

MINISTRY OF NATURAL RESOURCES

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November 14, 2011

Mike Wilton  
RR#1,  
Spring Bay, ON POP 2B0

Dear Mr. Wilton:

**Re: Application for Review - File No. R2011003 under the *Environmental Bill of Rights (EBR)* requesting the review of 1) Provincial Parks and Conservation Reserves Act, and 2) Forest Management Guide for Preserving Biodiversity at the Stand and Site Scales**

The Ministry of Natural Resources (MNR) has completed a preliminary review related to the above noted Application for Review (File No. R2011003) received on June 28, 2011.

The MNR has considered your application for review in accordance with the provisions of Section 68 of the EBR, and the ministry has determined that the public interest does not warrant a review of the matters raised in the application because:

- Third Reading to pass Bill 11, an Act to enact the PPCRA, 2006, took place on June 19, 2006, which is less than five years preceding the date of application for review (June 16, 2011); and
- that decision was made in a manner that MNR considers was consistent with the intent and purpose of Part II of the EBR.
- The decision to approve the Guide with its accompanying Background document was made in 2010, which is less than the five years preceding the date of the application for review (June 16, 2011); and
- that decision was made in a manner that MNR considers was consistent with the intent and purpose of Part II of the EBR.

In the event that you have questions regarding the above, or would like additional information about the EBR, please contact Daraleigh Irving, Senior Environmental Planning Analyst at (705) 755-5195.

Sincerely,

A handwritten signature in black ink that reads "Sally Renwick". The signature is written in a cursive, flowing style.

Sally Renwick Acting  
Team Lead  
Environmental Planning

c: Peter Lapp, Office of the Environmental Commissioner of Ontario

# **NOTICE OF DECISION**

## **Application for Review - Environmental Bill of Rights**

### **File No. R2011003**

#### **Background**

On June 28, 2011 the Ministry of Natural Resources (MNR) received from the Environmental Commissioner of Ontario (ECO) an application for review, R2011003, under the Environmental Bill of Rights (EBR).

This Notice of Decision has been prepared to fulfill the Ministry's obligations under the EBR. The EBR requires the MNR to send a Notice of Decision containing a brief statement of the reasons for the decision to the applicants, the ECO, and any other person who the minister considers ought to receive the notice because the person might be directly affected by the decision.

#### **Description of Application for Review**

The applicants request that MNR review:

- the Provincial Parks and Conservation Reserves Act, 2006 (PPCRA) specifically sections 16 and 17
- the MNR 2010 Forest Management Guide for Preserving [sic] Biodiversity at the Stand and Site Scales (hereafter known as the Guide) and the accompanying Background and Rationale for Direction (hereafter known as the Background document), specifically section 4.2.1 on "Groundwater recharge areas associated with brook trout spawning sites".

The applicants state that MNR should undertake a review to protect the environment because insufficient protection is provided against possible commercial timber harvesting damage to ensure habitat sustainability for known and potential lacustrine (lake-inhabiting) brook trout *Salvelinus fontinalis* populations in Algonquin Provincial Park.

Furthermore, the applicants assert, among other reasons, that:

- the unique features including self-sustaining populations of brook trout in Algonquin Provincial Park are not given special recognition (i.e. protection);
- the Guide misinterprets scientific literature resulting in insufficient protection of brook trout habitat; and
- small nursery creeks important for reproductive success for brook trout are not specifically mentioned in the Guide.

## Decision

After carefully considering the application in accordance with Part IV of the EBR, the MNR has determined, in accordance with section 68 of the EBR, that the public interest does not warrant a review in the ministry of these recent decisions. The reasons for this decision are as follows:

- Third Reading to pass Bill 11, an Act to enact the PPCRA, 2006, took place on June 19, 2006, which is less than five years preceding the date of application for review (June 16, 2011); and
- that decision was made in a manner that MNR considers was consistent with the intent and purpose of Part II of the EBR.
- The decision to approve the Guide with its accompanying Background document was made in 2010, which is less than the five years preceding the date of the application for review (June 16, 2011); and
- that decision was made in a manner that MNR considers was consistent with the intent and purpose of Part II of the EBR.

In addition, MNR has provided a brief response to the eight specific points listed in the summary of the applicants' concerns about the Guide and its accompanying Background document, as well as three other related specific concerns raised in the application for review.

## Rationale for Decision

### *Provincial Parks and Conservation Reserves Act, 2006 s. 16 and 17*

Third Reading to pass Bill 11, an Act to enact the PPCRA, 2006 took place on June 19, 2006 which is less than five years preceding the date of application for review (June 16, 2011).

