

January 14, 2021

Amy Smart
Far North Branch - Thunder Bay
421 James Street South, 1st Floor
Thunder Bay, ON, P7E 2V6 Canada
farnorthfeedback@ontario.ca

Re: Proposed amendments to the Far North Act, 2010 (ERO No. 019-2684)

Dear Ms. Smart,

Thank you for the opportunity to provide comments on the Ontario Ministry of Natural Resources and Forestry's *Proposed amendments to the Far North Act, 2010 (ERO No. 019-2684)*, which focus on amending or deleting provisions that are "perceived as hindering economic development".

We are submitting this feedback in our capacities as Wildlife Conservation Society (WCS) Canada scientists conducting research on species and ecosystems to inform conservation decisions. WCS Canada is a national non-government organization that has been engaged in Ontario since 2004, with research and conservation priorities in Ontario largely focused on the far north. We are some of the few scientists with continuous presence in the region. We lead ongoing scientific programs, support and collaborate with First Nations on community-based monitoring projects, and collaborate with academic and government researchers doing ecological studies in the region. WCS Canada has a long-term and consistent engagement with the government on relevant policy processes in the far north in Ontario, including species at risk, land use planning, and environmental assessment.

Based on our experience working in the far north in Ontario over the past 15 years, and our familiarity with implementation of the *Far North Act, 2010*, we preface our comments regarding the specific amendments proposed in this ERO notice with three overarching needs for land use planning in the far north. We then provide comments on the proposed amendments, and provide our recommendations.

Overarching needs for land use planning in the far north:

- 1) One of the issues that we have consistently flagged is that the Ontario government did not adequately address Indigenous jurisdiction in either consultation on the *Far North Act*, or during its implementation. None of the currently proposed amendments address this fundamental issue. ***The Ontario government needs to commit to co-developing a planning and decision-making process with First Nations that is equitable, and consistent with the standards in the United Nations Declaration on the Rights of Indigenous Peoples and the Truth and Reconciliation Calls to Action.***

- 2) We have previously stated that the Far North Land Use Strategy that was drafted in 2015, and never finalized by the Ontario Ministry of Natural Resources and Forestry, was inadequate for meeting the stated objectives for land use planning under the *Far North Act*¹. The global ecological and social significance of the far north region, particularly respecting its carbon storehouse, requires a commitment to regional-scale planning for cumulative effects of land use and climate change as new industrial development is contemplated, in order to address the trade-offs between economic development and the values, benefits, and rights associated with the far north ecosystems. These ecosystems in their current intact state provide their myriad benefits, at multiple scales, to Indigenous Peoples, Ontarians, and people around the world. Ontario's piecemeal approach to impact assessment and land-use planning fail to address key issues such as cumulative effects, species-at-risk, and freshwater management, among other "broad-scale" issues putting these systems at further risk. ***As part of co-developing a planning and decision-making process with First Nations, the Ontario government must enable and support cooperative, proactive, regional-scale planning that integrates with environmental assessment and supports local scales of planning.***
- 3) Despite the overarching issues with the *Far North Act*, many First Nation communities have engaged in good faith in this Ontario-led community-based land use planning process. ***The Ontario government needs to commit to working with First Nations in a co-developed process that supports First Nations vision for the future, and can consider development and conservation trajectories in the face of rapid climate change.***

Comments on proposed amendments:

The proposed amendments to the *Far North Act* do little to strengthen land use planning processes in the far north. If anything, the amendments weaken the role of First Nations in these processes, and undermine Ontario's stated commitment to achieve sustainability in this ecologically-sensitive and globally-significant region as development is introduced. We provide our comments on specific proposed amendments below.

