

November 21, 2012

BY EMAIL (PPSreview@ontario.ca) & REGULAR MAIL

Darryl Lyons, Team Lead
Ministry of Municipal Affairs and Housing
Local Government and Planning Policy Division
Provincial Planning Policy Branch
777 Bay Street, Floor 14
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Dear Mr. Lyons:

**RE: Provincial Policy Statement Five Year Review: Public Consultation on Draft Policies and the Review Cycle for the Provincial Policy Statement
EBR Registry Number: 011-7070
Ecojustice File Number: 362**

Canadian Environmental Law Association (CELA) and Ecojustice Canada (Ecojustice) submit the following comments in response to the Public Consultation on Draft Policies and the Review Cycle for the Provincial Policy Statement (EBR Registry Number: 011-7070).

CELA is a non-profit, public interest organization founded in 1970. CELA is an environmental law clinic – within Legal Aid Ontario – dedicated to providing legal services to low income people and disadvantaged communities, and advancing the cause of strong environmental protection through advocacy, education and law reform.

Ecojustice uses the law to protect and restore the environment in Canada. Since 1990, our unique combination of law and science (i.e. test-case litigation, policy and law reform, public education and communications) has set legal precedents and strengthened Canadian legislation. Ecojustice works in support of five program priorities: Environmental Rights, Health & Public Participation; Biodiversity & Ecosystem Protection; Climate Change & Energy; Environmental Health; and the Marine Environment.

CELA and Ecojustice have a significant interest and involvement in land use planning law and policy in Ontario. Both organizations have been engaged in previous reviews of the Provincial Policy Statement (PPS). Both organizations have staff that represents clients in land use planning disputes. Both organizations conduct research and make recommendations regarding improvements that can be made to the planning regimes. Most recently, both organizations worked with Pembina Institute and Zizzo Allan Climate Law in producing *Live Where You Go*, a report which, based on a year of research and consultation with experts and stakeholders, answers the question: how do we encourage developers to build more affordable options where people want to live? This report also recommends five top tools to encourage location-efficient development.

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CELA and Ecojustice welcome the opportunity to comment on the Draft Policies provided by the Ministry of Municipal Affairs and Housing. Below we provide brief answers to the specific questions posed by the Ministry. As well, we provide detailed submissions related to the specific language in the Draft Policies. Please note that the numbering of our recommendations below follows the layout of the Draft Policies and is not intended to signal priority.

CELA and Ecojustice have reviewed draft submissions of Ontario Nature, Ducks Unlimited Canada, and Ontario Headwaters Institute. We endorse those submissions and offer our perspective on the Draft Policies, as detailed below.

Summary

Overall, CELA and Ecojustice find that the Draft Policies contain a number of improvements that we support and recommend that the Ministry maintain when finalizing the amendments to the current Provincial Policy Statement (PPS 2005). At the same time, we are very disappointed that several of the priority amendments put forth in 2010 by the Planning for Sustainability Collaboration (of which CELA and Ecojustice were members) and emphasized during the Working Group process were not adopted. We draw your attention in particular to Recommendations 6 and 13 (clarity with respect to resolving conflicts among provincial interests), 10 (enhanced protection for inland wetlands in key Ecoregions), 11 (protection for species at risk habitat), and 12 (mineral aggregate resources) in our comments below. For resolving conflicts, we are strongly recommending explicit language be adopted in Part III and that the paramountcy of Provincial Plans over the PPS be retained. For inland wetlands, we are strongly recommending that all wetlands be protected by the prohibition standard in Ecoregions 6E and 7E. For species at risk habitat, we are strongly recommending that the policies remain as in PPS 2005. For mineral aggregate resources, we are strongly recommending that now is the time to reform these policies. If the mineral aggregate policies cannot be reformed at this time, we recommend in the alternative that the policies remain as in PPS 2005 and that the Ministry await the outcome of the Aggregate Resources Act Review before contemplating changes such as are proposed, in particular, in policies 2.5.2.3 and new policies 2.5.3.2 and 2.5.3.2.

Responses to the Ministry's Consultation Questions

1. *Do the draft policies provide sufficient direction to effectively protect provincial interests in land use planning?*

CELA and Ecojustice are supportive of many of the proposed changes to the Draft Policies and we encourage the Ministry to retain these as the new PPS is finalized. Below, in our detailed comments, we have pulled the particular sections that we consider improvements that should be retained together in bulleted lists. Changes that are of particular importance and should be retained as the Draft Policies are finalized include: (a) recognition and increased protection of

coastal wetlands (see policy 2.1.5) and the requirement to identify natural heritage systems in key Ecoregions (new policy 2.1.3); (b) including stormwater with other water/wastewater services (see policy 1.6.5.7); (c) recognition of Aboriginal interests (see Vision, para.2, policy 1.2.2 and new policy 4.3); (d) improvements to agriculture policies (see policy 2.3.3.1); and (e) addition of new terms which reflect an improved vision for land use planning in Ontario, including “strong, sustainable and resilient communities”, “active transportation”, “transit-supportive”, “green infrastructure”.

