

A photograph of a dirt road blocked by a metal barrier. The barrier is made of metal pipes and has a yellow sign with the word "NO" on it. The road is surrounded by a large pile of logs and brush. The background is a dirt embankment with more logs and brush. The text "Forest Access Roads" is overlaid in white, and "Access Considerations for Forest Operators When Crossing Alienated Lands" is overlaid in yellow. The date "October 2014" is overlaid in white at the bottom.

Forest Access Roads

Access Considerations for Forest Operators
When Crossing Alienated Lands

October 2014

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Background

Questions regarding access across alienated (private) lands are often raised by forest operators. Generally speaking, the *Forest Management Plan (FMP)* and the *Annual Work Schedules (AWS)* can only provide approval of operations on Crown lands. Shareholders are responsible for all other permits and approvals on alienated lands. In those cases where assigned allocations must cross alienated lands; companies must research and confirm boundaries and obtain the associated permits and/or approvals to cross. There are several instances where operators must create or use access across alienated lands. They include:

1. Private land
2. Utility Corridors (Pipelines/Power lines)
3. Provincial Parks/Conservation Areas
4. MTO Right of ways (P Plans)
5. Municipal Roads/Roads Boards

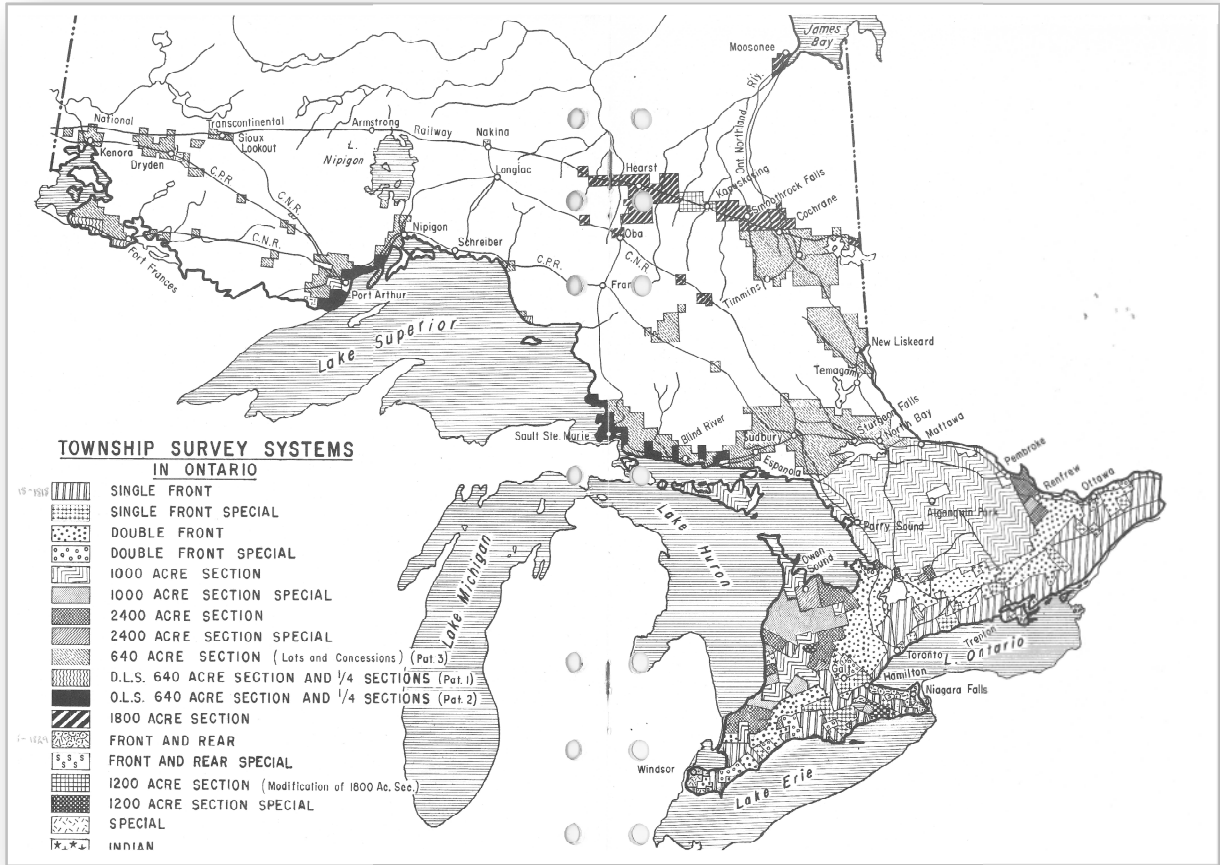
Care must be taken not to assume that this is a comprehensive coverage of the subject and source documents should be referenced for updates and to ensure that the correct interpretation is available for your particular situation. The following provides a brief summary of each of the above scenarios.

