

## ENVIRONMENTAL LAW CENTRE

### COMMENTS ON THE PROPOSED POLICY FOUNDATION FOR THE NATURAL HERITAGE ACT

In compiling these comments, we have reviewed the following documents:

- Proposed Policy Foundation for the Natural Heritage Act, Summary Report
- Report 1(a), Proposed Policy Foundation for the Natural Heritage Act
- Report 1(b), Proposed Policy Foundation for the Natural Heritage Act – Management Guidelines for Protected and Recreation Areas
- Report 1(c), Comparison of Management Guidelines Under Current Legislation and under the Proposed Natural Heritage Act

#### Classification System – General

Regarding the classification system generally, we suggest that two other classifications be added:

1. Linear parks, which would serve as wildlife, habitat and biodiversity corridors and recreation trails (as appropriate); and
2. Water-based parks, for the preservation, study and appreciation of areas comprised of, for example, lakes, wetlands, streams, rivers and segments thereof, etc. As an example, the proposed Big Lake Special Place could be a water-based park.

#### Provincial Nature Reserves

We are concerned that areas that are currently designated not lose protection when they are re-designated under the new Natural Heritage Act. An example of our concern is existing Ecological Reserves with long-term grazing commitments. The text of the Proposed Policy Foundation states that these reserves can be placed in the Heritage Rangeland class. However, this class not only affords less protection than Ecological Reserve status, but could also allow the exclusion of the public from such lands. Is there so much grazing on these lands that they ought to be preserved as Heritage Rangelands?

As well, we question why the government states that it has “long term grazing commitments” since the Public Lands Act provides that grazing leases may be for up to 20 years, and the government actually issues these leases for 10 years as a matter of practice. The Public Lands Act places no obligation on government to renew leases.

### Wildland Provincial Parks

We question why the existing three Wilderness Areas are being demoted, in effect, from their current most protected status, to the class of Wildland Provincial Park? It is not true, as the text contemplates, that the existing level of protection can be retained through “management guidelines”. In the usual case, management guidelines are not law and can be changed without the scrutiny of the Legislature. As well, the Proposed Policy Foundation states: “The existing levels of protection provided to these areas [existing wilderness areas and Willmore Wilderness Park] will stay the same under the new Act and activities that are not permitted under the existing legislation would be excluded from these areas.” Given the lack of legal status of guidelines, we urge that such restrictions be included as part of the Natural Heritage Act or regulations under that Act.

### Heritage Rangelands

We do not object in principle to this class. In fact, we see that it potentially could address many of the current land use and policy conflicts surrounding public lands subject to grazing dispositions under the Public Lands Act.

Undoubtedly, this class will be controversial. It is important that its creation not be, nor even be perceived as, a windfall to holders of agricultural dispositions at the public’s expense. Current wording of the text could be read to interpret Heritage Rangelands as huge private parks for the benefit of disposition holders. It is crucial that management plans be required to include reasonable opportunities for non-mechanized outdoor recreation activities.

### Guidelines vs. Legislation

We are very concerned by the reliance throughout these materials on the use of guidelines to ensure similar levels of protection to that afforded by existing legislation. As we have stated previously, guidelines have no legal status and cannot be enforced where there is non-compliance. As such, we strongly urge that use and activity restrictions set out in proposed management guidelines ultimately be incorporated within the new legislation. In most instances, this would be most appropriate in regulations accompanying the Natural Heritage Act, although protection of the status of the existing Wilderness Areas and Willmore Wilderness Park should be recognized within the new Act itself. It is misleading to claim that new classifications will afford equal protection as the existing legislation if much or all of the substantive limits and restrictions are not given the force of law in the new Act or regulations.

### Public Participation

We support the position that public participation requirements should be clearly set out in the Act, and feel that the extent of notice and participation should be at least as extensive as that provided for in section 3.1 of the Wilderness Areas, Ecological Reserves and

Natural Areas Act. We suggest that public notice and participation should cover the following matters:

- Site designation, alteration and de-designation;
- Development, review and amendment of management plans for designated sites;
- Granting and modification of dispositions within designated sites.

While the Summary Report mentions public notice and participation in relation to site designation and development of management plans, it is equally important that the public be involved on an ongoing basis, particularly in relation to changes that are proposed to sites and their management plans.

With respect to this process of policy and legislation development, we feel that the next step regarding public consultation should be a full consultation on a draft of the Natural Heritage Act itself, prior to its introduction as a Bill in the Legislature. That is the stage at which more meaningful comment and discussion will and should take place among all stakeholders.

#### Other Comments

We note the comment within the Summary Report that “Special Places will be implemented through the new Natural Heritage Act and other existing legislation”. We question what other legislation will be used, and feel that this implies an intention contrary to the intention stated elsewhere in the Report and supporting documents that the Natural Heritage Act will provide a single system for protecting areas within Alberta. If the intent is to rely on legislation other than the proposed Act, then the government should make its plan clear to provide for open public discussion and debate of it. It seems somewhat pointless to carry on an endeavour to consolidate various Acts into one, if the underlying intent is to ultimately rely on a number of pieces of legislation to do the job.

We are concerned about the use of broad terminology without definition or refinement. An example is the references to “vegetation management” within the Summary Report and supporting documents. Vegetation management is allowed in all classes of areas; however, the term is given no scope and could potentially include anything from clearcutting to pulling weeds by hand. We suggest that this and other broad terms be clarified to enable all parties to determine permissible activities in each area and allow for open discussion of concerns.

Within Report 1(a), we note some additional guidelines for developing the new Natural Heritage Act that are not included in the Summary Report. Does the failure to include these in the Summary Report mean that the government does not intend to follow them in creating this legislation? Of these points that have been omitted from the Summary Report, we support the call for clear authority for designation, management and enforcement of areas, clear definition of the designation process and the incorporation of appropriate enforcement mechanisms. However, we do have concerns about the point

stating that “the legislation should provide for use of zoning within a particular protected area...”. Taken to its furthest extent, this position could well defeat the purpose of creating protected areas, if non-protective exceptions can be created within these spaces. If there is an intent on the part of government to pursue such a policy within the Natural Heritage Act, then it should be stated clearly rather than being hidden within a supporting document. We are not totally opposed to the use of zoning to allow less restrictive protective uses within an area, but we are concerned that this type of tool not be used to derogate from and defeat the protective classifications. Any attempt to include a zoning tool within this legislation should be approached carefully and such provisions should be clearly drafted.

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