

SUBMISSIONS OF THE
CANADIAN ENVIRONMENTAL LAW ASSOCIATION
TO THE MINISTRY OF NATURAL RESOURCES
REGARDING
THE "LANDS FOR LIFE" PLANNING PROCESS

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PART I - INTRODUCTION

The Canadian Environmental Law Association (CELA) is a public interest law group established in 1970 for the purposes of using and improving laws to protect the environment and conserve resources. Funded as a legal aid clinic specializing in environmental law, CELA lawyers represent individuals and citizens' groups in the courts and before administrative tribunals on a wide variety of environmental issues. In addition to environmental litigation, CELA undertakes public education, community organization, and law reform activities.

CELA has long been involved in casework and law reform activities with respect to forestry, Crown land management, and biodiversity conservation. In recent years, for example, CELA has:

- served as counsel for the Forests for Tomorrow (FFT) coalition at the 4 year-long Timber Management Class EA hearing before the Environmental Assessment Board (EAB);
- participated in proceedings before the Environmental Assessment Advisory Committee (EAAC) respecting bump-up requests regarding proposed timber management activities;
- participated in the ongoing Environmental Assessment (EA) being developed with respect to proposed timber management activities near Megisan Lake;
- participated in the proceedings held by Ontario's Forest Policy Panel;
- participated as a member of the Forest Sectoral Task Force of the Ontario Roundtable on Environment and Economy;
- participated as a member of the resources sub-committee of Ontario's Fair Tax Commission;
- provided comments on the *Crown Forest Sustainability Act*, *Red Tape Reduction Act (MNR) 1996* and the Bill 26 amendments to statutes administered by the Ministry of Natural Resources (MNR);

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- provided comments on the *Crown Forest Sustainability Act*, *Red Tape Reduction Act (MNR) 1996* and the Bill 26 amendments to statutes administered by the Ministry of Natural Resources (MNR) ;

- provided comments on various policies and manuals proposed by the MNR, including Ontario's new wilderness policy; and

- provided comments on the federal biodiversity strategy and endangered species legislation.

In light of this background and experience, CELA has concluded that Ontario still has considerable work ahead in order to conserve biological diversity, require sustainable forestry, and ensure healthy, diversified communities across the province.

The purpose of this submission is to propose the goals, objectives, targets and indicators which, in CELA's view, should direct the Lands for Life planning process, particularly as public lands and resources are being assessed and allocated under the planning process. At this time, then, CELA will not be recommending site-specific allocations of lands or resources within each of the three Regions. In CELA's view, the task of nominating, evaluating and recommending candidates for various land-use categories is best left to local, regional or provincial stakeholders who have site-specific knowledge of the ecological or socio-economic values of the public lands and resources subject to the Lands for Life planning process. It is also necessary to ensure that land-use designations and zoning exercises under the Lands for Life process do not negatively affect or compromise treaty or aboriginal rights, land claim negotiations, or self-government initiatives by First Nations.

In order to provide fundamental policy direction for the Lands for Life planning process, CELA recommends the adoption of the following ecological and economic goals to guide the land use planning process for the Boreal West, Boreal East, and Great Lakes - St. Lawrence Regions:

CELA RECOMMENDATION #1: The Lands for Life planning process should adopt and achieve the following goals in each of the Regions:

LAND PROTECTION GOAL

To protect Ontario's biological and geological diversity through a comprehensive network of distinctive and representative lands protected against mining, logging and hydro-electric development.

LAND STEWARDSHIP GOAL

To ensure that public lands outside protected areas are managed such that plans, practices, processes and timing of resource-use operations are conducted to maintain the ecological integrity, productivity and sustainability of the region's land and resource base.

COMMUNITY GOAL

To establish land-use allocations, policies and procedures for managing public lands that support healthy, sustainable communities with an economic base capable of providing

continuity and diversity of employment, an attractive investment climate, and the same range of community services available throughout Ontario.

The remainder of this submission will describe the specific objectives, indicators and actions which are necessary to achieve these goals through the three main initiatives proposed by the MNR under the "Lands for Life" planning process:

- "Nature's Best Action Plan";
- "Resource-Based Tourism Policy";
- "Forest Management".

