In Response to
Bill 15:
the
Natural Heritage Act

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Introduction

A. Protected Areas Legislation and the Environmental Law Centre

The Environmental Law Centre is a non-profit, charitable organization incorporated in 1982. The Centre's overall objective is making the law work to protect the environment. In pursuit of this objective the Centre provides a number of services, a key one being law monitoring and law reform. We make our comments on Bill 15, the proposed *Natural Heritage Act* with this overall objective in mind - that Alberta's protected areas legislation should work to protect the environment.

B. Environmental Law Centre's Principles underlying it's Comments on the proposed Natural Heritage Act

The Centre embraces the following principles and it bases its comments on Bill 15 on them:

Regarding protection and management of existing and potential protected areas:

1. The Province of Alberta as owner holds existing and potential public lands protected areas in trust for the benefit of all Albertans, including future Albertans. Government's decisions on protection and management of such lands must err on the side of protection.

2. The overarching goal of protected areas legislation must be to protect natural values of public land and to allow public uses consistent with protection, not to protect private economic interests in public lands.

3. New protected areas legislation must be remedial in that it enhances protection and management in the public interest of protected areas and not diminishes it.

In being remedial:

1. New protected areas legislation must not explicitly or implicitly authorize lands under existing designation to lose protection conferred by existing designation.

2. In particular, new protected areas legislation must not explicitly or implicitly authorize opening up lands under existing designation to uses or dispositions not currently allowed under existing designation.

3. New protected areas legislation must not explicitly or implicitly authorize or allow a change of designation in a manner less stringent than authorized under existing legislation.

4. New protected areas legislation must not explicitly or implicitly authorize a change of designation without ensuring that the public, and not just those directly affected, has reasonable and effective opportunity to be involved in the decision.

Regarding form and process:

1. Laws should be drafted so that they are clear and understandable.

2. All information relied on by decisionmakers should be available to the public.

3. Decisionmaking should be guided by statutory criteria that further and are relevant to the objective of environmental protection. Legislation should avoid irrelevant distinctions.

4. Neither the Minister nor other statutory delegates should be given unqualified discretion to determine any matters, and in particular any substantive matters.

5. Regulatory powers for important matters must be exercizable only by Cabinet, and not by only a Minister.

6. Judicial review of decision making should not be precluded.

7. People, and not just those "directly affected", should have the legal right to:

    - Advance notice of decisionmaking that could substantially affect protected areas, for example, (among others), exercizing regulation making authority, generating management plans, proposing to allow dispositions, uses and activities potentially inconsistent with protection, proposing to add on or delete areas from protected areas, and proposing change of designation of a protected area.

    - Information on which decisionmakers will base their decisions.

    - Reasonable and effective opportunities to be involved in decisions.

8. All mandatory requirements should be in the Act or regulations and not in guidelines or policy statements.

9. Intervener costs should be available to ensure that public interveners will not be at a disadvantage when participating in public review processes.

10. Hearing processes should be conducted in a fair and open manner recognizing the duty of fairness and the principles of natural justice.

Comments and Recommendations

Our comments and recommendations follow the sections of Bill 15. We do not comment on every provision. Our recommendations are in bold and italics. Schedule "A" is a NHA graph of authorities, setting out who does what. Schedule "B" is a summary of recommendations.

Preamble

Introduction

The preamble to Bill 15 identifies Alberta's six natural regions and the fact that they contain natural landscapes, ecological processes and biological diversity. It then sets out the purposes of the Bill, which are to:

- Designate certain lands that are representative of the natural regions,
- Designate certain lands that contain unique or special natural features,
- Safeguard these lands from impairment caused by human use and activity,
- Preserve diversity,
- Provide lasting legacy for future generations,
- Provide opportunities for present and future generations to understand, appreciate and experience Alberta's natural heritage,
- Create different categories of areas based on the level of protection required to ensure preservation of ecological processes and biological diversity, and
- Provide opportunities for outdoor recreation, tourism and experiencing of Alberta's natural heritage.

Comments

Courts can refer to a preamble when called upon to interpret legislation. However, the purpose of legislation can be more effective if placed in a "purpose section" or "purpose statement" within the body of the bill rather than just in the preamble. The *Environmental Protection and Enhancement Act*, for example, does not contain a preamble but it does contain, in section 2, a list of the purposes of the legislation. Courts and tribunals have used that list to help interpret the legislation.

The purpose for legislation may be stated in either the preamble or in a separate section. This does not make the preamble and the separate section equivalent. *In Driedger of the Construction of Statutes* the author refers to the differences between them:

> Like preambles, purpose statements reveal the purpose of legislation and they are also an important source of legislative values. Unlike preambles, they come after the enacting clause of the statute and are part of what is enacted into law. This makes them binding in the sense that they cannot be contradicted by courts; they carry the authority and the weight of duly enacted law.[1]
>
> In *R. v. T.(V.)* the Supreme Court of Canada suggested that it was prepared to take purpose statements seriously. It rejected the suggestion that a purpose statement is merely a preamble that does not carry the same force as a substantive provision.[2]

This legislation calls for the preservation of our natural heritage before it is lost forever. The preamble states this in clear terms. The contents of the preamble, however, would have more force and effect if placed in a separate "purpose section" within the body of the Bill itself.

Recommendation on Preamble: We recommend that the contents of the preamble be placed in a new section 2 within the Bill immediately following section 1, the interpretation section.

1: Interpretation

Definitions of note to this review will be dealt with in the discussion of the substantive provisions of the Bill.

Section 1(2) gives the responsible Minister the authority to make regulations that "define any expression used but not defined in this statute." That definition then applies to the Bill and to its regulations. It is common for legislation to provide that certain definitions may be set in the regulations because of the nature of the material to be covered by the regulations. It is less common for the Minister, by regulation, to be able to define every term in the Bill that has not been defined in the Bill. There should be justification for this unusual provision. Unless justifiable, this provision should be deleted.

Recommendation on section 1: Either delete section 1(2) or, alternatively, amend it by identifying the terms that the Minister may define by regulation. There must be justification for allowing the Minister to define terms by regulation.

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[1] Ruth Sullivan, "Driedger on the Construction of Statutes (3rd Edition) p.264.
[2] Ibid. at 267.

2: Application respecting the Crown

Although the Bill binds the Crown, section 2 provides that regulations can free the Crown. This is understandable in respect of the enforcement provisions. The Crown, and those acting under her direction, may need to do things that would otherwise contravene the Bill in order to enforce it. It is less understandable why the Crown, by regulation, should be able to remove itself from any other provisions of the Act and especially those that create the protection for our Natural Heritage.

Recommendation on section 2: Either delete the words after "Act", (so that the Crown is always bound the Act), or limit the exclusion by confining regulatory authority to free the Crown to enforcement of the Act.

3: Laws of General Application

Section 3 states that "Laws of general application apply in respect of an area except to the extent that they are inconsistent with this Act." Thus the provisions of this Bill can take priority over laws that are inconsistent with it. A similar section is found in section 83 of the *Public Health Act* that states:

> This Act prevails over any enactment with which it conflicts, other than the *Alberta Bill of Rights*, and a regulation under this Act prevails over any other by-law, rule, order or regulation with which it conflicts.

It should be made clear that the *Public Health Act* applies to the Bill.

Recommendation on section 3: Amend the Bill so that the priority of the Public Health Act continues to apply to it.

4: Application of Legislation to Land Not Designated

Comments

Part 2, which contains sections 20 to22, provides the basis and the procedure for the cabinet to designate land as one of the five types of protected areas. Section 4 gives the Minister an alternate method of obtaining the protection afforded by designation. Instead of the cabinet making the designation, the Minister may, by regulation, declare that land under the Minister's administration is subject to the restrictions arising from designation. There is no indication of the factors that the Minister should consider in deciding whether to use this provision. Presumably it would be based upon the purposes set out in the preamble and which we have suggested should go to a purpose section.

Prior contractual rights are preserved by section 25 but only "where there is a designation of an area." A section 4 declaration can only be made for land that has not been designated. Accordingly it appears that section 25 does not apply to the section 4 declaration.

PART 1 - Administration

5: Minister's Role over Areas

Section 5 sets out the overall responsibility of the assigned Minister, likely the Minister of the Environment. That responsibility is divided into two categories. The first is the establishment and maintenance of a network of protected areas. The second is the establishment and maintenance of programs to protect Alberta's natural heritage. The standards to which this responsibility needs to be measured could be those contained in the preamble. As stated previously, they would be more forceful if they were in a purpose section.

6: Director: Appointment, Delegation Powers and Role

The Minister must appoint a Director. The Director is responsible for the "protection, planning, management and monitoring of the [protected] areas."

In section 6, the Director is given authority to delegate duties to employees. This is necessary for the Director to fulfill the assigned role.

The Director is also given authority to delegate "to any person the power to issue permits." Section 10, discussed below, allows the Director to issue a wide variety of permits. These permits are to be in accordance with regulations. This authority can be delegated to anyone. Since permits allow activities that would normally not be allowed in the protected areas it is unwise to allow anyone to issue permits.

Recommendation on 6: We recommend that the power to delegate the granting of permits be limited to permits for minor matters.

7: Public Access to Protected Areas, in particular access to Heritage Rangelands

This section gives the Director broad powers to close off all or parts of protected areas. Although it is understandable that the NHA should contain a power to close off areas in specific, limited circumstances, it belies the public trust under which the Crown holds these lands for the NHA to bestow such open-ended powers to close off public lands to the public. We are specifically concerned that these powers will be exercized to strong-

arm closure to the current controversy regarding grazing lessees rights to control access to public lands under *Public Lands Act* grazing lease. As stated in our discussion under the Heritage Rangelands designation, this designation must not be used to entrench and extend grazing lessees rights in any manner inconsistent with the public trust under which the Government holds these lands. In exchange for more secure tenure (potential 30 year leases instead of current standard 10 year leases (section 80 NHA)) the designation must require that the public have reasonable access to Heritage Rangelands, for example, in accordance with a stakeholder established rangeland management plan under section 16 of the NHA. (*See* our comments under sections 16 and 20).

Recommendation on section 7:

(i) Remove the broad discretion to close off areas of protected public land;

(ii) Delete "Director" and substitute at minimum, "Minister", but preferably, the "Lieutenant Governor in Council";

(iii) Limit and specify the circumstances under which areas of public land may be closed off to the public. These purposes should be limited to closure for (a) safety reasons, (b) to protect wildlife and other biodiversity, (c) to protect recognized paleontological, archaeological, or recognized historic resources reasons and (d) in accordance with an approved Heritage Rangeland Management Plan (see recommendation under section 16).

