario in the name of the Ministry of Energy and Infrastructure or its predecessors (Ministry of Government Services, Public Works) and managed by MNR for programs such as forest management

ORC in the beginning of the disposition process

- Federal Department of Fisheries and Oceans (DFO) is responsible for the administration of the Fisheries Act
 - reviews proposals that may effect fish habitat to determine if it will be impacted
 - provides direction to proponents as to how to avoid unacceptable impacts on fish habitat
 - may enter into agreements with proponents to authorize impacts on fish habitat
- Transport Canada is responsible for the administration of the Navigable Waters Protection Act
 - reviews and approves works that may impact navigation, such as bridges and shoreline works
- Local Health Units are legislated under the Ontario Building Code Act for the inspection and approval of septic systems with a capacity of 10,000 litres or less

This is not an exhaustive list of government ministries or agencies. Other permits or approvals may be required based on the nature of the proposal.

Section 2: Considerations that Effect the Availability of Crown Land for Development

- ***Our Sustainable Future, MNR's Strategic Directions (2005), expresses MNR's vision as "Healthy environment through sustainable development".***
- ***MNR's goal in managing Crown land is to contribute to the environmental, social and economic well-being of the province by providing for orderly use and sustainable development of Ontario Crown land.***
- ***The Strategic Direction of Management of Ontario Crown Land Policy describes eight objectives for achieving MNR's Crown land management goal.***

MNR's challenge is to balance these objectives, in particular "promoting environmental protection" and "supporting development".

MNR must evaluate the potential impact on the environment when considering an application for Crown land. Environment is defined to include the following:

- a) air, land or water;
- b) plant and animal life, including human life;
- c) the social, economic and cultural conditions that influence the life of humans and community;
- d) any building, structure, machine or other device or thing made by humans;
- e) any solid, liquid, gas, odour, heat, sound, vibration or radiation resulting directly or indirectly from human activities, or;
- f) any part or combination of the foregoing and interrelationships between any two or more of them, in or of Ontario" (MNR Policy PL 4.02.01 – Application Review and Land Disposition Process).

This definition demonstrates how complex the environment is and the scope of the potential impacts MNR must consider when reviewing an application for Crown land.

First Nations/Aboriginal and Treaty Rights

MNR must consider Aboriginal and treaty rights during the review of every application for the disposition of Crown land. Where there may be an impact on these rights, MNR must consult with the affected First Nation(s). The traditional use of Crown land by a First Nation, existing "allocations" of resources (e.g. traplines) and future requirements (e.g. expansion of reserve lands) must all be considered. Applications may be denied if they are deemed to be incompatible with traditional uses, existing uses or projected needs of a First Nation(s).

Natural Heritage Values

MNR is responsible for the sustainable management of a variety of natural heritage values. Plants and animals and their habitat that may be affected by a proposed disposition of Crown land are identified. The location of the land being considered for disposition may be modified to accommodate the habitat of a plant or animal. Applications may be denied if the impacts are considered unacceptable and or can not be mitigated.

Species at Risk

Ontario has a rich diversity of wild plants and animals. The populations of more than 180 species in Ontario are in decline. These are species at risk; plants, fish, mammals and birds that are at risk of disappearing from the province. Species are at risk due to a number of reasons. These include habitat loss, pollution, land use and resource management activities, as well as the spread of invasive species.

There are four categories of “at risk”: extirpated - a native species that no longer exists in the wild in Ontario, but exists elsewhere (e.g. Greater Prairie Chicken); endangered – a native species facing extinction or extirpation (e.g. Golden Eagle); threatened – a native species at risk of becoming endangered in Ontario (e.g. Woodland Caribou); special concern – a native species that is sensitive to human activities or natural events which may cause it to become endangered or threatened (e.g. bald eagle).

MNR will consider the impact of any proposed disposition on species at risk and their habitat. The Endangered Species Act provides for the protection of species at risk and their habitat. In addition, other legislation (e.g. Fish and Wildlife Conservation Act) provides for the consideration of species at risk.

Fish and Wildlife Habitat

The MNR manages Crown land with the objective of maintaining a healthy environment for all species of fish and wildlife. To meet this objective, MNR identifies and records the habitat for many species. For example, moose aquatic feeding areas are identified as values. The potential impacts of forest harvesting and other resource allocations are considered when planning these activities. Crown land will not normally be disposed of where there may be unacceptable impacts on fish and wildlife habitat.