- 1) **Section 7, Joint Body:** One of the issues that we have consistently flagged is that the Ontario government did not adequately address Indigenous jurisdiction in the *Far North Act*. First Nations have Inherent Aboriginal and Treaty Rights that are protected under Constitutional Law, rulings on case law, and Indigenous Law. Social, cultural, governance, and law-making are critical to the conversation with the government about planning in the far north and the impact that any government's project, policy, program, or plan has on First Nations. In addition, many of Ontario's laws, policies, and planning processes that affect First Nations in Ontario are inconsistent with international standards in the United Nations Declaration on the Rights of Indigenous Peoples and the Truth and Reconciliation Calls to Action. For example, Ontario exempted the *Far North Act* from strategic impact assessment, despite the potential to impact First Nations rights, and with limited consultation, which violated a number of articles associated with Indigenous Rights such as the right to self-determination, and Free, Prior, and Informed Consent. This also violated First Nations understanding of Treaty No. 9. To date, jurisdiction has not been addressed adequately in any legislated process in the far north that we are aware of, including the development and implementation of the *Far North Act*.

¹ <https://www.wcscanada.org/Policy-Comments/Land-Use-Planning.aspx>

In the ERO notice for the current proposed amendments to the *Far North Act*, the Ontario government states that it is “retaining provisions that allow for joint land use planning with all First Nations in the Far North” and, “proposing changes [...] that would [...] enhance certain provisions that encourage collaboration between Ontario and Far North First Nations on land use planning.” However, in reading through the specific changes, we fail to see how these amendments will encourage collaboration. For the joint body in particular, the proposed amendments to section 7 do not enhance any prospects for fostering cross-community collaboration with the Ministry on “development, implementation and co-ordination of land-use planning in the Far North” (ss. 7.1(b)). We suggest any joint body be considered as a co-management and co-governance structure, requiring Ontario to invest considerably more time and effort in its relationships with First Nations across Treaty No. 9. As such, we do not support the amendment to ss. 7(7) that instead provides more discretion to the Minister in how they engage with First Nations on planning in the region.

- 2) **Section 8, Far North Land Use Strategy:** The Far North Science Advisory Panel Report² emphasized that, “careful planning and management of development intensity and extent across the region as a whole was necessary to protect ecological integrity and resilience while delivering social and economic benefits” (2010: 99). This would require: a) a vision for the region that provides a framework for the overall process and links explicitly to delivering measurable outcomes for each of the objectives in the *Far North Act*; and b) a process for how the provincial interest (i.e., delivery of the objectives in the *Far North Act*) will be accommodated as community-based land use plans are developed and implemented.

Although a Far North Land Use Strategy was drafted, with various iterations distributed for public review (the latest in 2015³), it was never finalized. We fail to understand the purpose of making the instrument discretionary, rather than focusing on improving and releasing the current document for public and First Nations consultation. The current proposed amendment to section 8 serves to further weaken the obligation to finalize the Far North Land Use Strategy, to apply any overarching guidance to planning and decision-making processes in the far north, and to meet the ecological objectives that Ontario has committed to, including maintaining the globally significant ecosystems and the benefits they provide to First Nations, and to people throughout Ontario and beyond.

- 3) **Sections 12 and 14(5), Development and Land Use Planning:** Many communities have engaged in good faith in the community-based land use planning process previously initiated by the Ontario government. Despite concerns about the *Far North Act* and how it was implemented, by the time Ontario announced its initial proposal to repeal the *Far North Act* six community-based land use plans (Pikangikum, Cat Lake-Slate Falls, Pauingassi, Little Grand Rapids, Cat Lake-Slate Falls, Deer Lake) had been completed, nine other communities were at the terms of reference stage, and at least two others (North Spirit Lake and Kashechewan) were engaged in initial stages of community-based land use planning with the government. Our personal experiences in working in some of these communities is that despite the overarching issues with the *Far North Act*, it did in some cases enable additional capacity for First Nations to conduct traditional land use studies, develop community-driven research and monitoring, and conduct participatory mapping.

However, the current proposed amendments to Section 12 and Subsection 14(5) further erode the commitment by Ontario to support community-based land use planning, by removing any legal

² Science for a Changing Far North is available online at <http://wbn.scholarsportal.info/node/5794>

³ <https://www.ontario.ca/page/far-north-land-use-strategy>

imperative under the *Far North Act* that community-based land use planning, whether in progress or approved, has any affect on development and associated approval processes (e.g., permits). While the rationale provided for making these amendments was on the basis of “supporting economic growth” the *Far North Act* includes various exemptions, and has never impeded development in the far north. For example, the Wataynikaneyap Transmission Project is a development that has already moved forward in the absence of approved community-based land use plans, and so the removal of Section 12 and changes to Subsection 14(5) are demonstrably not needed to allow for economic development.

