



Ministry of Environment, Conservation and Parks
Conservation and Source Protection Branch
40 St Clair Ave W, 14th Floor
Toronto, ON M4V 1M2

via Environmental Registry of Ontario

August 20, 2023

Re: Development of a Project Evaluation Policy under the Provincial Parks and Conservation Reserves Act (ERO No. 019-7356)

Legal Advocates for Nature's Defence (LAND) provides the following comments to the Ministry of Environment, Conservation and Parks (MECP) in response to the proposed Project Evaluation Policy (the "Policy") under the *Provincial Parks and Conservation Reserves Act* (PPCRA).¹

LAND is a non-profit organization dedicated to advancing access to justice and advocates for the protection of nature and honouring of Indigenous sovereignty in law and policy. As an accredited Civil Society Organization by the Law Society of Ontario, LAND also provides free legal services to grassroots groups and individuals who are on the front lines of environment and climate injustices.²

In response to the Ontario government's proposal to rely on the Policy to replace the environmental evaluation and consultation requirements currently set out in the provincial *Environmental Assessment Act* (EA Act),³ LAND finds:

- The proposed Policy will be ineffective in enabling the Ontario government to meet its stated commitment of 'prioritizing' ecological integrity when it proposes to exempt projects in parks from the best tool we have to assess a projects' impacts before development occurs: environmental assessment. The Policy, as a discretionary, non-binding instrument, can never be an equivalent substitute for obligations set out in environmental assessment legislation.
- The proposed Policy cannot accomplish its stated intent to "improve processes, reduce delays and address duplication" when it has a very limited application, thereby diminishing opportunities for engagement and consultation, and fails to clarify expectations – for both project proponents and participating members of the public – in setting out a consistent, transparent decision-making process.

¹ "Development of a Project Evaluation Policy under the Provincial Parks and Conservation Reserves Act" 21 July 2023, online: <https://ero.ontario.ca/notice/019-7356>, [ERO Posting]

² Legal Advocates for Nature's Defence, online: <https://naturesdefence.ca>

³ ERO Posting

1. A discretionary policy cannot remedy the gap left by exempting projects in parks from environmental assessment law

LAND does not support relying on a policy in place of the *EA Act* applying to projects within provincial parks and conservation reserves. As a non-binding, guidance document, the Policy lacks the enforceability of environmental assessment legislation.

As commentators have previously remarked,⁴ exempting projects in provincial parks and conservation reserves from the *EA Act* means there will be:

- *No* legal requirement to consider the potential environmental effects (and any necessary preventative or mitigation measures) of the undertaking, alternative methods of carrying out the undertaking, and alternatives to the undertaking
- *No* legal requirement to consider alternative methods of carrying out the undertaking, and alternatives to the undertaking;
- *No* decision-making mechanism which considers the environmental advantages/disadvantages of the undertaking, alternative methods of carrying out the undertaking and alternatives to the undertaking

By virtue of being an advisory, guidance document, the Policy does not contain statutory requirements obligating consideration of a project's social, economic and environmental effects as would be the case with environmental assessment. The Policy also heavily relies on permissive (i.e. advisory) language such as "may" and "could" and does not prescribe what "shall" or "must" occur.

LAND does not support the Ontario government's proposal to rely on a policy in place of the *EA Act*. We are deeply concerned that this approach leaves open the possibility for government and proponents alike to disregard evaluating a project's impacts, possible alternatives and potential mitigation measures⁵ prior to a project's development.

2. The Policy broadens Ministerial powers, politicizes decision-making

The Policy sets out that projects will be evaluated "if the Minister determines that evaluation is necessary."⁶ Allowing the Minister to decide the threshold question of whether a project needs to be evaluated risks decisions being made based on political rather than merit-based reasons. This inappropriately enmeshes political and partisan interests within the proposed Policy's project review scheme.

LAND submits the Policy ought to require expert and independent review of projects, and ensure decision-making is segregated from those with political or private interests.

⁴ K. Blaise, "Comments by Canadian Environmental Law Association - Proposed exemption to the Environmental Assessment Act and a new policy under the Provincial Parks and Conservation Reserves Act for projects in provincial parks and conservation reserves," (July 2020), online: <https://cela.ca/proposed-exemption-to-ea-act-and-new-policy-under-ppcra-for-projects-in-prov-parks-and-conservation-reserves/>

⁵ Ontario Parks, "Proposed Evaluation Policy," s 4.1 [Proposed Policy]

⁶ Proposed Policy, s 4.1

3. The effectiveness of the Policy at maintaining ecological integrity is overstated

LAND submits the effectiveness of the Policy to ‘maintain ecological integrity as the first priority’⁷ has been overstated and due to a number of provisions limiting the Policy’s use and application, we do not support the government’s statement that the Policy is “an efficient mechanism to plan projects, including assessing potential environmental effects.”⁸

Accordingly, a number of provisions in the Policy limit its potential use and applicability:

1. The Policy is only applicable to “certain projects”⁹
2. A list of so-called “minor projects” are automatically exempt from the Policy,¹⁰ and
3. Whether the Policy is applied, is at the discretion of both the Ministry and Minister¹¹

These aspects automatically limit the applicability of the Policy and resultantly, there is no veracity to the government’s claim of prioritizing ecological integrity.

4. The limited applicability of the Policy diminishes opportunities to consider Indigenous rights in development decisions

The limited applicability of the Policy, as discussed above, will deprive First Nations of notice and opportunity to comment, resultantly diminishing opportunities for Indigenous people to have their interests considered in development decisions. For instance, should the Minister choose not to apply the Policy to a proposed project, the government will likely lack the informational basis from which it may ‘have knowledge’ of conduct that may impact established and asserted Indigenous rights, thus triggering the duty to consult and accommodate.

Consultation with Indigenous communities should be set out in a legally enforceable regulation and not guidance, as it currently is in the proposed Policy.

4. The Policy will not contribute to achieving biodiversity protection

There is clear evidence that biodiversity is in a global crisis - with the rate of species extinction being tens to hundreds of times higher than its average in the past 10 million years, 25 percent of all animal and plant species threatened, and 1 million species already facing extinction within decades unless action is taken to reduce the intensity of drivers of biodiversity loss.

Despite this and a growing understanding of ecosystem health that biodiversity underpins, the Policy stands to exacerbate nature loss and its continued degradation by removing projects from environmental assessment review. The Policy fails to require, indeed fails to mention, how impacts to biodiversity will be assessed. While the Policy makes repeated reference to ‘maintaining biodiversity,’

⁷ ERO Posting; Proposed Policy s 3.1

⁸ ERO Posting; Potential effects are described in the Policy as being “effects on natural, social, economic and cultural environments that may result from the implantation of a project.”

⁹ Proposed Policy, s 1.0, 3.1

¹⁰ Proposed Policy, s. 4.1 and Appendix 1

¹¹ Proposed Policy, s 3.2 and 4.1

(which is also a core purpose of the *PPCRA*¹²) it does not set out how this will be achieved.

To uphold the statutory purposes of the *PPCRA* as well as the Policy's stated commitment to prioritize the maintenance of biodiversity, the government of Ontario must rethink its approach to the review of projects in protected areas. It is not too late to require a robust, traceable and accountable EA process instead of a policy which is at best, aspirational.

Sincerely,

A handwritten signature in black ink, appearing to read "Kerrie Blaise".

Kerrie Blaise
Founder and Legal Counsel, LAND

¹² *PPCRA*, s 1