MNR policy also directs whether Crown land may be disposed of adjacent to the habitat of certain species. For example, Crown land will not be disposed on Lake Trout Lakes where the disposition would result in development such as cottage or residential lots. Refer to the enclosed copy of PL 4.02.01 Policy, Appendix ‘A’

for the complete policy regarding the disposition of Crown land on Lake Trout Lakes.

Provincial Policy Statements under the Planning Act

When considering an application for the disposition of Crown land MNR must also objectively consider the intent of the Provincial Policy Statements issued pursuant to the Planning Act.

Crown Resource Allocation and Land Use

Crown Land Use Planning

The majority of Ontario's Crown land is subject to land use policies. Land use policies include general land use intent for an area along with permitted and restricted uses (e.g. protected areas, public access, and commercial tourism). MNR's land management decisions must consider this land use direction. Land use policies may be amended, subject to a formal, public process, where a proposed use is not currently compatible with the policy.

Public Recreational Use

Access to Crown land, lakes and rivers provides the public with many opportunities for recreation. The public values this access very highly. The potential impact of a proposed disposition on public use is evaluated to ensure public access is not unnecessarily altered or lost. Where public use and or access will be impacted, alternative access may be required to be created.

Forest Resources

Ontario's forests are managed under the authority of the Crown Forest Sustainability Act. The Act provides for the allocation of forest harvesting rights via the issuance of Forest Resource Licences. The most significant form of these licences is the Sustainable Forest Licence (SFL). An SFL provides the licence holder (e.g. large forest products company) with the right to harvest and manage the forests on large areas of Crown land.

The impact of a proposed sale on the licence area of an SFL must be considered. Under the Crown Forest Sustainability Act, MNR is legally required to provide notice of any proposed change (e.g. sale of Crown land) in the area subject to a SFL. The SFL holder has the right to appeal the proposed change.

Mineral Resources

The purpose of the Mining Act is to encourage prospecting, staking and exploration for the development of mineral resources and to minimize the impact of these activities on public health and safety and the environment through rehabilitation of mining lands in Ontario. The Act provides for the staking of Crown mineral rights, registration of claims and issuances of leases. A mining claim holder has the exclusive right to explore and develop the mineral resources. In addition the claim holder has the priority of rights to the surface rights.

When considering the disposition of Crown land for other uses MNR can not grant a disposition under the Public Lands Act without the consent of the claim holder. MNR will consult with MNDM when considering an application for Crown land. MNDM role is to review the application to determine if the land has been staked or otherwise disposed of under the Mining Act and if there is a potential for mineral resources that would preclude the disposition of the Crown land.

Renewable Energy and Transmission Lines

Renewable energy and other commercial and industrial land uses are located on Crown land and are authorized by a variety of leases, licences of occupation and land use permits and easements. Water power and wind power facilities are situated in various locations and electricity transmission and distribution lines link homes and communities across the province. Hydrocarbon pipelines span the province on Crown land and communication towers are located on strategic hill tops serving industry and communities. Proposals for the use of Crown land are evaluated to ensure they do not compromise the operation of existing energy related infrastructure or eliminate future opportunities.

Aggregate Resources

The extraction of Aggregates is governed by MNR under the Aggregate Resources Act. Aggregates on Crown land are used by the Ministry of Transportation and private companies for a variety of commercial and industrial purposes. Any decision to dispose of Crown land must consider aggregate resource potential. MNR will not “sterilize” aggregate resources that may be required for future uses (e.g. provincial highway construction) through the disposition of Crown land for other uses.

Other Commercial Resource Allocations

MNR issues licences under the Fish and Wildlife Conservation Act for a variety of commercial resource harvesting activities. These include trapping, baitfish harvesting, wild rice harvesting and commercial fishing. These resource harvesting activities may be impacted by a proposed disposition of Crown land. The impact of the loss of land area or proposed activities adjacent to a licenced area will be evaluated, and the licence holder will be consulted. For example, a wild rice harvesting area could be negatively affected by a proposed shoreline development.

Resource-Based Tourism Industry

MNR authorizes the use of Crown land for commercial outpost camps and other tourism operations. The sites are generally small in area (i.e. less than one hectare). However tourism operations, particularly remote outpost camps, influence other land uses. For example, forest harvesting operations are modified to ensure that the aesthetics of an area are not altered to the detriment of a tourism operation. In reviewing an application for Crown land MNR will ensure the proposed land use is compatible with existing or potential tourism development.