PART II - "NATURE'S BEST" AND PROTECTED AREAS

In the discussion document entitled *Lands for Life: A Commitment to the Future* (MNR, 1997), there are frequent references to the commitment made by the Premier and the previous Minister to complete the province's system of parks and protected areas. This commitment is also found in the MNR's recently released wilderness policy entitled *Ontario's Approach to Wilderness - A Policy* (MNR, 1997). CELA commends the Ontario government's declared intention to complete the protected areas system, and CELA, other conservation groups, and the public at large will be highly supportive if the government honours this important commitment in a timely manner. We note, however, that similar commitments have been made but not fulfilled by previous governments, but we trust that the current government has every intention of satisfying the public expectations created by recent promises to complete the protected areas system.

Nevertheless, CELA remains wary of the fact that no quantifiable protected areas objectives or targets have been proposed by the MNR. In our view, the selection and protection of protected areas should be guided by clear, measurable objectives so that the public can monitor and assess how well the MNR is completing the protected areas system across the province. Accordingly, CELA recommends that the following protected areas objective be adopted:

CELA RECOMMENDATION #2: For each ecological district within the Lands for Life planning area, the MNR shall formally designate and protect not less than 15 to 20% of the public landbase in one of the following land use categories:

- remote wilderness;
- old-growth forest;
- significant wetlands;
- parks;

- conservation reserves; or
- other appropriate "protected area" designations,

where mining, timber management, or hydro-electric development shall not be permitted .

It should be emphasized that the 15-20% objective is proposed for the entire Lands for Life planning area. CELA recognizes that the actual percentage set aside in each ecological district may be higher or lower than the 15-20%, depending upon local conditions and needs. CELA also notes that using the 15-20% objective will potentially leave up to 80% of the remaining public areas potentially open to forest management or other commercial extractive operations. The Lands for Life policies and provisions which should govern these intervening landscapes is set out below in Part III (resource-based tourism) and Part IV (forest management) of this submission.

As benchmarks to assess the MNR's performance in meeting the above-noted protected areas goals and objectives, CELA recommends that the following indicators be adopted and used within the Lands for Life planning process:

CELA RECOMMENDATION #3: The MNR should adopt the following indicators to monitor and assess compliance with the "Nature's Best" goals and objectives respecting the completion of Ontario's protected areas system:

- the protected areas system must include significant or representative lands within all 67 site districts, primarily within the parks system;
- at least 15% of each ecological site district should be designated and maintained in a roadless, unfragmented wilderness, preferably in areas of 10,000 hectares or greater;
- all remaining provincially significant wetlands in the Lands for Life planning area should be designated and protected within the protected areas system;
- when evaluating land-use alternatives and designating protected areas, sufficient natural habitat must be maintained so as to sustain all native wildlife species in Ontario;
- for each ecological site district, old-growth forest types should be designated and protected within the protected areas system to ensure the continuing natural distribution and abundance of old-growth forests within the districts. Selection and evaluation criteria should give the highest priority to protecting old-growth forests types which are undisturbed and are in late successional stages. Once these district-specific old-growth targets have been met, any remaining old-growth forests can be managed within "forest management" lands in accordance with the forest stewardship/sustainability objectives described below in Part IV of this submission.

PART III - RESOURCE-BASED TOURISM

In CELA's view, the MNR's "Resource-Based Tourism Policy" should assist in resolving the acrimonious land use conflicts that have frequently occurred between remote tourism operators and the forest industry. Given the increasing importance of "eco-tourism", this policy should also assist in facilitating community diversification, economic stability, and job creation, as described below in Part IV of this submission. The key to success, however, will be how and when the policy gets implemented as local land and resource management decisions are being made. In our view, implementation mechanisms for the policy must include zoning of sufficient lands outside the protected areas system as lands primarily (or exclusively) designated for resource-based tourism. It may, in fact, be necessary to establish different categories of resource-based tourism zoning, ranging from low to high intensity recreation. On "forest management" lands adjacent to or near resource-based tourism lands, appropriate operational restrictions (i.e. no-cut reserves, buffers, timing constraints, etc.) will have to be clearly established, closely monitored, and strictly enforced.

