

# Renewable Energy on Public Lands Policy

This is the policy framework for how the Ministry of Natural Resources (the “Ministry”) manages waterpower, onshore wind power and solar photovoltaic power development on public (Crown) lands.

## 1.0 INTRODUCTION

### 1.1 Definitions

For the purposes of this policy,

“Public lands” mean lands owned by the provincial Crown that are under the administration and control of the Ministry and may include lands that have never been granted by the Crown, lands acquired by the Crown and the beds of navigable waters. Which part of the Crown has administration and control is determined by statute, order in council or minister’s order. Title to lands in land registries may not be current and may not indicate which part of the Crown has control of lands owned by the Crown. For greater clarity, “public lands” do not include lands controlled by the federal government or lands controlled by another provincial ministry, such as regulated provincial parks or conservation reserves under the *Provincial Parks and Conservation Reserves Act, 2006*.

“renewable energy” means waterpower, onshore wind power and solar photovoltaic power.

### 1.2 Background

Renewable energy plays an important role in Ontario’s energy supply mix. It provides benefits at the local and provincial levels by creating economic opportunities for investment, manufacturing and resource development. It also supplements fossil fuel-based forms of energy production that contribute to climate change and poor air quality.

Ontario’s public lands have long played an important role in helping to support the province’s energy needs. Most waterpower development has been located on the province’s waterways. More recently, public lands have been developed to support onshore wind power and other types of renewable technologies.

Renewable energy development on public lands may have environmental and social impacts and benefits that are considered during approvals processes.

The use of public lands is governed by applicable laws, including statutes and regulations, and by land use plans or policies. The *Public Lands Act* provides the Ministry with broad authority to plan, manage, authorize occupations or dispose of public lands managed by the Ministry. In the event of any inconsistency between this policy and applicable laws, the latter shall prevail.

### 1.3 Purpose

This policy sets out some of the considerations regarding applications to site renewable energy development on public lands, such as:

- alignment with government energy plans, programs, and goals, including the ability to connect to available or planned transmission or distribution;
- alignment with provincial, Indigenous, and/or community economic development objectives; and
- other relevant policies and procedures.

This policy also includes a high-level overview of the expectations for applicants' submissions to the Ministry and the Ministry's treatment and review of submitted applications.

## **2.0 AUTHORIZATIONS UNDER THE PUBLIC LANDS ACT**

### **2.1 Occupational Authority**

Authorization to occupy public lands is required for renewable energy development on public lands. Written and site-specific authorization is required from the Ministry unless it is an activity authorized by law, such as an activity prescribed under s. 21.1 of the *Public Lands Act* and O. Reg. 161/17.

Occupational authority may be in the form of a land use permit, licence of occupation, lease, or an easement. Occupational authority instruments typically include information about:

- who can use the lands and for how long;
- the applicable fees (e.g., rent) or other charges payable; and
- any associated conditions.

Long-term occupational authority in the form of a lease is likely required for the ongoing operation of a renewable energy project located on public lands.

### **2.2 Work permit**

When planning, designing, and building a renewable energy development, a work permit may be required to conduct certain prescribed activities on public lands or on "shore lands", as defined in regulation under the *Public Lands Act*.

## **3.0 LAND USE FRAMEWORK**

Renewable energy development on public land must be consistent with the Ministry's legislation, regulations, land use planning direction and policy.

### **3.1 Land use planning legislation**

The Ministry will not permit the occupation of public lands for renewable energy development in an area where it would not be permitted by law. For example, existing authorizations under the *Public Lands Act*, *Aggregate Resources Act*, *Oil Gas and Salt Resources Act*, or *Mining Act* may prohibit or limit development.

The land use governance framework includes the following legislation, as applicable:

**Public Lands Act:** Renewable energy development must comply with the *Public Lands Act*, its regulations and be consistent with any land use plans made under this Act.

**Far North Act, 2010:** Renewable energy development on public lands must be consistent with land use designations, permitted land uses and prescribed permitted activities specified in any applicable community-based land use plan approved under the *Far North Act, 2010*.

Other legislation may also apply, depending on the circumstances.

### **3.2 Certain limitations on available lands**

In addition to areas identified by the Ministry through land use planning as being unsuitable for renewable energy development, areas recommended as a provincial park or conservation reserve are not available for renewable energy development.

The Ministry will not dispose of public lands for greenfield waterpower development (including any reservoirs, impoundments and water control structures or weirs) on a naturally reproducing lake trout lake.

## **4.0 POLICY CONSIDERATIONS**

The use of public lands for a renewable energy project is subject to all applicable policies and procedures established by the Ministry including land use planning direction in:

- the Crown (public) Land Use Policy Atlas, and
- land use plans and guides.