Section 3: Identification of Crown Land Opportunities

After a municipality has defined its development objectives (i.e. via its Official Plan or other planning processes) it may chose to approach MNR to review the Crown land within the municipality to identify opportunities (e.g. Crown lakeshore lands that may be available) and to discuss potential considerations (e.g. known Species at Risk habitat) in the process to acquiring land.

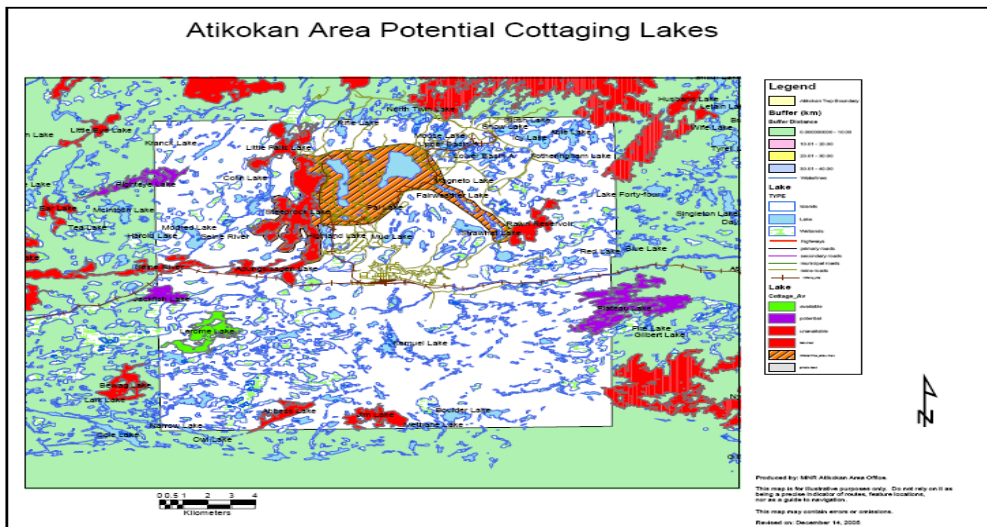
MNR can assist the municipality by providing maps showing where the Crown land can be found and the location of natural resource features and other relevant information. Examples include:

- all Crown land (both unpatented² and acquired³)
- all known natural heritage values such as eagles’ nests, fish spawning areas
- known or potential natural hazard lands (e.g. floodplains)
- all known cultural heritage sites
- watercourses – e.g. warm water lakes, Lake Trout lakes, cold water streams
- resource allocations such as traplines, baitfish areas
- lands staked or leased under the Mining Act, (in consultation with the Ministry of Northern Development and Mines)

Note: some values information such as the nature and location of endangered species nesting sites or cultural heritage sites is considered sensitive therefore it may not be made available to the public

Figure 1 is an example of a map created in response to the Township of Atikokan’s request for Crown land for cottage lot development. Refer to Appendix ‘B’ for a larger version of this map.

Figure 1 - Map Showing Evaluation of Crown land in the Township of Atikokan



² Unpatented land – land that is not granted, Crown Land

³ Acquired land – real property that is owned by the Province of Ontario in the name of the Ministry of Energy and Infrastructure or its predecessors (Ministry of Government Services, Public Works) and managed by MNR for programs such as forest management

The information gathered by MNR during the initial review will be explained and discussed with the municipality. Considerations such as Lake Trout Lakes, endangered species habitat, staked mining claims, etc will be identified and related to the municipality's development objectives.

From this information, the municipality will be in a better position to identify lands suitable for potentially development but subject to a more detailed review. If the municipality wishes to proceed, the disposition process as outlined in Section 4 will be initiated.

Section 4: Disposition Process

Working with MNR the municipality will identify the disposition approach (refer to Section 5) that best fits the municipality's economic objectives recognizing their capacity to complete the process. Regardless of the approach the fundamentals of the disposition process as outlined in this section must be addressed. The process will focus on the lands which have been identified through the initial screening process thereby reducing risk and increasing potential for success.

Note: some of the following steps may be undertaken simultaneously

Step One – Withdrawal of Crown Land Proposed for Acquisition under the Mining Act

A very important first step in the process is the withdrawal of the subject lands under the Mining Act. The Ministry of Northern Development and Mines will have been consulted regarding mineral development interests by MNR during the review identification of eligible lands as described in Section 3. MNR will now submit a request to have the subject lands withdrawn under the Mining Act. Upon withdrawal, the lands will not be open for staking or disposition under the Mining Act. This will ensure that the lands remain eligible for the proposed disposition and do not become encumbered by staking under the Mining Act.