We also note that the MNR has committed to "develop" mechanisms for "increased security of tenure" for the tourism industry. However, the MNR does not appear to have committed to compensation for tourism operators who may be impacted by approved timber management activities, or who may be subject to future withdrawals or re-allocations. It is our understanding that compensation for future withdrawals may be part of the tenure reform package being considered by the MNR in relation to the forest industry, as discussed below. If this is the case, then, for planning purposes, tourism operators will still remain as "second class citizens" in comparison to the forest industry, despite the issuance of the Remote-Based Tourism Policy.

PART IV - FOREST MANAGEMENT

Ontario's success or failure in meeting the above-noted goals and objectives will be largely determined by what processes, policies, and provisions are established to govern activities on lands designated for "forest management" activities. In CELA's view, there is a compelling public need for meaningful involvement by affected stakeholders and communities in the critical land-use planning decisions respecting forest management. CELA further submits that these decisions should be guided by a number of important objectives respecting community stability and biodiversity conservation. Accordingly, CELA recommends the adoption of the following objectives respecting "forest management":

CELA RECOMMENDATION #4: The MNR should adopt and achieve the following objectives respecting forest stewardship, community employment, community transition, and public accountability:

FOREST STEWARDSHIP OBJECTIVES

All forest management operations shall meet the highest possible environmental standards, adapt appropriate new technology or practices, and maximize community benefits within a

forest management framework which maintains natural ecological processes, provides sufficient wildlife habitat, and conserves biological diversity. Old-growth forests in lands allocated for industrial forestry shall be maintained through modified harvesting and harvest-scheduling techniques, such that at least 10% of each forest type will be in old-growth status within each forest management unit. On lands allocated for industrial forestry, excellent forestry practices shall be required and poor forestry practices shall be promptly investigated and properly penalized. Adoption of, and compliance with, independent third-party certification standards should be encouraged.

COMMUNITY EMPLOYMENT OBJECTIVES

Land-use allocations should develop or facilitate greater community and regional employment through land-use diversity and greater "value-added" activities. Thus, industries which commit to additional long-term employment per unit of resource allocated should receive greater initial allocations. Quantifiable targets should be established for additional employment attributable to improved land and resource allocations.

COMMUNITY TRANSITION OBJECTIVES

A community transition program should be established with funds obtained from resource-extraction revenue or general provincial revenue. The purpose of such a program should be to provide communities with access to venture capital or other financial assistance to develop value-added business, encourage economic diversification, provide retraining to enhance employment or productivity, and provide support for First Nations forestry programs and community forest programs.

PUBLIC ACCOUNTABILITY OBJECTIVES

All communities, stakeholders, and Ontario residents at large should have meaningful opportunities to monitor, assess and participate in all aspects of managing public lands and resources during and after the Lands for Life planning process. All interested persons should be able to access all relevant resource management information in a timely and efficient manner. The MNR should establish mandatory annual reporting requirements respecting the management of public lands and resources. Appropriate and efficient dispute resolution mechanisms (such as mediation or appeals) should be incorporated into the land use planning process. Clear standards should be promulgated to assess industrial compliance with regulatory requirements, and an effective monitoring and enforcement regime must be established.

CELA envisions that lands designated for "forest management" should be further zoned into different categories, depending on the intensity of the permitted resource extraction activities. For example, at least three zoning categories are possible within the "forest management" category:

- a "sensitive" or "low intensity" zone which emphasizes the protection of non-timber values while permitting compatible low intensity resource development activities;
- an "integrated resource management" or "multiple use" zone which emphasizes resource development activities which are consistent with maintaining the full range of non-timber values; and
- a "high intensity" zone which permits intensive resource development, particularly forestry, where the focus is on maintaining or enhancing the productive capacity of the landbase.

The foregoing discussion recognizes that up to 80% of public lands (i.e. lands outside the protected areas system and any additional lands set aside for resource-based tourism) could be potentially be zoned and made available for commercial forestry purposes. This, of course, begs key questions about precisely where and how forestry operations should be conducted within these public lands.

CELA is aware of internal MNR/industry discussion of the possibility of allocating up to 60% of the non-protected public lands for "intensive forestry", while some 40% of these lands would be subject to to "extensive forestry". In principle, CELA can agree with the proposal to specifically designate certain lands for high-intensity timber management, provided that these areas are restricted to highly productive sites which are located close to mills and are sufficiently isolated away from other forest uses or users which may be adversely affected by intensive forestry practices.

