

GUIDELINES TO STRUCTURE THE SALE OF LANDS IN THE DOMAIN OF THE STATE FOR PERSONAL USE

MINISTÈRE DES RESSOURCES NATURELLES ET DES FORÊTS

Production

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FOREWORD

The document entitled *Guidelines to Structure the Sale of Lands in the Domain of the State for Personal Use* (hereinafter “the Guidelines”) is intended mainly for the staff of the Ministère des Ressources naturelles et des Forêts (Ministère) and delegate regional county municipalities (RCMs). Designed as a complement to the legal and regulatory framework, it sets out a standard, fair approach that will help to structure decisions concerning the sale of lands in the domain of the State for private vacation, principal residence and other personal uses, including housing developments and vacation centres. It can also serve as a communication tool to help the general public understand the foundations and criteria underlying considerations relating to the sale of lands in the domain of the State for private vacation, principal residence and other personal uses.

INTRODUCTION

In Québec, more than 92 % of the territory, or roughly 1,500,000 km², is composed of land in the domain of the State. This land, and its pool of natural resources, are managed and used with a view to supporting the development of all Québec's regions. Many different rights of use are granted for this purpose, to allow for different activities to take place. These activities may, for example, play a role in the economic development of Québec or help to protect natural environments and develop natural resources.

The Ministère is the principal manager of land in the domain of the State. It oversees the responsible development of Québec's territory while taking different types of use into account. In doing this, it may assign land rights (leasing, sale, etc.) and delegate the management of specific responsibilities to RCMs among others.

The Minister of Natural Resources and Forests (hereinafter "the Minister") has a discretionary power to sell land in the domain of the State. This document sets out the guidelines that structure this power. The goal is to ensure that land in the domain of the State under the authority of the Ministère, including land for which management has been delegated, is managed consistently.

DEFINITIONS

Lease for private interests, complementary or accessory to a principal use: A lease granted by the Ministère for accessory use of an area not exceeding 1,000 m² that is not contiguous to the principal area used for personal purposes.

Permanent principal building: Any permanent construction used or intended to be used to shelter or host people as its principal use.

Sanitary facilities: Sanitary facilities including the water supply system and the wastewater evacuation system

Delegate RCM: A legal person established in the public interest that has signed an agreement under a delegation program adopted pursuant to section 17.13 and following of the *Act respecting the Ministère des Ressources naturelles et de la Faune*. To simplify the text of this document, local municipalities whose territories are not included in the territory of an RCM are also covered by the designation “RCM” in this document.

Urbanization perimeter: The planned limit on future expansion of urban-type habitat, regardless of whether the concentration is a town or a village. Urbanization perimeters are areas to which the notions of concentration, growth and diversity of urban functions are attached. They include the urban space in its entirety regardless of neighbourhood or municipal boundaries.¹

Urbanization perimeter delimitations are a mandatory element of an RCM's land use and development plan.

Vacation use: Time spent for recreational or leisure purposes at a location other than the person's principal residence, usually in a rural or forest environment. Vacation use may be described as private, commercial or community. It excludes Indigenous camps and lodging relating to resource harvesting or extraction activities (e.g. trapping camps, forestry camps, mining camps).

Private vacation use: Time spent at a vacation location for which a natural or legal person has an exclusive right of occupation. Such a right is established by a lease on land in the domain of the State. The end use stipulated in the lease must be respected.

¹ Ministère des Affaires municipales et de l'Habitation, <https://www.mamh.gouv.qc.ca/amenagement-du-territoire/guide-la-prise-de-decision-en-urbanisme/planification/perimetres-metropolitains-perimetres-durbanisation-et-zones-prioritaires-damenagement-et-de-reamenagement/#:~:text=Un%20PU%20est%20la%20limite,de%20diversit%C3%A9%20des%20fonctions%20urbaines>

1. GENERAL CONTEXT

1.1 Legal Framework

The *Act respecting the Ministère des Ressources naturelles et de la Faune* (chapter M-25.2) requires the Minister to manage lands in the domain of the State in compliance with the *Act respecting the lands in the domain of the State* (chapter T-8.1).

Section 2 of the *Act respecting the lands in the domain of the State* stipulates that the Minister shall exercise, in respect of lands in the domain of the State that are under his authority, all the rights and powers inherent in the right of ownership.

Section 34 of the same Act stipulates that the Minister may sell lands under his authority and buildings, improvements and movable property thereon which form part of the domain of the State, on the conditions and at the prices he determines, in accordance with the *Regulation respecting the sale, lease and granting of immovable rights on lands in the domain of the State* (chapter T-8.1, r.7) (hereinafter “the Regulation”).