Crown Surveys in Ontario

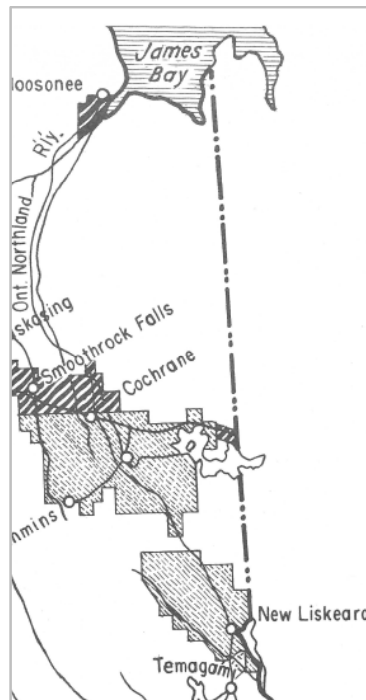
In the development of Ontario, survey control lines were used to establish a survey fabric from which townships were planned. After township surveys were made there were seven different systems of township surveys adopted:

1. Single-front
2. Front-and-rear
3. Double front
4. 2,400-acre section
5. 1,000-acre section
6. 640-acre section
7. 1,800-acre section

This document seeks to provide clarification within the area defined by the Timiskaming and Abitibi River Forest boundaries.



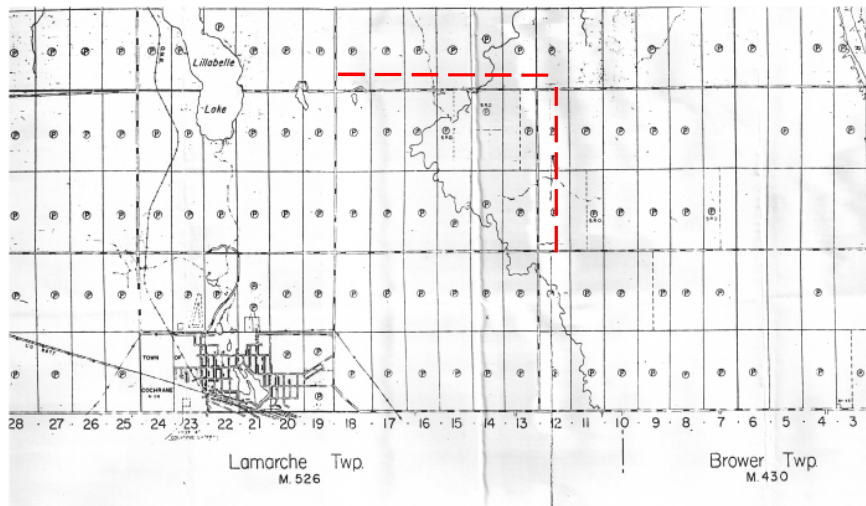
Locally, township survey systems #6 and #7 may be encountered during operations:



Private Land

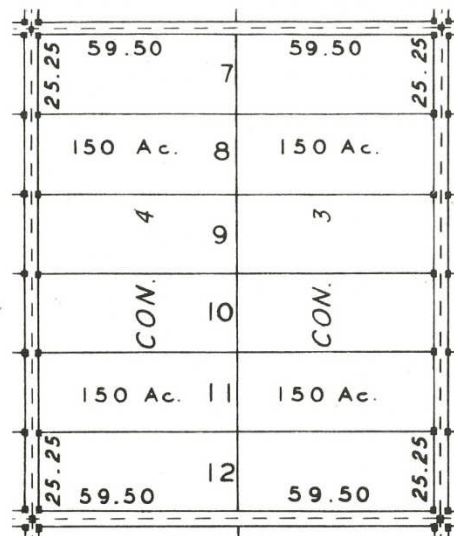
9-mile Square Townships: In the Cochrane District the township fabric includes a typical section of 1,800-acre section (circa 1906) with 9-mile square townships. A “sectional township with double fronts” means a township which contains 12 concessions of 28 lots with an allowance for road one chain in width at each alternate concession line and every sixth side line and along the banks of rivers and lakes, thus creating sections 1,800 acres each.

