

N.B. Department of Natural Resources Unauthorized Occupation of Crown Land Principles

Background

There are numerous unauthorized occupations on Crown land, which are addressed on an “as found” basis. These involve unauthorized camps, encroachments by adjacent landowners, infilling in coastal areas, or any other situation where Crown land is used or occupied without proper authorization.

Unauthorized occupations that meet eligibility criteria (see Attachment A) may be authorized via grant, deed, lease, license of occupation, easement, or other agreement depending on the tenure that is required under the circumstances. Occupations that meet these eligibility criteria are subject to a land use application and review process. Successful applicants must comply with all applicable laws and regulations.

Those occupations which cannot be authorized are dealt with under the trespass provision of the *Crown Lands and Forest Act* to ensure the unauthorized activity ceases.

Unauthorized Occupation Principles

Unauthorized occupation and use of Crown land in the province are dealt with in accordance with the following eight principles:

1. Unauthorized occupations shall be addressed in accordance with the Crown Land Management Principles:

- **Protection:**
Crown lands and resources will be protected against environmental degradation and improper/illegal use.
- **Fair Return:**
The Crown will receive fair financial return for the use of its land.
- **Impact on the Province:**
Crown lands and resources will be utilized in a manner and to an extent that such use does not result in long term negative environmental, economic, or social impacts.
- **Access to Crown land:**

The privilege of access to Crown land is conditional upon behaviors consistent with other goals and objectives of the Crown, and other obligations and commitments made by the Crown.

- **Use and Liability:**
Users of Crown land shall do so at their own risk.
- **Public Safety:**
Assets will be managed with due consideration for public safety.

2. Unauthorized occupations shall be dealt with in an equitable, fair, transparent and consistent manner:

Fair treatment is an objective when the Crown deals with unauthorized occupations. Standardized procedures are used to provide a consistent means to determine which occupations should be regularized, and which are removed.

3. Unauthorized occupations will be dealt with in a strategic manner:

Unauthorized occupations are too numerous to deal with all at once, especially given the finite human resources available. High profile and high impact cases will be treated as a priority. Other cases will be dealt with as they are brought to the Department's attention. There is no rationale for undertaking surveys to ascertain where all unauthorized occupations are located due to insufficient staff resources to deal with them all at once.

4. DNR will minimize and recover costs incurred when addressing unauthorized occupations:

To minimize and recover costs incurred in dealing with an unauthorized occupation, DNR will seize and dispose of assets left on-site; charge rent and back rent (where appropriate); seek reimbursement from the courts for costs and damages; and impose penalties. The Department will destroy or remove improvements in the most economically feasible manner.

5. Unauthorized occupations may be regularized if they meet certain eligibility criteria:

This principle is based on the realization that:

- i. Not all unauthorized occupations need to be removed;
- ii. Some unauthorized occupations are not presenting any problems;
- iii. Some unauthorized occupations might have otherwise been approved if permission to use Crown land had been requested; and

- iv. Some unauthorized occupations may be serving a public good.

Unauthorized occupations will be legalized in accordance with the “Criteria for Regularizing Unauthorized Structures and Works” shown in Attachment A.

6. Unauthorized occupations that do not meet the eligibility criteria cannot remain on Crown land:

Certain unauthorized occupations are unacceptable and cannot be allowed to remain on Crown land (see Item 5 of Attachment A). Each individual occupation will be dealt with in accordance with existing legislation and policy in conjunction with advice from legal counsel when circumstances warrant (i.e. high value properties, permanent homes, etc.).

Removal:

Unauthorized improvements may be removed by DNR or its agents:

- if the occupant refuses to remove improvements within the pre-determined deadline;
- if the improvement poses a risk to an adjacent property;
- if disruption to the environment will be minimal; and
- if removal costs to DNR will be minimal.

All assets and property removed by DNR or its agents shall be considered forfeited by the occupant and, if of significant market value shall be sold at public auction, with the proceeds transferred to general revenue. Items of insignificant market value shall be destroyed.

Destruction:

DNR may destroy an unauthorized improvement:

- if the occupant refuses to remove and/or destroy it within the pre-determined deadline;
- if removal would present an unacceptable physical, environmental, or financial burden; and
- if it has insignificant market value and has not been tendered, or if no bids were given during the public tender process for removal.

Destruction of an improvement shall be by whatever means are deemed appropriate under the circumstances, and could include dismantling, burning, demolition, etc. The occupant will not be entitled to reimbursement from DNR or its agents for the value of any improvements or effects destroyed.

Personal Belongings:

Personal belongings that are removed from an occupation by DNR or its agents, and are not claimed by the occupant within a reasonable timeframe, may be destroyed or sold at public

auction with any proceeds going to general revenue. However, DNR staff may choose not to remove large objects (i.e. appliances, beds, furniture, etc.) and these may be left on site.

7. DNR shall minimize risks and liabilities associated with unauthorized occupations and shall hold occupants accountable:

Unauthorized occupations or uses that cause adverse environmental impacts; create significant public health or safety concerns; or present unacceptable liabilities will not be allowed to remain under any circumstances.

8. The establishment of new unauthorized occupations shall be discouraged:

A preventive approach to unauthorized occupations in addition to the current reactive response will be undertaken. Measures to discourage unauthorized occupations will include regular monitoring and public communication and education on the implications of encroaching on Crown land. Measures may also include disincentives such as penalties and removal or destruction of improvements. Use of aerial photography may allow for setting a specific date whereby any new occupation will not be considered for regularization.

Attachment A

Criteria for Regularizing Unauthorized Structures and Works

1. Permanently fixed unauthorized structures and works may be regularized and allowed to remain on Crown land if:
 - a) they conform to or are made to conform to applicable DNR policy and practice; or
 - b) removal of the structure or work would cause more environmental harm if removed rather than if allowed to stay in place; or
 - c) the structure or work is needed to protect public health or safety, protect the environment or prevent significant property loss; or
 - d) the coastal structure has not adversely affected neighboring properties, has not caused environmental or ecological damage or concern, and has been in place for a significant period.
2. Regularization may be via a grant, lease, licence of occupation, easement or right-of-way. Grants may be issued as a way of regularizing an unauthorized structure or work only where the grant would meet the land registration requirements under the Land Titles Act.
3. Authorization may be issued only for the amount of land necessary to accommodate the occupation. An exception may be made in the case of grants, where lands may be added in order not to leave an isolated parcel of Crown land less than the minimum lot size and dimensions as per the applicable zoning or subdivision by-law or regulation and which remaining parcel would serve no public purpose.
4. An unauthorized occupant must apply for the appropriate type of authorization in order to regularize an occupation and pay all applicable fees, consideration and rents and absorb all costs incurred in regularizing the occupation.
5. Permanent structures or works shall be removed or destroyed where:
 - a) The structure or work is endangering public health, public safety, the environment or property;
 - b) An occupant has failed to apply for regularization of the occupation within 1 month of being requested to do so;
 - c) A review of the application to authorize the structure or work indicates that it does not meet the criteria outlined above; or
 - d) The applicant fails to fulfill the requirements for approval within the time frame specified.