2. *Are there additional land use planning matters that require provincial policy direction and which are not included?*

As currently proposed, the Draft Policies address a wide range of land use planning matters that typically arise under the *Planning Act*. Thus, the key challenge is not necessarily to expand the suite of discrete issues specifically addressed in the PPS, but to ensure that the proposed policies provide effective and appropriate direction to planning authorities on matters of provincial interest. As discussed below, CELA and Ecojustice have identified various opportunities to strengthen and improve the Draft Policies, particularly in relation to natural heritage systems and protection of agricultural lands.

3. *Do you foresee any implementation challenges with the draft policies?*

CELA and Ecojustice foresee a variety of implementation challenges, such as: (a) inadequate provincial direction on resolving conflicts between competing policies that are applicable to the same land use planning matter; (b) inadequate provincial direction on resolving conflicts between the PPS and other provincial plans; (c) inadequate integration between the PPS and other statutory regimes, particularly those governing infrastructure approvals or protection of species at risk; (d) inadequate guidance materials to assist planning authorities in interpreting and applying PPS policies at the local level; and (e) lack of capacity of smaller municipalities to fully implement the proposed policies. These and other challenges are described below in more detail.

4. *Is additional support material needed to help implement the Provincial Policy Statement?*

CELA and Ecojustice believe that guidance documentation, including in particular the Ministry of Natural Resource’s Natural Heritage Reference Manual, should be actively promoted to assist in implementation of the new PPS. Where guidance documents are outdated, insufficient or wholly absent on matters of provincial interest, new guidance documentation should be developed in a timely manner with input from interested stakeholders. CELA and Ecojustice also believe that performance measures for achievement of the various policy objectives in the PPS should be further developed and gathered and results disseminated annually (see Recommendation 2 below).

5. *Do you think that the legislated Provincial Policy Statement review cycle should be extended from the current 5-year period?*

Given past experience with changes to the PPS, CELA and Ecojustice understand that five years can be a rather short cycle for assessing how new policies are impacting land use planning. At the same time, the length of the PPS review itself is not subject to any limitation (eg, the review must start within 5 years of the PPS coming into force, but the amount of time to conduct the review is not referenced at all, meaning that there is no limit to the time period taken to conduct the review). In our experience, the review of PPS 1997 took three years and the current review of PPS 2005 is likely to take three years. As such, a new PPS is only implemented approximately every 8 years. If the period between reviews is extended, there should be a corresponding limit as to how long the review is to take in order to ensure that any new PPS is implemented within 10 years of the prior one.

Recommendation 1

Maintain the 5-year review cycle.

If the review cycle is to be extended, complementary limitations on the actual review should be enacted to ensure any new PPS is implemented within 10 years of date the one under review came into force.

As well, complementary work is needed for timely evaluation and adaptive management to optimize the effectiveness of PPS policies. Because municipalities are charged with the large task of implementing the PPS, it is critical that the Province fully embrace the requirement of monitoring the results of that implementation at a local, regional and provincial scale. The draft PPS monitoring framework for the PPS 2005 indicated that the Province was willing to act on the legislated requirement to monitor the PPS; however, the Province has not yet articulated how various agencies might collect and share information. We further recommend that Ontario commit to cumulative impact monitoring (an example is the Cumulative Impact Monitoring Program of the Northwest Territories¹) in order to integrate the collection of data, as well as the development and assessment of metrics that will be the basis of sound decisions for adaptive management, not only for the PPS, but also for other strategic initiatives.

Recommendation 2

Commit to a process to create measurable targets and require municipal reporting regarding how they are achieving consistency with the Provincial Policy Statement.

In particular, we recommend that the Ministry of Municipal Affairs and Housing commit to:

- a) a process, with deadlines, for coming up with regionally meaningful targets for the PPS including, but not limited to, intensification;**
- b) promoting a provincial, multi-agency direction for cumulative impact monitoring; and**
- c) application of adaptive management as a means of optimizing performance of PPS policies.**

¹ Aboriginal Affairs and Northern Development Canada. 2010. Cumulative Impact Monitoring Program. <http://www.aadnc-aandc.gc.ca/eng/1100100023828> (accessed 12 June 2012).

Specific Analysis, Comments and Recommendations

Below we offer our analysis, comments and recommendations with respect to the Draft Policies in the order in which they appear in the consultation document. All page references related to the Draft Policies, unless otherwise specified. As well, when proposing specific language, we have used ~~strike through~~ to denote recommended deletions and underline to denote recommended insertions.

Part I: Preamble

In the third paragraph, there is reference to the “principles of strong communities, a clean and healthy environment and economic growth, for the long term.” Are these truly principles? Or, are they the goals? We believe that the land use planning system should enable complete communities, a clean and healthy environment, and a stable economy. In addition, we recommend that the terms used be consistent throughout the PPS to avoid confusion. Specifically, we suggest that the terms “strong, sustainable and resilient communities” and “clean and healthy environment” and “strong economy” be used consistently throughout the PPS.

