

ENVIRONMENTAL & ENERGY LAW

NEW MNR POLICY ON ACCESS TO CROWN LANDS FOR RENEWABLE ENERGY PROJECTS

Stanley D. Berger B.C.L.,L.L.B, Certified Specialist Environmental Law

On February 10, 2014 Policy PL4.10.06 Renewable Energy on Crown Land was issued by the Ontario government :

www.mnr.gov.on.ca/groups/lr/@mnr/@renewable/documents/document/stdprod_095543.pdf

The Policy establishes a number of requirements that must be met to gain access to Crown land to advance a renewable energy development proposal for water, onshore wind and solar power development.

Transitional Rules The Minister of Natural Resources (MNR) has authority under Section 2(1) of the *Public Lands Act* S.O. 2006, C. 12 to approve or deny any use of Crown land, including the use of Crown land for renewable energy development. Renewable energy development applications on Crown land which include a power purchase agreement from an Ontario government energy procurement program and are proceeding through the regulatory approvals review process as of the approval of this Policy, will continue to be considered for access by the MNR, consistent with the Crown land site access policies and procedures in place at the time the energy procurement was awarded. Applicants that do not have a provincial energy procurement contract, but have been granted Applicant of Record status under the MNR's previous approach to access may transition their applications to the new policy approach. Those that have not been granted Applicant of Record status will need to meet the requirements of the new Policy or risk having their applications denied or returned.

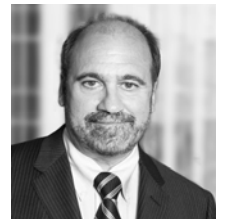
Aboriginal Community Economic Benefits

In the area identified in the *Far North Act* S.O. 2010, C.18 and *Ontario Regulation 21/11*, access to Crown land for renewable energy will only be granted to local Ontario First Nation communities and/or their partners. South of the *Far North Act* boundary, access to Crown land for water development opportunities within the Northern Rivers watersheds (this would include parts of Upper Albany and Kenogami) will only be granted to local Ontario Aboriginal communities and/or their partners. In this area and the Moose River basin North of Highway 11, where the adjacent bank(s) of the river are Crown owned, the MNR supports the creation of community economic benefits and Ontario Aboriginal community participation through the development of greenfield water power sites on Crown land that have a capacity of between 1 megawatt and 10 megawatts.

Continued on page 2...



Albert M. Engel, Partner
416.864.7602
aengel@foglers.com



Stanley Berger, Partner
416.864.7626
sberger@foglers.com



Yadira Flores, Associate
416.365.3744
yflores@foglers.com



Tom Brett, Partner
416.941.8861
tbrett@foglers.com

Fogler, Rubinoff LLP
Lawyers
77 King Street West
Suite 3000, PO Box 95
TD Centre North Tower
Toronto, ON M5K1G8

Tel: 416.864.9700
Fax: 416.941.8852
foglers.com

NEW MNR POLICY ...

Continued from page 1

For consideration of competitive applications for sites larger than 10 megawatts, development proposals that provide economic benefits to Ontario Aboriginal communities will be prioritized through the alignment of provincial Crown land application processes with provincial energy procurement initiatives.

Key Features of the Policy

- In granting access to Crown land, the MNR is only acknowledging that applicants can seek regulatory approvals for renewable energy projects on those lands. During this time frame the MNR will not accept any other applications for the same lands.
- While generally, renewable energy development on Crown land must be located where generation is enabled by available or planned transmission or distribution capacity, access may also be granted to support provincial economic development priorities (e.g. mining, regional development), off-grid Aboriginal community use, or small scale use for local resource management or other activities (forestry, mining, remote tourism).
- Development will need to be consistent with land use planning and more specifically the Crown Land Use Policy Atlas or other Ministry Crown land use plans and guides, Community Based Land Use Plans approved under the *Far North Act*, or in the absence of such Plans the Act itself. Since 1993, Crown land use policy provided for a 25 megawatt limit on water power development at individual sites within the Northern Rivers watersheds. The new Policy will allow for the review and potential exceedance of this limit through community based land use planning processes in the Far North or land use planning or other processes for areas south of the Far North in both cases in consultation with First Nations located within the subject river basin. This review will require broader landscape and watershed level considerations.
- Applications may require information and data including land tenure and ownership, confirmation of business and economic viability, alignment with provincial energy plans, programs and priorities, and transmission connection considerations and such other matters as the MNR deems appropriate.
- Aside from Crown Lands identified by the MNR through Crown land use planning, other Crown lands unavailable for renewable energy development include areas regulated or recommended as a provincial park or conservation area unless they qualify for exception under the *Provincial Parks and Conservation Reserve Act S.O. 2006, C.12*, a designated protected area under the *Far North Act*, greenfield water power development, including reservoirs, impoundments and water control structures or weirs on naturally reproducing lake trout lakes, or an area where existing authorizations or dispositions under the *Public Lands Act R.S.O. 1990, P.43*, *Aggregate Resources Act R.S.O. 1990 A.8*, *Oil Gas and Salt Resources Act R.S.O. P.12* or *Mining Act R.S.O. 1990,M.14*, prohibit development.