In all but some exceptional cases, lands in the domain of the State are sold at the market value determined by the Minister using generally recognized approaches of property assessment (section 2 of the Regulation). The Regulation stipulates the administrative costs payable for a sale, along with the conditions of allocation.

Under the provisions of section 17.13 and following of the *Act respecting the Ministère des Ressources naturelles et de la Faune*, the Minister may, with the approval of the Government, prepare programs for the development of lands that are under his authority, in order to encourage regional development or implement any other governmental policy.

1.2 Delegation of management

Since the mid-1990s, the Ministère has been able to delegate certain land management responsibilities to the regions, in order to foster regional development. To achieve this, it has introduced programs granting RCMs a variety of powers and responsibilities for the management of lands in the domain of the State, including the power to sell parcels of land subject to the Minister’s approval. Under Québec’s *Municipal Code*, a municipality that takes part in a program or enters into an agreement has the powers needed to fulfill its commitments and assume the related responsibilities, including those relating to the sale of lands in the domain of the State.

1.3 Guiding Principles

1.3.1 Preserve and develop the land heritage as a public property

By preserving the land heritage, it is possible to help encourage coexistence of different uses, optimize resource development, maintain general access to public land and ensure that land and resources are used in the interests of the communities, for the benefit of present and future generations.

1.3.2 Limit the fragmentation of public land

Privatization of public land is generally restricted to urban and peri-urban areas, to limit fragmentation and avoid the creation of enclaves. This helps to consolidate the private domain for future municipal development purposes.

1.3.3 Ensure fair and transparent treatment of purchase applications

The existence of clear and standard criteria helps to ensure that applications to purchase land in

the domain of the State are treated fairly. The criteria are made public to ensure transparency.

1.3.4 Take sustainable development principles into account

The *Sustainable Development Act* (chapter D-8.1.1) provides that the Government must take sustainable development principles into account in its decisions and actions. These principles are closely related to the basic orientation and rules on which the Guidelines are based.

2. ORIENTATION

Given the legal framework and the above guiding principles, the orientation retained for land rights is leasing of land in the domain of the State. In exceptional circumstances, however, the Minister may agree to the sale of land in the domain of the State, in accordance with the rules set out in these Guidelines. These Guidelines do not require the Minister to sell, nor do they limit the Minister's power. Among other things, the Minister's discretionary power allows for regional specificities and the public interest to be taken into account when considering the sale of land.

3. CONSIDERATION OF INDIGENOUS CONCERNS

The Guidelines do not change the constitutional duty to consult and, where necessary, accommodate the Indigenous communities concerned, in cases where the Ministère is considering a measure that is likely to have a detrimental effect on an existing or credibly claimed ancestral or treaty right.² The consultation must be separate from the one held for other partners, and must be organized in accordance with the Québec Government's *Interim Guide for Consulting the Aboriginal Communities*. The Crown's duty to consult cannot be delegated to a third party, and the Ministère cannot make a decision to authorize or refuse a request to sell land until the Indigenous communities concerned have been consulted.

These Guidelines do not override treaties entered into by the Québec and Canadian governments with Indigenous nations, nor do they override agreements signed by the Indigenous nations and the Québec Government or one of its departments.

4. FIELD OF APPLICATION

The purpose of the Guidelines is to present the rules governing the sale of land in the domain of the State for private vacation, principal residence and other private uses.

The notion of sale refers exclusively to that set out in the Regulation.

These Guidelines apply to lands in the domain of the State that fall under the authority of the Minister of Natural Resources and Forests pursuant to the *Act respecting the lands in the domain of the State*, including those for which managerial responsibility has been delegated to an RCM.

4.1 Exclusions

The following land is excluded from the scope of these Guidelines:

- Land transferred pursuant to the *Regulation respecting the gratuitous transfer of land for public use* (chapter T-8.1, r. 1).

² Based on the jurisprudence, the Québec Government believes that a claim targeting a right must be assessed for its credibility. This position is reflected in the Québec Government's *Interim Guide for Consulting the Aboriginal Communities*. The Supreme Court, in paragraph 37 of the *Haïda Nation v. British Columbia (Minister of Forests)* ruling ([2004] 3 RCS 511), notes that "Knowledge of a credible but unproven claim suffices to trigger a duty to consult and accommodate."

