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***Via Fax To: (416) 314-1198***

Dear Ms. Sutherland,

**Re: Ecojustice Recommendations to amend Bill 191 – *Far North Act, 2009*  
EBR Registry No: 010-6624**

Below you will find Ecojustice's submissions to the above-noted EBR Registry posting concerning a proposal for *An Act with respect to land use planning and protection in the Far North*.

### **Process and Funding**

From a process standpoint, little to no consultation has yet occurred with individual First Nations on the development of Bill 191. This is unacceptable and completely jeopardizes the success of the Far North Act. As a result, we highly recommend that the Minister of Natural Resources undertake consultations with all First Nations with an interest in Ontario's Far North prior to this Bill being subject to second reading and before the Standing Committee hears input on the Bill.

It is our view that such a consultation process would be consistent with the overall intent of the Far North Act that First Nations have substantial decision-making authority on land use decisions on their traditional lands. More importantly in terms of the Crown-First Nation relationship, such a process would also be consistent with the Treaties, under which the Crown and First Nations agreed to jointly govern land use decisions.

Consistent with our submission on Bill 173, the *Mining Amendment Act*, we further recommend that the Far North Act be developed in consideration of the UN Declaration on the Rights of Indigenous Peoples which mandates that Ontario First Nations provide free, prior and informed consent to any activity that may impact their interests, including the land use planning process being developed under the *Far North Act*.

Another key component of the success of this land use planning exercise will be dedicated, long-term funding directed at First Nation participation in both consultation

processes and in the actual land use planning exercise and also for Ontario to adequately staff the bodies necessary to make land use planning a success.

Assuming proper negotiations have occurred between Ontario and First Nations, we provide the recommendations below on how Bill 191 could be improved. In our view, the main benchmarks for an excellent *Far North Act* are:

1. Recognition of decision-making authority of First Nations and equal representation on land use bodies;
2. Clear statement of ecological planning goals and objectives;
3. Enshrinement of the principle of land use planning before development; and
4. Establishment of a science advisory body.

**1. Recognition of decision-making authority of First Nations and equal representation on land use bodies**

The Bill requires that the Minister establish one or more bodies to advise the Minister on implementation of the Act. The Act is silent on specifically establishing planning bodies and the powers of such bodies however. It is our view that an independent Far North Planning Commission with representatives from Far North First Nation governments should be established.

As a result, we recommend that the Bill be amended to add the following provisions:

8.1(1) The Lieutenant Governor in Council shall establish a Far North Planning Commission.

(2) The Far North Planning Commission shall have the power to:

- (a) allocate funding for land use planning activities;
- (b) as requested, provide assistance to individual communities developing land use plans;
- (c) approve terms of reference drafted by one or more First Nation under section 8(1);
- (d) approve a land use plan under section 8(13) by considering whether the land use plan is consistent with the Far North land use strategy;
- (e) provide dispute resolution on land use planning issues referred to it;
- (f) provide a yearly report to the Lieutenant Governor in Council and First Nations in the Far North on implementation of the Act; and

(g) provide input to the Minister on the periodic review of this Act under section 18.1.

(3) The Lieutenant Governor in Council and First Nations shall jointly appoint members of the Far North Planning Commission.

(4) At least half the members of the Far North Planning Commission shall be members of First Nation communities located in the Far North.

Given the above, we recommend the following subsections be added also:

8(13)(d) the Far North planning body has approved the land use plan.

Communities are enabled to initiate, develop and approve land use plans. This is a first in Ontario history and laudable. However, the Bill currently gives the Minister and Cabinet significant more decision making authority than the First Nations who are actually living on the land and who have government-to-government Treaty relationships with the Crown.

For example, subsection 8(3)(b) of the Bill currently gives the Minister authority to approve terms of reference prepared by one or more First Nations for the creation of a land use plan. In our view, the Minister should be required to approve the terms of reference as long as it meets certain criteria, including consideration and approval by the Far North Planning Commission, as follows:

8(2.1) The Minister shall approve a terms of reference if it is consistent with the purpose of this Act and it has been considered and approved by both the Far North Planning Commission .

## **2. Clear statement of ecological planning goals and objectives**

Consistent with the Premier's announcement that Far North legislation will ensure permanent protection for 50% of the land base, we recommend that the word "permanent" be inserted into section 6 of Bill 191. We also recommend that a reference in section 6 to maintaining ecological integrity of the Far North will be important. As a result, we recommend that section 6 be amended as follows:

6. The following are objectives for land use planning in the Far North:

1. A significant role for First Nations in the planning.
2. The permanent protection of areas of cultural value in the Far North and the protection of the ecological integrity of natural systems in the Far North by including at least 225,000 square kilometres of the Far North in an interconnected network of protected areas.