Recommendation 3

Ensure that the terms “strong, sustainable and resilient communities” and “clean and healthy environment” and “strong economy” be used consistently throughout the PPS.

Recommendation 4

**Change the third paragraph, second sentence in the Preamble (p.9) to read:
Provincial plans and municipal official plans provide a framework for comprehensive, integrated, place-based and long-term planning that supports and integrates the principles of strong communities, a clean and healthy environment and economic growth, for the long term vision for Ontario’s land use planning system (see Part IV).**

Part III: How to read the PPS

This section has been significantly improved, including:

- Use of subheadings (read the entire PPS, consider specific policy language, geographic scale, policies are minimum standards, defined terms and meanings, pp.9-10)
- New specific guidance is offered about how to read the policies when more than one is relevant (para.8, p.9)
- Clear discussion of directives (shall) and other terms (should, encourage) and that the choice of language is intended to influence the “nature of implementation” (paras.2-3, p.10)
- The policies are intended to be minimum standards (para.8, p.10)

We strongly recommend maintaining these improvements. As well, we reiterate our past submissions in stating that: “The first section of the PPS should clearly articulate and prioritize the

values and principles that must be applied when making land use planning decisions. Establishing a clear goal and hierarchy of priorities will ease ongoing issues with implementation when land uses are in conflict.” (Planning for Sustainability Submission 2010, p.5)

In order to avoid implementation challenges, we recommend that the limitation on the policies being the minimum standards (eg, that polices are not intended to be a minimum standard when adopting an improved standard would “conflict with any policy” of the PPS, para.8, p.10) be removed. As well, we strongly encourage the Ministry to enhance the clarity provided in the PPS by providing clear direction as to how to resolve conflicts among land use policies. This clear conflict resolving provision will also be applied when specific communities consider building upon minimum standards.

Recommendation 5

Amend the second paragraph under “Policies Represent Minimum Standards” (p.10) to read: Within the framework of the provincial policy-led planning system, planning authorities and decision-makers may build upon these minimum standards to address matters of importance to a specific community, ~~unless doing so would conflict with any policy of the Provincial Policy Statement.~~

Recommendation 6

Add the following to Part III:

None of the policies are to be read in isolation from each other, and in situations where there is a conflict with respect to a matter relating to the natural environment or human health, the policy that provides more protection to the natural environment and/or human health prevails.

Part IV: Vision for Ontario’s land use planning system

This section contains improvements to the vision including:

- “strong communities” is now “strong, sustainable and resilient communities” in the introductory paragraph (para.1, p.11)
- explicit recognition for the “importance of consulting with Aboriginal communities” (para.2, p.11)
- reference to “transportation choices that increase the use of active transportation and transit before other modes of travel” (para.4, p.11)
- reference to creating communities that are “resilient to climate change” (para.4, p.11) and reference to the Great Lakes, “food provided” by agricultural resources, and that we should manage resources “to maintain biodiversity, protect essential ecological process” (para.5, p.11)
- adds “human health” to environmental and social well-being in the vision (para. 7, p. 11)

We strongly recommend that these improvements be maintained. We further recommend that there be consistent reference to the new term “strong, sustainable and resilient communities” throughout the PPS, as mentioned in Recommendation 1. We also recommend that there be explicit reference to integrated watershed management and cumulative impacts.

Recommendation 7

Amend Part IV to include specific references to integrated watershed management and cumulative impacts.

Part V: Policies

There are numerous improvements throughout the various policies, including:

- Adding “promoting development and land use patterns that maintain biodiversity and resilience to climate change” to the list of items that “healthy, liveable and safe communities are sustained by” in policy 1.1.1 (p.13)
- Adding two introductory paragraphs to the settlement areas policy (1.1.3) that describe settlement areas and suggest that “[t]he vitality of settlement areas is critical to the long-term economic prosperity of our communities.” As well, it indicates that land use pressures vary across the province and includes that “[i]t is in the interest of all communities to use land and resources wisely, to promote efficient development patterns, ...” and so on (p.14)
- Adds “support active transportation;” “are transit-supportive” and “support the efficient movement of goods” to the list of items on which land use patterns in settlement areas are to be based in policy 1.1.3.2 (p.14)
- Adding to the coordination policies two new policies: one that encourages coordination with aboriginal communities (1.2.2) and one that encourages coordination of emergency, economic, environmental and social considerations in support of “efficient and resilient communities” (1.2.3) (p.17)
- Simplifying and clearly setting a hierarchy in the planning for sewage and sewer services in policies 1.6.5.1 through 1.6.5.6 (p.20)
- Adding “stormwater” to the other water/wastewater services policies in 1.6.5, with the addition of policy 1.6.5.7 “planning for stormwater management shall” meet a number of criteria including minimizing contaminant loads, maintain/increase the “extent and function of vegetative and pervious surfaces”, and promoting best practices (p.21)
- Adding to transportation systems (1.6.6) and transportation infrastructure corridors (1.6.7) terms such as “transportation demand management”, “multi-modal transportation system”, and “active transportation” (p.21)
- Adding to the energy and air quality policies (1.8) to reflect “energy conservation” and “climate change” – planning authorities “shall support energy conservation and efficiency,

improve air quality, and climate change mitigation and adaptation” through a number of items, including promoting “active transportation”, “transit in and between residential, employment ... and other areas”, and design that “maximizes energy efficiency and conservation, and considers the mitigating effects of vegetation; maximizes opportunities for the use of renewable energy; and takes into account the impacts of climate change” (policy 1.8.1) (p.23)

