

Notice of Decision

Application for Review – Environmental Bill of Rights

File No. R2006022

Request under Section 61 (1) of the *Environmental Bill of Rights* (EBR) for a review of the need for a comprehensive public review of the regulatory regime that permits logging in Algonquin Provincial Park.

DECISION

On November 14, 2006 the Ministry of Natural Resources (MNR) received Application for Review R2006022 under the *Environmental Bill of Rights* (EBR) from the Environmental Commissioner's Office. This application requests that the MNR undertake a comprehensive public review of the regulatory regime that permits logging in Algonquin Park.

Pursuant to this request for review and in accordance with Part IV of the EBR, MNR considered this application for review to determine whether the public interest warranted MNR conducting a review of the matters raised in the application. MNR has determined that the public interest does not warrant a review of the regulatory regime that permits logging in Algonquin Park.

This Notice of Decision has been prepared to fulfill the Ministry's obligations under the *Environmental Bill of Rights*. The EBR requires that this Notice contain a brief statement of the reasons for the decision and that it be sent to the applicants, the Environmental Commissioner and any other person(s) the Ministry considers should receive the notice. The reasons for this decision are set out below.

Summary of Rationale for Decision

The public interest does not warrant a review of the regulatory regime that permits logging in Algonquin Park for the following reasons:

- the regulatory regime that permits logging in Algonquin Park has undergone extensive review. The regulatory regime includes the *Provincial Parks Act*¹, and the *Crown Forest Sustainability Act*, and the regulations and requirements under those Acts, as well as relevant provincial policies and subsidiary policy direction. When under development or review, any part of this regulatory and policy regime undergoes a comprehensive review to ensure consistency and

¹ The *Provincial Parks and Conservation Reserves Act* is not yet in force.

cohesiveness with each other. As part of the process, the public and Aboriginal peoples are provided opportunities to have input to any relevant new or revised legislation, regulations, manuals or policy.

- the current regulatory regime that permits logging in Algonquin Park is consistent with MNR's Statement of Environmental Values;
- there is no potential for harm to the environment if the review is not undertaken because environmental considerations are a fundamental part of park management planning, forest management planning processes, and the processes that are in place for licensing, independent forest audits, compliance, certification, and scientific research;
- the *Crown Forest Sustainability Act* applies to the Recreation-Utilization zone in Algonquin Park, and this Act requires the management of the forest resource in accordance with the principles of forest sustainability;
- the issue of logging in Algonquin Park was recently openly reviewed in the development of the *Provincial Parks and Conservation Reserves Act*;
- opportunities for public consultation and Aboriginal input, and periodic review of regulations and policies that govern activities in the park are part of the park planning and forest management processes, including use of public advisory groups to provide advice on forest management activities in Algonquin Park;
- logging plays an important role in providing jobs and sustaining communities in eastern and central Ontario; and
- Bill 11 confirms that logging will continue in Algonquin Park.

RATIONALE FOR THE DECISION

In determining whether the public interest warrants a review of the regulatory regime that permits logging in Algonquin Park, MNR considered the following factors as set out in Section 67(2) of the EBR:

a) the Ministry Statement of Environmental Values

The Ministry of Natural Resources' Statement of Environmental Values (SEV) guides MNR decision-making.

The desired outcomes listed in the MNR SEV are to *"be viewed as an integrated set of statements. The priority, or weight, given to the achievement of these outcomes will vary over time and geographical area. Accordingly, individual decisions regarding the mix of outcomes must be made in the context of provincial interests and local circumstances."* (See page 5 of the SEV.) These desired outcomes include economic development associated with natural resources, orderly planning and management of natural resources, and the protection of significant natural heritage features and landscapes.

Together, the integrated statements in the MNR SEV and legal requirements under the *Provincial Parks Act*, *Crown Forest Sustainability Act* and the *Environmental Assessment Act* require a balancing of protection and consumption objectives associated with the management of protected areas and Crown forest lands. The public interest in balancing protection and consumption objectives in Algonquin Park specifically is achieved through both park and forest management planning processes. The significant features and landscapes within Algonquin Park are protected through the Park Management Plan. The Park Management Plan sets the direction for all other resource plans to be developed for the Park. Therefore, the Forest Management Plan for the Algonquin Park Forest must comply with the policies of the Algonquin Park Management Plan.

b) the potential for harm to the environment if the review applied for is not undertaken

The public interest does not warrant a review of the legal regime that permits logging in Algonquin Park because any potential for harm to the environment is addressed through the steps and consideration involved in park management planning, forest management planning processes, and the processes that are in place for licensing, independent forest audits, compliance, certification, and scientific research.