8: Appointment, Powers and Duties of Park Guardians

The Director has the authority to appoint park guardians whose powers and duties will be prescribed by regulation. In addition, the Director by written direction can give other administrative or regulatory duties to them. Conservation officers can also give direction to park guardians.

9: Orders, and Conditions to Orders, Dispositions, etc.

Although most orders must be in writing there are provisions for valid oral orders.

10: Permits (*also see ss 25, 26 discussion*)

The Director, or anyone, to whom he delegates this authority under section 6(2)(b), can issue a permit that authorizes activity that would otherwise be contrary to the Bill. This is different than a disposition under section 26 since a permit applies only if there is no disposition. Nevertheless, since

both permits and dispositions may be granted for activities that could adversely impact protected areas, we discuss permits under our discussion of section 26 dispositions.

See our discussion of section 10 permits on in the context of discussion of section 26.

11: Signs

The Crown and the Director may post signs and the like to control access.

12: Fees

The Director sets fees under the Bill but can delegate certain fees to the operator of an area or a facility. There must be an agreement between the Crown and the operator for this delegation to take place.

13 and 14: Acquisition of Land and Personal Property

The Minister may acquire land "for any of the purposes" of the Bill. As previously discussed, there is no section which sets out these purposes. We have recommended one be included in the Bill.

The Minister, with the authorization of the Cabinet, may expropriate land that the Minister considers necessary "for the creation or expansion of an area." A designation can only be made if the Crown owns the land or has an agreement with the owner allowing it to do so. In either of these cases the Crown would likely not need to expropriate land. Expropriation would be used to obtain the land in order to protect it by a designation or otherwise. Accordingly, expropriation would normally precede designation. Expropriation would normally not be subject to prior contractual rights. In other words, the Minister is free to expropriate land even if it means that contractual rights are affected.

15: Collection and disclosure of information

The Director is authorized to collect and disclose information necessary for the administration of the Bill. The Director can delegate this to anyone else.

16 to 19: Management Plans, General

The Director has a duty to complete a management plan for an area reasonably soon after it is designated. For a recreation area, the plan's objective is to "ensure the provision or enhancement of outdoor recreation opportunities." For the four other types of areas, the objective is to "ensure, through the preservation and protection of the environment, that the structures and functions of the ecosystems in the area are maintained."

The Director may restrict activities on, and the use of, the land in accordance with a management plan.

Plans are to be reviewed and updated every 10 years. The Director is required to consult with the public during the development or review of a management plan. The nature of the consultation is left to the Director, who is under no obligation to consider the information received from the public.

General recommendation on sections 16-19: Amend the legislation to give the public (and not just those directly affected) reasonable opportunity to effectively participate in the development of management plans.

16 to 19: Heritage Rangeland Management Plans?

As mentioned in our comments under sections 7 and 20, it is of critical importance that the Government not violate the public trust under which it holds public lands by virtue of the category of heritage rangelands. We believe that the public trust could be respected as well as the interests of grazing lessees by the NHA requiring that a heritage rangeland management plan with specific features be required as a pre-condition of designation as a heritage rangeland. Our following recommendation sets out what features must be included in a Heritage Rangeland Management Plan.

Specific recommendation on 16 to 19: Amend these provisions to include the following requirements:

(i) A Heritage Rangeland Management Plan must be established prior to the designation of any land as a Heritage Rangeland;

(ii) Stakeholders and others with a genuine interest (not just directly affected) will have reasonable opportunity to effectively participate in the development of a Heritage Rangeland Management Plan. (Stakeholders will include affected Crown agencies (AFRD, Environmental Protection (including Fish and Wildlife), Energy, Tourism), the lessee, those with a registered or other private interest in the rangeland in question (e.g. traplines, forest permits etc.), potentially affected aboriginal groups, public interest organizations with a genuine interest, and fish, wildlife and hunting organizations with a genuine interest).

(iii) Every Heritage Rangeland Management Plan must include provisions to protect the grassland ecosystem, to allow the lessee to exercize the rights to graze livestock and to protect the

lessee's interests, to respect aboriginal rights, and to allow reasonable public access according to a Public Access Plan.

(iv) (a) The Public Access Plan should (among other things) prohibit access in a manner that may interfere with a lessee's exercizing of the right to graze, or that may damage the grassland ecosystem. (b) However, the public access plan must allow for reasonable public access at established times and places, without first seeking lessee's consent, unless the intended mode or point of access would be inconsistent with provisions of the Public Access Plan.

PART 2 – Designation of Areas and Zones

20: Purposes of designations of areas

Introduction

Section 20 sets out the purposes of the five new designations, listed below, created by the NHA:

- Ecological reserves;
- Wildland parks;
- Provincial parks;
- Heritage rangelands;
- Recreation areas.

These designations will replace the seven designations, listed below, currently existing under the *Wilderness Areas, Ecological Reserves and Natural Areas Act*, the *Willmore Wilderness Park Act*, and the *Provincial Parks Act*:

- Wilderness areas;
- Ecological reserves;
- Natural areas;
- Willmore Wilderness Park;
- Provincial parks;
- Wildland provincial parks;
- Recreation areas.

General comments

As mentioned previously, we are concerned that the NHA does not provide explicit transition provisions related to the existing designated areas. This

gap within the NHA makes it extremely difficult to assess the true effects of this new legislation upon the existing designated areas. Transition provisions to bring the existing designated areas under the NHA should have been set out within the NHA itself or in regulations that should have been made available for public review at the time that the NHA was introduced. Given that there are no explicit transition provisions related to the existing designated areas, we will be basing our comments on the particular designations created by section 20 NHA on our views of their similarities with the existing classes of designation.

"Natural landscapes" and definition of "Natural heritage"

We are also concerned that sections 20(1) – (4) refer to the "preservation and protection of natural landscapes" rather than "natural heritage" (subject to our suggested change of definition of "natural heritage" noted below). Use of the term "landscape" generally refers to the aesthetic or scenic aspects of an area and does not usually encompass all the matters that affect the ecosystem as a whole. We note that the definition of "natural heritage" in section 1(1)(l) refers to ecosystems, ecological process and biological diversity in addition to natural landscapes, thus "natural landscapes" does not, of itself, include those matters. However, the definition of "natural heritage" is deficient in that it does not explicitly include wildlife – a major component of our natural heritage.

Another matter that concerns us is the incorporation of the broad concept of "tourism" in sections 20(3) and (5). As this term is not defined in the NHA or in other Alberta legislation, it can be interpreted very broadly, and can include activities and operations that are not compatible with ecosystem protection and preservation. We acknowledge that one of Alberta Environmental Protection's policy goals for protected areas relates to tourism, but we strongly believe that the goal of ecosystem protection and preservation must be given the first priority in any system for protected areas.

Our comments on the types of activities permitted and prohibited in the various classes of designated areas under the NHA are set out later in this brief in relation to Parts 3 and 4 of the NHA.

General recommendation on definition of "natural heritage" and section 20:

Amend the definition of "natural heritage" to specifically include wildlife;

Amend sections 20(1) – (3) by replacing "natural landscapes" with "natural heritage" in each of those subsections;

Amend section 20 by adding a new subsection (6) indicating that the primary or governing purpose of the designations created by section 20(3) is ecosystem protection and preservation, and that tourism and all other activities within those areas must be compatible with this primary purpose.

20(1): Ecological reserves

Section 20(1) establishes the "ecological reserve" designation, which under the NHA is intended to "ensure the preservation and protection of natural landscapes in an undisturbed state as examples of naturally functioning ecosystems and gene pools for scientific research and education".

It is obvious that the intent is to make ecological reserves the most protective class of designation under the NHA. By comparison, the most protective designation existing under current legislation is for wilderness areas that are created under the *Wilderness Areas, Ecological Reserves and Natural Areas Act*. While the purposes of wilderness areas are not explicitly stated under that Act, a review of the relevant provisions indicates that wilderness areas are established to protect and preserve natural areas from damage and industrial development, and to greatly restrict access to those natural areas.

These two classifications (proposed "ecological reserve" and existing "wilderness area") seem to be very similar in intent. However, policy documents produced by Alberta Environmental Protection thus far indicate that the existing wilderness areas will likely not be designated under the NHA within the most protected category of ecological reserves, but rather as wildland parks. We will comment further on the potential implications of this course of action below.

We assume that existing ecological reserves may be designated as ecological reserves under the NHA. We are concerned that the wording of section 20(1) that refers to the "preservation and protection of natural landscapes in an undisturbed state" may preclude the designation of ecological reserves for the purpose currently found in section 3.1(1)(c) of

the *Wilderness Areas, Ecological Reserves and Natural Areas Act*. That section enables the designation as an ecological reserve of an area of public land that "serves as an example of an ecosystem that has been modified by man and that offers an opportunity to study the recovery of the ecosystem from that modification".

Recommendation on section 20: Amend section 20 by adding as subsection (1.1) "Ecological reserves may be established to preserve and protect public lands that are examples of ecosystems that have been modified by human activity and that offer opportunity to study the recovery of such ecosystems from that modification."

20(2): Wildland parks

Section 20(2) establishes the "wildland park" designation, which is intended to "ensure the preservation and protection of natural landscapes with minimal interference with naturally functioning ecosystems, while providing opportunities for back-country recreation and the experiencing of nature in an undisturbed state".

This type of designation appears to be the next level of protection in the NHA classification of designations, so arguably it could be compared to the ecological reserve designation under section 3.1 of the *Wilderness Areas, Ecological Reserves and Natural Areas Act*. The existing ecological reserve designation seeks to preserve public lands for ecological purposes, many of which focus on the protection of unique, rare or endangered natural features, species or ecosystems, and to protect such lands from damage and industrial development. Activities that can take place in these areas are quite restricted, similar to wilderness areas, as discussed above.

The policy documents produced to this point in relation to the NHA indicate intent to designate the three existing wilderness areas[3] and Willmore Wilderness Park as wildland parks under the NHA. For the wilderness areas in particular, this is a downgrading of protection. The purpose of wilderness areas under the *Wilderness Areas, Ecological Reserves and Natural Areas Act* is quite protective and restricted, while the wildland park designation is less restrictive. The wildland park designation refers explicitly to back-country recreation which, without definition, could include travel by means other than foot and a broader range of activities that those currently allowed in the existing wilderness areas. As well, the reference to "minimal interference" in section 20(2) implies that some

[3] Ghost River Wilderness Area, Siffleur Wilderness Area and White Goat Wilderness Area, *Wilderness Areas, Ecological Reserves and Natural Areas Act*, RSA 1980, c. W-8, Schedule.

interference with ecosystems in wildland parks will be acceptable, while the existing wilderness areas are intended to have no interference with the protected lands and ecosystems. There is no category of designation that carries forth the current level of protection afforded to existing wilderness areas under the *Wilderness Areas, Ecological Reserves and Natural Areas Act*.