- Adds new requirement that “natural heritage systems shall be identified in Ecoregions 6E & 7E” (new policy 2.1.3) (p.24)
- Adds “coastal wetlands” (eg, those that are not “provincially significant”) to the mitigation policies (see policy 2.1.5) (p.24)
- Adds detail to water policies that include “integrated and long-term” watershed planning as foundation for “considering cumulative impacts”, “maintaining linkages and related functions among ground water features, hydrologic functions, natural heritage features and areas, and surface water features including shoreline areas” (see policy 2.2.1) (p.25)
- Adds “on farm diversified uses” to policy 2.3.3.1 to uses permitted in prime agricultural lands (p.26)
- Adding new policy to natural hazards (3.1) requiring that “planning authorities shall consider the potential impacts of climate change that may increase the risk associated with natural hazards” (new policy 3.1.3) (p.31)
- Regarding implementation, there is a new policy (4.3) that explicitly states “this provincial policy statement shall be implemented in a manner than is consistent with the recognition and affirmation of existing aboriginal and treaty rights in section 35 of the Constitution Act, 1982.” (p.33)
- There is also direction that “planning authorities shall keep their zoning and development permit by-laws up-to-date with their official plans and with this provincial policy statement.” (new policy 4.7, p.33).
- There is a new policy (4.12) that “there may be circumstances where planning authorities should consider agreements related to the protection and restoration of the Great Lakes— St. Lawrence River Basin” (p.34).
- There are a number of new definitions, including “active transportation”, “transit-supportive” and “green infrastructure” which are encouraging.

We strongly recommend that these improvements be maintained; in particular we strongly support the proposed amendments that extend protection for coastal wetlands.

At the same time, we are extremely disappointed that the Ministry has not proposed to adopt key amendments required for the effective protection of natural heritage systems and species at risk.

First, the natural heritage section of the PPS falls short of adequately protecting Ontario's rich diversity of natural systems in a comprehensive and systematic manner. This is particularly troubling in light of the need for intact functioning ecosystems that are necessary to adapt to the projected impact of climate change. In addition to the new policy (2.1.3) that requires identification of natural heritage systems which we strongly support, we highly recommend that specific changes be made to ensure a full commitment to a systems-based approach.

Recommendation 8

Amend policy 2.1.1 (p.24) to read:

Natural features, ~~and~~ areas and systems shall be protected for the long term.

Recommendation 9

Amend policy 2.1.2 (p.24) to read:

The diversity and connectivity of natural features in an area, and the long term *ecological function* and biodiversity of *natural heritage systems*, ~~should~~ shall be maintained, restored or, where possible, improved, recognizing linkages between and among *natural heritage features and areas, surface water features and ground water features*.

As mentioned earlier, we commend the Ministry for "Recognizing the importance of the Great Lakes and expanding protection for Great Lakes coastal wetlands" (Draft Policies, p.6). This represents a clear and welcome commitment from the Province to ensuring the health of our communities by supporting the natural systems that provide us with numerous benefits. Having made this commitment to "recognize the importance" of Great Lakes coastal wetlands, we urge the Ministry to remove the distinction being made in the Draft Policies between those wetlands that have full protection (all provincially significant coastal wetlands in policy 2.1.4) and those that have partial protection (all coastal wetlands in Ecoregions 5E, 6E and 7E that are not provincially significant only protected to the point that "there are no negative impacts on the natural features or their ecological functions" through policy 2.1.5). We strongly recommend extending full protection to all coastal wetlands, by deleting the word "significant" in policy 2.1.4(b).

Further, given the loss of 72% of wetlands south and east of the Canadian Shield, with losses exceeding 90% in some areas, all remaining wetlands and their ecological functions in Ecoregions 6E and 7E must be protected from development and site alteration. For provincially significant wetlands (PSWs) in Ecoregion 5E, protection as in the PPS 2005 must be maintained.

Recommendation 10

Amend policy 2.1.4 (p.24) to read:

Development and site alteration shall not be permitted in:

a) ~~significant~~ wetlands in Ecoregions ~~5E, 6E and 7E; and~~

b) ~~significant coastal wetlands;~~ and

c) significant wetlands in Ecoregion 5E.