Step Two – Consultation/Notification

A successful disposition will only occur with a properly planned and implemented consultation process. It is recommended that consultation be initiated early in the disposition process to ensure all parties who may be affected or have an interest in the proposal are informed and have an opportunity to comment. The municipality in cooperation with MNR and possibly other ministries will be responsible for completion of all consultation with the exception of that involving First Nations.

Experience has shown that consultation and information exchange must occur early and often throughout the process. Once a municipality has developed a conceptual plan (i.e. the Crown land has been identified and the proposed land use is known) broad consultation should be undertaken by whatever means (e.g. public meeting, newspaper advertisement) is appropriate.

Consultation with...

First Nations – The Crown has a legal obligation to consult First Nations when considering an application for the disposition of Crown land and resources. How and when (i.e. timing in process, frequency) consultation is undertaken will depend on the nature of the proposal and the preferences of the First Nation involved.

Sustainable Forest Licensee – Subsection 37(2) of the Crown Forest Sustainability Act requires MNR to provide the holder of forest resource licence 30 days notice of a proposed disposition of Crown land within their licence area. The licensee has a legal right to comment and make representations to the Minister of Natural Resources. MNR will condition the licensee's concerns regarding a proposed disposition.

Notice and or consultation may be required under MNR's Class EA RSFD based on the category to which the proposal has been screened. Consultation may also be required during related approval processes such as the subdivision approval process under the Planning Act. The required consultation/notification should be coordinated as much as possible in the interest of efficiency and to reduce possible confusion on the part of the public and other parties.

List of other parties that may be consulted:

- Public – e.g. recreational users, anglers and hunters
- Resource users such as trappers, baitfish harvesters, resource-based tourism operators
- Government ministries including MMAH, MTO, Ministry of Culture, MNDM, MOE
- Other municipalities

Note: this is not an exhaustive list, other parties may have to be consulted based on the nature and location of the proposed disposition

Step 3 - Screening of Environmental Effects

A broad screening of the environmental effects of the proposed disposition will have been undertaken during the process as outlined in Section 3. The proposed land use and the subject Crown land will have been identified during this process. Based on the municipality's decision as to the appropriate disposition approach the following screening process will apply:

IF A MUNICIPALITY IS THE PROPONENT:

MNR's Class EA RSFD requires that the municipality provides confirmation of the completion of its requirements under the Environmental Assessment Act. Upon receipt of this MNR will not apply any further provisions of the Class EA RSFD. However, MNR is still required to consider the environmental effects of a proposed disposition and may utilize the screening process of the Class EA to evaluate the proposal and document its considerations of the environmental effects.

IF A MUNICIPALITY IS NOT (I.E. PRIVATE SECTOR DEVELOPER) THE PROPONENT:

The broad screening process may have produced a detailed project description (e.g. specific industrial site of 10 hectares) that can now be screened under the Class EA RSFD.

It is also possible that further planning will be required to develop a description of the proposal that can be screened. For example, this will be the case where the shore lands of a lake have been identified for possible cottage lot development, but additional work under the subdivision approval process of the Planning Act will occur before the land to be disposed of can be accurately defined. Only at this point will a proposal be sufficiently defined to permit screening under the Class EA RSFD.

MNR will screen the proposal as per Section 3 of the Class EA RSFD. The results of this screening will determine the category to which the proposal will be assigned. The category determines any further process that needs to be undertaken (e.g. notification, study requirements). The private sector developer will be responsible for gathering information, completing studies (e.g. shoreline habitat, endangered species habitat, archaeological assessments) and potentially other work in order to provide sufficient information for MNR to meet its obligations under the Class EA RSFD and support a sound decision regarding the proposal.

The municipality/private developer is encouraged to become familiar with the requirements of the Class EA RSFD and MNR Policy PL 4.02.01. Any questions or concerns should be discussed with MNR as they arise.

Step 4 – Disposition Review and Approval/Denial

MNR will guide the municipality and or private developer throughout the review process to ensure an efficient and complete consideration of all potential impacts. The results of First Nation consultation, public and stakeholder consultation, the environmental effects screening, the requirements of other government ministries and agencies and all other information gathered by the municipality/private developer during the review process will assure a timely decision by MNR.

Where a proposal requires subdivision approval under the Planning Act the MNR will work closely with MMAH to ensure the requirements for both processes are met by the municipality/private developer without duplication (e.g. cultural heritage assessments) or unnecessary delays.