Recommendation 1 on section 20(2) and current wilderness areas and the Willmore Wilderness Park: Amend the NHA to include a category of wilderness areas that confers protection to the same level as wilderness areas and the Willmore Wilderness Park currently are protected under existing legislation.

Recommendation 2: Amend the NHA by adding transitional provisions to specifically designate the three existing wilderness areas, Ghost River Wilderness Area, Siffleur Wilderness Area and White Goat Wilderness Area, and Willmore Wilderness Park under the new most protected designation category.

Alternate, though not preferred recommendation: If no other new class of designation will be included in the NHA, then at minimum, the NHA should require that the four existing wilderness parks be designated as ecological reserves.

20(3): Provincial parks

Section 20(3) establishes the "provincial park" designation, which is intended to "ensure the preservation and protection of natural landscapes while providing opportunities for outdoor recreation, tourism or appreciation of Alberta's natural heritage, or for any combination of those purposes, that are dependent on and compatible with the protection of the environment".

We will compare this type of designation to the existing provincial parks designation under the *Provincial Parks Act*. Section 3 of that Act states:

> Parks shall be developed and maintained
>
> (a) for the conservation and management of flora and fauna,
>
> (b) for the preservation of specified areas and objects therein that are of geological, cultural, ecological or other scientific interest, and
>
> (c) to facilitate their use and enjoyment for outdoor recreation.

The new provincial park designation is not largely different from the existing designation, and may provide a greater measure of protection for areas designated under this class through the emphasis on preservation and protection.

As mentioned above in our general comments on section 20, we are concerned by the addition of tourism as a purpose for this designation, due to the potentially broad scope of activities beyond outdoor recreation that could be permitted. However, the reference to compatibility with environmental protection may operate as a limiting factor in relation to tourism.

We are concerned that the new provincial park designation appears to scale back one form of protection available under the existing designation. Section 3(b) of the *Provincial Parks Act* refers to the "preservation of specified areas and objects therein…" We believe that the current wording of section 20(3), which refers to the "preservation and protection of natural landscapes", is not sufficient to protect those objects currently given protection under the *Provincial Parks Act*.

We are also concerned that the wording "or for any combination of those purposes" within section 20(3) opens the door to the possibility of tourism being given priority over the preservation and protection of natural areas. We suggest that the wording of this subsection be clarified to indicate that this wording relates directly to "opportunities for outdoor recreation, tourism or appreciation of Alberta's natural heritage" and will not take precedence over preservation and protection.

Recommendation 1 on section 20(3): We reiterate our recommendation above to amend section 20(3) by replacing "natural landscapes" with "natural heritage" (with the inclusion of "wildlfe"). This would operate to address our concern about the protection of objects of significance within provincial parks, as discussed above.

Recommendation 2: Amend section 20(3) by removing the current wording and replacing it with the following:

> ***Provincial parks are established to ensure the preservation and protection of natural heritage, while providing opportunities for***

(a) outdoor recreation,

(b) tourism,

(c) appreciation of Alberta's natural heritage, or

(d) any combination of (a) – (c),

that are dependent on and compatible with the protection of the environment.

20(4): Heritage rangelands

Section 20(4) establishes the "heritage rangeland" designation, which is intended to "ensure the preservation and protection of natural landscapes that are representative of Alberta's prairies, using grazing to maintain the grassland ecology".

This is a totally new class of designation, and we find that it is not easily comparable to any of the protected areas designations that currently exist under the *Wilderness Areas, Ecological Reserves and Natural Areas Act*, the *Willmore Wilderness Park Act*, and the *Provincial Parks Act*. Although we do not object to this category of designation, in our view it is critical that Government not act inconsistent with the public trust under which it holds these important lands. If these public lands are to be included in the category of Alberta's protected areas, then they must be protected for the benefit of all Albertans, and not to entrench private interests in our public lands. We repeat our comments under section 7 of the NHA that it is of particular importance that this designation not be used to strong arm closure to the current controversy regarding grazing lessees rights to control access to public lands. Moreover, the designation should not entrench and extend grazing lessees rights in any manner inconsistent with the public trust under which the Government holds these lands. In exchange for more secure tenure (under NHA clause 80 (1.1) (a) and (b) potential 30 year leases instead of current standard 10 year leases) the designation must require that the public have reasonable access to Heritage Rangelands. We recommend this be done by way of a Heritage Rangeland Management Plan. (S*ee* our recommendation under section 16).

Recommendation on section 20 regarding Heritage Rangelands: Amend subparagraph 20(4) to delete the "." at the end and to add, "and to provide reasonable opportunities for outdoor recreation consistent with these purposes".

20(5): Recreation areas

Section 20(5) establishes the "recreation area" designation, the intent of which is stated in that section:

> (a) to ensure the preservation and protection of sites of local interest,
>
> (b) to provide access for outdoor recreation to lakes, rivers, reservoirs and adjacent land belonging to the Crown, and
>
> (c) to support outdoor recreation and tourism,
>
> or for any combination of those purposes.

This new designation is relatively consistent with the existing recreation area designation created under the *Provincial Parks Act*. Section 3 of that Act provides that recreation areas are intended to facilitate the use and enjoyment of outdoor recreation. We note, however, as mentioned above, the addition of the tourism purpose within this designation. Tourism is not explicitly mentioned in section 3 of the *Provincial Parks Act*, and we believe that the wording of section 20(5) creates the potential for recreation areas to be used for a much broader range of activities beyond outdoor recreation.

As well, we note that the NHA does not provide a process for determining or identifying "sites of local interest" for designation as recreation areas. Consideration should be given to establishing a process for identifying or nominating such sites within either the NHA or regulations.

Recommendation on section 20, Recreation Areas: Establish a process within either the NHA or the regulations for identification or nomination of sites of local interest for designation as recreation areas.

21: Designations of areas and zones

Introduction

This section deals with the designation of land within the five classes of designated areas created by section 20, and with the designation of special preservation and special use zones within those designated areas. As well, section 20 also deals with maintaining the land base of designated areas in instances of removal of land or cancellation of designation.

21(1) and (5): Designations

These subsections deal specifically with the designation of land as designated areas. Section 21(5) provides that land belonging to the Crown

or land that is the subject of an agreement giving the Crown the right to designate it may be designated as an area under the NHA. This goes beyond what is provided in the existing statutes, as those allow for designation of public land only, although the *Provincial Parks Act* provides that land leased by the Crown may be designated as a provincial park or recreation area. We commend the addition of the ability to designate non-Crown land that is the subject of an agreement allowing it to be designated, as this will provide greater flexibility in designating and protecting special regions of Alberta.

Section 21(1) provides that the Lieutenant Governor in Council may designate land that falls within the scope of section 21(5) within any of the five classifications set out in section 20. This is consistent with the methods of designation of all existing types of designated areas other than wilderness areas and the Willmore Wilderness Park.

Wilderness areas are designated in the schedule to the *Wilderness Areas, Ecological Reserves and Natural Areas Act*. In order to change these areas, delete them or add other wilderness areas, amendments must be made to that Act.

Willmore Wilderness Park was created by the *Willmore Wilderness Park Act*, and is described in the schedule to that Act. Section 2(2) of that Act provides that the area of the park can be increased or decreased by the Lieutenant Governor in Council. However, a specific method for changing the park's boundaries is not set out in the Act, so it is unclear whether it would be necessary to amend the Act to change the boundaries, or if the Lieutenant Governor in Council could do so by order in council.

Willmore Wilderness Park and the three existing wilderness areas are currently the most protected areas in Alberta. Under the NHA, ecological reserves will be the most protected areas. As mentioned above, the Lieutenant Governor in Council, rather than within the statute itself will designate ecological reserves. We feel that the need to protect Alberta's most sensitive and significant natural areas is no less important now than it was at the time that Willmore Wilderness Park and the three wilderness areas were created.

Recommendation on section 21: Ecological reserves, as the most protected designated areas under the NHA, should be designated by the statute rather than by the Lieutenant Governor in Council. This could be achieved by adding a new section providing that ecological reserves are those areas listed in a schedule to the Act. The schedule would list all ecological reserves designated under the NHA,

including their detailed legal descriptions, similar to the designation of the three existing wilderness areas under the* Wilderness Areas, Ecological Reserves and Natural Areas Act *and Willmore Wilderness Park under the* Willmore Wilderness Park Act*.

As well, we recommend that the existing areas designated for Willmore Wilderness Park, Ghost River Wilderness Area, Siffleur Wilderness Area and White Goat Wilderness Area be continued by their specific designation within the NHA, preferably as a new wilderness category in order to continue their status as the most protected areas in Alberta. (See our recommendation on subsection 20(2))

21(2): Special Preservation Zones

Section 21(2) enables the Lieutenant Governor in Council to designate as special preservation zones portions of wildland parks, provincial parks or heritage rangelands that meet specific conditions set out in that subsection related to unique and significant features that require special protection. This is a new provision that does not have an equivalent in any of the *Wilderness Areas, Ecological Reserves and Natural Areas Act*, the *Willmore Wilderness Park Act*, or the *Provincial Parks Act*.

We commend the addition of the ability to provide greater protection for special features within designated areas; however, we question why this ability is not extended to apply to features that may exist within recreation areas. Given that recreation areas can be designated to "ensure the preservation and protection of sites of local interest"[4] and not solely for recreational purposes, it is possible that these areas could contain unique and significant features that would require special protection.

Recommendation on 21(2): Amend by deleting "or heritage rangeland", and by inserting", heritage rangeland or recreation zone" after "provincial park".

21(3): Special use zones

Section 21(3) provides for the designation of special use zones in accordance with section 24(3). This is a new provision that allows for transition into the new provincial park classification under the NHA of certain existing developments. We agree that some transitional provision is necessary to deal with existing developments that will be affected by the NHA. Our more detailed comments on the substance of section 24(3) follow in later portions of this brief.

