

July 6, 2010

Our File: 5320

Alberta Tourism, Parks & Recreation
Proposed Park Legislation
2nd floor, Oxbridge Place
9820-106 Street
Edmonton, Alberta T5K 2J6

To whom it may concern,

Re: Proposed parks legislation

The Environmental Law Centre (ELC) is a charitable organization incorporated in 1982 as a public source of information on environmental law and policy in Alberta and Canada. The ELC's mission is to ensure that laws, policies and legal processes protect the environment. The ELC is pleased to provide its comments in relation to Alberta Tourism, Parks and Recreation consultation on proposed park legislation.¹

Principles behind parks

A detailed analysis and commentary on the proposed parks legislation is made difficult due to the lack of detail about the new legislation being provided; however, there are several central principles that must be recognized in any new parks legislation. These principles include:

1. Parks and protected areas are essential to the protection of Alberta's natural heritage and biological diversity;
2. The overarching goal of protected area legislation must be to protect the natural values of the land and human use of these areas must be consistent with this goal;
3. New protected areas legislation must focus on enhancing and remediating the natural environment and not allow for further degradation;
4. Protected areas are an essential part of efforts to restore populations of species at risk; and
5. The Government of Alberta holds these lands in trust for all Albertans.

¹ Government of Alberta, Tourism, Parks and Recreation, "Proposed Park Legislation", online: <<http://www.tpr.alberta.ca/parks/consult/legislation/>>.

These principles must be incorporated into any protected area legislation by ensuring the following issues are captured in the wording of the statute:

1. New protected areas legislation must ensure that existing designations and levels of protection are maintained. This requires that any new zoning system capture the essential elements of prohibitions on dispositions and access within existing parks.
2. New protected areas legislation must have substantive environmental protection provisions that guide decision making about the parks. Discretion of decision makers under the proposed legislation must be exercised within a protective framework to ensure that management and administration of parks remains accountable to the purpose of protected areas.
3. New protected areas legislation must ensure that administration and creation of protected areas are based on identified needs for protection of biological diversity, including species at risk and their habitat.
4. New protected areas legislation must incorporate the public interest by ensuring that the public is able to participate in decision making and by enabling an advice derived from an independent advisory body.

These issues are described in greater detail below.

1. Maintaining protection

The premise of “simplifying” and providing additional clarity to parks and protected areas must not be used to diminish protection for these areas.² The current legislative system for parks and protected areas is essentially a zoning system that classifies areas and sets out specific prohibitions that apply to each area.³ It is unclear how a new zoning system would greatly simplify the various protections these different designations provide without altering the various permitted uses (and related prohibitions) that currently apply. To the contrary, a blanket reference to parks and protected areas as a “park” more generally may create additional confusion relative to the current legislative framework.

If a new zoning approach is to be considered, the prohibitions related to zones must be expressly set out in the statute and not be subject to discretionary decisions of the department, or a department delegate.

Furthermore areas of zoning must not compromise the biological diversity of the area. In this regard, the vast majority of parks should be managed for sustaining their ecological integrity.

² Government of Alberta, Tourism, Parks and Recreation, “Questions and Answers on the Proposed New Parks Legislation”, online: < <http://www.tpr.alberta.ca/parks/consult/legislation/FAQs.pdf> > at 2.

³ See the *Provincial Parks Act*, R.S.A. 2000, c. P-35, the *Provincial Parks (General) Regulation*, Alta Reg. 102/1985 and the *Wilderness Areas, Ecological Reserves, Natural Areas and Heritage Rangelands Act*, R.S.A. 2000, c. W-9.

2. Protective administrative framework

New protected area legislation should include substantive protective provisions that mandate that administrative decisions under the legislation must preserve the ecological integrity of these areas. The decisions of the Minister, the Director (and any other officers of the Crown), and any delegated administrative organization as contemplated in the consultation documents should be guided by this primary purpose for protected areas.⁴

The consultation website states that one of the “key highlights of the proposed legislation” is to enable “the Minister to encourage tourism and recreation development opportunities, where they are consistent with the classification and intent of the site”.⁵ In the absence of a substantive legislative definition of the “the intent” of each site, this discretion is overly broad and may allow significant augmentation to protected areas by way of increased tourism development, leading to a degradation of Alberta’s natural heritage. Ministerial discretion to promote economic development must be limited by substantive provisions indicating the primary purpose of these lands.