Forest management activities occur within Algonquin Provincial Park consistent with the requirements of the *Provincial Parks Act* (PPA) and the *Crown Forest Sustainability Act* (CFSA), both of which are prescribed under the *Environmental Bill of Rights*. Undertakings carried out under the PPA and the CFSA, and under any relevant provincial policies, manuals regulated under the CFSA, or subsidiary policy directions, are also subject to the requirements of the *Environmental Assessment Act* (EAA).

Forest operations in Algonquin Park are regulated under the CFSA and must be consistent with the relevant provisions of the:

- *Provincial Parks Act*, supporting provincial policies and the Algonquin Park Management Plan;
- *Crown Forest Sustainability Act*, including relevant provincial policies and regulated manuals such as the Forest Management Planning Manual (FMPM 1996, 2004) which guides the forest management planning process; and,
- *Environmental Assessment Act*, and more specifically Declaration Order MNR-71 regarding MNR's Class Environmental Assessment Approval for Forest Management on Crown Lands in Ontario (MOE, 2003).

Algonquin Park Management Plan

All resource management in Algonquin Park, including forest management in the Park, must adhere to the Algonquin Park Management Plan (1998).

The Algonquin Park Management Plan (PMP) establishes the overall goals and objectives of the Park as well as the permitted land and resource activities. The PMP is prepared in accordance with the Provincial Parks Planning and Management Policies (1992) under the *Provincial Parks Act*. The *Provincial Parks Act*, the Provincial Parks Planning and Management Policies and the individual park planning process all provide existing opportunities for review, meeting the public interest for transparency and public and Aboriginal consultation.

The existing, consulted-upon management direction for the park includes goals and objectives related to supporting the regional economy. As outlined in the Algonquin Park Management Plan, the Park's goal is: *To provide protection of natural and cultural features, continuing opportunities for a diversity of low-intensity recreational, wilderness, and natural environmental experiences; and within this provision continue and enhance the Park's contribution to the economic, social and cultural life of the region.* The PMP's objectives include a "resource management objective" which enables commercial timber harvest in the Park. The Algonquin Park Management Plan permits forest management activities as a land use within the Park's Recreation-Utilization zone.

Sustainable Forest Management

The *Crown Forest Sustainability Act* (CFSA) applies to all forest management activities in Ontario's Crown forests, including forest management activities within Algonquin Park. The purposes of this Act are to provide for the sustainability of Crown forests and, in accordance with that objective, to manage Crown forests to meet social, economic and environmental needs of present and future generations. Under Section 2 (3) of the CFSA, the principles of sustainability include:

1. Large, healthy, diverse and productive Crown forests and their associated ecological processes and biological diversity should be conserved.
2. The long term health and vigour of Crown forests should be provided for by using forest practices that, within the limits of silvicultural requirements, emulate natural disturbances and landscape patterns while minimizing adverse effects on plant life, animal life, water, soil, air and social and economic values, including recreational values and heritage values

Section 9 (2) requires that a forest management plan not be approved unless it provides for the sustainability of the forest which includes having regard to the plant life, animal life, water, soil, air and social and economic values, including

recreational values and heritage values. The CFSA, and any relevant provincial policies, manuals regulated under the CFSA or subsidiary policy directions are also subject to the requirements of the *Environmental Bill of Rights*.

Forest management plans are prepared in accordance with the requirements of the Forest Management Planning Manual (FMPM). The FMPM is a regulated manual under the CFSA. It incorporates the planning requirements required from both the CFSA and Declaration Order MNR-71 regarding MNR's Class Environmental Assessment Approval for Forest Management on Crown Lands in Ontario (MOE, 2003). The forest management planning process requires the production of values maps for the identification of natural resource features, land uses or values such as fish and wildlife habitat, known sites of species at risk, cultural heritage sites and canoe routes. Values mapping is fundamental to the planning process and must meet the standards of the Forest Information Manual, a manual also regulated under the CFSA. The Algonquin Park Forest Management Plan is subsidiary to, and must comply, with the policies of the Algonquin Park Management Plan. Commercial timber harvesting is a permitted use in the Recreation-Utilization zone as stated in Section 8.3.2. of the Algonquin Park Management Plan. The Park Management Plan lays out prescriptions to be used to modify forest management operations to protect park values. These prescriptions are incorporated into the Forest Management Plan. The Forest Management Plan contains 32 operational prescriptions that are specific to protecting park values. Certified tree markers mark the boundaries of areas of concern prior to operations commencing. Compliance inspections and audits are conducted on a regular basis in order to ensure that operations are being conducted as they have been prescribed, and that all park values in the forest are being protected.