The authority to approve an application for Crown land is delegated to the MNR District Manager. This decision can only be made once MNR obligations under the Class EA RSFD have been met, meaningful First Nation consultation has been completed and MNR has sufficient information regarding the potential effects of the proposal.

MNR decisions during the disposition process are subject to public scrutiny. Under the Class EA RSFD where a proposal has been screened to a category B or higher persons or agencies that are not satisfied with a project proposal or the evaluation process, can request the Minister of the Environment make a Part II

Order to have the project evaluated under an Individual Environmental Assessment. Where a proposal is also subject to an approval under the Planning Act, the public may appeal a decision to the Ontario Municipal Board.

Step 5 – Sale of Crown Land

MNR must ensure that the province receives a fair return for the use and acquisition of Crown land. Crown land is generally disposed of at market value or rents based on market value established through the appraisal (valuation) process.

Upon MNR's decision to approve an application for Crown land, the following steps will have to be completed by the proponent:

- 1) Preparation of a plan of survey for registration at the Land Registry Office
- if a survey is required MNR will issue survey instructions.
Note: Crown land cannot be surveyed without authorization from MNR, as per Section 7 of the Public Lands Act.
- 2) Completion of an Application for Crown land
- this is completed at this stage in the process to ensure there is an agreement as to the lands to be disposed of, the name in which the lands are to be granted and the sale price
- 3) Payment to MNR of sale price based on market value of the un-subdivided land.

Although the sale price of the lands may have been determined through the appraisal/valuation process by MNR or the municipality prior to the issuance of an RFP, the area (i.e. hectares) of land may have been refined and market conditions may have changed. An agreement regarding the sale price will be made based on the original appraisal or a review of that appraisal.

Payment may be made by one of the following options:

- Payment by instalments with interest accruing on outstanding balance (one year)
 - Payment deferral for a period time (180 days) after patent issuance
 - Payment by instalments based on the sale of individual lot's as per a confirmed sales schedule.
- all subject to a written agreement between the municipality and MNR.

Upon receipt and acceptance of the above, the MNR District Manager will request the issuance of letters patent to the municipality/private developer.

Note: the issuance of letters patent grants a fee simple interest in the land and creates a parcel in the Land Registry System. The land is now subject to the provisions of the Planning Act and any other applicable legislation.

Section 5: Disposition Approach Available to Municipalities

Municipalities have a number of available options for the completion of the disposition process. The selection of the appropriate process is dependent on: the development goals of the municipality; the capacity and experience of the municipality; and, the municipality's vision of its role in the process.

- 1) Direct sale to a municipality – the municipality works with MNR to complete the disposition process
 - MNR determines the sale price and sells land to municipality
 - municipality completes subdivision approval process or other planning process and markets lots

Approach used in Elliot Lake and Pickle Lake

- 2) Municipality leads a public Request for Proposal process in which they seek a qualified developer to complete the disposition and development process
 - MNR or the municipality commission an appraisal as per MNR's terms of reference
 - Sale may be to the municipality or the developer who then completes any necessary approval processes (e.g. subdivision approval)

Approach used in Addington-Highlands (underway - resort/lodge)

- 3) MNR with the support of the municipality leads a public Request for Proposal process in which a qualified developer is selected to complete the disposition and subdivision processes
 - MNR commissions an appraisal to determine the sale price
 - MNR sells land to the developer upon the completion of the disposition and perhaps the subdivision or other planning process
 - The developer sells cottage lots upon the approval of the subdivision by MMAH.

Approach used in Atikokan (underway)

- 4) Other approaches that may meet the requirements of a municipality can be discussed with MNR.

Refer to Appendix 'A' for examples of disposition approaches 1 – 3.

Appendix 'A' – Examples of Disposition Process Options

1) Sale of Crown Land Directly to a Municipality

Example: Township of Pickle Lake

The Township has successfully completed the disposition process on two occasions leading the development and sale of cottage lots on two lakes within the municipality. Crown land on Kapkichi Lake was sold to the Township in 2003, with thirty-four lots being developed and sold in 2004. The Township initiated a second proposal for Pickle Lake in 2005.