### **4.1 Provincial energy needs**

For applications for the use or occupation of public lands and resources for renewable energy development, the Ministry may consider the extent the proposed application aligns with provincial energy plans, programs, or goals (e.g., provincial energy procurements). Where the provincial energy procurement agency is administering an energy procurement program that is anticipated to result in applications for the use or occupation of public lands, the Ministry will work collaboratively with the provincial energy procurement agency to coordinate their respective processes.

### **4.2 Renewable energy development not part of a competitive provincial energy procurement process**

Renewable energy development that is not part of a provincial energy procurement is also subject to this policy.

Examples of renewable energy development that may not be part of a provincial energy procurement include:

- rate-regulated development;
- bilateral contracts permitted in Ontario's electricity market;
- other provincial economic development priorities (e.g., regional economic development plans);
- off-grid Indigenous community use; or,

- small-scale use for local resource management or other activities (e.g., forestry, mining, remote tourism).

#### **4.3 Environmental considerations**

Occupational authority for renewable energy development will not be approved without meeting any applicable requirements under the *Environmental Assessment Act* (e.g., Class EA for Waterpower Projects), *Environmental Protection Act* (e.g., O. Reg 359/09 Renewable Energy Approval), and any other regulatory approvals for the project (e.g. *Lakes and Rivers Improvement Act* for waterpower).

Certain requirements of the Ministry of the Environment, Conservation and Parks' Renewable Energy Approval under the *Environmental Protection Act* may meet our Ministry's information needs for certain permit, authorization, or approval requirements.

#### **4.4 Other considerations**

When making decisions regarding the use of public lands for renewable energy development, the Ministry will endeavour to use the best available natural resource, ecological, and socio-economic information, and science, as well as traditional ecological knowledge where it is available and supported by local Indigenous communities.

In addition to the requirements identified in this policy, other provincial, federal, and local agency regulatory and permitting processes may apply.

### **5.0 INDIGENOUS CONSIDERATIONS**

#### **5.1 Land Claims**

In reviewing an application for public lands for renewable energy development, consideration will be given to whether the area of the proposed project is subject to land claim processes or settlement agreements. Prior to a Crown decision regarding the use of lands for the project, the Crown may require consultation with the First Nation and other Indigenous communities. The support of the First Nation involved in the land claim may be required.

#### **5.2 Crown's duty to consult Indigenous peoples**

The Crown has a legal duty to consult and, where appropriate, accommodate, Indigenous communities when it contemplates conduct or activities that may adversely impact asserted or established Aboriginal or treaty rights.

The duty to consult rests solely with the Crown, however the Ministry may delegate procedural aspects of consultation to project proponents.

The duty to consult obligation is an iterative process, and the requirement to consult Indigenous communities about proposed development on public lands, may be required at multiple stages throughout the approvals process.

Engaging Indigenous communities identified by the Crown as early as possible is strongly encouraged and will assist project proponents and Indigenous communities in developing relationships built on mutual trust and good faith.

The Ministry may seek to coordinate fulfilling any Crown consultation obligations with other ministries.

Duty to consult obligations are separate from the Ministry's support and encouragement of Indigenous community economic benefits outlined in this policy. Meeting the economic benefit requirements of this policy does not mean that the consultation and accommodation obligations of the Crown have been met.

### **5.3 Indigenous community economic benefits**

The Ministry supports local Indigenous community economic benefits associated with renewable energy development on public lands (e.g., equity ownership or partnership model).

Where the Ministry considers that the decision-making criteria in a provincial energy procurement process meets the Indigenous community economic development objectives of this policy, the Ministry may rely on that provincial energy procurement process to implement this policy objective.

The Ministry is also committed to implementing specific policy commitments in the following specified areas.

#### **Far North**

In the area north of the "Far North Act Boundary" as shown in Figure 1, public lands for renewable energy development opportunities will only be made available to First Nations that meet the definition of "First Nation" under the *Far North Act, 2010* and/or their partners.

#### **Northern Rivers**

Public lands for waterpower development opportunities within any portion of the Northern Rivers watersheds south of the "Far North Act Boundary" as shown in Figure 2 will only be made available to local Ontario Indigenous communities and/or their partners.

Policy direction since 1993 has provided for a 25-megawatt limit on waterpower development at individual sites within the Northern Rivers watersheds as shown on Figure 1.

A review of the 25-megawatt development limit may occur and would include broader landscape and watershed level considerations and provide for dialogue with Indigenous communities located within the subject river basin. In the absence of such a review, the 25-megawatt limit on individual waterpower sites remains in place.