Harvesting activities occur on less than 1.5% of the forested area of the park in any given year, and 95% of the harvesting that does occur is selection or uniform shelterwood systems which promote healthy forests and regeneration, and maintain forest cover on the land base at all times.

Forest Resource Licence

The Algonquin Forestry Authority (AFA) holds a Forest Resource Licence which without it cannot operate. This licence is issued, under the CFSA for a five-year term following the approval of the FMP. In addition to the licence, there is a 20-year Algonquin Park Forestry Agreement between the AFA and the MNR, which is reviewed every five years, provided certain conditions are met. This agreement defines the AFA's obligations for such activities as plan preparation, silvicultural operations, harvesting and road maintenance, similar to conditions in a Sustainable Forest Licence. The agreement is conditional on the completion and approval of a Forest Management Plan (per the FMPM) and the conduct of environmental inventories, surveys, tests and studies as required under the

Forest Information Manual (2001; 2004 Addendum), and a successful Independent Forest Audit (IFA).

If the Forest Management Plan is successfully completed, all conditions of the previous agreement have been met satisfactorily, and the IFA determines that the forest is being managed effectively and sustainably, then a new agreement is issued. Licence conditions require operations to be conducted in accordance with the approved FMP and the agreement. Forestry operations, tree marking and road layout are subject to the Forest Operations and Silviculture Manual (1995; updated 2000).

Independent Forest Audit

The AFA is subject to an Independent Forest Audit (IFA) every five years. IFAs provide opportunities for members of the public to identify issues or concerns. The '1997-2002 Independent Forest Audit' concluded that the Algonquin Park Forest was being managed effectively and in a manner consistent with accepted criteria of forest sustainability. The next IFA will review the period from 2002 to 2007.

Ontario Regulation 160/04 outlines the requirements for an Independent Forest Audit as per the direction in the CFSA and the Declaration Order MNR-71 regarding MNR's Class Environmental Assessment Approval for Forest Management on Crown Lands in Ontario (MOE 2003). The Independent Forest Audit Process and Protocol describes the detailed requirements for audits, including an assessment of compliance with the CFSA, the manuals regulated under the Act, the applicable forest management guides, the forest resource licence, and the forest management plan, including the effectiveness of meeting objectives, such as the protection of park values.

Forest Compliance Program

The AFA must monitor its operations and submit compliance reports through the Forest Operations Inspection Program. The AFA must also prepare a forest compliance plan that meets all provincial legislative requirements and which is consistent with all of the applicable legislation, regulations, relevant provincial policies, regulated manuals and forest management guides prepared by the MNR. Algonquin Park MNR staff must also prepare and implement a compliance plan that considers park values, and must review AFA compliance reports and carry out random compliance inspections in operating areas consistent with the standards established in the Forest Operations Inspection Program.

AFA Certification

Furthermore, the AFA has achieved ISO 14001 certification which ensures that environmental management systems are in place to guide activities that impact

the environment and meet all external standards and requirements. The AFA is also currently pursuing additional performance-based forest certification through the Canadian Standards Association (CSA). This is consistent with the MNR intent to require that all Sustainable Forest Licence holders and the AFA be certified to an accepted performance standard by the end of 2007. This adds an additional layer of independent environmental oversight on forest management activities in the Algonquin Park Forest. The AFA have appointed a public Advisory Group consistent with the process for forest certification. The Advisory Group represents the broad interests of the users of the forests in Algonquin Park, e.g., outfitter, forest scientist, Aboriginal representatives, mill operator, environmental group, park representative etc. The Advisory Group will provide advice on values, objectives, indicators and targets that should be used in the assessment of sustainable forest management practices in Algonquin Park. This process is a fundamental requirement in the forest certification process.