The Draft Policies would remove the current prohibition (see policy 2.1.4) on development and site alteration in the significant habitat of threatened and endangered species. In its place is proposed a new policy (2.1.7), which defers to the provincial *Endangered Species Act, 2007* (ESA) and the federal *Species at Risk Act* (SARA). These two pieces of legislation will ‘trump’ the formerly clear PPS prohibition. This is of considerable concern because the ESA permitting process allows development to proceed in the habitat of threatened and endangered species if an ‘overall benefit’ to the species can be achieved (e.g., if habitat restoration is undertaken to improve the quality or the extent of the species’ habitat). As well, under the ESA, regulations may be established that allow exemptions from the prohibition on damage or destruction of habitat.

It is important to understand that the ESA permitting process was never designed to take the place of land use planning. ESA permit applications are not reviewed through the lens of choosing the most appropriate land use designation. Rather, the permitting process addresses a technical consideration – is the development proponent able to create an overall benefit to the species? If so, the permit is granted. Policy 2.1.7 as drafted is based on the faulty premise that ESA permits can serve as a surrogate for the consideration of endangered species habitat in land use decision-making.

In contrast, municipal land use planning is fundamentally a values-based exercise. It is about determining what is the best use of the land – what activities *should* be allowed to occur at which locations? The 2005 PPS says that development and site alteration should not occur in the significant habitat of threatened or endangered species, and consequently *Planning Act* approvals are not supposed to be issued to allow such activities to occur. For example, a site cannot be re-designated for mineral extraction in the significant habitat of a threatened or endangered species. (See the recent ruling of the Joint Board, *Re Nelson Aggregate Co*, Case No. 08-030.)

Proposed policy 2.1.7 weakens the current standard of protection. Under the proposed regime, once an ESA permit or exemption is granted the development would be able to proceed, regardless of land uses prohibited or allowed under municipal official plans.

Further, the revised policy 2.1.8 does not refer to species at risk habitat at all. Under the 2005 PPS, development and site alteration are not permitted on lands adjacent to the significant habitat of endangered and threatened species. Removal of this protection for species at risk habitat is of enormous concern because habitat is greatly influenced by land use on adjacent lands. Those adjacent lands are often not significant from any other perspective than their influence on the species at risk habitat. By removing the adjacent lands provision from the PPS, proposed development on adjacent lands species at risk habitat will not be assessed vis-à-vis the influence on that habitat.

Given these concerns, we strongly recommend that the following changes be made to the Draft Policies.

Recommendation 11

Remove proposed policy 2.1.7 (p.24), the definition of “habitat of endangered species and threatened species” (p.40), and the paragraph referencing policy 2.1.7 under the definition of “provincial and federal requirements” (p.43).

Retain “significant habitat of endangered species and threatened species” under proposed policies 2.1.4 (p.24) and 2.1.8 (p.25).

Amend the definition “significant” (p.44) to include:

a.1) in regard to the habitat of endangered species and threatened species, means the habitat, as defined under the *Endangered Species Act, 2007*;

In recent years, some of Ontario’s most controversial and intractable land use disputes have involved proposals for new or expanded aggregate operations at locations (or to depths) that may cause adverse effects upon adjoining lands, natural heritage features, ecological functions/systems, and rural communities.² With some notable exceptions (i.e. the above-noted *Nelson Aggregates* case), aggregate operations tend to prevail and receive land use planning approvals despite well-founded objections from site neighbours, non-governmental organizations, and other interested stakeholders. Such outcomes are unsurprising since the PPS has traditionally been heavily weighted in favour of aggregate protection and production.

The Draft Policies in relation to mineral aggregate resources attempt to continue this tradition by retaining the key elements of the aggregate policies in PPS 2005 (i.e. maintaining the “close to market” criterion; dispensing with a “need” assessment or demand/supply analysis, etc.). In addition, the Draft Policies purport to justify the continued primacy of aggregate extraction within the PPS by adopting the erroneous view that aggregate extraction is merely an “interim use” whose negative impacts can be remedied by progressive and final rehabilitation. More alarmingly, the Draft Policies now invite planning authorities to conclude that “no negative effects” will be created within the meaning of natural heritage policies (i.e. policies 2.1.5 and 2.1.8), provided that rehabilitation “in accordance with established standards” will occur at some unspecified point in the future. In our view, given the vagaries and uncertainties associated with rehabilitation planning under the *Aggregate Resources Act*,³ this new PPS provision is objectionable and unacceptable.

While we recognize the provincial interest in mineral aggregate resources, CELA and Ecojustice strongly believe that it is now time for Ontario to revisit and revise the preferential treatment accorded to aggregate extraction under the PPS. In particular, the Draft Policies regarding aggregate resources should be wholly deleted and replaced by a new set of provisions which:

- articulate the provincial interest in conserving aggregate resources, reducing aggregate demand, and recycling used aggregate where feasible;
- prohibit new or expanded aggregate operations in certain lands and areas;

² See, for example, CELA, Submissions to the Standing Committee on General Government on the *Aggregates Resources Act* (May 14, 2012), pp.3-4

³ *Ibid.*, pp.8-11.