The MNR met the requirements of EBR Part II (Public Participation in Government Decision-making)-through an extensive 60-day public consultation period from September 9, 2004 to November 9, 2004. The public consultation process included:

- Release of a discussion document which was made available for review and comment electronically through the EBR Environmental Registry and the MNR and Ontario Parks websites. Printed copies were also made available.
- Opportunities for people to email or mail in questionnaires, comments and suggestions.
- Upon request, meetings with key stakeholders.
- Upon request, meetings with Aboriginal peoples and representatives of First Nation Communities.
- Nine public open houses held in communities across Ontario.

A discussion of commercial timber harvesting in Algonquin Provincial Park was included in the policy proposal document made available for review; and at the time, MNR did not make any new proposals to change the historical policy related to commercial timber

harvesting in Algonquin Provincial Park. Eight submissions related to commercial timber harvesting in Algonquin Provincial Park were received during the consultation period and considered prior to the decision to pass the PPCRA.

In addition, it is MNR's opinion, that there is no social, economic, scientific or other evidence that a failure to review the decision could result in significant harm to the environment, or that evidence was not taken into consideration in the decision to pass the PPCRA.

MNR considers that a forest management plan prepared in accordance with the requirements of the Crown Forest Sustainability Act (CFSA) meets the requirements for ecological integrity as defined by the PPCRA. In Algonquin Provincial Park, the requirements for forest management planning (FMP) (both process and content), provide the flexibility to specifically address the particular needs for the protection of values in the park, including the ecological processes that maintain those values, that are different than the needs for the protection of values outside of the park. For example, to meet the additional protection objectives for brook trout lakes and nursery creeks in Algonquin Provincial Park additional restrictions on access, harvest, and other forest operations are used.

Note:

Notwithstanding that this request for review is within five years of Third Reading to pass Bill 11 (A Bill to enact the PPCRA), the MNR has also considered the request for a review of the PPCRA sections 16 and 17 under section 67 of the EBR.

MNR has determined that the public interest does not warrant a review of the Act as:

- 1) There is minimal potential for harm to the environment if the review applied for is not undertaken, given the application of the provisions of the CFSA, the FMP process and the Guide with its accompanying Background document, as explained below.
- 2) As described above, members of the public had extensive opportunities to participate in the development of the Act, in respect of which a review is sought.

### *Forest Management Guide for Conserving Biodiversity at the Stand and Site Scales*

The correct title of the Guide is the *Forest Management Guide for Conserving Biodiversity at the Stand and Site Scales*.

The Guide was approved and released March 18, 2010. The Background document was approved and released July 15, 2010. Each of these dates is within the five year period preceding the date of the application for review.

The MNR met the requirements of EBR Part II (Public Participation in Government Decision-making) by placing the proposed document on the EBR Environmental Registry (EBR Registry Number: 010-5218) for a 60-day public consultation period from November 27, 2008 to January 26, 2009.

Further, various stakeholders (i.e. forest industry, fur managers, wildlife biologists, an Aboriginal group) were members of the team that oversaw the development of the

Guide. The Provincial Forest Technical Committee (a legally mandated advisory committee to the Deputy Minister) provided technical advice and review of the Guide throughout its development. In addition, the Guide authors consulted with a lengthy list of experts and practitioners as identified in the Acknowledgements section and Appendix 1a of the Guide.

In addition, it is MNR's opinion, that there is no social, economic, scientific or other evidence that a failure to review the decision could result in significant harm to the environment, or that evidence was not taken into consideration in the decision to approve the Guide or its accompanying Background document.

To provide further support to this rationale, the following is a brief response to the eight specific points noted in the summary of the applicants' concerns, listed on page 5 of the application for review:

1. Nursery Creeks are Addressed in the Guide and Background document:

Within the Guide, all streams - permanent, intermittent, and ephemeral; mapped or unmapped - have been addressed and direction for protection is provided (see sections 4.1.1, 4.1.2 and 5.2.5). The Guide adopted a risk management approach consistent with that developed by Fisheries and Oceans Canada where management direction is more restrictive when operations have a higher potential for negative effects/impacts on fish or their habitats. Streams that are known to contain brook trout are considered High Potential Sensitivity (HPS) streams and are provided with the highest level of protection.

