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May 18, 1997

BY FAX

Ms. Adair Ireland-Smith
Manager, Natural Heritage Section
Lands and Natural Heritage Branch
Ministry of Natural Resources
Box 7000
300 Water Street
Peterborough, Ontario
K9J 8M5

~~RE:~~ CELA PUBLICATIONS:
Canadian Environmental Law Association.
Lindgren, Richard
CELA Brief No. 321; Re: "Ontario's approach to
wilderness: a draft policy" EBR Registry no.
RN 22826

Dear Ms. Ireland-Smith:

RE: "ONTARIO'S APPROACH TO WILDERNESS: A DRAFT POLICY"
EBR REGISTRY NO. PB7E6003.P

We are writing to provide you with the comments of the Canadian Environmental Law Association (CELA) with respect to "Ontario's Approach to Wilderness: A Draft Policy" (MNR, April 16, 1997). These comments are being filed with the Ministry of Natural Resources (MNR) in accordance with the EBR Registry Notice for this proposal.

CELA has long been involved in casework and law reform activities with respect to forestry, Crown land management, and biodiversity conservation. For example, CELA served as legal counsel for the Forests for Tomorrow (FFT) coalition at the Timber Management Class EA hearings. At these proceedings, FFT was the lead advocate for roadless wilderness protection, which resulted in Condition 106 of the EA Board's decision:

Within three years of this approval, MNR shall develop a provincial policy on roadless wilderness areas.

When imposing Condition 106, the EA Board correctly observed that "wilderness preservation is an important objective", and is a "matter of provincial interest" (Decision, page 134).

In CELA's opinion, the MNR's proposed policy is fundamentally flawed and does not meet the letter or spirit of Condition 106. The MNR's proposed "Approach to Wilderness" is, in reality, a proposed approach to wilderness degradation. At most, the MNR's proposal amounts to a commitment to upgrade the provincial parks system, which largely ignores the need to restrict or prohibit certain land uses within roadless areas outside the parks system. In CELA's opinion,

the proposed policy does not materially improve upon the status quo, and it will not result in the timely identification and protection of Ontario's few remaining roadless wilderness areas.

CELA's specific comments and concerns about the MNR's proposed policy may be summarized as follows:

1. The public comment period for the proposed policy is inadequate.

The Class EA hearing that resulted in Condition 106 lasted over 440 hearing days spread out over several years. When the Board released its decision on April 20, 1994, the MNR was given three more years to develop a roadless area policy. However, when the MNR finally posted notice of a draft policy on the EBR Registry, the public was given the absolute minimum amount of time to comment on the draft policy (i.e. from April 17 to May 18, 1997).

Given the nature, significance, and level of public interest in wilderness protection, CELA submits that this minimalist comment period is wholly inadequate. In our opinion, a comment period of at least 45 to 60 days would have been appropriate in these circumstances, particularly in the absence of any meaningful public consultation by the MNR prior to the release of the proposed policy.

As described below, CELA regards wilderness protection as an urgent matter requiring expeditious action by the MNR. However, during the three year term of Condition 106, the MNR had ample opportunity to undertake more meaningful forms of public consultation, and clearly had sufficient time to provide a longer public comment period under the EBR. The fact that the MNR has elected to undertake the barest form of public consultation on the proposed policy leads CELA to conclude that the MNR still places a low priority upon public participation in its environmental decision-making. This reality is to be contrasted with the MNR's rhetoric in its EBR Statement of Environmental Values (SEV) regarding the need for "openness" and "consultation" in the MNR's environmental decision-making.

2. The MNR's belated proposal does not comply with the timeframe imposed by the EA Board for developing provincial policy on roadless wilderness areas.

As noted above, Condition 106 of the EA Board's decision required the MNR to develop a roadless wilderness policy within three years of the Board's decision. It is noteworthy that the Board's decision is dated April 20, 1994. Significantly, just three mere days before the expiry of the three year period, the MNR posted on the EBR Registry notice of a draft policy on wilderness protection. According to the EBR notice, the MNR anticipates having the policy finalized and in place during the summer of 1997.