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[4] *Natural Heritage Act*, Bill 15, section 20(5)(a)

21(4): Removing, canceling land from designation

Section 21(4) deals with instances of removal of land from designated areas and the cancellation of designations. It states:

> Where an ecological reserve, wildland park, provincial park or heritage rangeland has land removed from it or where its designation as such is cancelled, the Lieutenant Governor in Council shall add equivalent land of equal or higher quality to the overall size of the land base of the areas of those 4 kinds taken together.

It is apparent to us that this subsection is intended to maintain a constant minimum area of land included in the four designation classes of ecological reserves, wildland parks, provincial parks and heritage rangelands. While we find it commendable that the NHA seeks to maintain this standard, we find that section 21(4) is drafted in an unclear and confusing manner.

In particular, the term "equivalent land of equal or higher quality" is quite ambiguous and could be interpreted in any of a number of ways. For example, "equivalent land" could be taken to mean land that would be classed in the same designation as the land it is replacing, land that is the same area as the land it is replacing, land that represents the same ecoregion as the land it is replacing, or any of a number of other interpretations. The term "equal and higher quality" could also be interpreted in a variety of ways.

We are concerned that where a designation is cancelled or has land removed from it, section 21(4) enables its replacement with a designation that offers lesser protection. We suggest that section 21(4) be amended to require that where a designation is cancelled or has land removed from it, such land be replaced with land of the same area and within the same class of designation. For example, if land is removed from an ecological reserve, it should be replaced by designating other land of an equal area as an ecological reserve. This is particularly important for those designations that give the greatest level of protection.

Recommendation on section 21(4): Amend by removing the current wording and replacing it with two subsections:

> ***Where an ecological reserve has land removed from it or where its designation as such is cancelled, this Act shall be amended to designate land of an equal size as an ecological reserve.***
>
> ***Where a wildland park, provincial park or heritage rangeland has land removed from it or***

where its designation as such is cancelled, the Lieutenant Governor in Council shall designate land of an equal size as the same type of designation.

22: Public notice and consultation

This section establishes requirements for public notice of certain proposals, including designation, increases or decreases in the size of designated areas, name changes for designated areas, and the cancellation of designations.

22(1): Notice for designations

Section 22(1) sets out the instances related to designation matters in which the Director is required to provide public notice. We feel that the instances that are listed in this subsection and the exceptions are reasonable. Given that the existing legislation (*Wilderness Areas, Ecological Reserves and Natural Areas Act, Provincial Parks Act* and *Willmore Wilderness Park Act*) only provides for public notice in relation to the establishment, cancellation or alteration of area of ecological reserves, we feel that it is an improvement that notice requirements in the NHA have been extended to a wider range of designations. However, we question why the public notice requirement does not apply to recreation areas. Conceivably, there may be situations where the public may have valid concerns or comments that they wish to air in relation to designation matters for recreation areas.

22(2): Other notice

Section 22(2) sets out the requirements that must be met by the Director when providing public notice in the instances listed in section 22(1). These requirements are essentially the same as those set out in section 3.1(3) of the *Wilderness Areas, Ecological Reserves and Natural Areas Act*. While we feel that the notice requirements are reasonable, we are concerned that there are no specific time lines related to notice where there will be a public hearing or meeting (see section 22(2)(d)). In such instances, it is important that members of the public be given an adequate notice period, to allow them to prepare their positions and any materials they may wish to present, particularly in the case of public hearings.

As well, the public notice should include a location where members of the public can obtain further information and review documents about the proposed action that is the subject of the notice.

Recommendations on section 22(2):

Amend 22(2)(d) by adding "be published at least 30 days before the date of the public hearing or meeting, and" after "to be held,"

Amend section 22(2) by adding clause (c.1) "state the locations where information about the action proposed may be obtained or is available for public disclosure".

General comments on section 22, public notice and consultation

We find that section 22 is somewhat lacking in context, as it refers in subsection (1) to proposals, but the other designation provisions do not indicate who has responsibility for putting forward these proposals or a process for doing so. Section 3.1 of the *Wilderness Areas, Ecological Reserves and Natural Areas Act*, the predecessor of section 22 NHA, could be interpreted within the broader context of that Act, which established the Advisory Committee on Wilderness Areas and Ecological Reserves in section 2. The Advisory Committee, made up of 6 government employees and 6 members of the public, can hear and consider requests from the public about wilderness areas and ecological reserves, and make recommendations to the Minister regarding the establishment of these areas and the addition or withdrawal of land for these areas, as well as the making of regulations for these areas.[5] This provides additional means for members of the public to become involved in the designation of protected areas and to put forward areas to be considered for designation. As well, Advisory Committee recommendations are required to be made public within the Legislative Assembly[6], which offers another means of making relevant information available to the public.

In contrast, the NHA is silent on how such proposals will be formulated. We believe that the establishment under the NHA of an advisory committee similar to that found in the *Wilderness Areas, Ecological Reserves and Natural Areas Act* would offer a means of productive and meaningful public consultation, and provide a context within which proposals related to designation matters could be generated.

We are also concerned that section 22, while titled "Public notice and consultation", does not appear to directly address the matter of public consultation. Although section 22 requires the Director to provide public

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[5] *Wilderness Areas, Ecological Reserves and Natural Areas Act*, RSA 1980, c. W-8, section 2(7).
[6] *Ibid.*, section 2(9).

notice, it does not explicitly provide a means by which members of the public can provide their comments on the proposed actions that are referred to in public notices, aside from referring in section 22(2)(d) to the notice requirements "if a public hearing or meeting is to be held". There are no provisions that mandate when a public hearing or meeting would be held about a proposed action referred to in section 22(1) or how members of the public can provide input to Alberta Environmental Protection regarding a proposed action. Failure to provide a means of public consultation and participation renders the requirement to provide public notice a rather meaningless paper exercise.

With respect to public notice and participation generally, we had suggested in our previous submission to Alberta Environmental Protection on the proposed policy foundation for the NHA that public notice and participation should be included in relation to the following matters:

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

We note that public consultation has been included in section 18 in relation to management plans. However, we are concerned that there are no public notice or consultation requirements related to dispositions within designated areas. Given the potential effect that dispositions can have on designated areas, we feel it is extremely important that a process of public notice and consultation be included within the process of granting and modifying those dispositions. The balance of our comments related to dispositions follow later in this paper.

Recommendations: Amend the NHA to include a provision creating an Advisory Committee similar to the Advisory Committee on Wilderness Areas and Ecological Reserves established by section 2 of the* Wilderness Areas, Ecological Reserves and Natural Areas Act*.

This committee should be responsible for hearing and considering public requests related to designation matters under the NHA and for making recommendations to the Minister regarding the designation of new areas, the addition of land to or withdrawal of land from designated areas, and the making of regulations related to designated areas. The Minister should be required to refer committee recommendations to the Lieutenant Governor in Council, and committee recommendations should be

made public through their presentation in the Legislative Assembly.

Section 22 should include provisions allowing members of the public to provide written comments on proposed actions to the Director. The Director should be required to provide these written comments to the Lieutenant Governor in Council, and the Lieutenant Governor in Council should be required to take the comments into consideration in undertaking a proposed action.

Part 3, which deals with land use, should be amended to include requirements for public notice and consultation in relation to the granting and modification of dispositions.

PART 3 – Land Use

24: Townsites, cottage sub-divisions and commercial tourism facilities

Comments

The objective of this provision is commendable; that is to limit cottage and commercial tourism development to that which already exists under predecessor legislation. However, we have the following comments and suggestions arising in respect to the transition between the provincial parks and recreation areas under the *Provincial Parks Act* and areas under the NHA.

In reviewing section 24(1), we are assuming that there are currently, as a matter of fact, no cottage subdivisions, townsites or commercial tourism facilities in any areas other than provincial parks and recreation areas. This question arises, in particular, with respect to wildland parks under the *Provincial Parks Act* and regulations. If there are such developments, we believe that they should be addressed specifically in section 24(2).

Further, with respect to section 24(1), where existing developments are continued under the NHA, we think that it would be preferable to limit that continuation to those developments that were "lawfully developed". This mirrors the wording in section 24(2) regarding the establishment of special use zones and ensures that prescriptive rights are not created for "illegal" developments.

The major controversy with this section will arise from the determination of the boundaries of special use zones under section 24(2) since there are

no existing boundaries to carry forward into the NHA and there is no express mechanism for any form of public consultation with respect to the process for setting the boundaries. The criteria in the section for establishing boundaries is imprecise and will inevitably give rise to disputes.

Two particular provisions are problematic, both of which are found in section 24(2)(b). According to the section, areas are to be included in a special use zone where "commitments were in place by the Crown to allow future development". This is vague. What constitutes a "commitment" under this section? Is it a formal binding agreement or a vague promise? Is it public? This provision is too uncertain to either give direction to those drawing the boundaries or those concerned with future development.

The second provision of concern is the part of section 24(2)(b) which states that a special use zone is to include a location where "the management plan for the provincial park allowed for further development". First, it should be noted that there is no provision in the *Provincial Parks Act* for management plans. Section13(1)(d) of that Act permits the Minister to, by order, establish zones to regulate the uses of land and resources and water within the provincial park or recreation area. For certainty, reference in section 24(2)(b) should be to zones established under the *Provincial Parks Act* rather than to management plans; existing management plans have no statutory basis and can be out of date.

Similar concerns arise with respect to a designation under section 24(2)(c).

There is no obvious explanation as to why "recreation areas" are not referenced in section 24(3)(b). Either they should be included as areas where no new commercial tourism facility will be allowed or they should be referred to in respect to special use zones under section 24(2).

Recommendations on section 24: Amend section 24(1) to include the word "lawfully" before the word "existed".

Amend section 24(2)(b) by deleting the phrase: "or commitments were in place by the Crown to allow future development". (A similar amendment is required in section 24(2)(c).)

Amend section 24(2)(b) by deleting the phrase: "or the management plan for the provincial park allowed for further development" and replace it with "the zones established by Ministerial order allowed for

future development". (A similar amendment is required in section 24(2)(c).)

Amend section 24(3)(c) by adding "recreation area" after "provincial park".

10, 25, 26 and 27: Permits and dispositions

These sections are the some of the most important in the Bill. They set out what industrial or other land disturbing activities may be allowed in protected areas. As these sections work in concert with each other, this part of our comments deals with them together.