Such guiding substantive provisions should preclude the exercise of discretion in certain instances, providing that “no use or permit shall be authorized which is contrary to the philosophy and objectives of the protected area” (where the objectives are legislatively entrenched or incorporated by reference).⁶ In conjunction with this approach there should be a positive duty placed on the government decision makers to make decisions that are consistent with the protective purpose. For example, federal parks legislation states “[m]aintenance or restoration of ecological integrity, through the protection of natural resources and natural processes, shall be the first priority of the Minister when considering all aspects of the management of parks.”⁷

Another example of this is found in the *Provincial Parks and Conservation Reserves Act, 2006*:⁸

3. The following principles shall guide all aspects of the planning and management of Ontario’s system of provincial parks and conservation reserves:
 1. Maintenance of ecological integrity shall be the first priority and the restoration of ecological integrity shall be considered.
 2. Opportunities for consultation shall be provided.

...

⁴ The use of “delegated administrative organizations” is set out in the consultation materials for the purpose of planning, building and maintaining trails, *supra* note 2 at 6.

⁵ *Supra* note 1.

⁶ This example is paraphrased from International Union for Conservation of Nature and Natural Resources, “The legal aspects of ecological reserve creation and management in Canada” *IUCN Environmental Policy and Law Paper*, No. 09 (Morges, Switzerland: IUCN, 1975), online: IUCN <<http://data.iucn.org/dbtw-wpd/edocs/EPLP-009.pdf>> at 38.

⁷ Section 8(2) *Canada National Parks Act*, S.C. 2000, c. 32.

⁸ S.O. 2006, c. 12.

5. (2) Ecological integrity refers to a condition in which biotic and abiotic components of ecosystems and the composition and abundance of native species and biological communities are characteristic of their natural regions and rates of change and ecosystem processes are unimpeded.

(3) For the purpose of subsection (2), ecological integrity includes, but is not limited to,

(a) healthy and viable populations of native species, including species at risk, and maintenance of the habitat on which the species depend; and

(b) levels of air and water quality consistent with protection of biodiversity and recreational enjoyment.

In the absence of substantive provisions government discretion, left unfettered, may allow for continuous increases in detrimental access and use, resulting in impacts on the ecological integrity of the Alberta's protected areas network.

3. Remediation of parks for biological diversity and protection of habitat

2010 is the United Nations International Year of Biodiversity and the *Convention on Biological Diversity* speaks directly to the importance of protected areas for conservation of biological diversity.⁹ The proposed new legislation provides a significant opportunity to address the remediation of protected area lands that have seen historical impacts that are threatening biological diversity and to address the role of parks and protection areas to species at risk in Alberta.

In furtherance of biodiversity goals the proposed legislation should provide for timely reclamation of lands, particularly disturbances related to access and other linear disturbance. The proposed legislation should also address a significant gap relating to protection of species at risk and their habitat in the province. Species' habitat is essential to any possibility of the delisting of a species. Current provincial legislation dealing with protected areas and wildlife lack habitat protection provisions.

Proposed parks legislation should have substantive protection provisions for identified species at risk and listed species habitat.¹⁰ Federal and provincial recovery strategies will facilitate identification of relevant habitat.¹¹

4. Accountability and public participation

Protected areas legislation must provide for public participation in decision-making processes. This includes participation in decisions regarding the establishment and

⁹ *Convention on Biological Diversity*, 5 June 1992, U.N. No. 30619, (ratified by Canada 4 December 1992) online: *Convention on Biological Diversity* <<http://www.cbd.int/doc/legal/cbd-un-en.pdf>> at article 8.