In our opinion, the timing component of Condition 106 is not satisfied by the belated proposal of a draft policy on wilderness protection. The EA Board gave the MNR up to three years to develop policy on roadless areas. This was clearly more than enough time to address any

outstanding information gaps, and to finalize and implement the long overdue policy. The fact that the MNR has stalled and delayed this policy leads CELA to conclude that the MNR continues to place low priority upon wilderness protection – and upon compliance with the Class EA approval.

Since the Board's 1994 decision, countless kilometres of more access roads have been extended into or near the few remaining roadless wilderness areas in Ontario. At the same time, commercial extractive activities (i.e. logging and mining) have been planned, approved or undertaken in or near the remaining wilderness areas. Consequently, the MNR's delay has resulted in the further loss or degradation of wilderness areas, values and experiences within Ontario. The urgent need to identify and protect the remaining wilderness areas thus appears to have been overlooked or ignored by the MNR to this point.

3. The MNR's proposal is too narrowly focused on wilderness parks, and it generally overlooks the roadless wilderness areas outside of the parks system.

The main focus of the proposed policy appears to be upon a modest expansion of the provincial park system in site regions 3S and 5S, and upon the designation of Wilderness Zones within existing parks. On lands outside of parks, the MNR merely commits to "manage for wilderness qualities with relevant policy, legislation, and management guidelines and techniques and ongoing programs, such as the 'Lands for Life' initiative." In CELA's view, this statement simply amounts to a promise by the MNR to maintain the status quo, which generally does not make roadless wilderness protection mandatory. Indeed, it is the status quo under the existing law and policy framework (i.e. intensive logging, road construction, etc.) that is threatening the very wilderness values that the policy purports to protect.

This is why CELA regards the proposed policy as a profound disappointment – it will still be business-as-usual within most of Ontario's Crown forests. In the absence of any laws or regulations that impose a mandatory duty upon the MNR to identify, evaluate and manage roadless areas as wilderness, CELA remains unconvinced that any meaningful and enforceable protection will be accorded to roadless wilderness areas outside the provincial park system.

4. The MNR's proposed definition of "wilderness" requires further refinement and amendment.

The proposed policy correctly notes that many jurisdictions have developed slightly different definitions of "wilderness" (page 3). The proposed policy goes on to indicate that "wilderness in Ontario is characterized by:

- an absence of human impact and no permanent infrastructure (eg. roads);
- no evidence of long-lasting damage from human activities;

- its contribution to ecosystem health, science, education and recreation."

It is unclear whether this characterization is intended to serve as a policy definition of wilderness, or whether it is an assessment of Ontario's current wilderness areas. If it is intended to serve as a definition, then CELA submits that it is far too narrow and could exclude many areas from being identified and managed as wilderness. In CELA's view, an area does not necessarily have to be absolutely pristine or untouched by humans in order to qualify as roadless wilderness. Accordingly, the MNR's definition of wilderness should be modified to indicate that human impact should be minimal rather than non-existent, and to ensure that the presence of a trail or tertiary road through an otherwise undeveloped area would not necessarily exclude the area from consideration as roadless wilderness.

5. The MNR's proposed policy lacks sufficient details regarding how the policy is to be implemented, particularly in relation to non-park public lands.

As drafted, the MNR's proposed policy is more narrative than prescriptive in nature. Indeed, there appears to be very little "policy" in the proposed policy. The majority of the text is devoted to background information regarding wilderness values, provincial parks, and the MNR's existing resource management programs.

At page 10 of the proposed policy, however, the MNR vaguely claims that wilderness values "will be accounted for" in its land use programs and resource management plans developed in support of "sustainable" natural resource management. No particulars are provided as to when, how and by whom the policy is going to be implemented at the operational level.

For example, are access road planners now required to inventory and avoid roadless wilderness areas when developing forest management plans? Will the MNR produce a specific roadless wilderness manual or technical guideline to provide much-needed direction to MNR staff regarding such areas? Will the MNR pursue and protect roadless areas as an independent planning objective, or will "wilderness" simply continue to serve only as a constraint or afterthought in the context of other resource management planning exercises? Precisely what types of uses or activities will be permitted (or prohibited) within roadless wilderness areas, particularly those upon Crown lands outside the parks system? These and other key implementation questions are largely unanswered by the proposed policy, leaving CELA with the clear impression that the policy was quickly cobbled together as a last minute attempt to satisfy Condition 106.