Example of 9 mile Square Townships



Typical section of 1,800-acre section, 1906
9-mile Square Township
Sectional Township with Double Fronts

Original survey lines run on the ground are indicated by broken lines; original survey posts by small squares.



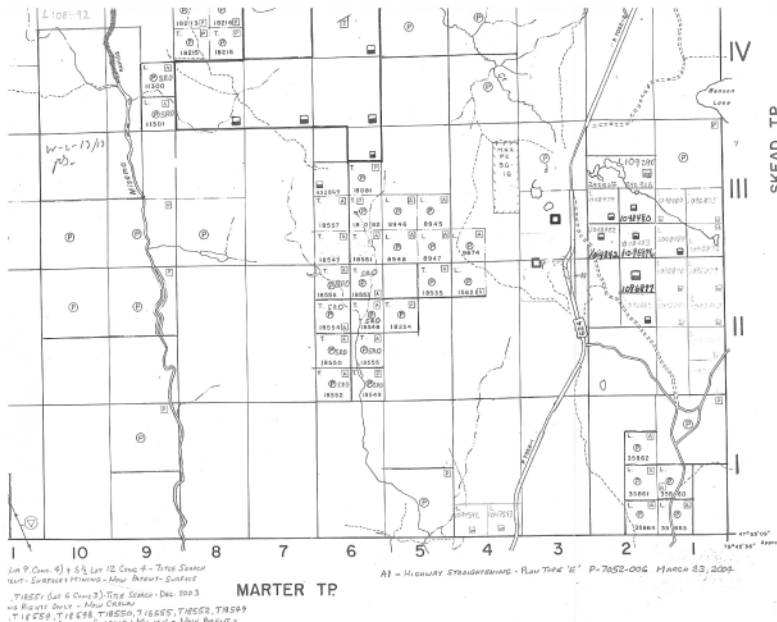
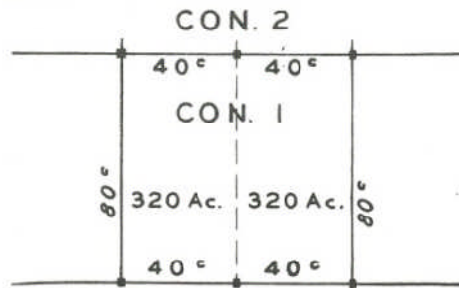
6-mile Square Townships: In the Timiskaming District the township fabric includes 640-acre sectional system (1859) with 6-mile square townships. More specifically a typical section of *pattern 3* of 640-acre sectional system is used. A "sectional township with single front" means a township divided into sections and lots were the usual practice in the original survey was to survey the township boundaries, concession lines and side lines of the sections to establish the front corners of the lots and the section corners. Pattern 3 was applied to townships of similar size divided into concessions one mile deep and each containing twelve lots 40 chains wide by 80 chains in depth, with an area of 320 acres, 5 % being reserved for roads.

Example of 6 mile Square Township

Typical section of pattern 3 of 640-acre sectional system

Sectional Township with Single Fronts

Original survey lines run on the ground are indicated by unbroken lines; original survey posts by small squares.