Scientific Research

Finally, scientific research in Algonquin Park has a long and distinguished history and has contributed to advancements in the understanding of how natural values in Algonquin Park and elsewhere can be most effectively managed. Forest ecosystem, wildlife and fisheries research stations were established in the Park more than 60 years ago. Forestry research conducted at the Swan Lake research station was the basis for selection harvest and tree-marking systems now used to support sustainable forest management elsewhere in the Province. The results of wildlife and fisheries research are also incorporated into both park and forest management planning processes and operations on a continual basis.

c) the fact that matters sought to be reviewed are otherwise subject to periodic review

Forest management activities in Algonquin Park are otherwise subject to periodic review and public consultation as required through both park management and forest management planning processes. The public interest would not be enhanced by additional opportunities for review.

Provincial Parks and Conservation Reserves Act

MNR recently completed an extensive public process with opportunities provided for Aboriginal input in the development of new legislation for provincial parks and conservation reserves in Ontario. The *Provincial Parks and Conservation Reserves Act* will replace the Provincial Parks Act once proclaimed by the Lieutenant Governor. The *Provincial Parks and Conservation Reserves Act* was drafted after considering input from the public, stakeholder groups, Aboriginal organizations and communities, during extensive consultations, as well as the

recommendations from the Ontario Parks Board of Directors². The new legislation supports the continuation of logging in Algonquin Park.

Starting five years after proclamation by the Lieutenant Governor, the *Provincial Parks and Conservation Reserves Act* will require MNR to annually examine every plan that is 10 years old or older to determine the need for amendment or review of the Park Management Plan. The results of the examination will be posted to the Environmental Registry or made available for public information by other appropriate means.

Park Management Planning

All resource management in Algonquin Park, including forest management in the Park, must adhere to the Algonquin Park Management Plan (1998). The current management plan follows the first Park Master Plan of 1974, and subsequent comprehensive open reviews in 1979 and 1989. Park management planning also provides opportunities for Aboriginal review and input.

The *Provincial Parks Act*, the Provincial Parks Planning and Management Policies and the individual park planning process all provide existing opportunities for review, meeting the public interest for transparency and consultation. The Provincial Parks Planning and Management Policies, which establish the zones and permitted uses within parks, were prepared with extensive public consultation and opportunities for Aboriginal input. Consultation processes associated with park planning may involve meetings, direct mail notification to interested stakeholders and adjacent landowners, and the posting of discussion papers, draft policies and notices on the Environmental Registry.

Forest Management Planning

The CFSA, and any relevant provincial policies, manuals regulated under the CFSA or subsidiary policy directions are also subject to the requirements of the *Environmental Bill of Rights*. Like the *Provincial Parks Act*, the CFSA is subject to EBR provisions for proposals for regulations and instruments, applications for review and investigation and protection against employer reprisals.

Forest management planning for the Algonquin Park Forest requires extensive public consultation as required by the FMPM. This involves multiple opportunities for public participation and Aboriginal input and review at key stages in the planning process including identification of information or values for consideration by the planning team, review of long-term management direction, review of proposed operations, review of draft forest management plan (FMP) and inspection of the MNR approved FMP. The public is also provided on-going opportunities to resolve issues, including a formal issue resolution process. In addition to the notices issued through direct mail and newspaper ads, the

² Public Advisory Board appointed by the Lieutenant Governor in Council.

Environmental Registry is used to notify and provide opportunities for comment. The 2005 FMP for the Algonquin Park Forest is scheduled for renewal in 2010, with the planning process commencing in 2007. The FMPM is also subject to review and public consultation. Forest management planning also provides opportunities for Aboriginal review and input.

The FMPM requires that a Local Citizen's Committee (LCC) be in place to assist in the preparation of the FMP. For Algonquin Park, the LCC is appointed by the Park Superintendent and represents a wide range of interests as set out in the FMPM including naturalists and local environmental groups. The LCC is an integral part of the planning process and participates through all stages of plan development. The LCC also provides advice to the Park Superintendent when discretionary decisions must be made.

All forest management guides are reviewed every five years, as required under Declaration Order MNR-71 regarding MNR's Class Environmental Assessment Approval for Forest Management on Crown Lands in Ontario (MOE, 2003). These periodic reviews determine the need to revise a guide to reflect recent changes and advances in policy, science, management techniques and societal expectations.

Governance Structures

The Algonquin Forestry Authority (AFA) was established in 1974 as a self-financing Crown Agency to ensure that a high standard of forest management is practiced within Algonquin Park. All existing company licenses were cancelled in favour of one licence administered by the AFA. The government objective in creating the AFA recognizes the need to assure ensure? the continued existence of Algonquin's values and special qualities.