- Property sold pursuant to the *Regulation respecting the disposition of certain surplus or confiscated properties* (chapter T-8.1, r. 2).
- Land transferred pursuant to the *Program relating to a gratuitous transfer of land in the domain of the State in favour of Northern municipalities* (Order-in-Council 305-2012).
- Land affected by the regularization of an occupation that meets the conditions of alienation set out in the *Regulation respecting the regularization of certain types of occupation of lands in the domain of the State* (chapter T-8.1, r. 6).
- Land affected by the Minister's renunciation of the right of ownership during a cadastral renovation or the processing of a request for regularization in the two years following the tabling of a cadastral renovation plan (section 40.1 of the *Act respecting the lands in the domain of the State* and section 19.1 of the Regulation).
- Land covered by the waiving of a restrictive clause in a notarized deed or letters patent (section 35.1 of the *Act respecting the lands in the domain of the State*).
- Land affected by a rectification letters patent (section 43 of the *Act respecting the lands in the domain of the State*).
- Land involved in an application for an exchange (section 5 of the *Act respecting the lands in the domain of the State*).

5. LAND THAT CANNOT BE SOLD

Because of its nature and the way it is used, some land in the domain of the State is exempted from all forms of sale. The main categories of public land that cannot be sold are as follows (the elements in parentheses are examples only and are not exhaustive):

- Land and natural or cultural elements that have or are in the process of obtaining protected status under an Act or regulation (e.g. protected area, archaeological site, designated wildlife habitat).
- An island with a surface area of less than 10 hectares.
- Land abutting onto a lake of less than 20 hectares.
- Land arising from compensation for the destruction of a habitat or wetland.
- A conservation zone³ established for a vacation development project by the Ministère or an RCM.
- Land posing a risk to public safety or land located in areas with natural constraints.
- Land set aside for particular uses or in the public interest (e.g. access to a body of water or public land, an area of land that may be used by a Government department or agency).
- Land subject to a right other than the applicant's right, pursuant to the *Act respecting the lands in the domain of the State* (e.g. blueberry field lease, land set aside for a proposed wind facility, etc.).
- Land in respect of which a lease for private interests, complementary or accessory to a principal use, has been issued.

³ The Guide to the Development of Vacation Use on Public Land is currently being revised. The area known currently as a conservation zone may be known in future as a natural environment preservation zone..

- Land that cannot be sold due to a legislative measure, treaty or agreement between an Indigenous nation or community and the Québec Government.
- Land designated as not eligible for sale in a planning tool approved by the MRNF: the regional public land development plan (PRDTP) or the integrated land use plan (PAI).

6. RULES GOVERNING APPLICATIONS TO PURCHASE LAND IN THE DOMAIN OF THE STATE FOR PERSONAL USE

- Purchase applications made by individuals are only deemed admissible in the cases set out in sections 6.1 to 6.3. Consideration of an admissible purchase application does not automatically mean that a sale will take place. Admissible purchase applications must be submitted to the partners concerned for consultation.

6.1 Application from a lessee to purchase the leased land

For an application to be admissible, all the following criteria must be met:

- The land is located in an urbanization perimeter or on a site with a sale history.
- On Anticosti Island and the Îles de la Madeleine, only land that is located in an urbanization perimeter can be sold.
- There is a permanent principal building on the land, and its construction has been completed.
- The clauses of the lease and all current regulations have been respected (e.g. rent, type of use stipulated in the lease, municipal by-laws, etc.).
- The applicant's file does not contain an application for a modification that is currently being processed.

SALE HISTORY

Vacation sites composed of three or more lots, at which 20% or more of the land used for personal purposes is privately owned, are considered to have a sale history.

The features of these vacation sites include:

- A portion of a lake or a stretch of river in a riparian environment.
- Vacation lots that are contiguous or separated by a distance equivalent to no more than two vacation lots.
- A road connecting the vacation lots.

6.2 Application from a landowner to purchase a lot adjacent to their property, in order to comply with a municipal by-law concerning environmental standards

Landowners can apply to purchase a parcel of land adjacent to their land in order to comply with a municipal by-law concerning environmental standards, for the addition or improvement of sanitary facilities. For an application to be admissible, all the following criteria must be met:

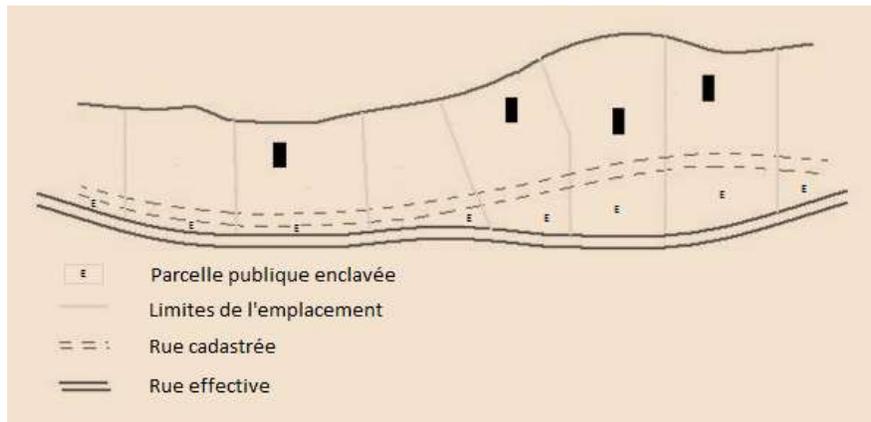
- The parcel is abuts onto the applicant's property (e.g. is not separated from it by a watercourse, a road or a parcel of public or private land).
- The parcel of land correspond to the minimum size required for the addition or improvement of sanitary facilities, under the current regulations.
- The parcel of land is not located in an area set aside for use as a public access or conservation zone.
- Sale of the parcel of land would not prevent access to a watercourse or land in the domain of the State, and it would not create an enclave of adjacent land.

When the purchase application is submitted, evidence such as a soil test for the construction of a septic facility may be required to verify that the land owned by the applicant is in fact insufficient to comply with the environmental standards.

6.3 Application from a landowner to purchase a parcel of land adjacent to their land which could not be developed otherwise

Landowners may apply to purchase enclaved or residual parcels of public land adjacent to their property, provided those parcels could not be developed otherwise. In other words, the parcels must have little to no economic value (e.g. for forestry or agricultural use) and has very low potential for conservation or recreational use (e.g. to create a municipal park).

In the illustration below, a landowner has applied to purchase an enclave of public land with very little development potential, located between a privately owned property and the effective right-of-way of a road. Situations like this may arise, for example, if a portion of cadastered road is built outside the proposed right-of-way.



For a parcel of land to be sold, all the following criteria must be met:

- The parcel of land has little to no economic value (e.g. for forestry or agricultural use) and has very low potential for conservation or recreational use (e.g. to create a municipal park).
- The parcel of land abuts onto the applicant's land (e.g. is not separated from it by a watercourse, a road or a parcel of public or private land).
- The parcel of land is not located in an area set aside for use as a public access or conservation zone.
- Sale of the parcel of land would not prevent access to a watercourse or lands in the domain of the State.
- The combination of the private land and the adjacent parcel could not be subdivided into two separate lots under municipal subdivision rules.

7. RULES GOVERNING THE SALE OF LANDS IN THE DOMAIN OF THE STATE ON AN INITIATIVE OF THE MINISTER

The Ministère and delegate RCMs (after obtaining authorization from the Minister) may sell land via calls for bids or random drawings, in compliance with current regulations.

Sales such as these, on an initiative of the Minister, are exceptional, but it is important for them to be mentioned in these Guidelines. As stated in the sections on the guiding principles and orientation, the Minister's aim is to limit the fragmentation of public land and to encourage leasing rather than sale.

It should be noted that offers to sell on an initiative of the Minister must be submitted for consultation with the partners concerned.

7.1 Land made available on an initiative of the Minister by means of a call for bids

To ensure healthy competition between promoters, land in the domain of the State can be offered for sale via a call for bids, on an initiative of the Minister. This may be done, for example to ensure that land is allocated fairly for a development project, and to maximize the benefits for the population as a whole.

This section covers the sale of large areas of land intended for subdivision, and not vacation sites. Development projects must be located inside urbanization perimeters.

Residual parcels of land located inside an urbanization perimeter may also be made available via a call for bids for consolidation purposes.

7.2 Land made available on an initiative of the Minister by means of a random drawing

A vacation site may be sold by means of a random draw. In the areas listed in section 6.1, leases granted for vacation purposes may, at the MERN's discretion, include a promise to sell conditional upon the construction of a principal permanent building.

CONCLUSION

The Guidelines form part of the Ministère's ongoing general orientation to prioritize leasing rather than sale of public land. This orientation is based on four main principles:

- Preserve and develop the land heritage as common property
- Avoid the fragmentation of public land
- Ensure fair and transparent treatment of purchase applications
- Take sustainable development principles into account

The purpose of these Guidelines is to preserve ownership of land in the domain of the State, for the benefit of present and future generations of Québécois.

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