LEGEND	
PATENTED LAND	⊕ or ⊙
PATENTED FOR SURFACE RIGHTS ONLY	⊕ or ⊙
LEASE	⊕ or ⊙
LICENSE OF OCCUPATION	L.O.
CROWN LAND SALES	C.S.
LOCATED LAND	Loc.
CANCELLED	C.
MINING RIGHTS ONLY	M.R.O.
SURFACE RIGHTS ONLY	S.R.O.
HIGHWAY & ROUTE NO.	— 11 —
ROADS	— — — — —
TRAILS	— · — · — · —
RAILWAYS	— + — + — + —
POWER LINES	— — — — —
MARSH OR MUSKOG	⊕ or ⊙
MINES	⊕ or ⊙

*used only with summer resort locations or when space is limited

TOWNSHIP OF
CATHARINE
 DISTRICT OF
 TIMISKAMING
 LARDER LAKE
 MINING DIVISION
 SCALE: 1 INCH = 40 CHAINS (1/2 MILE)

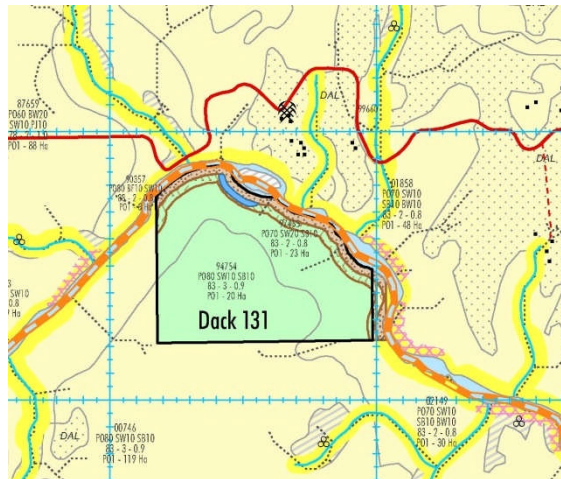
DATE	JULY 1986	PLAN NO.	G-3615
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Under the 640 –acre sectional system no road allowance layout was provided in the original township survey.

Access Options: The *Road Access Act* includes provisions for accessing across private property to ensure properties are not ‘land-locked’ (i.e. surrounded by private land). The *Road Access Act* ensures that no person construct, place or maintain a barrier or other obstacle over a common road that as a result prevents the use of the road. A “common road” means an access road on which public money has been expended for its repair or maintenance. However, it can be difficult to prove that public money has been spent on common roads as these records have been inadequately maintained over time and may not readily available from Ministry of Transportation (MTO). Refer to the attached link for full copy of *Road Access Act*: http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90r34_e.htm

In many cases operators may encounter cleared road right-of-ways that follow the original fabric of the lot and concession lines under the *pattern 3* of 640-acre sectional system (i.e. these right-of-ways can be lightly surfaced or only show evidence of having been previously cleared). Under this *pattern 3* system there is no allowance for roads and property lines extend to the center of the road from each side. They can be used if previously established or maintained using public money. However, if MTO cannot prove that the road segment is a ‘common’ road then application would need to be undertaken under the *Road Access Act*. It is suggested that as a first option operators deal directly with landowners to use these right of ways. If unsuccessful, only the ‘owners’ of private property that are land-locked can exercise the 5% reservation for roads. In the case of Crown land the Ministry of Natural Resources & Forestry (MNRF) is deemed to be the ‘owner’. Therefore where operators need to use these roads (or create new corridors) to access allocations that are ‘land locked’, the MNRF will need to exercise its percentage reservation for roads as ‘owner’.

Example of Allocation Land- locked by Private Lands



The MNRF can apply to the Minister for a) access for the program purposes of the Ministry (e.g. *provide access for forest management*) and b) when there is no other option for access except over

private property. Operators will need to exhaust all other options to access the forest operations before a request is made. They will need to show that no agreement could be made with the property owner(s) or that there is no alternate access around the property(s) in question. This could include but not be limited to the excessive cost or barriers to prevent an operation to use alternatives of Crown land. Operators need to understand that costs (MNR administration and field surveys) are borne by the beneficiaries of the right. It can also be expected that MNRF will not exercise the percentage reservation for roads in every case. The provisions to exercise this percentage reservation for roads are describe under *MNRF Policy PL 3.01.01* and set out under *Public Lands Act (PLA) sections 64(2), 65(1) and 65(2)*. If companies pursue this option it has been suggested that a minimum of two (2) years is required to complete the process (i.e. if approved by MNRF)

Other Alienated Lands

Mining Patents and Leased Mining Claims

The whole matter of interpreting mining claims is very complex. The following provides only general information related to accessing of these areas and operators should remember to take nothing for granted. In those cases where townships did not have a fabric established (i.e. lots and concessions), surveyed mining patents may have been established.