10: Permits

These are addressed in section 10, which reads:

> Permits
> 10(1) The Director may, in accordance with the regulations, issue an instrument known as a permit that is not a disposition but that authorizes the activity specified in it, being an activity that would or might otherwise be contrary to this Act.
> [Emphasis added]
>
> (2) Permits are to be classified according to the prescribed kinds and issued in the form and manner determined by the Director.
>
> (3) The Director may amend the terms or conditions of a permit already issued, and may recall the permit for the purpose of updating it.
>
> (4) A permit may not be transferred.
>
> (5) The right to undertake the activity referred to in subsection (1) is subject to any actions taken by the Director or a conservation officer pursuant to powers given them by this Act.
>
> (6) The Director may cancel or suspend a permit
> (a) at the request of the permit holder or in an emergency,
> (b) if the Director considers that the holder has contravened a provision of this Act or, in an area, a provision of any other Act,
> (c) if the area or a part of the area to which the permit relates is closed, or
> (d) if the activity allowed by the permit has resulted or could result in a significant adverse impact on the environment. [7].

[7] Note that the last provision is discretionary, so the Director does not have to do anything even if a permit causes significant adverse effect on the environment.

It is important to note that what might be permitted could cause substantial impact on the environment including wildlife habitat and other biodiversity values. And what is most remarkable about this section is that it allows permits to be issued *even though they might be contrary to the Act*. This means that Bill 15 could allow nearly any kind of environmental destruction. It doesn't matter what the Act says about the category of protection, permitted or prohibited uses and so on. Bill 15 is written so that permits trump them all. All that is required is a Minister's regulation that allows activities to be permitted. So, the Minister has the right, in effect, to override any protective measures in the Act by allowing a use or activity by permit. As the following discussion on section 26 demonstrates the permit could be a useful tool to get around so-called prohibitions on development.

How Section 10 changes existing legislation regarding permitted activities in protected areas

Wilderness Areas, Ecological Reserves

Nothing in the *Wilderness Areas Ecological Reserves and Natural Areas Act* (R.S.A. 1980, C.W-8) would allow any such general permitting. Indeed, as seen below, this Act prohibits all potentially land disturbing dispositions or other statutorily authorized activities in wilderness areas, and prohibits most in ecological areas.

Natural Areas

Even though more industrial and related activity potentially may take place in a Natural Area than in a Wilderness Area or Ecological Reserve, nothing in the *Wilderness Areas, Ecological Reserves and Natural Areas Act* would allow such general permitting.

Provincial Parks and Recreation Areas

Although the *Provincial Parks Act* does not specifically limit the kinds of activities that may take place in a provincial park or recreation area, except as may be implied by the purposes, nothing in the Act would allow activities not consistent with the purposes of the Act.

Willmore Wilderness Act

Nothing in the *Willmore Wilderness Act* would allow activities not otherwise consistent with the Act.

Recommendation: We recommend that either (a) the legislation set out just what rights may be issued in respect of each category thus eliminating the open-ended discretion of the Minister (preferred recommendation) or (b) if the legislation must give discretion to issue permits then the legislation must require that any permits be consistent with the Act

and not allow any activities that would otherwise be prohibited by the Act.

26: Prohibited and permitted "dispositions" and other interests

Introduction

This section prohibits, subject to noted exceptions, the Crown from granting or renewing dispositions or other industrial or agricultural interests, or access in respect of such interests, in an "area" meaning an ecological reserve, wildland park, provincial park, heritage rangeland or recreation area.

The exceptions are numerous. Each exception is dealt with separately to demonstrate the overwhelming amount of activity that this Bill allows in so-called protected areas. Prior to discussing the exceptions, we must comment on how the Bill uses the term "disposition".

"Disposition" in Bill 15

The NHA defines "disposition" in a way more narrow that that term is defined in other legislation. For the purposes of the NHA, "disposition" refers only to property interests, whereas under other legislation, for example, the *Mines and Minerals Act*, the *Public Lands Act* and the *Forests Act* "disposition" may refer to any number of interests or rights in land even though they do not amount to a property interest. (*See footnote for explanation)*[8] Accordingly, it must be assumed:

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[8] Bill 15 defines "disposition" to mean "an instrument under any law by which an estate or interest in land belonging to the Crown is, was or would be granted or conveyed by or on behalf of the Crown". An "estate" or "interest" in land means a property interest. Accordingly, the Bill 15 definition applies only to property interests and would not apply to personal rights only, such as a permit or license that grants no rights to the land itself.

By contrast, The *Mines and Minerals Act* (R.S.A. 1980, C. M-15) defines "disposition" to mean:

> 1(f) "disposition" means a grant, a transfer referred to in section12 or an agreement;
>
> (a) "agreement" means an instrument issued pursuant to this Act or the former Act that grants rights in respect of a mineral, but does not include a notification, a transfer referred to in section 12, a unit agreement or a contract under section 9 Transfer
>
> 12(1) When a person is entitled to receive from the Crown in right of Alberta a title for an estate in a mineral for which a

a) Where the Bill refers to dispositions under other legislation, the Bill means dispositions as defined under that legislation, whether or not the right in question is a property right and therefore would qualify as a disposition under Bill 15.
b) Where the Bill specifically refers to dispositions under the NHA then the Bill means estates or interests in land issued or granted in respect of an area subject to the Act.

> certificate of title is registered under the Land Titles Act, a transfer shall be issued by the Minister.

As the above sections illustrate, for the purposes of the *Mines and Minerals Act* the term "disposition" is very broad and refers to nearly any kind of right that can be granted in respect of a mineral.

The *Public Lands Act* (R.S.A. 1980, c. P-30) defines "disposition" to mean:

> 1(e) "disposition" means every instrument executed pursuant to this Act, the former Act, The Provincial Lands Act or the Dominion Lands Act (Canada) whereby (i) any estate or interest in land of the Crown, or (ii) any other right or privilege in respect of land of the Crown that is not an estate or interest in land, is or has been granted or conveyed by the Crown to any person and, without derogating from the generality of subclauses (i) and (ii),includes a conveyance, assurance, sale, lease, licence, permit, contract or agreement made, entered into or issued pursuant to any of those Acts, but does not include a grant.

The *Public Lands Act* defines "grant" (which is not a disposition) to mean:

> (h) "grant" means letters patent under the Great Seal of Canada or a notification issued pursuant to The Provincial Lands Act, the former Actor this Act;

Accordingly, under the *Public Lands Act* a disposition need not involve a grant or transfer of a property right.

The *Forests Act* (R.S.A. 1980, C. F-18) defines a "timber disposition" to mean: a forest management agreement, timber license or timber permit (definition (l)). S. 28(1) states that a holders of a timber permit, license or quota… "do not acquire any right or interest in the forest land."

Discussion of Exceptions

1. Under section 26 the Crown may grant or renew an interest:

> 1 a) with respect to enabling resource extraction or industrial activity or access to it,
>
> (i) a renewal of a disposition under the *Mines and Minerals Act*, or of a prescribed disposition enabling an activity referred to in section 23(c)(ii), to which section 25 originally applied,
>
> (ii) a prescribed disposition to provide access to land under a disposition referred to in subclause (i) or to privately owned land or privately owned minerals in or surrounded by an area,
>
> (iii) a disposition under and within the meaning of the *Mines and Minerals Act* that conveys no rights relating to the surface of the land, or
>
> (iv) a disposition in a recreation area allowing prescribed activity that has no potential for significant impact on people's recreational use and enjoyment of the area,
>
> and
>
> b) with respect to enabling activity other than resource extraction or industrial activity or access to it,
>
> (i) a prescribed disposition for the purposes of renewing a disposition to which section 25 originally applied,
>
> (ii) any other prescribed disposition in respect of land in a wildland park, provincial park, heritage rangeland or recreation area, or
>
> (iii) a grazing lease under Part 4 of the *Public Lands Act* in a heritage rangeland or another prescribed area where the lease existed immediately before the area was designated.

Comment on 26(1)(a)

What does section 26(1)(a) mean? It allows "resource extraction or industrial activity or access" in respect of the matters under (i) – (iv). Section 23(c) of the Bill defines "resource extraction or industrial activity" to include:

> (i) any activity related to mining, quarrying, petroleum or natural gas production, geological or geophysical exploration or commercial logging,
>
> (ii) construction of a railway, aircraft landing strip or pipeline corridor or a hydro development or

> transmission line within the meaning of the *Hydro and Electric Energy Act*, and
> (iii) construction of a major water management structure or dam;

Focus on 26(a)(i)

Accordingly, subclause (i) then, first, would allow any of the above mentioned activities or constructions to them in relation to any existing dispositions under the *Mines and Minerals Act* (R.S.A. 1980 C. M-15). Note that these *dispositions* would be as defined by the *Mines and Minerals Act* and therefore need not necessarily amount to a property right. As well, these existing dispositions could relate to any mineral defined under that Act, and would include rights in relation to:

> gold, silver, uranium, platinum, pitchblende, radium, precious stones, copper, iron, tin, zinc, asbestos, salts, sulphur, petroleum, oil, asphalt, bituminous sands, oil sands, natural gas, coal, anhydrite, barite, bauxite, bentonite, diatomite, dolomite, epsomite,granite, gypsum, limestone, marble, mica, mirabilite, potash, quartz rock,rock phosphate, sandstone, serpentine, shale, slate, talc, thenardite, trona, volcanic ash, sand, gravel, clay and marl

Subclause (a) (i) would also allow activities and constructions in relation to existing rights regarding construction of a railway, aircraft landing strip or pipeline corridor or a hydro development or transmission line within the meaning of the *Hydro and Electric Energy Act.*

Recommendation on 26(1)(a)(i): Prior to taking any further action toward passing this Bill, the Government should make public what existing rights there are in respect of areas so that the public can evaluate the potential effect on protected areas of 26(1)(a)(i).

Focus on 26(1)(a)(ii)

This clause would allow any "prescribed disposition to provide access to land under a disposition referred to in subclause (i) or to privately owned land or privately owned minerals in or surrounded by an area". "Prescribed" means by ministerial regulation under s.78.

It is entirely unclear what such a disposition would amount to. Does it give the Minister the right to decide what kind of land disturbances may occur in protected areas in order to allow any existing rights falling under 26(1)(a)(i) to be exercized? Does the Surface Rights Board have any role? The Energy and Utilities Board? Why should protected areas serve as roads to private lands or privately owned mineral rights?

Recommendation on 26(1)(a)(ii): Delete it.

Focus on 26(1)(a)(iii)

This clause would allow "a disposition under and within the meaning of the *Mines and Minerals Act* that conveys no rights relating to the surface of the land". As mentioned above there is a range of interests that could constitute a disposition under this Act relating to any of the numerous mines and minerals subject of the Act.