- impose more stringent planning and approval requirements for new or expanded aggregate operations in lands or areas where such operations may be permitted;
- impose further and better requirements in relation to rehabilitation; and
- require certain land use planning approvals for wayside pits and quarries (and related facilities) in or near certain lands or areas;

In summary, given the various adverse effects (including cumulative impacts) generally associated with aggregate operations, CELA and Ecojustice strongly recommend that the Draft Policies must be reformed to better control this intrusive industrial activity in the land use planning context, and to safeguard other matters of provincial interest reflected in the PPS.

Recommendation 12

Section 2.5 of the Draft Policies should be deleted in its entirety, and should be replaced by the following provisions:

2.5 MINERAL AGGREGATE RESOURCES

2.5.1 Protection of Long-Term Resource Supply

2.5.1.1 Since *deposits of mineral aggregate resources* are non-renewable resources, planning authorities shall undertake all necessary steps to:

- (a) conserve and manage the Province's *deposits of mineral aggregate resources* for the benefit of current and future generations of Ontarians;**
- (b) implement strategies, plans and programs to reduce aggregate demand across the Province; and**
- (c) require the recovery and recycling of previously extracted aggregate whenever technically feasible.**

2.5.1.2 *Deposits of mineral aggregate resources* shall be identified across the Province. *Mineral aggregate resources* shall be protected in only those areas across the Province in which extraction may be permitted in accordance with policy 2.5.3.

2.5.2 Prohibition of Aggregate Extraction

2.5.2.1 New or expanded operations for the extraction of *mineral aggregate resources* shall not be permitted in:



- (a) prime agricultural land or specialty crop areas;
- (b) wellhead protection areas, intake protection zones, highly vulnerable aquifers, or significant groundwater recharge areas identified in a source protection plan approved under the *Clean Water Act*;
- (c) significant wetlands or coastal wetlands;
- (d) significant woodlands;
- (e) significant valleylands;
- (f) significant wildlife habitat, fish habitat, or habitat of endangered species or threatened species; or
- (g) significant areas of natural or scientific interest.

2.5.3 Siting and Assessment of Proposed Aggregate Extraction

2.5.3.1 New or expanded operations for the extraction of *mineral aggregate resources* shall not be permitted on *adjacent lands* to the lands, areas and features identified in policy 2.5.2.1, or on any other part of the Province designated under the *Aggregate Resources Act*, unless:

- (a) a demand/supply analysis provides satisfactory evidence that:
 - (i) there is a demonstrable public need for the proposed extraction of the *mineral aggregate resources*; and
 - (ii) there are no other alternative aggregate supplies (i.e. recycled aggregate), or alternative sites licenced under the *Aggregate Resources Act*, that can address the need for the proposed extraction of the *mineral aggregate resources*;
- (b) an environmental impact study demonstrates that the proposed extraction of the *mineral aggregate resources* will not cause any direct, indirect or cumulative *negative effects* on the lands, areas or features identified in policy 2.5.2.1, or on their *ecological functions, biodiversity or connectivity*;
- (c) a human health risk assessment demonstrates that the proposed extraction of the *mineral aggregate resources* will not cause any direct, indirect or cumulative *negative effects* on public health and safety; and



(d) appropriate requirements are imposed to ensure the effective monitoring and mitigation of any unanticipated *negative effects* that may arise during the establishment, operation, or closure of aggregate extraction operations.

2.5.3.2 In the demand/supply analysis required by policy 2.5.3.1(a), the proposed extraction of the *mineral aggregate resources* shall not be selected as the preferred alternative, or evaluated as the only alternative, on the grounds that the location is geographically closer to the identified market than other alternative aggregate sources or sites.

2.5.3.3 Where the site-specific application of policy 2.5.3.1 may create operational conflict with another policy issued under the *Provincial Policy Statement*, then the policy that is the most protective of the environment, natural heritage or public health and safety shall prevail to the extent of the conflict.

2.5.4 Progressive and Final Rehabilitation

2.5.4.1 Progressive and final rehabilitation shall be required on all land from which aggregate has been extracted in order to completely restore the land to its former condition and use. Where complete rehabilitation is not technically feasible, the land shall be restored to a condition or use that is compatible with, and does not cause *negative effects* upon, adjoining land conditions and uses.

2.5.4.2 *Comprehensive rehabilitation* planning shall be undertaken where there is a concentration of existing or proposed mineral aggregate operations in close proximity to each other, or within the same *watershed*.

2.5.4.3 In parts of the Province not designated under the *Aggregate Resources Act*, rehabilitation standards that are substantially similar to those under the Act should be applied to extraction operations on private lands.

2.5.5 Wayside Pits and Quarries and Related Facilities

2.5.5.1 *Wayside pits and quarries, portable asphalt plants and portable concrete plants* used on public authority contracts shall require an official plan amendment, re-zoning, or development permit under the *Planning Act* if these facilities are proposed in or adjacent to *settlement areas, designated growth areas, and environmentally sensitive or vulnerable areas*.