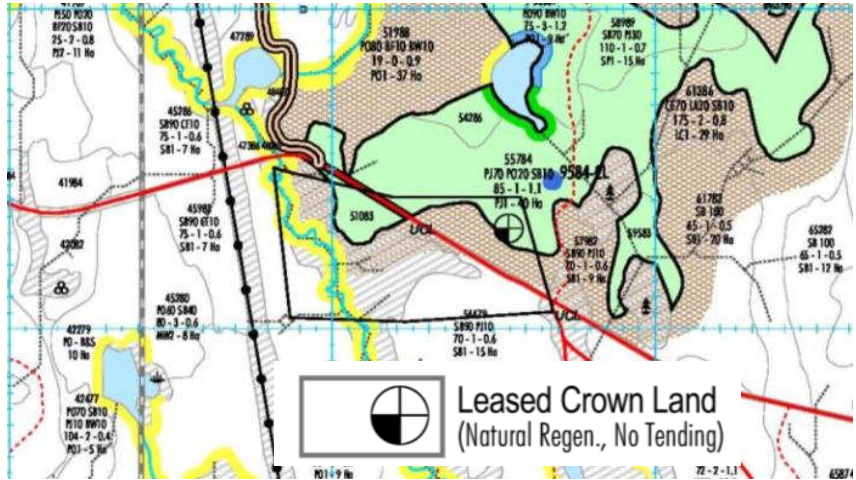
Access Options: In some cases existing roads that pre-date the patent may have been excluded in the survey plans or patent descriptions. Depending on the situation operators will need to review the original patent documents and survey plans at Land Registry Offices (and any subsequent grants and title changes). If excluded, this would allow for use of the roads by forest industry without restrictions. Land Titles and/or Registry Office registers for our region are located in Haileybury (Temiskaming District), Cochrane (Cochrane District) and Sudbury (Sudbury District). However, a word of caution; Title searching and interpretation of control maps is a complex matter and should not be carried out by inexperienced staff. Records in the Distinct offices of the Ministry of Natural Resources & Forestry is also another valuable source of information as they maintain various land tenure control maps.

Example of Patent Mining Claim (Lebel Township)



By an amendment of the Mining Act in 1964 the policy of granting patents (freehold titles) for mining claims was discontinued. Leasehold patents, commonly known as mining leases, replaced the former freehold titles. However, there are old leases issued in former provincial forest where the Ministry does not have the right to practice forestry.

Example of Patent Mining Lease (Tyrrell Township):



Inset provides symbology from legend on 'Areas Selected for Operations' map

Access Options: In the case of mining leases the forest management planning process has identified those mining claims where all trees have been reserved to the Crown and identified whether the “right to practice forestry” and to “make necessary roads for such purposes” is permitted. Depending on the claims, the Crown can remove all trees or allow removal under licence. Leases where forestry operations are acceptable have been reviewed by MNR during the FMP process is clearly indicated on *Areas Selected for Operations Maps*.

Work Permit applications

In certain cases operators will also need to construct roads and water crossings across private lands. Application under the *Lakes and Rivers Improvement Act* (LRIA) is required. This process for applications under LRIA are required to seek MNR's approval to 'construct, alter improve or repair water control infrastructure' in Ontario. Construction of roads or trails across stream beds may also be required. It should also be noted that any agreement with landowners should also contain provisions with landowners to allow for future access to conduct silvicultural operations following harvesting.

Access Options: Refer to the attached link for full copy of LRIA Act or Administrative Guide to help you in determining if a work approval is required.

http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90I03_e.htm or
http://www.MNRF.gov.on.ca/stdprodconsume/groups/lr/@MNRF/@water/documents/document/stdprod_088408.pdf

There may be exceptions to approvals under the LRIA but in both cases the MNRF uses the Work Permit application process to determine which Act applies. For detailed information on the Ministry's requirements for work permits, please refer to Policy PL 3.03.04 - *Public Lands Act Work Permits (Section 14)*. If in doubt on whether a work permit is required, applicants are encouraged to contact their local Ministry of Natural Resources & Forestry office well in advance and make an appointment to speak with a Ministry staff person.