Figure 2 – Developed Lot on Kapkichi Lake (2005)



Outline of the process - Pickle Lake:

- February, 2005 - Initial meeting with MNR to discuss proposal – Township indicates it will be the proponent
- MNR undertook a review of proposal to determine if there were any known values or concerns that would preclude the sale. With no significant concerns being identified MNR requested a formal application for the Township.
- Consultation with MNM followed by the withdrawal of the subject Crown land under the Mining Act
- MNR laid out the process for completion by the Township including studies of shoreline survey of habitat, archaeological assessment, NW Health Unit inspection of proposed lots for suitability for Class 4 septic system, water quality/lake capacity
- June, 2005 - MNR initiated First Nation consultation
- 2005 – Township completed studies such as an archaeological assessment. The results were shared with the First Nation and the public.
- In the late summer of 2006, formal comments from local First Nation were received. Between September 2006 and November 2007 meetings were held to talk about and resolve First Nation concerns. Some land was deleted from the proposal to mitigate First Nation concerns.
- In February 2008 MNR advised the First Nation's Chief and Council that the disposition was to be approved. MNR believed it had met its duty to consult and had made reasonable accommodation of the expressed interests of the First Nation
- July 2008 - the land sale to the Township was completed. [A digital copy of the plan of survey is attached.](#)

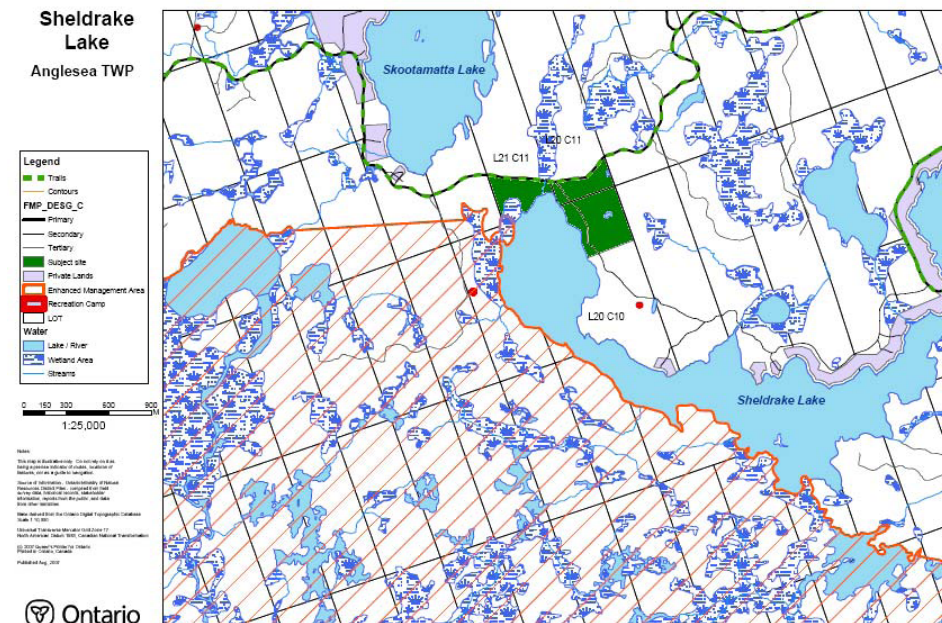
2) Municipality leads a public Request for Proposal process in which they seek a qualified developer to complete the disposition and development process. Sale may be to the municipality or the developer.

Example: Township of Addington Highlands requested that MNR make Crown land available on Sheldrake Lake (refer to Figure 3) for possible tourism development. MNR assessed the Crown land on the lake to determine if an eligible site could be made available.

Figure 3 - Location of Proposed Development within the Municipality



Figure 4 - Crown Identified for Proposed Development



The Crown land shown green on Figure 4 was identified as eligible for the development of a tourism facility subject to the completion of MNR's disposition process, including Class EA requirements. MNR screened the conceptual development proposal under the Class EA RSFD and ranked it as a Category 'C' project. This category defines the process that a developer will have to fulfill in order to acquire the Crown land.

A Request for Proposals (RFP) was developed by the municipality in consultation with MNR. The RFP presented the development proposal of the municipality and the disposition requirements of MNR.

An initial Request for Proposals (RFP) in 2007 failed to attract a developer. Upon review of comments received from prospective developers MNR and the municipality agreed that two factors likely contributed to the failure of the initial RFP: 1) the market value of the Crown land was not provided, leading to uncertainty as to a developer's costs; and, 2) the lands were only available for rent not sale, thus not providing sufficient security for the required financing of a development.

To address the concerns identified during the initial RFP process, MNR commissioned an appraisal to determine the market value of the Crown land. After discussions with the municipality, MNR decided to offer the lands for sale versus the initial offer of a land use permit with a lease or sale possible in the future. A second RFP has been prepared reflecting these changes and was to be issued by the municipality in the fall of 2008. The municipality decided to delay the issuance of the RFP due to the current economic situation.