#### **Moose River Basin**

This policy acknowledges and recognizes the continued Ontario government commitment to co-planning with certain First Nation communities on potential future waterpower development within the Moose River Basin, north of Highway 11 as shown on Figure 3.

#### **Waterpower on other public lands**

In areas south of the boundaries of the “Far North Act Boundary”, the Northern Rivers watersheds area and the Moose River Basin north of Highway 11 as shown in the Figures, the Ministry supports economic benefits for those local Indigenous communities situated within or adjacent to the tertiary watershed, and the participation of local Indigenous communities in the development of new waterpower sites that:

- are located in whole or in part on public lands; and
- have a capacity greater than 1 megawatt.

## **6.0 APPLICATIONS FOR PUBLIC LANDS**

To facilitate the consistency of proposals for a renewable energy development on public lands with provincial energy policy, including generation and transmission needs, the Ministry will seek process alignment with broader government energy procurement and application processes, where applicable.

### **6.1 Application submission**

The Ministry encourages proponents wishing to propose a renewable energy project to use all available information sources, including policy and procedural guidance from the Ministry, to assess the availability and suitability of public lands, including the review of any existing information regarding encumbrances or resource uses within or adjacent to their area of interest.

When considering a renewable energy project on public lands, applicants are required to obtain all required permits, approvals or authorizations.

### **6.2 Priority of applications**

In alignment with provincial energy procurement processes, the Ministry may receive more than one application under the *Public Lands Act* for a renewable energy development proposal on the same area of public lands. The Ministry will consider any decisions of the energy procurement agency’s procurement contract to determine which application(s) for public lands will continue to be processed by the Ministry. Each pending application under the *Public Lands Act* (e.g., Public Land Site Report Form) confirmed by the energy procurement agency as having an associated bid submission to the agency will be considered as having priority to surface rights over any mining claim registered while the application is pending.

Where public lands are subject to a provincial energy contract between a renewable energy proponent and the energy procurement agency that is in force, a pending application (e.g., Public Land Site Report) associated with the project will continue to be considered an application for public lands and:

- The Ministry will not accept any other application for another renewable energy development on the same public lands, at the same time.
- The Ministry may continue to consider other applications for the same public lands and may, where appropriate, issue approvals for uses compatible (e.g. road) with the renewable energy development. The ministry may consult with the renewable energy applicant as it

considers another application for the same public lands. Applications for uses or occupations that may interfere with the construction, operation, safety, efficiency, or regulatory compliance of the renewable energy development may be considered incompatible uses and occupations by the Ministry.

Where a provincial energy contract between a renewable energy proponent and the energy procurement agency is no longer in force:

- any application for public lands by the renewable energy proponent related to the project will no longer be processed; and
- any occupational authority instrument such as a land use permit applicable to the renewable energy development may be cancelled, revoked or terminated in accordance with the terms and conditions in the instrument.

### **6.3 Limited scope of applications**

An application for renewable energy development on public lands that has been received by the Ministry does not provide any right, title, or interest in lands, is non-transferable, and does not guarantee occupational authority or regulatory approvals for the development. There is no ability to mortgage or charge such an application.

## **7.0 ENERGY SECTOR SPECIFIC POLICY**

### **7.1 Wind power testing activities**

The type of testing equipment and the degree to which placement of the equipment may require a new trail, road, certain aquatic vegetation or tree clearing may affect the type of approval(s) required. Please refer to O. Reg. 161/17 and O. Reg. 239/13 for activities that may not require occupational authority or other approvals.

### **7.2 Waterpower**

Waterpower development on public lands may include the following development types:

- peaking facilities or run of river facilities which require the construction of dams or infrastructure,
- in-stream flow technology,
- new development,
- retrofit of water control structures and redevelopment of waterpower facilities, and
- pumped storage generation, where pumped storage generation is supported by provincial energy needs or specific economic development objectives.

The Ministry encourages the retrofitting of Ministry-owned water control structures, where it meets other Ministry program objectives, and contributes to provincial energy plans, programs, or goals.

Applicants retrofitting Ministry-owned water control structures for waterpower purposes may be required to assume partial or full responsibility for the maintenance, operational control, long-term structural integrity or liability for such water control structures. The Ministry may also require the

applicant to assume responsibility for operational control of other associated Ministry-owned water control structures to ensure appropriate water management regimes.