¹⁰ This protection of habitat is viewed as essential due to the limitations of current approaches to identifying and protecting "critical habitat" under federal legislation, *Species at Risk Act*, S.C. 2002, c. 29.

¹¹ Habitat identification could be completed quite quickly through processes already under the federal process and the *Wildlife Act*, R.S.A., 2000, c. W-10.

modification of protected areas, management of protected areas and permissible activities within protected areas, including zoning amendments. All members of the public - not just those directly affected – should have a reasonable and effective opportunity to be involved in decision-making. As well, provision should be made for intervenor costs to ensure public participation in public review processes.

Public participation should include the ability to bring concerns about protected areas or areas in need of protection to the government and an independent advisory body (described further below).

Parks advisory body

The creation of a parks advisory council is laudable however there is need for further detail the make up of the council and the nature of its work. Specifically any parks advisory council should have a role in:

- Assessing areas for park designation to meet biological diversity, species at risk and representativity objectives for parks and protected areas;
- Conduct inquiries, as initiated by members of the public or internally, into current impacts in established parks to determine whether altering protective measures is required to maintain ecological integrity;
- Assessing and providing public reports on proposed zoning amendments;
- Making recommendations for the management of buffer areas around parks and protected areas;
- Make recommendations for scientific research to be conducted; and
- Review and make recommendations around protected area management.

The advisory body should be primarily scientific and technical in nature and must be adequately resourced to fulfill the roles outlined above.

5. Access and recreation

The consultation material notes, “outdoor recreation opportunities are critical to the quality of life we experience as Albertans”.¹² This notion must be measured against the view that “Albertans’ feel the top priority for Alberta Tourism, Parks and Recreation should be to set aside more land and leaving it in an undisturbed state.”¹³

It must be recognized that introduction of alien and weed species, impacts of various levels of trail construction and maintenance, and the increased potential for illegal

¹² *Supra* note 2 at page 5.

¹³ Government of Alberta, *Survey of Albertan’s Priorities for Provincial Parks* (Edmonton, Government of Alberta, 2008), online: Alberta Parks <<http://www.albertaparks.ca/pubsandmedia/Praxis%20Report%20Final.pdf>> at 5 and 20.

(poaching) activities that accompany increased recreation and tourism contribute to the degradation of parks and protected areas.

In this regard, recreational opportunities in parks and protected areas should be contained, focus on low impact recreation, and ensure facilities minimize disturbance to the landscape and impacts on flora and fauna.

Conclusion

New parks legislation is justified if it provides a substantive framework for the creation, and management parks in furtherance of preservation of Alberta's natural heritage. New parks legislation is not justified merely to provide more simplicity and clarity around legislative rules (as the current framework is quite clear already), particularly if such simplicity entails increasing activities that adversely affect the ecological integrity of protected areas.

The current system is quite clear and any confusion among the public may reflect that insufficient resources have been put toward education and communication on this issue. The proposed parks legislation should not derogate from current park protections but rather bolster further the protection that is provided, by ensuring that the principle of protecting ecological integrity guide government decisions related to parks.¹⁴

Further, new protected area legislation should outline reclamation requirements for sites within protected areas and provide protective provisions for species at risk habitat. This would be a significant step forward in having parks and protected areas fulfill their role of maintaining biological diversity.

Finally, the proposed parks legislation should integrate increased areas for public input in park management and an independent advisory body should be created to provide scientific advice to government to facilitate continuous improvement in protected area management.

Should you have any questions regarding any of the comments provided, please do not hesitate to contact the ELC. Should additional information about legislation become available for consultation the ELC would be interested in providing feedback.

Sincerely,

Jason Unger
Staff Counsel

¹⁴ For additional reading see International Union for Conservation of Nature and Natural Resources, *Guidelines for Protected Areas Legislation*, IUCN Environmental Policy and Law Paper No. 16. (Gland, Switzerland: IUCN, 1980), online: IUCN <<http://data.iucn.org/dbtw-wpd/edocs/EPLP-016.pdf>>.