3. The maintenance of biological diversity, ecological processes and ecological functions, including the storage and sequestration of carbon in the Far North.

4. Enabling sustainable economic development that benefits the First Nations.

The Bill should establish a timeframe for Far North land use strategy completion so that land use plans begin with the strategy in mind as early as possible in their preparation and the Bill should also stipulate what policies ought to be in the strategy:

7(1) The Minister shall ensure that a strategy is prepared to assist in the preparation of land use plans in the Far North under section 8 within 6 months of this legislation coming into force.

7(1.1) The Far North land use strategy shall contain policies that promote the objectives in s.6, including:

- (a) An ecological integrity policy which sets out indicators for ecological integrity;
- (b) Policy guidance on best methods on sequestration of carbon in the Far North;
- (c) A drinking water source protection policy; and
- (d) An integration policy that ensures individual land use plans are consistent across the Far North region.

The Bill needs to be explicit that land use plans shall be consistent with the Far North land use strategy. As such, the following provision should be added to the Bill:

7(10) Community based land use plans prepared under section 8 shall be consistent with the Far North land use strategy.

7(11) A community based land use plan that is prepared before the Far North land use strategy is prepared may be approved by the Minister if it is consistent with the objectives of land use planning in section 6.

In order to ensure First Nations have a major role in developing the Far North land use strategy, subsection 7(3) of the Bill ought to be amended as follows:

7(3) The Minister shall ensure that First Nations participate in the preparation of the Far North land use strategy and approve its final contents.

In terms of regulating protected areas, we recommend that section 10 be deleted from the Bill and replaced with a provision that requires the Minister to regulate areas designated as protected areas under the *Far North Act*:

10(1) The Lieutenant Governor in Council shall, by order, establish the boundaries of a protected area identified in a community land use plan.

(2) The Lieutenant Governor in Council may, with the approval of the First Nations who prepared a community land use plan, by order dispose of an area of a protected area that is less than 50 hectares or less than 1 per cent of the total area of the provincial park or conservation reserve, whichever is the lesser.

(3) The Lieutenant Governor in Council may not order the disposition of an area of a protected area that is 50 hectares or more or 1 per cent or more of the total area of the protected area, unless,

- (a) the Minister first reports on the proposed disposition to the Assembly;
- (b) the Minister tables the proposed new boundaries of the protected area with the Assembly; and
- (c) the Assembly endorses the proposed new boundaries of the protected area.

We also recommend that Bill 191 be amended to ensure that the protection afforded to areas designated as protected areas under the *Far North Act* be substantially similar to that afforded to protected areas under the *Provincial Parks and Conservation Reserves Act* (“PPCRA”). Further, we recommend that the allowance for hydro and wind power development currently contained in subsection 13(2)(5) of the Bill be circumscribed so as to allow only power development that supports First Nation community power needs as follows:

13(2) No person shall carry on any of the following developments in a protected area:

1. Commercial timber harvest.
2. Constructing wind power or waterpower facilities unless the facilities are for use within a First Nation community that is not connected to the IESO-controlled grid.
3. Prospecting, staking mining claims, developing mineral interests or working mines.
4. Extracting aggregate, topsoil or peat.
5. Other industrial uses.

Further, the Cabinet “override” currently contained in subsection 13(4) to the prohibitions on development in subsections 13(1) and (2) ought to be circumscribed. Subsection 13(4) currently allows Cabinet to override prohibitions on industrial development when it is in the “social and economic interests of Ontario”. This is a significant loophole in the Act and opens the safeguards existing in the Act to potential abuse whenever mineral, oil and gas, or any other natural resource potential is discovered in Ontario’s Far North. As a result, we recommend simply that this provision be deleted from the Bill.

By way of alternative, we recommend that the word “significant” be added to subsection 13(4) and that the approval of the First Nations who developed the community based land use plan be obtained as follows:

13(4) Subsection (1) or (2) does not apply if the Lieutenant Governor in Council by order determines that the allocation, disposition or use of public land and natural resources in the planning area or the development in the planning area, as the case may be, is in the significant social and economic interests of Ontario and:

(a) The Lieutenant Governor in Council takes into account the objectives set out in section 6.

(b) The First Nations who approved the community based land use plan have passed a resolution approving the allocation, disposition or use.

It is also extremely important to make it clear that protected area designation allows for all First Nation uses, other than designation for industrial development prohibited by subsection 13(2). We recommend the following provision be added for clarity as a result:

13(6) First Nations may carry out any activity within a protected area that is consistent with a community based land use plan and not prohibited by subsection (2).