A digital copy of the RFP in PDF format is enclosed.

3) MNR with the support of the municipality leads a public Request for Proposal process in which a qualified developer is selected to complete the disposition and subdivision approval processes. Sale is to the developer. The developer sells cottage lots or other developed lands upon the approval of the subdivision or other planning process by MMAH.

Example: The Township of Atikokan approached MNR to make Crown land available for cottage lot development. This request was based on the results of a consultant's study in which it was recommended that cottage lot development be pursued as part of an economic renewal plan for the municipality.

Key Facts:

- the municipality did not request that Crown land be sold directly to it, as it did not want to assume the costs and risks associated with being a developer
- the Township covers a large geographic area but is constrained by the existence of a large abandoned iron ore mine that occupies a large portion of the Crown land within the municipality
- the municipality requested Crown land for cottage lot development as part of broad economic development plan

MNR reviewed all lakes in and immediately adjacent to the municipality with the objective of identifying lakes that may be suitable for cottage lot development. A map was created and shared with the municipality. The map (a copy is provided in Appendix 'B') illustrated all lakes by habitat type (e.g. lake trout, warm water). Three lakes were identified as being candidates for possible disposition. Based on their review of the three lakes the municipality formally supported (i.e. resolution of council) the concept of a Request for Proposals (RFP) by MNR for cottage lot development.

Process: Figure 5 is a flowchart illustrating the disposition process that was designed by MNR and agreed to by the municipality. This process met the requirements of the municipality and MNR by placing the majority of the responsibility for the completion of the process on the private sector developer.

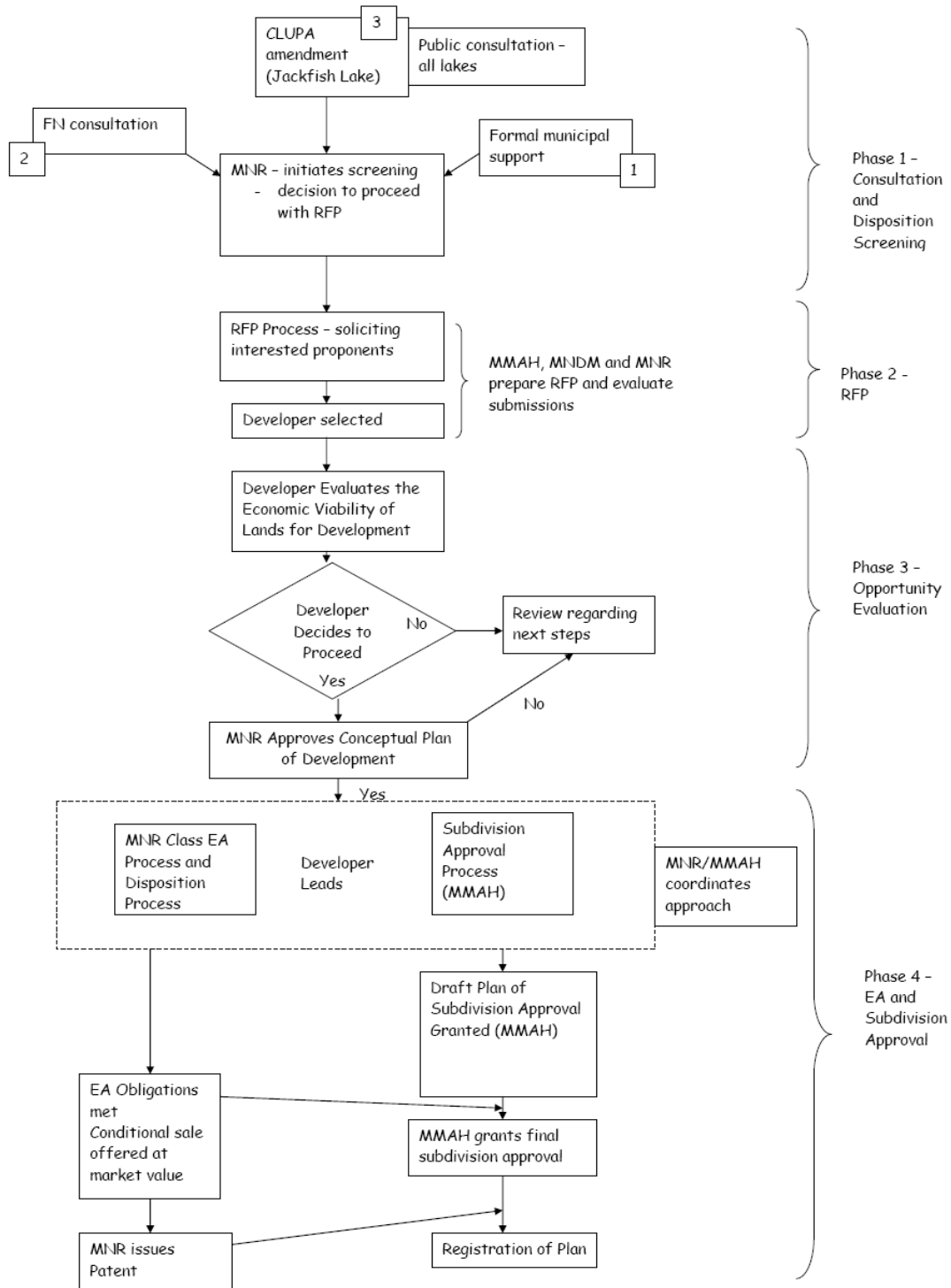
Phase 1 – MNR Reviewed all known values information, resource management and land use direction