These changes reduce the incentive and obligation for Ontario to support communities in developing community-based land use plans. Therefore, we do not support these amendments on the basis that there are already adequate exemption provisions for development within the *Far North Act*. This further ignores First Nations roles and responsibilities in decision-making about their lands in the context of community-based land use planning. Rather than lessening the role for First Nations in planning, the Ontario government needs to commit to working with First Nations in a joint, co-developed process that supports First Nations vision for the future and can consider development and conservation trajectories in the face of climate change.

In conclusion, these proposed amendments do little to address both initial issues (i.e., jurisdiction) and concerns (i.e., delivering on the objectives) about the *Far North Act*. Although these amendments may address the perceptions of some that the *Far North Act* hinders opportunities for economic development in the region, we contend that this is merely performative. More importantly, some proposed amendments further erode the commitments by Ontario to research and monitoring in the far north that would support broad-scale planning, and erode the opportunities for First Nations to engage in community-based land use planning.

Recommendations:

- 1) **Work nation-to-nation with First Nations to co-develop an equitable planning and decision-making process that enables and supports cooperative, proactive, regional-scale planning.** In addition to considering further amendments to the *Far North Act*, we recommend that Ontario, and specifically the Ministry of Natural Resources and Forestry, conduct a critical review of the process of community-based land use planning that it has led, identifying the strengths and weaknesses of the current approach with First Nations in the far north, and make this information available for public review. We recommend Ontario consider lessons learned from the Regional Framework Agreement with nine Matawa First Nations, and invest in a process that provides First Nations with space, time, and resources to consider their vision for the future at the regional and community scale.
- 2) **Engage formally in the regional impact assessment under the Federal Impact Assessment Act⁴.** Ontario faces a daunting challenge in representing broad provincial interests relating to the planning of protection and development; evaluating and responding to cumulative environmental impacts; and considering the implications for First Nations, economies, resource management industries and ecosystems together with First Nations communities. Taking some time at the outset to consider the regional (“broad-scale”) perspective would assist in addressing the cumulative effects introduced by new development projects, as well as climate change, and would help focus and improve the efficiency and credibility of subsequent project-level impact assessments in the same geographic

⁴ <https://iaac-aeic.gc.ca/050/evaluations/proj/80468>

area. Experience demonstrates that regional-scale assessments can provide greater scope for the identification, evaluation and pursuit of different futures for both development and conservation⁵. Comparing the potential impacts of multiple future scenarios can facilitate informed discussion about past and future land use and alternatives, including the routing of infrastructure and how mines and new infrastructure might become bridges to more sustainable futures and outcomes, particularly for First Nations. A regional approach could also offer efficiencies and cost savings by consolidating infrastructure and providing a cumulative-effects framework within which individual projects are considered, together with greater certainty for proponents. Furthermore, it could provide a platform to address fundamental questions being faced in the far north, such as how many mines and roads could operate in this sensitive region with minimal adverse effects on community well-being and the environment.

We would be pleased to engage in any discussions regarding our comments and recommendations. Thank you again for this opportunity to provide feedback.

Sincerely,



Constance O'Connor, PhD
Associate Conservation Scientist



Claire Farrell, MSc
Associate Conservation Scientist



Cheryl Chetkiewicz, PhD
Conservation Scientist



Justina Ray, PhD
President and Senior Scientist

⁵ Blakley J, Noble B, Vella K, Marty J, Nwanekezie K & Federoff K. 2020. *Lessons Learned, Best Practices and Critical Gaps in Regional Environmental Assessment: A Synthesis of Canadian and International Literature* [Knowledge Synthesis Grant Final Report]. <https://research-groups.usask.ca/blakley/research-projects.php>