Clause 26(1)(a)(iii) is perhaps misleading, in that most dispositions under the *Mines and Minerals Act* would be subsurface interests that do not give rights to the surface. Although a person obtains a subsurface mineral right pursuant to the *Mines and Minerals Act* (and other legislation), surface rights to develop the mineral rights usually involves two steps. The first takes the form of an exploration permit under the *Exploration Regulation* to enable a holder of a mineral right to explore for the presence of the mineral. If the mineral presence appears worth pursuing, the holder then must obtain a right to the surface of the land containing the mineral in order to develop the right. The *Surface Rights Act* (s.12) states that no one may enter onto the surface of land to develop mineral rights without the consent of the owner and the occupant of the surface of the land, or alternatively, by right of entry order of the Surface Rights Board. Consent normally would take the form of a lease, but it does not have to.

Back to Bill 15, an interesting question is, why would the NHA allow a person to obtain sub-surface mineral rights that do not include a surface right? There are three possibilities:

(a) The NHA assumes that people are not too bright and will purchase mineral rights that they will never be able to develop because the NHA prohibits new development;
(b) The NHA contemplates only development that does not require surface access (e.g. some directional drilling);
(c) The NHA allows for development of new sub-surface mineral rights and only has the appearance of prohibiting such development.

Unfortunately for protected areas, possibility (3) appears to be the reality. We assume that (a) cannot be the correct possibility. Regarding (b), there is nothing in the Act that limits development to a non-surface disturbing type. However, the Bill does give the Minister free hand to allow nearly any kind of activity on any area the Bill covers. Such activity could involve surface access through a section 10 permit. (*See* discussion on section 10 permits above). In other words, even though the Bill might prohibit a disposition (property interest) to allow surface access to develop new sub-surface rights, with an appropriate Ministerial regulation a

Director could issue a permit for surface access without running afoul of the Act. Accordingly, even though the Bill gives the illusion of prohibiting new mineral and related industrial development, it does not.

Recommendation on 26(1)(a)(iii): This clause is unacceptable. If the intention of the legislation is to exclude new resource and industrial development then there is no point in allowing new sub-surface interests to be granted. Delete clause 26(1)(a)(iii).

Focus on 26(1)(a)(iv)

This clause would allow "a disposition in a recreation area allowing prescribed activity that has no potential for significant impact on people's recreational use and enjoyment of the area". It is true that under the *Provincial Parks Act* recreation areas currently are not subject to any limitations on dispositions or other interests except as may be implied from the purposes of the Act or set out in regulation. Nevertheless, clause 26(1)(a)(iv) is worse than the current situation in that it would allow dispositions even though they are inconsistent with recreation. They only must not "significantly impact" recreational use and enjoyment. This is so open-ended that it could admit of nearly any kind of development. The reason is that it will be in the discretion of whatever Crown delegate is administering this clause as to what constitutes a "significant impact on people's recreational use and enjoyment". Does clear-cutting, livestock grazing, oil and gas development, or coal mining constitute a significant impact on people's recreational use and enjoyment? To a court, all that matters is whether the Crown's decision in deciding whether or not to issue a disposition was whether the Crown acted "reasonably". The standard used by the court for acting "reasonably" is pretty low. Provided that a statutory delegate did not act so that a reasonable person could not dream that the act was within jurisdiction,[9] a court will not declare the act to be beyond what a statute allows.

Recommendation on 26(1)(a)(iv): Delete the word "significant."

Comment on 26(1)(b)

All of the clauses under subparagraph 26(1)(b) apply to allowable activities "other than resource extraction or industrial activity or access to it". Given the definition of "resource extraction or industrial activity" (see Comment on 26(1)(a)) these would be any activities other than those under the Mines and Minerals Act or commercial logging. The Bill does not define "commercial logging" so presumably, if an issue surrounds the use of that word the Minster may define it by regulation pursuant to subsection 1(2).

It would not be possible to state all of the potential allowable activities that might fall under 26(1)(b). However, it is safe to say

[9] This is the standard set forth in *Reese v. Alberta*, 7 CELR (N.S.) at 93) (Alta. Q.B.)

that they would include any disposition possible under the *Public Lands Act, Special Areas Act, Forests Reserves Act* and *Wildlife Act* (such as agricultural permits, leases, and other rights, clay, marl, sand, gravel leases, recreational leases, tramlines, hunting and fishing rights, etc., and rights under the *Forest Act* that do not amount to "commercial logging").

Recommendation on 26(1)(b): The NHA should not include such a general disposition authorizing section. It should, at minimum, follow existing legislation in prohibiting dispositions in what are now Wilderness Areas, and with respect to other areas allowing only those dispositions in other areas that are entirely consistent with protection of the area given the purposes of the designation.

Focus on 26(1)(b)(i)and (ii)

Clause 26(1)(b)(i) would allow activities other than resource extraction, industrial activity or access relating to a "prescribed disposition for the purposes of renewing a disposition to which section 25 originally applied". Accordingly, this section applies to existing dispositions and other rights.

Clause 26(1)(b)(ii) would allow new prescribed dispositions other than resource extraction and industrial activities " … in respect of land in a wildland park, provincial park, heritage rangeland or recreation area".

Again, "prescribed" here means by Ministerial regulation. So, the Minister may decide what activities may be allowed.

Comment on 26(1)(b)(ii)

We object to these clauses in that any permitted dispositions should be set out in the legislation, and not be left to Ministerial discretion. Some of the dispositions that might be allowed under this clause could cause significant disturbance of protected areas. Moreover, as noted earlier, the proposed NHA Policy Document contemplates that existing wilderness areas and Willmore Wilderness Park will be reclassified as Wildland Provincial Parks. Clause 26(1)(b)(ii) has great potential to seriously erode protection by allowing dispositions not currently allowed in these areas under existing legislation.

Recommendation on 26(1)(b)(ii): Amend it to remove Ministerial discretion so that all permitted dispositions are set out in the legislation.

Focus on 26(1)(b)(iii)

This clause would allow ".. a grazing lease under Part 4 of the *Public Lands Act* in a heritage rangeland or another prescribed area where the lease existed immediately before the area was designated". *See* comments and recommendations on sections 7, 16 and 20 regarding the Heritage Rangeland designation.

How Section 26 would change existing legislation regarding permitted dispositions and other interests in protected areas

Current Protection for Wilderness Areas and Ecological Reserves

Regarding existing rights, subject to certain exceptions pertaining to ecological reserves, section 6 of the *Wilderness Areas, Ecological Reserves and Natural Areas Act* requires the Minister to cancel, withdraw or terminate, as soon as practicable any:

6(a) a disposition granted under the Public Lands Act and the regulations under that Act,
(b) a lease, permit, easement or other disposition under the Special Areas Act and the regulations under that Act,
(c) a timber disposition as defined in the Forests Act,
(d) a surface disposition granted under any other Act or regulation, or
(e) a disposition as defined in the Mines and Minerals Act.

The exceptions, for ecological reserves are that the above does not apply:

> 6(2) … so as to require the Minister of Energy to withdraw, cancel or otherwise terminate an interest under a petroleum or natural gas disposition in an ecological reserve.

Under subsection 6(3) the Minster may permit the following interests to be continued or renewed in an ecological reserve, but only with the consent of the Minster of Environmental Protection:

> 6(3)(a) dispositions granted under the Public Lands Act or the Special Areas Act and the regulations under those Acts in connection with a petroleum or natural gas disposition made under the Mines and Minerals Act,
> (b) other dispositions granted under the Public Lands Act and the regulations under that Act,
> (c) leases, permits, easements and other dispositions under the Special Areas Act and the regulations under that Act,
> (d) timber licences and timber permits under the Forests Act, and
> (e) permits to graze livestock granted under the Forest Reserves Act and the regulations under that Act

Subject to section (6), section 7 of the Act prohibits any Crown delegate from granting any new dispositions in a wilderness area. In other words, for wilderness areas, all existing interests must be cancelled as soon as possible

and no new interests may be granted. For ecological reserves, section 7 prohibits any new dispositions for any of the matters mentioned under section 6, except for 6(d), *Mines and Mineral Act* dispositions.

Moreover, section 7 of the Act prohibits any other kind of right, permit etc. in either wilderness areas or ecological reserves other than specified above, and prohibits any "public work, road, railway, aircraft landing strip, helicopter base, structure or installation in a wilderness area or ecological reserve".

Current Protection for Willmore Wilderness

Section 4 of the *Willmore Wilderness Act* prohibits the conducting of any industrial activities whatsoever in the Park. Accordingly, even if there were any outstanding industrial dispositions when section 4 was enacted, they could not be exercized. Section 5 prohibits any dispositions under the *Public Lands Act*, *Forests Act*, *Mines and Minerals Act*, any disposition or other right for geophysical or geological exploration or for water conservation or hydro-electric power, or for any estate or interest in land under any other Act. The only exceptions are for trail riding or other outfitting, and insect control or "to assist in trapping".

Current Protection for Provincial Parks, Recreation Areas and Natural Areas

Save what may be implied from the purposes section, nothing in the *Provincial Parks Act* either specifically limits the kinds of activities that may occur, or limits dispositions in a provincial park, natural area or recreational area. Section 8 of the Act gives the Lieutenant Governor in Council (Cabinet) authority to make regulations restricting land activities and authorizing the Minster to make dispositions. However, nothing in the Act authorizes activities that may be inconsistent with the purposes of the legislation. Nothing in the Act specifically allows activities in a recreation area that could pose significant adverse effects on recreational use.

Graphic summaries of Alberta's protected areas, before and after the NHA

To better appreciate how the NHA will decrease protection for wilderness areas, ecological reserves, Willmore Wilderness Park, provincial parks, recreation areas and natural areas, the following pages summarize and map out differences. The summary is based on statements in the NHA Policy Document concerning reclassification.

Comparing protection of Wilderness Areas under Existing Legislation and under NHA

1. Under existing legislation Minister must terminate all *Mines and Minerals Act, Public Lands Act¸ Forests Act, Special Areas Act, and any other disposition giving an access right as soon as practicable* (s.6).

The NHA removes this protection under current legislation by specifically preserving all existing dispositions under any legislation (s.25).

2. Existing legislation does not permit any renewal of dispositions in a wilderness area.

The NHA removes this protection by permitting: (a) any non-resource or industrial dispositions to be renewed; (b) any *Mines and Minerals Act* dispositions to be renewed; and (c) any other dispositions prescribed by the Minster to allow railways, landing strips, pipeline, or transmission lines (s.26(a)(i).