We also recommend, as we did when the PPCRA was originally introduced, that a consequential amendment to the PPCRA clarifies that all parks and conservation reserves throughout Ontario allow for First Nation uses other than industrial development.

Finally, we recommend that First Nations manage any protected areas identified as part of Far North land use planning with the financial and technical assistance of the Ministry of Natural Resources, as follows:

14.1(1) First Nation communities that have identified protected areas as part of a community based land use plan may manage those protected areas.

(2) The Minister shall provide financial and technical assistance to First Nations who decide to manage protected areas.

### 3. Enshrinement of the principle of Land Use Planning before development

Section 11 makes it clear that in the absence of a community based land use plan, no development will be permitted except for electrical transmission lines and roads associated with them. This could be cause for concern since transmission lines and roads are disturbances that have far reaching and damaging ecological impacts. We recommend that this exception be limited to situations where the transmissions lines are for direct First Nation community use:

11(2) Despite paragraph 5 of subsection (1), a person may construct electrical transmission facilities and lines, or all weather roads associated with them if,

(a) the construction is for First Nation community use and it has the support of the First Nations that are affected by the development, as evidenced by resolutions passed by their councils; and

(b) one of the following conditions applies:

(i) the construction is consistent with the Far North policy statements that have been issued, if the Minister has issued such statements,

(ii) the Minister, by order, states that the Minister is of the opinion that sufficient information on ecological values exists for the geographic area of the construction, if the Minister has not issued any Far North policy statements.

There is also a broad exemption contained in subsection 11(3)(b) for development that Cabinet believes is in the social and economic interests of Ontario. Similar to our recommendation to amend subsection 13(4) above, we recommend that subsection 11(3)(b) be deleted or, alternatively, amended to contain the word “significant” previous to “social and economic interests of Ontario” so that it only captures significant benefits to the province and is not relied upon to allow any development proposal that may arise prior to a land use plan being finalized.

Opportunities for provisional protection from mineral staking are enabled through section 12 of the Bill. However, once an order for provisional protection has been requested by the First Nation or Minister, the Minister of Natural Resources then has to request MNDM to withdraw the lands. Unfortunately, the Bill does not actually require the Minister of NDM to withdraw the lands from staking. This should be a requirement as follows:

12(3.1) Upon receipt of a request from the Minister of Natural Resources under section 12(3), the Minister of Northern Development and Mines shall withdraw the area specified from staking under the *Mining Act*.

#### **4. Establishment of a science advisory body**

Given the scientific complexities that invariably exist in a planning area as large as Ontario's Far North, we recommend that the Minister be required to establish a science advisory body that the Minister would be required to consult with in the preparation of the Far North land use strategy and that could be relied upon by communities and regional land use bodies in their work:

16(1) The Minister shall establish one or more bodies to advise the Minister on the development, implementation and co-ordination of land use planning in the Far North in accordance with this Act and First Nations involved in land use planning, including a Far North Science Committee.

(2) The Far North Science Committee shall perform the following functions:

1. Review the environmental conditions of the Far North and provide advice to the Minister with respect to the scientific research that needs to be pursued to support the implementation of the objectives of the Far North Act set out in s.6.
2. Reviewing the draft Far North land use strategy, including policies under the strategy, and providing advice to the Minister;
3. Reviewing amendments to the Far North land use strategy, including policies under the strategy, as they arise and providing advice to the Minister;
4. As requested, providing advice to a community preparing a land use plan;
5. As requested, providing expert advice to the Far North Planning Commission;
6. Reviewing individual draft community land use plans and providing recommendations to communities, the Far North Planning Commission and the Minister as to how to integrate land use plans regionally;
7. Provide input to the Minister on the periodic review of this Act under section 18.1; and
8. Such other functions as may be specified by the Minister.

Finally, we recommend that the Bill contain a provision that requires the Minister to undertake a periodic review of the Act and report to the Legislative Assembly and First Nations in the Far North as follows:

18.1(1) The Minister shall undertake a period review of this Act and at least every five years and report to the Assembly and First Nations in the Far North.

(2) In undertaking the review, the Minister shall provide opportunities to First Nations to:

(a) Provide feedback on how the review should be undertaken; and

(b) Provide meaningful input during the review.

Should you wish to discuss any of the contents of this letter or our recommendations, please feel free to contact us.

Yours truly,

A handwritten signature in black ink, appearing to read "Justin Duncan", followed by a long horizontal line extending to the right.

Justin Duncan  
Staff Lawyer