- limited significant values were identified
- part of Sustainable Forest Licence, recent harvest post blow down event
- Crown land use plan amendment required to permit cottage lots on one of the three lakes selected
- First Nations consultation regarding the concept of the disposition
- Public and agency consultation regarding the concept

This review was to identify any significant factors that would preclude cottage lot development on the candidate lakes. No concerns were identified during this phase.

Figure 5 - Atikokan Disposition Process

Crown Land for Cottage Subdivision - Disposition Process



Prepared by: Gary Davies
 MNR NW Regional Lands Specialist
 June 26, 2006
 Revised August 23, 2006

Phase 2 – RFP Developed and Issued in February, 2007

- In consultation with the Ministry of Municipal Affairs and Housing (MMAH) with the goal of coordinating MNR's Class EA RFSD and Planning Act subdivision approval process
- Developer to be given opportunity to evaluate the Crown land, market, etc. before committing to development process
- Developer to be responsible for completion of MNR's EA responsibilities and the subdivision approval process
- 13 packages distributed (\$100 fee); included DVD of lakes' shoreline
- Mandatory pre-submission meeting – 8 attended
- Closed April, 2007 with 3 bids

Opportunity awarded to Technologic Timber Ltd., a local timber and land company

Phase 3 – Developer Evaluated Crown Land Opportunity

- Proponent had 6 months to evaluate the opportunity
 - financial viability
 - develop a conceptual plan for lands proposed for cottage lot development
- Proponent undertook additional work towards subdivision approval and MNR's Class EA
 - Stage 2 cultural heritage assessment
 - lake capacity modelling
 - MTO entrance permits
 - road design
- December, 2007 – Conceptual Plan submitted to MNR

January, 2008 – MNR approved conceptual plan; project now defined for Class EA RSFD screening and review

Phase 4 – Subdivision Approval and Completion of Class EA Processes

- Developer has until July 31, 2009 to acquire final subdivision approval and complete MNR's EA obligations
 - sale will be approved upon draft subdivision approval by MMAH, completion of EA obligations and payment of market value
 - MNR will grant letters patent for the Crown land to the developer immediately prior to final subdivision approval and registration of plan

As of February, 2009 the developer has completed the Pre-consultation process under the Planning Act and the application for Draft Subdivision Approval is pending. Upon completion of Phase 4 the developer will complete the development of roads and other infrastructure and begin marketing cottage lots.

A digital copy of the RFP is attached to this guide.

Appendix 'B' – Attachments

In digital format on enclosed CD

- **A Guide to the Acquisition of Crown Land to Support Municipal Economic Development (PDF)**
- NOHFC Brochures:
 - Enterprises North Job Creation Program
 - Emerging Technology
 - Infrastructure and Community Development
 - Northern Ontario Young Entrepreneur
 - Youth Internship and Co-op
 - Northern Energy
- MNR Policy & Procedure PL 4.02.01 Application Review and Land Disposition Process
- Class EA for MNR Resource Stewardship and Facility Development Projects (RSFD)
- Township of Atikokan – lake screening map
- Sample Requests for Proposals:
 - Township of Atikokan – cottage lot development
 - Township of Addington Highlands – tourism development
- Sample of Crown land survey used to describe land for sale – Pickle Lake