However, CELA cannot accept that 60% of public lands outside the protected areas should be eligible for intensive forestry, particularly since many of the highly productive lands are often the most biologically diverse. In addition, CELA submits that the "multiple use" concept should not be used a pretext or smokescreen for additional long-term "lock-up" of public lands in private hands for intensive forestry purposes throughout the majority of the Lands for Life planning area.

CELA is also aware of MNR discussions regarding tenure reform to strengthen the timber companies' interests in resources allocated to them, and to provide compensation to these companies for any future withdrawals of resource allocations. As CELA understands the MNR's argument, these "reforms" are viewed as being necessary to give timber companies the certainty and predictability required to make long-term investments in timber operations or processing equipment.

It is CELA's view that this argument is highly suspect at best, particularly since Ontario's forest industry, over the past decade, has made considerable capital investments despite the alleged "uncertainty" of their long-term tenure under the current forest management regime. Indeed, given the "evergreen" clauses in current tenure agreements, and given the fact that no long-term tenure agreements have ever been revoked by the MNR, it is CELA's view that the forest industry already enjoys sufficient long-term tenure in Ontario.

Accordingly, CELA is strongly opposed to tenure reforms which give the forestry companies a proprietary interest in the lands or resources allocated to them. At all times, the Crown must reserve

its prerogative right to allocate, re-allocate or withdraw lands or resources within the tenure area. Similarly, CELA is strongly opposed to any notion that compensation should be payable to the forest industry where withdrawals or re-allocations of public lands or resources may be necessary or desirable for public interest reasons.

CELA is also concerned about the accelerated allowable cuts still being authorized by the MNR, which results in harvesting rates that significantly exceed sustainable levels, and which facilitates stand conversions and declines in commercially preferred softwood species such as black spruce. On this point, it is instructive to repeat the findings and recommendations of the Forest Sectoral Task Force Report prepared for the Ontario Roundtable on Environment and Economy:

The Task Force recognizes the importance of the forest sector to the economy of Ontario and the need to protect forest sector employment. However, there is public concern that current levels of harvest in some regions of Ontario are not sustainable. Mill closures have been a facet of the history of the industry as wood supply in various areas became depleted. In order to prevent such closures, planning and management at the provincial level is required.

While production of fibre of the quantity, quality and type sufficient to meet industrial needs is necessary for job protection, production that exceeds the sustainable capacity of the forest will lead to an anticipated decline in wood supply and falling employment levels.

It is necessary for the MNR and industry to make a commitment to harvest at a sustainable level...

It may be desirable to concentrate high yield timber production in some areas of production forest to satisfy industry demands. In other areas, a mix of silvicultural prescriptions and uncut natural forest will be required to protect biodiversity and animal and plant ecosystems (emphasis added).

In our view, the issues of tenure reform/compensation and sustainable harvest levels are integral parts of the overall land use planning picture, and CELA submits that these issues must be openly discussed and debated as part of the Lands for Life process, rather than after the completion of public consultation.

PART V - CONCLUSIONS

CELA welcomes this opportunity to provide comments and recommendations respecting the MNR's Lands for Life planning process. While CELA remains concerned about the highly compressed timeframe for the Lands for Life consultation, CELA trusts that the above-noted goals, objectives and targets will be duly considered and integrated into the Lands for Life planning process.

With respect to the overall Lands for Life planning process, CELA concludes that specific objectives should be adopted in relation to land protection, land stewardship, and community development.

With respect to the "Nature's Best" component, CELA concludes that specific objectives and indicators should be adopted in order to ensure the designation and protection of at least 15 - 20% of public lands and resources within the protected areas system.

With respect to the "Resource-Based Tourism Policy" component, CELA concludes that appropriate implementation mechanisms are required to ensure that policy goals and objectives are actually achieved on the ground.

With respect to the "Forest Management" component, CELA concludes that specific forest stewardship objectives and directives are required to ensure that sustainable forestry is actually practiced, particularly in relation to old-growth forest types.

All of which is respectfully submitted.

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