The proposed policy goes on to indicate that, among other things, the MNR will identify and establish two new Wilderness Parks by 1998, and will identify and establish Wilderness Zones in existing parks within most site regions in 1998 and 1999. These are commendable commitments that CELA fully supports, although these commitments simply reaffirm previous commitments by the MNR to complete the parks system in a timely manner.

Nevertheless, CELA must question the MNR's assertion that wilderness park targets cannot be met in southern Ontario (site regions 6E and 7E). Unless and until these site regions are inventoried and assessed in a systematic review of roadless wilderness areas, it is premature for the MNR to rule out the possibility of wilderness parks in southern Ontario. On this point, it is noteworthy that the United States Forest Service included partially developed or cutover lands in its roadless area exercise in order to ensure the eventual production of wilderness as these lands restored themselves over time, as described below.

In addition, the commitment to create new parks or zones does not excuse the MNR's attempt to evade its wilderness responsibilities on lands outside of parks. Provincial parks are undoubtedly an important component of Ontario's protected areas framework, but wilderness protection should not be equated with parks management. A comprehensive approach to wilderness requires a much broader solution than simply creating new Wilderness Parks or Wilderness Zones. In our view, Ontario's success in protecting wilderness areas, values and experiences will stand or fall on what the MNR permits to occur on Crown lands outside the small percentage of the Ontario landbase designated as Wilderness Parks or Zones.

6. The obligation upon the MNR to identify, evaluate and manage roadless wilderness areas should be entrenched in legislation rather than policy.

The MNR's inertia regarding roadless wilderness is to be contrasted with the initiatives of the United States Forest Service (USFS) upon federal public lands in the United States. As early as 1924, the USFS had designated wilderness areas upon public lands. Following the passage of the 1964 Wilderness Act, the USFS identified and evaluated millions of acres of roadless areas under the its Roadless Area Review and Evaluation programs (RARE I and II). By the 1990's, approximately 20 million acres were considered to be roadless, and it is anticipated that half of these lands will ultimately be managed as wilderness, while the remaining half will be subject to multiple use, including forestry.

The USFS's timely action regarding roadless areas is largely attributable to the fact that the USFS's wilderness obligations are entrenched in law and in regulations passed under the National Forest Management Act. In CELA's view, the MNR should be under a similar legal duty to identify, evaluate and manage roadless areas as wilderness. This legal obligation could be entrenched in a variety of methods, such as: (1) amendments to the Crown Forest Sustainability Act and/or Public Lands Act; (2) overhaul of Ontario's existing Wilderness Areas Act; or (3) enactment of an Ecological Reserves Act, which is CELA's preferred alternative.

In our opinion, simply addressing roadless wilderness issues through vague "policy" is not acceptable, particularly since "policy" is generally unenforceable in the courts. In addition, self-imposed ministerial policy is generally more susceptible to amendment or revocation than legislation, depending on the whims and priorities of the government of the day. Accordingly, CELA submits that the best mechanism to ensure the long-term protection of roadless wilderness is to entrench wilderness obligations in law. At a minimum, these obligations should include the essential elements of the roadless area condition submitted at the Class EA hearing

by FFT (Condition #42), which has been appended to this submission for your information.

We trust that CELA's comments will be taken into account as the MNR finalizes and implements its roadless wilderness policy. Please contact the undersigned if you have any questions or comments about this submission.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



Richard D. Lindgren
Counsel

cc. Mr. David Watton, MNR Land Use Planning
Ms. Eva Ligeti, Environmental Commissioner

- cultural environments, including non-timber values;
- ii) an assessment of the advantages and disadvantages to the environment of the alternative corridor;
 - iii) consideration of reasonable use management strategies; factors to be considered include public access provisions or restrictions, and maintenance provisions and, where appropriate, abandonment provisions; [N/A]
 - iv) an analysis of the alternative methods to mitigate, minimize or prevent the environmental effects that may be caused by the alternative corridor.
 - v) an estimate of costs related to road construction and use management, including a projection of maintenance costs and, where appropriate, abandonment costs. [N/A] and
 - vi) a cost-benefit analysis.
- (b) The selection of a corridor from among the alternatives shall be based on a comparison of the evaluations of the alternatives. The reasons for the selection of the corridor and associated use management strategy shall be provided. [N/A]
 - (c) The documentation and analysis required by Conditions 40 and 41 shall be summarized within the timber management plan, and included as part of the supplementary documentation for the plan.