The Guide does not use the term 'nursery creeks'. However, the importance of small streams as nursery habitat for brook trout is discussed (e.g. see page 135 in the Background document). Moreover, streams providing nursery habitat are addressed in a number of ways (see pages 48-49 of the Guide):

- Streams known to provide nursery habitat are identified as HPS features and receive a 30-90 metre (m) slope-based AOC (area of concern).
- Any mapped or unmapped permanent stream segments within 500 m of a brook trout lake potentially provide nursery habitat and are identified as HPS features and receive a 30-90 m slope-based AOC.
- Any mapped or unmapped intermittent stream segments within 500 m of a brook trout lake potentially provide nursery habitat and are identified as Medium Potential Sensitivity (MPS) features and receive a 30 m AOC.

The Algonquin Park FMP has included two measures to help locate and protect nursery creeks. First, before any operation is conducted near a brook trout lake, an on-the-ground survey is undertaken by Ontario Parks staff to locate any small, unmapped nursery creeks (Algonquin Park Forest Management Plan (Alg Pk FMP) Sect 2.2.4.1). If one is found, the appropriate AOC is applied and forest management operations are modified accordingly. Also, where practical, tree-marking is done in the "snow free season" to allow markers to identify any additional nursery creeks in the forest block allocated to be harvested (Alg Pk FMPTableFMP-14).

The Algonquin Park FMP addresses its specific objectives for protecting sensitive brook trout lakes by restricting new roads, landings or aggregate operations within 500 metres of the lake unless approved by Ontario Parks.

The measures listed above demonstrate the flexibility in the FMP process to address specific objectives in the Algonquin Park FMP.

## 2. Relevant Literature has been Correctly Interpreted:

The authors acquired and reviewed all relevant scientific literature (see pages 121-134, 144-149, and 169-170 in the Background document for the references consulted during development of the water direction in the Guide), consulted extensively with experts from scientific/resource management disciplines, asked experts to review draft portions of the Guide, and reviewed all comments received from the posting on the EBR Environmental Registry.

Based on all the input, comments, and interpretations solicited and received, the authors believe the interpretations found in the Guide to be correct, and that the literature was used in a fair and objective manner.

The applicants assert the authors made three errors in interpreting the relevant scientific literature:

- Implied that recharge areas will "never exceed 10 ha in size".

However, the reference to 10 ha in the discussion on page 167 of the Background document simply refers to the size of the largest recharge area estimated in the study by Curry and Devito (1996). Moreover, the direction in section 4.2.1 of the Guide applies to any mapped recharge areas associated with known spawning sites, regardless of size.

- Missed Curry and Devito's (1996) key point that fixed-width shoreline buffers do not necessarily encompass recharge areas.

However, in addition to fixed-width buffers, the Guide prescribes a special AOC that protects all mapped groundwater recharge areas associated with known spawning sites (section 4.2.1), thus addressing both the issue described by Curry and Devito and the applicants' primary concern.

- Citations from the literature appear to have been chosen selectively so that the impact of commercial timber harvesting is minimized.

However, the Background document provides a balanced discussion. It does cite one potential positive effect of commercial timber harvesting on groundwater discharge but also includes a detailed discussion of potential adverse effects (see Background page 168).

## 3. Harvest Operations around Brook Trout Habitat are Addressed in the Guide:

The Guide recognizes the importance of water resources and provides the appropriate level of protection based on the current scientific literature for all types of lakes, ponds, rivers and streams.

During the development of the Guide, reviews of the scientific literature and consultation with experts identified deposition of sediment as the primary potential adverse effect of forest management operations in shorelines associated with lakes.

Sedimentation in aquatic features is primarily associated with the occurrence and location of roads, landings and aggregate pits. For that reason the Guide does not allow landings or aggregate pits in shoreline AOCs, and roads are also not permitted unless no practical or feasible alternative exists (with appropriate mitigation).

Other measures are included in the Guide to reduce the chance of contamination of water features by foreign materials. This includes restrictions on equipment maintenance and application of pesticides.

Harvest, renewal, and tending operations, when conducted appropriately by following other direction found elsewhere in the Guide (e.g. related to rutting, soil compaction) will not cause sedimentation in aquatic features and, therefore, are permitted within a recharge area.

As noted in the discussion on nursery creeks, the Algonquin Park FMP addresses its specific objectives for protecting sensitive brook trout lakes by restricting new roads, landings or aggregate operations within 500 metres of the lake unless approved by Ontario Parks.

#### 4. Glossary:

The Guide does include an extensive glossary of terminology (see pages 203-211). Terms identified by the applicants, such as catchment, were not included because they were either defined in the text (e.g., see page 18 for a definition of catchment) or it was believed these terms were commonly used and understood by the resource management community.