Finally, PPS 2005 clearly specified that provincial plans “shall take precedence” over the PPS when there is conflict. However, the current Draft Policy (4.11) reads that provincial plans “shall be read in conjunction” with the PPS and “generally take precedence”. In our view, this change to the PPS is both inappropriate and legally questionable because provincial plans provide for more detailed and specific direction regarding land use planning in special areas of Ontario, and because they are subject to a legal standard of conformity (i.e. section 14 of the *Niagara Escarpment Planning and Development Act*). Accordingly, the language in PPS 2005 should be retained in its original form.

Recommendation 13

Amend policy 4.11 (p.34) to read:

~~Provincial plans shall be read in conjunction with the Provincial Policy Statement and generally take precedence over policies in this Provincial Policy Statement to the extent of any conflict, in accordance with relevant legislation or regulations.~~ Examples of these are plans created under the *Niagara Escarpment Planning and Development Act*, the *Ontario Planning and Development Act, 1994*, the *Oak Ridges Moraine Conservation Act, 2001*, the *Greenbelt Act, 2005* and the *Places to Grow Act, 2005*.

Conclusions

For the foregoing reasons, CELA and Ecojustice support many of the proposed improvements within the Draft Policies prepared by the Ministry of Municipal Affairs & Housing. However, we submit that certain Draft Policies require further consideration and re-drafting in order to better safeguard matters of provincial interest. Our main recommendations are as follows—please note, as mentioned earlier, the numbering of our recommendations does not imply priority; we draw your attention in particular to Recommendations 6 and 13 (clarity with respect to resolving conflicts among provincial interests), 10 (enhanced protection for wetlands in key Ecoregions), 11 (protection for species at risk habitat), and 12 (mineral aggregate resources):

Recommendation 1

Maintain the 5-year review cycle.

If the review cycle is to be extended, complementary limitations on the actual review should be enacted to ensure any new PPS is implemented within 10 years of date the one under review came into force.

Recommendation 2

Commit to a process to create measurable targets and require municipal reporting regarding how they are achieving consistency with the Provincial Policy Statement.

In particular, we recommend that the Ministry of Municipal Affairs and Housing commit to:

- a) a process, with deadlines, for coming up with regionally meaningful targets for the PPS including, but not limited to, intensification;**
- b) promoting a provincial, multi-agency direction for cumulative impact monitoring; and**
- c) application of adaptive management as a means of optimizing performance of PPS policies.**

Recommendation 3

Ensure that the terms “strong, sustainable and resilient communities” and “clean and healthy environment” and “strong economy” be used consistently throughout the PPS.

Recommendation 4

Change the third paragraph, second sentence in the Preamble (p.9) to read:
Provincial plans and municipal official plans provide a framework for comprehensive, integrated, place-based and long-term planning that supports and integrates the principles of strong communities, a clean and healthy environment and economic growth, for the long term vision for Ontario’s land use planning system (see Part IV).

Recommendation 5

Amend the second paragraph under “Policies Represent Minimum Standards” (p.10) to read:
Within the framework of the provincial policy-led planning system, planning authorities and decision-makers may build upon these minimum standards to address matters of importance to a specific community, ~~unless doing so would conflict with any policy of the Provincial Policy Statement.~~

Recommendation 6

Add the following to Part III:

None of the policies are to be read in isolation from each other, and in situations where there is a conflict with respect to a matter relating to the natural environment or human health, the policy that provides more protection to the natural environment and/or human health prevails.

Recommendation 7

Amend Part IV to include specific references to integrated watershed management and cumulative impacts.

Recommendation 8

Amend policy 2.1.1 (p.24) to read:

Natural features, ~~and~~ areas and systems shall be protected for the long term.

Recommendation 9

Amend policy 2.1.2 (p.24) to read:

The diversity and connectivity of natural features in an area, and the long term *ecological function* and biodiversity of *natural heritage systems*, ~~should~~ shall be maintained, restored or, where possible, improved, recognizing linkages between and among *natural heritage features and areas, surface water features and ground water features.*

Recommendation 10

Amend policy 2.1.4 (p.24) to read:

Development and site alteration shall not be permitted in:

- a) *significant wetlands* in Ecoregions 5E, 6E and 7E; and
- b) *significant coastal wetlands*; and
- c) *significant wetlands in Ecoregion 5E.*

Recommendation 11

Remove proposed policy 2.1.7 (p.24), the definition of “habitat of endangered species and threatened species” (p.40), and the paragraph referencing policy 2.1.7 under the definition of “provincial and federal requirements” (p.43).

Retain “*significant habitat of endangered species and threatened species*” under proposed policies 2.1.4 (p.24) and 2.1.8 (p.25).

Amend the definition “significant” (p.44) to include:

a.1) in regard to the habitat of *endangered species* and *threatened species*, means the habitat, as defined under the *Endangered Species Act, 2007*;

Recommendation 12

Section 2.5 of the Draft Policies should be deleted in its entirety, and should be replaced by the following provisions:

2.5 MINERAL AGGREGATE RESOURCES

2.5.1 Protection of Long-Term Resource Supply

2.5.1.1 Since *deposits of mineral aggregate resources* are non-renewable resources, planning authorities shall undertake all necessary steps to:

- (a) conserve and manage the Province’s *deposits of mineral aggregate resources* for the benefit of current and future generations of Ontarians;
- (b) implement strategies, plans and programs to reduce aggregate demand across the Province; and
- (c) require the recovery and recycling of previously extracted aggregate whenever technically feasible.