A Board of Directors, appointed by the Lieutenant Governor in Council provides overall guidance to the AFA. The Board of Directors are accountable to the Minister of Natural Resources for the management of the Authority's affairs.

The governance structures for the AFA provide MNR with regular opportunities to review the performance of the AFA and ensure that the AFA's activities are in compliance with all relevant policies and practices. A Memorandum of Understanding between the Minister and the AFA Board of Directors describes the relevant roles, operating relationships and business process. The Minister of Natural Resources and the AFA are parties to the "Algonquin Park Forestry Agreement", a twenty year agreement reviewed/renewed every five years. This Agreement identifies the responsibilities of the AFA with respect to forestry activities. As a Crown agency, the AFA must annually produce a business plan which covers a three-year projection, and produce an "Annual Report" which is tabled in the Legislature each year.

d) any social, economic, scientific or other evidence that the Minister considers relevant

Significance of Logging to Communities

Logging has been part of the history of Algonquin Park, and has occurred in this area since the mid 1830's. Logging was recognized as a permitted use when the park was established in 1893. Following extensive consultation, forest management was again recognized as a permitted use in the original 1974 Master Plan. Subsequent open and transparent reviews of the Master Plan in 1979 and 1989 and subsequent provincial governments have confirmed logging as a permitted use, subject to the provisions of the Park Management Plan and Forest Management Plans. The *Provincial Parks Act* and the *Provincial Parks and Conservation Reserves Act* (not yet in force) both permit logging in Algonquin Park in accordance with the Park Management Plan.

The Algonquin Park Forest plays an important economic role to many of the communities in central and eastern Ontario. There are 11 companies (14 facilities) that are 'designated corporations' under the Algonquin Park Forestry Agreement and are the primary beneficiaries of the wood harvested from the Algonquin Park Forest. Seven of these mills are considered dependent³ on wood from Algonquin Park. There are another five to ten mills that have traditionally received open market wood from the Algonquin Park Forest. Approximately 2400 people are employed in the mills that typically rely on wood from Algonquin Park. In addition to the jobs in mills, the woodland industry in Algonquin Park provides approximately 420 jobs. Many of the small communities of central and eastern Ontario depend on the forest industry for employment and contributions to the local economy. Any mill shutdowns and loss of jobs will be felt by the people living in these areas.

e) other matters that may be relevant

On September 15, 2004 the Ministry of Natural Resources initiated consultation about new legislation for provincial parks and protected areas in Ontario. Consultation was initiated via a posting on the Environmental Registry and written notification of key stakeholders, First Nations and provincial treaty organizations.

During this process the issue of logging in Algonquin Park was given substantial attention. Input was received from those who opposed and those who supported the continuation of logging in Algonquin Provincial Park. Legislative Proposal 6 specifically addressed logging within Algonquin Provincial Park as a permitted

³ Dependant - a mill that received from 48% to 100% of its wood supply from the Park, and without this source, the mill would expect wood shortages and potential shutdown.

exception to the policy that would prohibit specific industrial uses in provincial parks.

A total of 1503 responses were received to a questionnaire regarding the legislative proposals. Open houses were held in 9 communities across Ontario. Written submissions were received from stakeholders, individuals, treaty organizations and First Nations.

The Ontario Parks Board of Directors is a public advisory committee established by the Minister of Natural Resources through Order in Council. The Minister requested the Board to provide advice about the legislative proposals. The Board provided the Minister with advice about the legislation on February 11, 2005, which included endorsement of all the legislative proposals along with some suggestions and recommendations to promote the effective application of ecological integrity. On April 26, 2005 the Minister met with the Board's chair to discuss future tasks for the Board. In respect of the Board's recommendations, the Minister asked that the Board provide advice about how to lighten the ecological footprint of logging in Algonquin Park.

Bill 11, an Act to Enact the Provincial Parks and Conservation Reserves Act was introduced for First Reading in Ontario's Legislature on October 25, 2005. When introducing the bill, the Minister stated that the Board was going to provide advice about how to "lighten the footprint" of logging in Algonquin Park. The Bill was debated in the Legislature and the relevant Environmental Registry posting was updated. Individuals and stakeholders provided input about the Bill. Options were considered as Bill 11 was drafted.

After Bill 11 received Second Reading, the Standing Committee on the Legislative Assembly held a hearing and received presentations from delegations. The Bill received third reading on June 19, 2006 and received Royal Assent on June 20, 2006. The passing of Bill 11 permits logging to continue in Algonquin Park.