#### 5. Use of Terms like "mitigate", "reduce", and "minimize":

Use of these words in conjunction with terms like "rutting" does not imply or endorse these activities as acceptable.

The Guide does provide very specific tolerances for site disturbance within 3 m, within 15m, and beyond 15m of water features (see Sections 4.1.1 and 5.2.5).

The Guide was developed to be a practical document that allowed operators and workers to work prudently in the forest, within a series of mandatory standards and guidelines, with the understanding that penalties may be applied if the standards and guidelines are not followed.

Training is being provided for MNR and industry across the province as FMPs begin to implement direction in the Guide. MNR and industry are monitoring operations to ensure compliance with direction in the FMPs (which is based on the Guide).

6. Consideration of Genetics:

In the Guide, direction for aquatic ecosystems, shoreline areas, and recharge areas associated with brook trout spawning sites was developed to ensure consistent protection of all fish habitat (including that inhabited by brook trout) wherever the Guide is implemented regardless of the genetic uniqueness of the fish populations.

7. Soil-calcium Levels:

The Guide recognizes that forest operations and natural disturbances within catchments may affect the yield or chemistry of water exported from catchments. The Background document (pages 22-23) does discuss the potential role of timber harvest on calcium declines in forest soils and aquatic ecosystems. It concluded that there was insufficient evidence to warrant inclusion of additional mitigative direction specifically for catchment-scale effects of harvesting on calcium exports to aquatic ecosystems. The Background document also recognizes the ongoing work in this area and concludes that the potential requirement for (and nature of) mitigative direction, should be carefully considered during the 5-year review of this guide.

8. Cumulative Effects:

MNR agrees with the applicants' assertion that human activities that do not individually exhibit measurable effects may combine through time to cumulatively affect brook trout populations. Assessing whether the interaction of various human activities through time results in cumulative effects requires long term monitoring data for self-sustaining brook trout populations.

Recently the province began a long-term broad scale program to monitor the health of Ontario's lakes. This program collects data on fish abundance, fish community diversity and health, and aquatic habitat characteristics.

These data, as well as other data such as collected by fisheries assessment units will allow MNR to identify if long-term changes to fish populations or aquatic characteristics are occurring.

The status of these data sources, and their usefulness for detecting the effects of forest management operations, will be investigated further during the review of the Guide in 2015.

In addition to the eight concerns listed in the applicants' summary on page 5 of the application, the applicants also raised the following three concerns.

Page 8: Application of Slope-based AOCs:

Slope-based AOCs are still required for all lakes, rivers, large streams, and any other water features supporting brook trout. For lakes and ponds, direction is

provided in section 4.1.1 of the Guide. For rivers and streams direction is provided in section 4.1.2 of the Guide.

In addition to the slope-based AOCs for water features containing brook trout, there is an additional AOC (section 4.2.1) for mapped groundwater recharge areas associated with known brook trout spawning sites.

In situations where groundwater recharge areas can be mapped, more than one AOC will be in place (i.e. both a slope-based AOC plus an overlapping recharge area AOC). When multiple AOCs overlap, direction in the Guide (page 35) is clear: "In some situations, AOCs for multiple values may overlap. In these cases, the most restrictive direction will be applied unless MNR approves otherwise".

As noted previously, in Algonquin Provincial Park, these AOCs are nested within a larger 500 m AOC surrounding brook trout lakes in which access is restricted.

Page 9: Catchment-scale Effects of Forest Operations were Considered during Development of the Guide:

The Guide (see page 18) and Background document (see pages 21-29) acknowledge that forest operations (and natural disturbances) in catchments may influence the yield or chemistry of water exported to adjacent aquatic systems. The Background document discusses these effects, the factors influencing their magnitude, and the consequences to aquatic biota. Effects associated with timber harvesting and natural disturbances are generally similar, transitory, and most do not appear to translate to higher biotic levels. Thus, after careful consideration, the Guide authors concluded that the cumulative application of various pieces of direction (e.g., creation of natural landscape pattern, restrictions on site disturbance, retention of residual forest, protection of hydrological linkages) would adequately address catchment-scale effects and therefore explicit catchment-scale direction was not prescribed.

Page 11: Identifying the Extent of AOCs:

The Guide does not specify how to map the extent of a recharge area. Where planning teams determine that recharge areas may extend beyond the height of land, they will extend the mapped recharge area and the boundary of the AOC. This would not be an exception to the AOC or the Guide.

## **Conclusion**

For the rationale noted above, MNR has determined that the public interest does not warrant a review in the ministry of the matters raised in this application for review.