2.5.1.2 *Deposits of mineral aggregate resources* shall be identified across the Province. *Mineral aggregate resources* shall be protected in only those areas across the Province in which extraction may be permitted in accordance with policy 2.5.3.

2.5.2 Prohibition of Aggregate Extraction



2.5.2.1 New or expanded operations for the extraction of *mineral aggregate resources* shall not be permitted in:

- (a) *prime agricultural land or specialty crop areas;***
- (b) *wellhead protection areas, intake protection zones, highly vulnerable aquifers, or significant groundwater recharge areas identified in a source protection plan approved under the *Clean Water Act*;***
- (c) *significant wetlands or coastal wetlands;***
- (d) *significant woodlands;***
- (e) *significant valleylands;***
- (f) *significant wildlife habitat, fish habitat, or habitat of endangered species or threatened species; or***
- (g) *significant areas of natural or scientific interest.***

2.5.3 Siting and Assessment of Proposed Aggregate Extraction

2.5.3.1 New or expanded operations for the extraction of *mineral aggregate resources* shall not be permitted on *adjacent lands* to the lands, areas and features identified in policy 2.5.2.1, or on any other part of the Province designated under the *Aggregate Resources Act*, unless:

- (a) a demand/supply analysis provides satisfactory evidence that:**
 - (i) there is a demonstrable public need for the proposed extraction of the *mineral aggregate resources*; and**
 - (ii) there are no other alternative aggregate supplies (i.e. recycled aggregate), or alternative sites licenced under the *Aggregate Resources Act*, that can address the need for the proposed extraction of the *mineral aggregate resources*;**
- (b) an environmental impact study demonstrates that the proposed extraction of the *mineral aggregate resources* will not cause any direct, indirect or cumulative *negative effects* on the lands, areas or features identified in policy 2.5.2.1, or on their *ecological functions*, biodiversity or connectivity;**



(c) a human health risk assessment demonstrates that the proposed extraction of the *mineral aggregate resources* will not cause any direct, indirect or cumulative *negative effects* on public health and safety; and

(d) appropriate requirements are imposed to ensure the effective monitoring and mitigation of any unanticipated *negative effects* that may arise during the establishment, operation, or closure of aggregate extraction operations.

2.5.3.2 In the demand/supply analysis required by policy 2.5.3.1(a), the proposed extraction of the *mineral aggregate resources* shall not be selected as the preferred alternative, or evaluated as the only alternative, on the grounds that the location is geographically closer to the identified market than other alternative aggregate sources or sites.

2.5.3.3 Where the site-specific application of policy 2.5.3.1 may create operational conflict with another policy issued under the *Provincial Policy Statement*, then the policy that is the most protective of the environment, natural heritage or public health and safety shall prevail to the extent of the conflict.

2.5.4 Progressive and Final Rehabilitation

2.5.4.1 Progressive and final rehabilitation shall be required on all land from which aggregate has been extracted in order to completely restore the land to its former condition and use. Where complete rehabilitation is not technically feasible, the land shall be restored to a condition or use that is compatible with, and does not cause *negative effects* upon, adjoining land conditions and uses.

2.5.4.2 *Comprehensive rehabilitation* planning shall be undertaken where there is a concentration of existing or proposed mineral aggregate operations in close proximity to each other, or within the same *watershed*.

2.5.4.3 In parts of the Province not designated under the *Aggregate Resources Act*, rehabilitation standards that are substantially similar to those under the Act should be applied to extraction operations on private lands.

2.5.5 Wayside Pits and Quarries and Related Facilities

2.5.5.1 *Wayside pits and quarries, portable asphalt plants and portable concrete plants* used on public authority contracts shall require an official plan amendment, re-zoning, or development permit under the *Planning Act* if these facilities are proposed in or adjacent to *settlement areas, designated growth areas, and environmentally sensitive or vulnerable areas*.

Recommendation 13

Amend policy 4.11 (p.34) to read:

Provincial plans shall be read in conjunction with the Provincial Policy Statement and generally take precedence over policies in this Provincial Policy Statement to the extent of any conflict, in accordance with relevant legislation or regulations. Examples of these are plans created under the Niagara Escarpment Planning and Development Act, the Ontario Planning and Development Act, 1994, the Oak Ridges Moraine Conservation Act, 2001, the Greenbelt Act, 2005 and the Places to Grow Act, 2005.

If requested, we would be pleased to meet with you or other Ministry staff to further discuss our recommendations for PPS reform. Please contact the undersigned if you have questions or comments about this submission.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

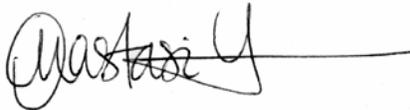


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