Example of PLA or LRIA Application area (Chamberlain Township)



Utility Corridors

The provisions which describe the approach for land tenure associated with utility corridors on Public Land are provided for under *MNRF Policy PL 4.10.03*. These utilities are designated as Unclassified Lands (UCL) on Forest Inventory Maps.

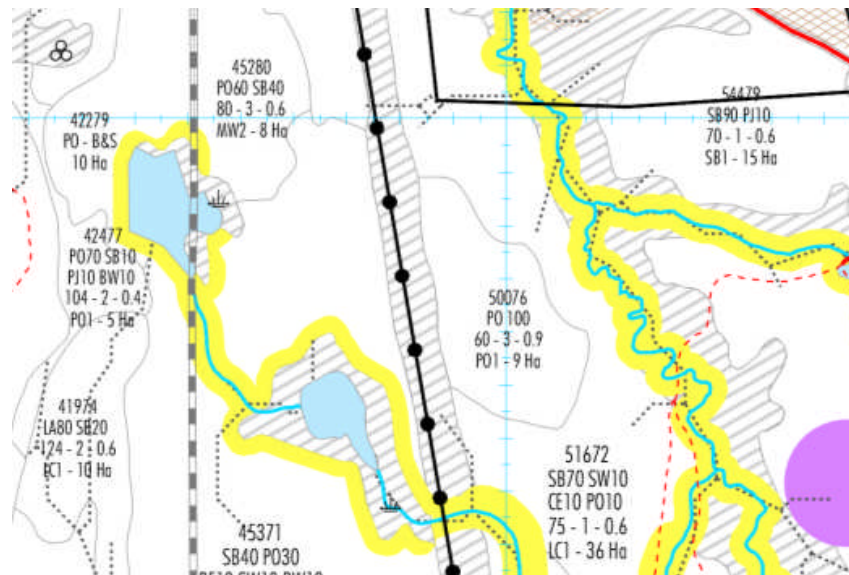
Pipelines

All crossings of pipeline right-of-way as defined by the *National Energy Board Pipeline Crossing Regulation 112* require prior written authorization. Each excavation or construction activity is unique but for forestry applications, a crossing 'facility' could include; roads, trails, pathways and this authorization would provide written requirements for clearances and design requirements of the crossing. Additionally, the *National Energy Board Act (NEB)* requires that anyone excavating with power-operated equipment within 30 m of the pipeline right-of-way must obtain approval from the pipeline company before starting any work.

Access Options: The pipeline company will provide written approval for your excavation request and will likely require notification prior to start-up. Further details can be obtained from the National Energy Board website and it can help you determine whether you must obtain approval, where to obtain it and how to obtain it.

<http://www.neb-one.gc.ca/clf-nsi/rsftyndthnvrnmnt/sfty/rfrncmtrl/xcvtncnstrctnppln/xcvtncnstrctnppln-eng.html>

Example of Utility Corridor on Forest Inventory Map (Tyrrell Township)



Power Lines

Section 3 of the *Power Line Crossing Regulations (SOR/95-500)* sets the circumstances to construct a facility across, on, along or under a power line or to excavate using power-operated equipment within 30 m of a power line pursuant to subsection 58.31(1) or subsection 112(1) of the NEB Act.

Access Options: Prior to crossing, written permission must be obtained by the owner of the facility or the owner's sub-contractor and a written procedure and schedule for the work have been agreed to by the holder and the owner of the facility or the owner's sub-contractor. Operators can expect that permission for the proposed crossing/installation work on the utilities easement will be provided in writing by the power line utility setting out its particular terms and conditions. The Ministry of Natural Resources & Forestry can also provide details with respect to any exclusionary rights (i.e. if any) held by the utility service under their "memorandum of agreement". Further details can be obtained from the owner of the power line utility and from the National Energy Board website at:

<http://www.neb-one.gc.ca/clf-nsi/rpblctn/ctsndrgltn/rrggnmgpnb/pwrlncrssnrgltn/pwrlncrssnrgltns-eng.html>

Provincial Parks Conservation Land

Where pre-existing access is required to cross provincial parks or conservation areas a work permit is required. Under the *Provincial Parks and Conservation Reserves Act, 2006* the superintendent in charge of a provincial park and the district manager or conservation reserve manager in charge of a conservation reserve may open or close to travel any road or trail in the provincial park or conservation reserve that is not under the control of the Ministry of Transportation. In these cases the Park Manager is responsible for reviewing and approving the work permit. Make sure operators are aware of the conditions set by the Parks branch in the work permit before commencing operations. For example official Park plans normally require that harvested timber is left on site where it was cut.