Ecological Reserves and Roadless Areas

42. (1) For the purposes of this Condition, "roadless area" means Crown land within a management unit which remains essentially roadless and undeveloped, and which has not yet been designated as an area of concern or reserve; an area of natural or scientific interest (ANSI); an approved or candidate provincial park; or an area under the Wilderness Areas Act.
- (2) The MNR shall immediately establish a system of ecological reserves and protected areas which is sufficient to ensure:
- (a) the representation and protection of all ecological site districts within the area of the undertaking;
and

- (b) the provision of Research Natural Area (RNA's) for scientific research on ecological processes.
- (3) No commercial development or resource extraction shall be planned or permitted within ecological reserves, protected areas or RNAs.
- (4) In order to meet its obligations under this Condition, the MNR shall ensure that all roadless areas within each forest management unit are identified and evaluated prior to the consideration and analysis of alternative corridors for primary and secondary roads. The evaluation of the roadless areas shall include field surveys and, as a minimum, shall include consideration of the following matters:
- (a) the nature, extent and location of the non-timber resources, features and values of the area;
 - (b) the feasibility of designating the area as a no-cut reserve, AOC, ANSI, provincial park, ecological reserve, or other protected area and the effects of designation on existing land uses in the roadless area and all contiguous areas;
 - (c) the size of the roadless area and its proximity to other roadless areas, AOCs, ANSIs, provincial parks, ecological reserves, or other protected areas;
- (5) The roadless area evaluation required by this Condition shall be made available for public review and comment.
- (6) There shall be a presumption that roadless areas shall remain roadless and be managed as wilderness by the MNR within the ecological reserve/protected area system required by this Condition. In general, larger and contiguous roadless areas are to be preferred to small and scattered roadless areas. Without limiting the generality of the foregoing, no primary and secondary road shall be permitted or planned for a roadless area unless it can be demonstrated that:
- i) the road, and the timber management activities permitted by the road, will not cause significant or permanent impairment of the biological diversity or productivity of the area;
 - ii) the road, and the timber management activities permitted by the road, will not cause significant or permanent impairment of water quality;

- iii) the road, and the timber management activities permitted by the road, will not cause significant or permanent harm to the non-timber resources, features and values identified in the roadless area evaluation;
 - iv) the road, and the timber management activities permitted by the road, will not impair or eliminate habitat for vulnerable, threatened or endangered species;
 - v) the road, and the timber management activities permitted by the road, will be consistent with the overall integrated resource management objectives of the management unit.
- (7) Notwithstanding paragraph (6), all primary and secondary roads permitted or planned for a roadless area shall be designed with the objective of re-establishing vegetative cover on the road, and any associated disturbed area, within five years by artificial or natural means, unless the necessity and rationale for a permanent road is set forth in the forest management plan.
- (8) Where a roadless area evaluation has been completed by the MNR, and where the requirements of paragraph (6) have been satisfied, the road shall be planned in accordance with Conditions 38-41 and 59-63, and the roadless area evaluation and the documentation required by paragraph (5) shall be included within the supplementary documentation for the timber management plan.
43. Whenever a new river/lake drive is proposed, or an existing river/lake drive is proposed to be extended, for the purposes of access for timber management, the proposal shall be considered in the timber management planning process as a "primary" access option, and the planning requirements for primary access shall apply. [6.7.4]

Harvest, Renewal and Tending Operations and Selection Criteria (Five-Year Plan Term): [TOPIC 6.8]

44. Each timber management plan shall contain criteria for the selection of areas for harvest, renewal and tending operations for the 5-year term of the plan. Those areas in the forest management unit within the "eligible areas" which meet the selection criteria, up to the level of the Maximum Sustainable Harvest, shall be portrayed on "areas selected for operations maps" in the timber management plan. [N/A]
45. Each timber management plan shall contain a forecast of the level of timber harvest activity expected to be carried out