3. Existing legislation prohibits any new dispositions, whatsoever in relation to wilderness areas(s.7).

The NHA removes this protection under existing legislation by permitting the following new dispositions in wildland parks: • Dispositions as prescribed by Minister to provide access to land under an existing *Mines and Minerals Act* disposition (presumably for resource extraction and development) (s.26(a)(ii)). • Disposition by the Crown to enable access to private lands or privately owned minerals in surrounding land (s.26 (a)(ii)). • Dispositions under the *Mines and Minerals Act* if they grant no surface rights (S.26 (a)(iii)). • Dispositions for other than resource extraction or industrial activity permissible as determined by Minister's regulation (s 26(b)(ii)).

4. Existing legislation does not allow any general permitting of activities that do not amount to dispositions.

The NHA removes this protection by allowing the Minster to pass regulations to enable Director to permit activities that are not dispositions (i.e. interests in land) even if the activities are contrary to the Act. (S.10).

Comparing protection of Ecological Reserves under Existing Legislation and under NHA

1. Under existing legislation, subject to noted exceptions, the Minister must terminate all *Mines and Minerals Act*, *Public Lands Act*¸ *Forests Act*, *Special Areas Act*, and any other disposition giving an access right as soon as practicable The exceptions are, with approval of the Minster of Environmental Protection, the Minster may continue and renew *Public Lands Act* or *Special Areas Act* dispositions relating to a petroleum and natural gas dispositions; other *Public Lands Act* dispositions, leases, permits and other dispositions under the *Special Areas Act*; timber licenses under the *Forests Act* and grazing permits under the *Forests Reserves Act*. (s. 6).

The NHA reduces this protection under current legislation by specifically preserving all existing dispositions under any legislation (s.25).

2. Existing legislation permits renewal only of the dispositions noted under 1 above, and then only with the Minster of Environmental Protection's consent.

The NHA reduces this protection by permitting any *Mines and Mineral Act* dispositions to be renewed, as well as any other dispositions prescribed by the Minster (26(b)(i).

3. Existing legislation prohibits any new dispositions, except under the *Mines and Minerals Act* (s.7).

The NHA reduces this protection under existing legislation by permitting *mines and Minerals Act* dispositions that carry no surface right, and the following new dispositions in ecological reserves:

- Dispositions by the Crown to enable access to private lands or privately owned minerals in surrounding land (s.26 (a)(ii).
- Dispositions for other than resource extraction or industrial activity permissible as determined by Minister's regulation (s 26(b)(ii)).

4. Existing legislation prohibits the construction etc. of any "public work, road, railway, aircraft landing strip, helicopter base, structure or installation in a … ecological reserve".

The NHA reduces this protection by specifically allowing renewals of dispositions for "construction of a railway, aircraft landing strip or pipeline corridor, hydro development or transmission line " (s.26(a)(i)).

Comparing protection of Willmore Wilderness Park under Existing Legislation and under NHA

1. Existing legislation prohibits any industrial activities whatsoever in the Park (s.4).

If there are currently are any industrial dispositions in the Park the NHA removes this protection under current legislation by specifically preserving all existing dispositions under any legislation (s.25).

2. Existing legislation does not permit any renewal of dispositions in a wilderness area.

The NHA removes this protection by permitting: (d) any non-resource or industrial dispositions to be renewed; (e) any *Mines and Mineral Act* dispositions to be renewed, and (f) any other dispositions prescribed by the Minster to allow railways, landing strips, pipeline, or transmission lines (s.26(a)(i).

3. Existing legislation prohibits any new dispositions, whatsoever in Willmore Wilderness Park (s.5).

The NHA removes this protection under existing legislation by permitting the following new dispositions in wildland parks: • Dispositions as prescribed by Minister to provide access to land under an existing *Mines and Minerals Act* disposition (presumably for resource extraction and development) (s.26(a)(ii). • Disposition by the Crown to enable access to private lands or privately owned minerals in surrounding land (s.26 (a)(ii). • Dispositions under the *Mines and Minerals Act* if they grant no surface rights. (S.26 (a)(iii)).

- Dispositions for other than resource extraction or industrial activity permissible as determined by Minister's regulation (s 26(b)(ii)).

4. Existing legislation does not allow any general permitting of activities that do not amount to dispositions.

The NHA removes this protection by allowing the Minster to pass regulations to enable Director to permit activities that are not dispositions (i.e. interests in land) even where not consistent with the Act

Comparing protection of Provincial Parks, Recreation Areas and Natural Areas Existing Legislation and under NHA

1. Existing legislation requires a Cabinet regulation to authorize activities and dispositions in these areas.

The NHA reduces protection by allowing the Minister to prescribe regulations. This removes the requirement for a larger discussion and debate regarding what activities and dispositions may occur in these areas.

2. Existing legislation does not provide for permitting of activities that are inconsistent with the Act.

The NHA allows the Minster to pass regulations to enable Director to permit activities that are not dispositions (i.e. interests in land) even where not consistent with the Act.

3. Existing legislation does not specifically allow dispositions in recreation areas that may have adverse effects on recreational use and enjoyment.

The NHA allows the Minster to prescribe by regulation allowable activities in recreation areas that have "no potential for significant impact on people's recreational use and enjoyment of the area". This implies that the Minster may allow activities and dispositions that have fairly substantial effects on recreational enjoyment and use.

General recommendation on section 26: Amend section 26 as required to ensure that the NHA does not diminish the degree of protection from actual and potential dispositions, permits and activities in respect of each existing category of protected area.

For example (among many), the NHA should have a wilderness category containing all of the prohibitions contained under current legislation and requirements to cancel or otherwise terminate dispositions as required under current legislation.

28: Improvements

Comments

Provisions in current legislation, specifically section 8 of the *Wilderness Areas, Ecological Reserves and Natural Areas Act* and *section* 44 of the *Dispositions Regulations* under the *Provincial Parks Act*, address some matters dealt with in this section. Specifically, *section* 8 of the *Wilderness Areas, Ecological Reserves and Natural Areas Act* prohibits, in a wilderness area or ecological reserve, construction, reconstruction, or addition of improvements or any other act that will alter or disturb the surface of land without the consent of the Minister. Section 44(3) of the *Provincial Parks Act* requires Ministerial approval before a holder of a summer cabin disposition constructs an extension or otherwise makes structural improvements or undertakes any other construction not referred to in the plans and specifications submitted with the application for the disposition.

Given that improvements can be authorized by a disposition or permit under the NHA, we question whether the same attention to the nature of the proposed construction or surface disturbance will be brought to the issue as has been the case with specific Ministerial approval or consents. We expect that considerable detail regarding the implementation of this provision will be included in the regulations under the NHA.

We are pleased to note that the possible fine for contravening this section, contained in section 66(2) of the NHA, is considerably higher than under the predecessor legislation.

29: Residence

Comments

We are pleased to see this express prohibition of residences in ecological reserves, wildland parks and heritage rangelands.

30: Activities under Wildlife Act

Comments

We agree that it is fair to continue, but not renew, existing licenses under the *Wildlife Act*. However, we are not as comfortable with section 30(2) which extends the same where licenses under the *Wildlife Act* were on sale immediately before the designation. The fact that licenses are on sale does not create rights and they should not be viewed as such.

Given that trapping (as well as hunting) is currently prohibited under section 8(1) of *Wilderness Areas, Ecological Reserves and Natural Areas Act*, it is appropriate that section 30(3)(a) prohibits the granting or renewing of a fur management license under the *Wildlife Act* in an ecological reserve.

Ss 30(3), (4) refer to management plans in existence at the time that the area was designated. As noted earlier, unlike the provisions in the NHA respecting management plans, in predecessor legislation, management plans are informal documents that are not created pursuant to statute. Accordingly, the status of existing management plans may be uncertain (ie they are draft) and they may be out of date. This will most certainly lead to confusion as to whether or not there are applicable management plans for any given area. This ought to be clarified.

Recommendations on section 30:

(a) Delete section 30(1)(2)

(b) Clarify what is meant by "management plans in existence when the area was designated".

31: Director's power to grant, amend, cancel, etc., dispositions

Comments

We read this section as simply designating the appropriate official to deal with dispositions. It should not create any new rights respecting dispositions that are not otherwise dealt with in the legislation. We offer the reminder that under this section, the Director (and his lawful delegates) is the statutory decision-maker and is legally responsible for any decisions made. It is noteworthy that these decisions are not assigned to the Minister.

PART 4– Visitor Use and Other Prohibitions and Restrictions

44: Travel other than on foot

Comments

Section 8(1) of the *Wilderness Areas, Ecological Reserves and Natural Areas Act* prohibits anyone from travelling in a wilderness area except on foot. This section links this limitation on human travel specifically to ecological reserves and special preservation zones only, although it can also apply in prescribed areas. We understand that existing wilderness areas will become wildland parks under the NHA; if this is indeed the case, existing wilderness areas will need the necessary prescription to maintain the same level of protection as they now have. It would be helpful if the government's intention regarding prescribed areas under this section were available for this discussion.

We also note that this prohibition does not exist in the *Wilderness Areas, Ecological Reserves and Natural Areas Act* with respect to ecological reserves; this provision is a welcome improvement.

45: Vehicles

Comments

The prohibition in *section* 45(1) against the possession of a motor vehicle or an off – highway vehicle in an ecological reserve is a stronger prohibition that the limits in section 8(1)(i) of *Wilderness Areas, Ecological Reserves and Natural Areas Act*. However, at the present time, in wilderness areas under the Act, section 8(1)(g), bringing in a motorized vehicle is prohibited. If wilderness areas are to be designated as wildland parks under the NHA, then the operation of off-highway vehicles, albeit on routes or trails, is a more intensive use of the area.

Recommendation: Delete "wildland park" from section 45(1)(2)(b).

46: Aircraft

Comments

At the present time under the *Wilderness Areas, Ecological Reserves and Natural Areas Act*, section 8(1)(d), landing an aircraft is prohibited in an ecological reserve or wilderness area. This section authorizes a permit to be issued in prescribed wildland parks (amongst others) for floatplanes to take off and land.

Recommendation on section 46: If wilderness parks are to be designated as wildland parks under the NHA, it is important that current wilderness parks are not prescribed under this section.

50: Weapons

Comments

The rules respecting the use or possession of weapons, other than in a special preservation zone, where they are prohibited, will be determined by the regulations. Accordingly, it is impossible to determine whether the restrictions in the current *Provincial Parks Act*, in section 46, will be carried forward into the NHA.

51: Hunting

Comments

At the present time, under the *Wilderness Areas, Ecological Reserves and Natural Areas Act* A, hunting is prohibited absolutely in ecological reserves and wilderness areas (section 8(1)(b)). This section would allow hunting in prescribed ecological reserves and wildland parks. We believe that hunting is inconsistent with the purposes of ecological reserves as described in s. 20(1) and should be prohibited. In addition, any existing wilderness areas that are continued as wildland parks should not be prescribed.

Recommendations: Delete "ecological reserve" from s. 51(b) and add "ecological reserve" to s. 51(a).

PART 5 - ENFORCEMENT

54 to 58: Enforcement Powers of Conservation Officers

Conservation officers are given broad powers to enforce the Bill by order:

- requiring information (s. 54(1)(a))
- stopping an activity (s. 54(1)(b))
- closing an area (s. 54(1)(c))
- prohibiting vehicles in an area (s. 54(1)(d))
- removing a person from an area (s. 54 (1)(e))
- to produce a permit (54(1)(f))
- disposing of abandoned things

In addition they may:

- take emergency measures if there is danger to life, public safety or the environment (s.54(5))

- take measures to carry out an order if the person ordered does not comply (s. 54(7))
- order the production of visible objects (s.55(2)(a))
- order the production of hidden objects of reasonable and probable grounds exist (s.55(2)(b)
- may enter places other than dwellings without a warrant if there is reason to believe there may be unlawful objects (s.56)
- search places other than a dwelling without a warrant if there are reasonable and probable grounds that there is evidence of an offense (s.57(1))
- enter a dwelling if in immediate pursuit of a person believed to have committed an offense (s. 57(2))
- seize anything in plain view without a warrant if it is evidence of an offence and delay in waiting for a warrant could result in its loss (s.58)

All of these powers are reasonable.

59 and 60: Enforcement Powers of Director

The powers of the Director to enforce the Bill seem reasonable.

PART 6 - OFFENCES, PENALTIES AND CIVIL PROCEEDINGS

61 to 70: Offenses and Penalties

These provisions resemble those found in the *Environmental Protection and Enhancement Act* and include the same penalty maximums. They appear reasonable.

71 to 76: Civil Proceedings

Administrative penalties as now exist in other legislation are provided for. This is reasonable.

PART 7 - MISCELLANEOUS PROVISIONS

77: Service

The service of documents provisions are reasonable.

78: Regulations

The Minister is given very broad powers to make regulations dealing with numerous issues raised by the Bill.

79: Transitional Provisions

This section automatically continues permits and authorizations, other than dispositions, under prior legislation as permits under the Bill. Similarly prior management plans continue until new plans are prepared.

Section 79(3) provides that the public consultation provisions found in section 22 do not apply to "the initial set of designations made in conjunction with or following the commencement of section 21(1)." It is unclear what the phrase "initial set of designations" means. If it means designations that continue an area's status as it existed when this law comes into force then public notice would not be an issue. Initial set could refer to any of the first designations even if there was no prior status. There is no reason why those designations should not be subject to public consultation.

Recommendation 1 on transitional provisions: Amend section 79(3) to make it clear that it applies only with respect to land that was protected to the same degree prior to the passing of the Bill as it will be after passing of the Bill.

We notice the lack of any transitional provisions relating to how current designations will continue once the Bill is passed into law. We are aware that the Government policy document *Alberta Parks and Protected Areas, Natural Heritage Act Update and Summary of Public Comments* (the "NHA Policy Document") contemplates transition provisions in this regard. However, in our view, the Act should set out specific transition provisions as outlined in our recommendations below.

Recommendation 2 on transitional provisions: Amend the transitional provisions to include a process for bringing existing designated areas under the new legislation. The process should ensure first that in the usual case current protected areas would not lose protection by virtue of re-designation. The process should also ensure that where Government contemplates to lower or otherwise negatively alter protection through re-designation, that the Act require a prior public participation process where members of the public with a genuine interest (not just directly affected) have reasonable opportunity to effectively participate in the re-designation process.

Schedule "A"

Who Does What? – *Natural Heritage Act*

Chart of Authorities

Bill 15 Natural Heritage Act				
Section	Who:	Does what:	If:	Other
11(1)	Crown	May post limiting signs		
24(3)	Crown	Must not create new townsite', cottage subdivision or tourism facility except as stated		
26(1)	Crown	Must not authorize activity in an area except as stated		
26(2)	Crown	Must not grant or renew grazing lease to allow anything conflicting with Act		
30(3)	Crown	Must not grant or renew fur management licence except as stated		
32	Crown	May do the things stated although others may not		
39	Crown	May enter or remain in a closed area		
73	Crown	May, in a debt action, recover costs	If someone creates an emergency, is forced to comply with order, is convicted of an offence or whose vehicle causes damage	
69	Court	May make orders relating to penalties	If person is convicted of an offence	
70	Court	May direct forfeiture of anything that was seized	If person is convicted of an offence	

13(3)	Cabinet	May authorize the Minister to expropriate land		
21(1)	Cabinet	May designate land as an area		
21(2)	Cabinet	May designate special preservation zone		
21(3) 24(2)	Cabinet	Must designate special use zones for prov. Parks		
21(4)	Cabinet	Must replace land removed from non-recreation areas		
1(2)	Minister	May by regulation define words		
4	Minister	May by regulation apply the Act to non designated land		
5	Minister	Has responsibility to establish and maintain areas and programs		
78	Minister	May make regulations		
6(1)	Minister	Must appoint Director		
13(1)	Minister	May acquire or exchange land or personal property		
13(2)	Minister	May receive gifts		
13(2)	Minister	Must make reasonable efforts to comply with trust conditions in gifts		
6(2)&(3) 12(2)	Director	May delegate to others		
7	Director	Has responsibility to protect, plan, manage and monitor areas		
8(1)&(2)	Director	May, in writing, appoint and direct park guardians		
10	Director	May under regulation issue, amend, recall, cancel or suspend permits for non-disposition activities		
11(2)	Director	Must post signs re closures, etc.		
12(1)	Director	May set fees		
15(2)& (3)	Director	May collect, and must disclose, information		
16(1)	Director	Must, asap after a designation, complete management plan		

16(4)	Director	May prepare interim management plan for non designated land		
17	Director	Must implement management plans, review and reissue them within 10 years		
18	Director	Must appropriately consult re management plans		
19	Director	May, by order, zone area per management plan		
22	Director	Must provide public notice re non-recreation areas and changes		
31	Director	May grant, renew, amend, cancel or suspend dispositions subject to Act and by regulation		
59(1)	Director	May order a person to take reasonably necessary measures	If person is in contravention of Act or carrying on detrimental activity	
59(2)	Director	May order removal of unauthorized work, repair of structure or repair of damage		
59(3)	Director	May order compliance with disposition, stopping activities and removing works not authorized by disposition,	If contravention is a contravention of a disposition	
59(4)	Director	May take reasonable measures to carry out order	If person ordered does not comply	
60	Director	May, without warrant, enter and inspect land or vehicle except dwelling		
71	Director	May levy administrative penalty	If of the opinion that disposition or permit holder has breached s. 33(2)	
72	Director	May apply for court order for compliance	If a person does not comply with an order under the Act	
8(3)	Conservation Officer	May direct park guardians		

54(1)	Conservation Officer	May generally enforce the Act by order for: Information Stopping an activity Closing an area Prohibiting vehicles in an area Removing persons from area Production of permits Disposal of abandoned things		
54(5)	Conservation Officer	May take emergency measures	If officer considers there is danger to life, public safety or The environment	
54(7)	Conservation Officer	May take measures necessary to carry out order	If person ordered does not comply	
55(2)(a)	Conservation Officer	May order production of visible objects		
55(2)(b)	Conservation Officer	May order production of hidden objects	If reasonable and probable grounds exist	
56	Conservation Officer	May, without warrant, enter and inspect except dwelling	If reason to believe there may be unlawful objects	
57	Conservation Officer	Search, without a warrant, except dwelling	If reasonable and probable grounds of evidence of offence	
57(2)	Conservation Officer	May enter dwelling	If in immediate pursuit of person believed to have committed offence	
58	Conservation Officer	May, without warrant, seize anything in plain view	If it is evidence of an offence that is in plain view and may be lost	

Schedule "B"

Summary of Recommendations

Specific recommendations on sections 16 to 19: Amend these provisions to include the following requirements:

(i) A Heritage Rangeland Mangement Plan must be established prior to the designation of any land as a Heritage Rangeland;

(ii) Stakeholders and others with a genuine interest (not just directly affected) will have reasonable opportunity to effectively participate in the development of a Heritage Rangeland Management Plan. (Stakeholders will include affected Crown agencies (AFRD, Environmental Protection (including Fish and Wildlife), Energy, Tourism), the lessee, those with a registered or other private interest in the rangeland in question (e.g. traplines, forest permits etc), potentially affected aboriginal groups, public interest organizations with a genuine interest, and fish, wildlife and hunting organizations with a genuine interest).

(iii) Every Heritage Rangeland Management Plan must include provisions to protect the grassland ecosystem, to allow the lessee to exercise the rights to graze livestock and to protect the lessee's interests, to respect aboriginal rights, and to allow reasonable public access according to a Public Access Plan

(iv) (a) The Public Access Plan should (among other things) prohibit access in a manner that may interfere with a lessee's exercising of the right to graze, or that may damage the grassland ecosystem.
(b) However, the public access plan must allow for reasonable public access at established times and places, without first seeking lessee's consent, unless the intended mode or point of access would be inconsistent with provisions of the Public Access Plan 14

General recommendation on definition of "natural heritage" and section 20:
Amend the definition of "natural heritage" to specifically include wildlife; 17

Amend sections 20(1) – (3) by replacing "natural landscapes" with "natural heritage" in each of those subsections;..... 17

Amend section 20 by adding new subsection (6) indicating that the primary or governing purpose of the designations created by section 20(3) is ecosystem protection and preservation, and that tourism and all other activities within those areas must be compatible with this primary purpose..... 17

Recommendations: Amend the NHA to include a provision creating an Advisory Committee similar to the Advisory Committee on Wilderness Areas and Ecological Reserves established by section 2 of the *Wilderness Areas, Ecological Reserves and Natural Areas Act.*

Recommendations on section 24: Amend section 24(1) to include the word "lawfully" before the word "existed".