Access Options: Resource access roads for non-provincial park and conservation reserve uses in provincial parks and conservation reserves are permitted, subject to the policies of the Ministry and the approval of the Minister, with or without conditions. The *Provincial Parks and Conservation Reserves Act* does provide for construction of resource access roads and trails that are required to access Crown timber outside of a provincial park or conservation reserve. Currently the FMP allows forest operators to use existing resource access roads or trails, however, the expansion or improvements to these roads and trails are subject to approval. It should be noted that unlike the Annual Work Schedule, there are no time frames provided for processing of work permits as the PLA act does not apply. Operators should take this into consideration when scheduling operations.

Example of Provincial Park Application area (Noble Township)

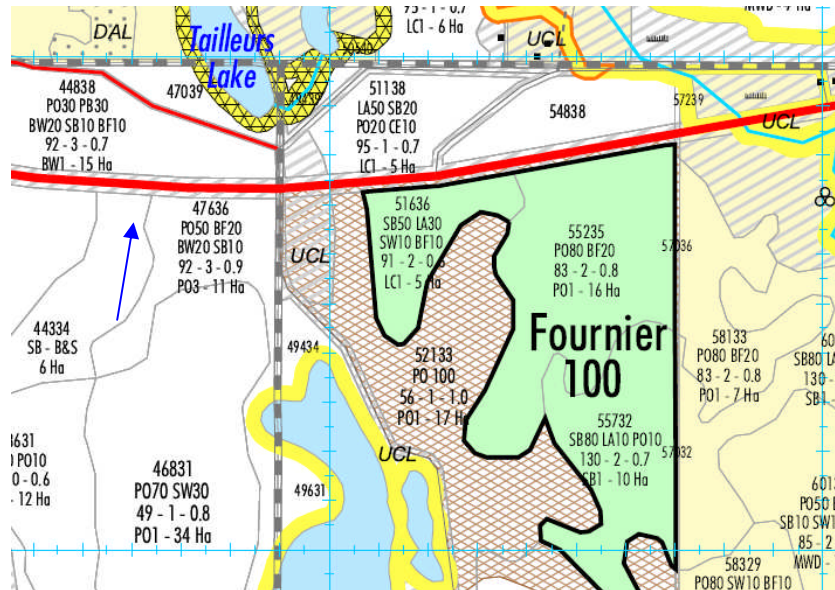


MTO Right of ways (P Plans)

MTO's statutory authority for its permit control system, including highway access control, is set out in Sections 31, 34 (King's Highway) and 38 (controlled-access highway) of the *Public Transportation and Highway Improvement Act* (PTHIA). Any development located within MTO's permit control area under the PTHIA is subject to MTO review and approval prior to the issuance of entrance, building and land use permits.

Access Options: Permits must be obtained prior to any construction being undertaken within MTO's permit control area. It should be noted that MTO has also applied these conditions to old road beds following realignments of highway corridor as the P Plans still include these segments. Further details can be obtained from the Ontario Ministry of Transportation website at: <http://www.mto.gov.on.ca/english/engineering/management/corridor/municipal-guideline/standards.shtml>