Occupational authority of public lands will likely not be issued for waterpower projects without completion of any required environmental assessment and obtaining approval for the waterpower facility under the *Lakes and Rivers Improvement Act*, particularly where the duration of the occupation is considered significant

## **8.0 FEES AND OTHER CHARGES**

Occupational authority associated with renewable energy developments may be subject to one-time or recurring fees or other charges (e.g., annual fees, rents, royalties).

## **9.0 PROCEDURAL GUIDANCE**

This policy may be implemented through procedural guidance that is developed by the Ministry of Natural Resources, as amended from time to time, and posted publicly on Ontario.ca.

## 10.0 FIGURES

Figure 1 – Areas referenced in this Renewable Energy on Public Lands Policy



Figure 2 – Northern Rivers Watersheds

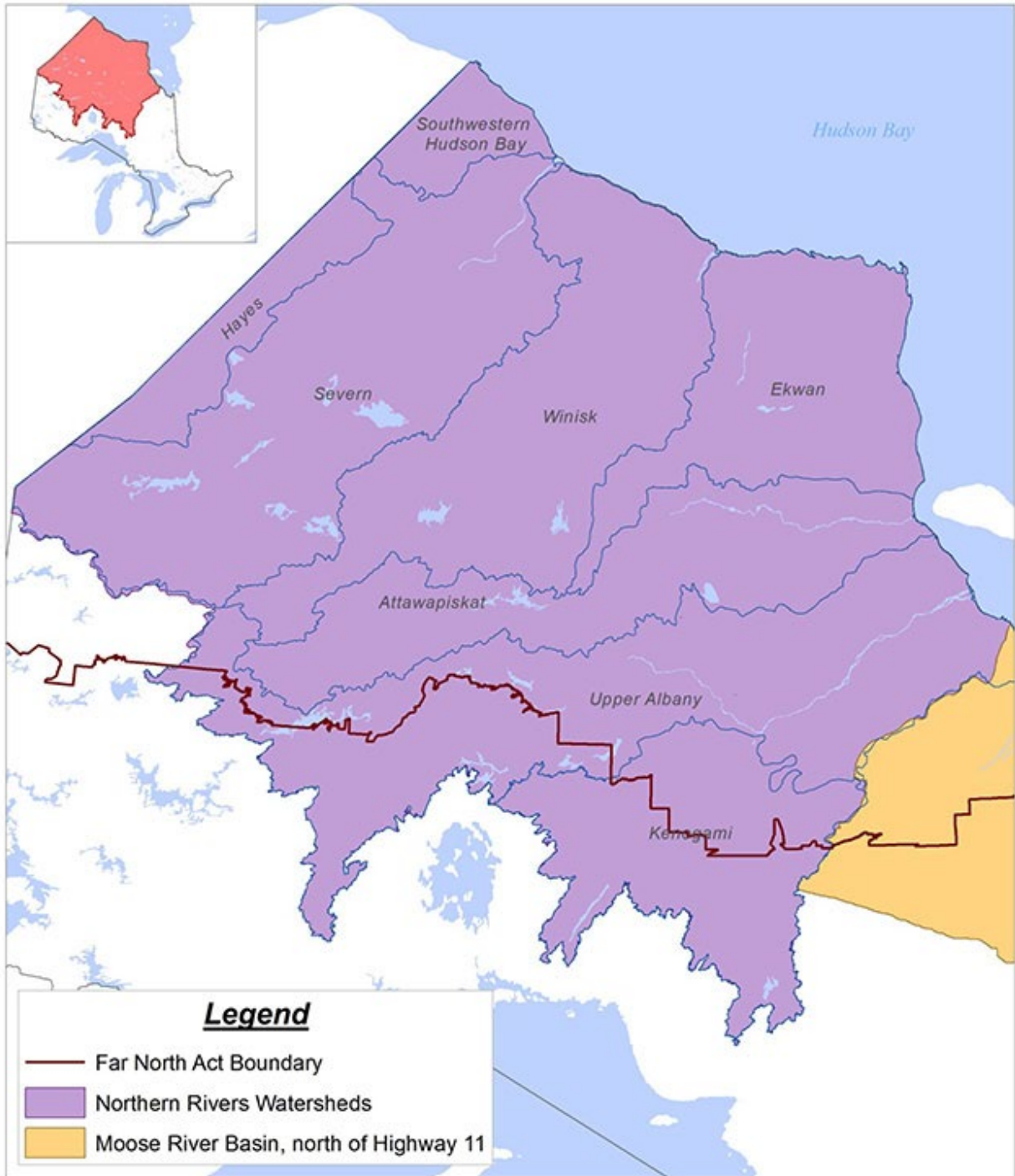


Figure 3 – Moose River Basin (North of Highway 11)