Example of Highway 11 Road of Way Allowance



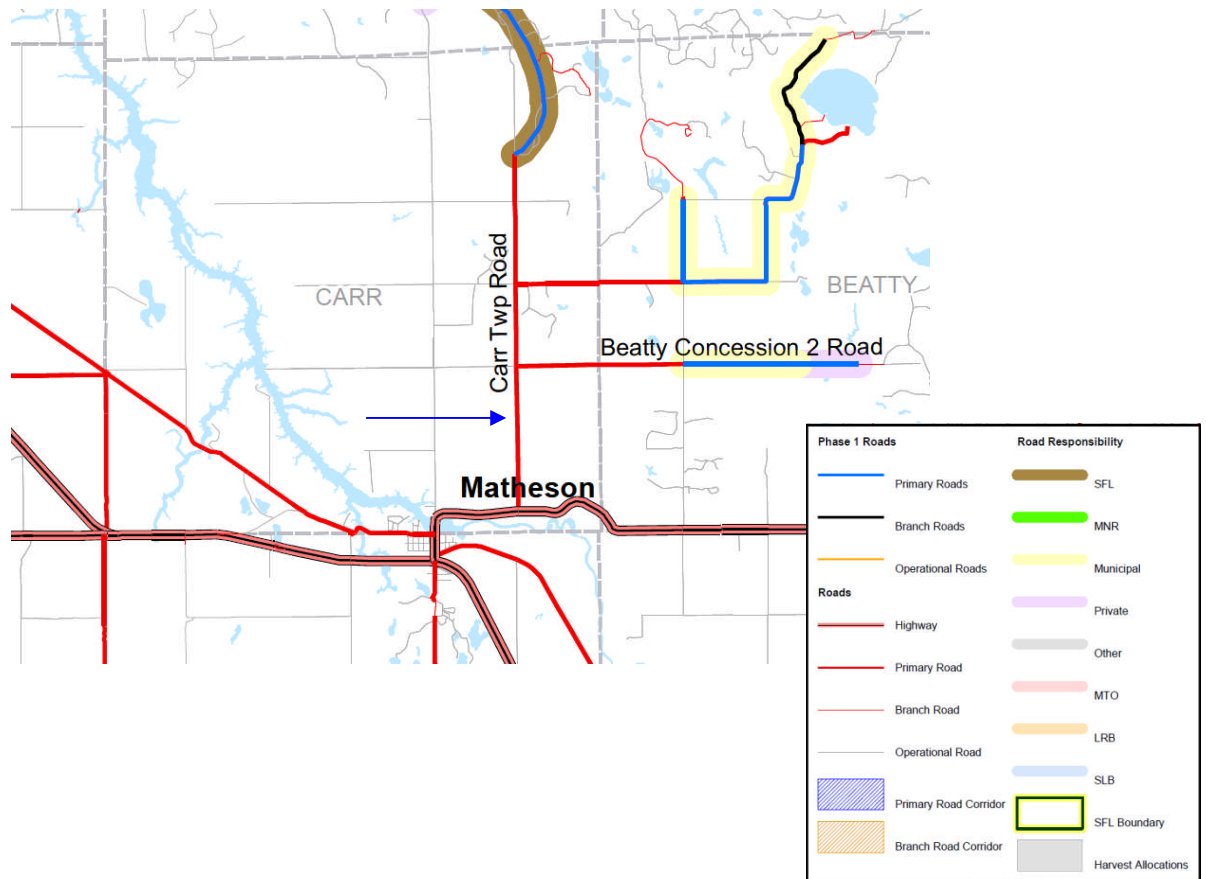
Municipal Roads and Roads Boards

Public access roads on Crown land are subject to the Public Lands Act. In some cases the Ministry of Transportation (MTO) for the purposes of maintenance is responsible for administering the legislation which governs development of *Local Roads Boards (LRB)*, *Statute Labour Commission (SLC)* and *MTO Special (MTO)* groups in unorganized areas. These groups can partially or fully fund road improvement and maintenance work. MTO has imposed certain conditions such as load limits, signing requirements etc. on these segments of roads. Operators should contact the local MTO

Technical Services Officer were forest operations overlap these road segments and/or deal directly with groups in these unorganized areas. In other cases roads used by forest industry may fall within the boundaries of organized municipalities. These roads are monitored and maintained by them in some cases

Access Options: Memorandums of Agreement with operators may be required by the local municipalities to ensure that the final state of roads are the same or better condition than found. Although subject to change refer to the SFL responsible roads overview maps provided on website for the most current inventory available at the time of your operations. In some cases the SFL may also have entered into MOU's with other road users to share maintenance and monitoring on roads assigned to them.

Example of FMP Road Responsibility Overview Map



Notes:

