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Oral Presentation

Exposé oral

Written submission from the Curve Lake First Nation

Mémoire de la Curve Lake First Nation

In the Matter of the

À l'égard de

Darlington New Nuclear Project

Projet de nouvelle centrale nucléaire de Darlington

Application to renew the nuclear power
reactor site preparation licence for the
Darlington New Nuclear Project

Demande de renouvellement du permis de
préparation de l'emplacement d'une centrale
nucléaire pour le projet de nouvelle centrale
nucléaire de Darlington

Commission Public Hearing

Audience publique de la Commission

June 10-11, 2021

10 et 11 juin 2021

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May 7, 2021

RE: Curve Lake First Nation Comments on Consultation for Ontario Power Generation's Site Preparation Licence Renewal for the Darlington New Nuclear Project (DNNP)

Dear Secretariat,

On behalf of Chief & Council and our community at Curve Lake First Nation (CLFN), we hope that this written intervention finds you safe and healthy during this crucial time where we all have to maintain extraordinary effort to keep our community, our friends, our family and our loved ones safe, healthy, and cared for. We hope that members and staff at CNSC are coping well during these times.

Ontario Power Generation's Project and ongoing facility operations are located on Treaty 20 Michi Saagiig territory and in the traditional territory of the Michi Saagiig and Chippewa Nations, collectively known as the Williams Treaties First Nations, which include: Curve Lake, Hiawatha, Alderville, Scugog Island, Rama, Beausoleil, and Georgina Island First Nations.

Curve Lake First Nation is the steward and caretaker of the lands and waters within our territory in perpetuity, as we have been for thousands of years, and we have an obligation to continue to steadfastly maintain this responsibility to ensure their health and integrity for generations to come. Protection, conservation, and sustainable collaborative management are a priority for Curve Lake First Nation.

This written intervention represents the views of CLFN only. In my assessment, CLFN has made great strides in the last few years to build relationships and engage in open dialogue on a government to government or government to corporation basis as it relates to processes of consultation. Consultation and accommodation are critical in ensuring that the rights and interests of the Mississauga Anishinabek Nation are prioritized regarding projects in our territory.

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Our Consultation Department has emphasized that environmental protection and sustainability is an integral component of the future of the Curve Lake First Nation. Working with Curve Lake to develop project concept, design, planning, assessment, potential and actual impacts, monitoring, etc. are necessary steps in our process. All plans and activities must be viewed through the lens of environmental protection and sustainability. These requirements ensure that Curve Lake First Nation's interests and rights are being protected within our territory; that we are able to protect the ability to exercise our rights as a people – physically, culturally, and spiritually; that we are able to foster sovereignty, cultural identity, and sustainable succession. This is central to all relationships being progressed with various regulators and proponents.

Curve Lake's vision statement must be central to development in the territory: "Upon the foundation of community values and vision that promotes and preserves our relationship with mother earth, which has defined and will continue to define our identity and culture as Anishnaabe People, the Consultation Department will build and secure the framework for our First Nation lands by putting into place ways and laws that will provide both the protection and the freedom for each person, their family, and the whole community to fulfill their potential. Each way and law will be given the consideration to its importance for our next seven generations."

I would like to acknowledge CNSC staff in their dialogue and work with our Consultation Department since 2020 and into 2021. There are many topics and projects that have been covered; as everyone can appreciate, meaningfully consulting on and addressing each topic or project takes time, commitment, and focus. I am optimistic that our Terms of Reference and Work Plan for 2021 will result in progress and improvements in the coming years.

Our Consultation Department is progressively building capacity to be able to match the various consultation needs in the nuclear sector and I would point out that having three full time equivalent members on my team pales in comparison to the amount of resources that each regulatory body and proponent are able to bring to the table. These are our resources that have to respond to all sectors and projects across our territory. As such, I must emphasize that I view this intervention process merely as a formal check-in point and I expect that continuing dialogue and consultation will reach beyond the confines of this process and lead to decision points and decision making that includes Curve Lake First Nation.

Likewise, I would also like to acknowledge OPG staff in their dialogue and work with our Consultation Department, roughly quarterly meetings in 2020 and then monthly meetings in 2021. OPG has provided general project presentations and environment focused presentations pertaining to the DNNP at these meetings. Beyond what is posted publicly on their website, OPG has provided additional information requested as a result of the various meetings. At the



time of this writing, OPG has planned a virtual session for our community on May 19, 2021. OPG has also provided capacity funding to support and to ensure that CLFN can be engaged meaningfully in activities related to OPG's application to renew the DNNP Site Preparation Licence issued by the Canadian Nuclear Safety Commission.

Similarly, as you can appreciate, meaningful consultation takes time. The volume of information and the depth of information are such that they cannot simply be covered in a matter of monthly meetings. Even with OPG's best intentions and engaging a year in advance of the hearing, it is just not realistic to expect OPG and CLFN to cover substantial and meaningful ground. As such, I must similarly emphasize that I expect continuing dialogue and consultation by OPG will reach beyond the confines of this process and lead to decision points and decision making that includes Curve Lake First Nation. OPG and my consultation staff have made note of key topics for future and ongoing discussion as a next phase after this hearing.

When CLFN made the decision to participate we had a number of objectives and I have provided my qualitative assessment on these objectives [on a progressive scale of: no effort made → information sharing → engagement → constructive dialogue and involvement → trust building dialogue and collaboration → meaningful consultation → sustainable and empowered relationship].

1. To understand, to be aware, to review potential impacts on treaty lands, settlement lands or traditional territories or related claims and rights. [information sharing and needs to progress as stipulated above]
2. To ensure that there is a mechanism to raise any cultural, environmental, and treaty rights related concerns; to provide corresponding insights, recommendations, and a way forward. [information sharing and needs to progress as stipulated above]
3. To assess the on-going relationship with OPG and CNSC, to ensure that CLFN is meaningfully engaged and consulted on activities and processes. [information sharing and needs to progress as stipulated above]
4. To provide the early work necessary to understand the implications for the future Licence to Construct new nuclear reactors. [not started]
5. To gain general understanding of the nuclear industry and regulatory processes. [engagement, ongoing]

There are three portions in the details of this submission.

- **Appendix A – Specific Topics and Feedback Provided at Routine Meetings**
- **Appendix B – High Level Values and Principles Communicated at Routine Meetings**
- **Appendix C – CLFN Perspectives on Information Provided in Documentation**

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Appendix A and Appendix B contain information that was shared and discussed during the routine meetings with OPG. Appendix C contains CLFN's perspectives as a result of our detailed review of the documents made available by OPG. Appendix C further elaborates on many of the points discussed at the routine meetings. Given the timing, the content of Appendix C has not yet been shared nor discussed with OPG. It is important to note that at the time of preparing this written submission, our reviews are not yet complete and will continue through 2021.

That said, there is enough information in Appendix A, B, and particularly in C that will help guide the dialogue between OPG staff and CLFN Consultation Department staff to make progress from information sharing, to engagement, all the way to meaningful consultation as they continue their work after the hearing.

We do this work to uphold our responsibilities to care for the earth and waters, for our people, our nation, and for all our relations. Our foundational belief is balance; our values and principles are built upon the respect, care, and nurturing of all life as part of an interconnected whole and necessary for the balance and harmony required for Mino-Bimaadiziwin now and for future generations.

Sincerely,

A handwritten signature in blue ink, appearing to read "Emily Whetung", is written over a light blue circular stamp.

Chief Emily Whetung
Curve Lake First Nation

cc:

Curve Lake First Nation Chief and Council
Dr. J. Kapyrka, Consultation Department
K. Hill, Consultation Department

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Appendix A Specific Topics and Feedback Provided at Routine Meetings

- Involvement of CLFN in the update of baseline characterization information going forward, in the DNNP environmental monitoring program, in the EA follow-up program, in the EA follow-up plan
- Incorporation of keystone species of value to CLFN in site planning; discussion on Valued Ecosystem Components
- Inclusion of design elements that would eliminate environmental impact (e.g., cooling systems, fish protection and deterrent systems, closed looped systems); not just to minimize impact, given that there are advancements in technology
- Where impact cannot be avoided or mitigated, develop appropriate mitigation and offset projects with adequate replacement value in line with what is relevant and important to CLFN
- The site Environmental Risk Assessment, the recommendations/planned updates, and inclusion of the DNNP in the future revision
- Specific topics under Surface Water Environment, Aquatic Environment, Terrestrial Environment, including proposed studies such as the DNNP Geotechnical Study that were covered in a surficial manner at the monthly meetings
- Items of interest that were not covered specifically at meetings:
 - Clearing and grubbing of vegetation
 - Construction of environmental monitoring and mitigation systems
 - Construction of flood protection and erosion control measures
 - Longer lead times, such as the Bank Swallow Program, aquatic environment characterization and once-through condenser cooling

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Appendix B High Level Values and Principles Communicated at Routine Meetings

- Early inclusion of CLFN environmental monitors and knowledge keepers during the activities conducted to update the baseline information was a missed opportunity; the planned activities could have included CLFN – the discussion would have needed to happen at least 2 years ago
- When speaking about keystone species, it is not simply having a keystone species list and handing it over, it is understanding the interconnectedness of species to each other and to CLFN and the relationship these species have with all things
- Allowing the environment to reveal where facilities can be built upon; not relying on mitigation of impacts to be the guide to whether the area can be built upon or not; minimize the need for mitigation measures upfront in the planning and implementation of plans
- Striving for environmental protection beyond the regulatory requirements of today; striving for environmental protection practices for what is most responsible and what will become the environmental requirements of the future
- In connection to the above, considering the advancements in technology, to secure a greater degree of environmental protection than what is currently deemed acceptable by society today
- The Environmental Assessment language used, “With the implementation of mitigation measures and commitments, the DNNP will not result in any significant adverse environmental effects.”, does not match up with the reality and the community perspectives on the project’s impact on the environment.
- Promotion of nuclear as clean energy does not sit well with the community - nuclear waste, its generation, disposal, management, and lasting legacy continues to be a concern; carbon footprint is not the only measure of whether the energy source is clean.

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Appendix C – CLFN Perspectives on Information Provided in Documentation

The following sections of this Appendix look at the information presentation by OPG and their consulting teams primarily through an Indigenous lens. This lens looks at all beings in nature being equal without one being more important than the other.

To further this perspective, this review did consider past and present grievances at all levels of the project with the proponent and governments not acknowledging Indigenous Rights or through Treaty as part of their obligation to live meaningfully in Canada as Settlers with the Indigenous community.

This section of the Appendix is meant to empower Indigenous community with ideas to help address challenges or resource developments in their territories; as well as to enlighten Settler based proponents wishing to operate in traditional territories.

Misunderstanding and Representation of Indigenous Treaty Rights

Within the context of Treaty Rights based reporting from OPG and its consultant teams, there were several references that WTFN extinguished their rights in the treaty making process. Even after the 2018 Settlement Agreement, and a reconfirmation of rights to the WTFN this information was still touched upon within their documentation. It was not formally documented within the reports provided that WTFN did have rights to the lands in which OPG operates on. Each report needs to have an amendment created and an apology from OPG for discounting Indigenous Treaty Rights in the assessment process and for the lands where their site is. Without this, OPG is not enhancing Canada's commitment to reconciliation.

It is in the best interest of OPG in collaboration with WTFNs to create cross cultural educational programs for staff and contractors working on their behalf. This program should be done in good faith looking to achieve Indigenous worldviews as an outcome. In the future, educational programs geared toward the public must have the correct history from this misstep in Ontario's colonization of the Indigenous peoples.

Overall Outlook at the Baseline Environmental Conditions.

It is very evident that OPG and its consultants working on their behalf suffer from "shifting baseline syndrome" (SBS). SBS has been gaining traction in the collection and implementation of Western science for quite some time in the environmental assessment field. SBS is the gradual change in the accepted normalities for the conditions present in the natural



environment. This failure is easily achievable in Western science since it lacks transgenerational memory as seen in Indigenous knowledge systems to understand a healthy environment or healthy landscape. Landscapes that are healthy now, past generations would be considered to be degraded. Without standardization in Western science, Indigenous knowledge systems or memory, and experience with past environmental conditions; current generations cannot perceive how much their environment has degraded because they are comparing it to their own “normal” baseline and to a historical trend through time memory.

It was quite evident within this review that the following occurred throughout the gathering of Western science ecological parameters:

1. Every consultant working on behalf of OPG had their own ideology of environmental health,
2. Every consultant working on behalf of OPG had their own method, thus other OPG sites could not be evaluated on performance,
3. The environmental conditions were considered in present time, post construction impacts and not preconstruction of the landscape prior to OPG occupation,
4. Western science has a difficult time qualifying and quantifying cumulative impacts by the historical and future impacts by the site,
5. Not truly defining or understanding the term “significant” under whose knowledge system or Rights.
6. This shifting of baseline ecological integrity from an Indigenous world view makes it difficult for policy makers to make informed decisions that could ultimately impact Indigenous Rights. Thus, from an Indigenous perspective, policy around conservation and environmental protection are becoming less effective with each passing generation.

To begin to mitigate this SBS effect, OPG must include in their operations and programing:

1. Look to the Indigenous peoples and those who harvest the waters of Lake Ontario as equals, incorporation of ceremony and traditional knowledge or oral histories to inform the natural baseline conditions of the site,
2. Ensure that “Ethical Space” is created for all knowledge systems, using both Indigenous Oral and Western Written knowledges to make informed decisions about the impacts from their current operations and future,
3. Meaningful participation within the conservation, restoration, and cultural keystone protection of the site and surrounding watershed,
4. Adopt a healthy landscape approach to monitoring and restoration. It is difficult to significantly restore or provide protection for a species at risk. However, if OPG maintains intact habitat units or corridors for species migration then it is easier to maintain biological diversity within the watershed and then specifically to their operations or sites.

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5. Allowing the Rights holders of the area to set, drive and co-operatively manage conservation outcomes. OPG through their interpretation of the Williams Treaty First Nations Rights have not delivered on meaningful participation in the management of the site, thus affecting land use or occupation for future generations.

Defining the Term “Significant” Harm

Throughout the documents provided by OPG, it was clear that the term “significant harm” to the natural environmental and ecological features of the site was through a Western science SBS lens. When assessments attempt to define or identify with significant harm and relate that to the Indigenous community, they need to understand the following:

- Our belief of the natural world is that of a sacred commitment and bond to coexist together,
- People are just one element of this world and we need it unharmed and whole for future generations,
- Indigenous peoples like all people health and well-being comes from the environment, so that environment must be given the opportunity to provide and be stewarded.

Cumulative impact prediction is difficult on any watershed and even more challenging when looking at it on the scale of a Great Lake. Governments are just beginning to understand the impacts that the Settler community has on the health of the landscape and waters.

OPG and their consultants need to understand that through an Indigenous lens significant harm explanation to us is like when we say, “*All our relations*,” back to them. “*All our relations*” means that everything in the universe is connected. It also reinforces that everyone and everything has a purpose, is worthy of respect, caring and the right to a life. So, when the Indigenous peoples respond to what is the “*significant impact*,” there is an expectation that the Practitioners of Western Science has considered “*All our relations*.”

Understanding Cultural Keystone Species

Michi Saagig, the *Salmon People*, or *The People of Big River Mouths* that’s whose territory the Darlington New Nuclear Project is on. Humans all around the world identify themselves or the cultural affiliations with a particular species. It is not totally what a species does to earn such respect from humans that they characterize their cultural identity after it, but it should note the level of significance to the people who share its identity.

OPG has attempted to help heal the damage Lake Ontario basin with the stocking of the Atlantic salmon. However, their failure in this attempt was not including the Indigenous people who identify with this species and named themselves after it. Further collaboration is needed

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with both Indigenous knowledge holders and Western science practitioners to restore the natural balance of Lake Ontario that Settlers took from the Michi Saagig people.

Further work is needed by OPG to understand the cultural keystone species that their daily operations and future project impacts may have on the Indigenous communities living within their zone of impact. It is important to note that these species are not just limited to other species at risk within the lake basin (such as lake sturgeon and American eel), they could be common species like the deer, the coyote, or the hummingbird.

As we collectively achieve this understanding of worldviews then more meaningful restorations can be accomplished on the landscape since it is intertwined in spirit and in ceremony.

Defining Meaning Indigenous Participation

Reconciliation with the Indigenous Community from the Settler occupation needs to be at the centre of all aspects to rehash a new relationship that is meaningful for all people in Canada. All settlers not only governments have a responsibility to uphold the treaty commitments. To foster a renewed relationship with all peoples, settler policy makers and practitioners need to hear that current methods of information sharing is only one step towards defining meaningful engagement and participation. Meaningful engagement aims to secure free, prior, and informed consent from actions or projects that affect the Indigenous way of life.

4 Directions of Conservation Consulting Services (4 Directions) as engaged by CLFN in the review of documents provided by OPG. 4 Directions routinely educates proponents on how to define meaningful engagement within their assessment process. This method follows the principles set forth in the IAP2 Canada Practices for Public Participation. 4 Directions founder Mr. Gary Pritchard routinely advises the IAP2 Canadian Council on how to better foster relationship with the Indigenous community.

Core Values for the Indigenous Participation

1. Meaningful participation is based on the belief that those who's Rights are affected by a decision have a right to be involved in the decision-making process.
2. Meaningful participation includes the promise that the Rights Holders contribution will influence the decision.
3. Meaningful participation promotes sustainable decisions by recognizing and communicating the needs and interests of all participants, including Treaty, Rights Holders and governmental decision makers.



4. Meaningful participation seeks out and facilitates the involvement of those potentially affected by or interested in a decision.
5. Meaningful participation seeks input from Rights Holders in designing how they participate.
6. Meaningful participation means that costs could be accord and welcomed by a proponent if the Crown does not have a funding mechanism which limits Rights Holders participation.
7. Meaningful participation communicates to Rights Holders, how their input affected the decision and then presented to them in writing.

Throughout the literature review, OPG and their consultants went to great depth on the level of effort completed in Indigenous engagement. A lot of the documentation seemed to only inform the community, provide tokenism but not really provide concrete action on implementing concerns raised by the Indigenous community.

OPG engagement team needs to re-evaluate their position and method on how they conduct business with and on the WTFN territory. The following headings are where engagement efforts have been achieved and the direction they need to go:

1. Inform

- OPG has done a terrific job at informing the consultation workers of the WTFN communities. They provided information that is balance and with objectives. Unfortunately, OPG struggles with alternatives to design or idea conceptualization and providing solutions at the Indigenous community questioning.

2. Engage or Consult

- After informing the Rights holders, OPG will work to obtain and understand their feedback. This includes:
 - i.* Questions about proposed or future study designs,
 - ii.* Alternatives to the problems arising,
 - iii.* Input on how each community would like to be involved, and
 - iv.* Which Rights Holders wish not to be involved.
- To date, OPG has not entered this phase of meaningful engagement since it is unclearly documented within the context of the reports to illustrate this. As an observer within the round table discussions with WTFN communities, it appears



that OPG required a third party mediator to help move the conversations into more meaningful participation.

3. *Involve*

- In this phase, all parties begin to enter the realm of achieving meaningful participation. In this space, all knowledge systems are equal and all parties will be willing to directly work together to understand the process and the project holistically together. During this phase, the Indigenous community will request areas where they like to directly be involved and/or provide some kind of support to the proponent.

4. *Collaborate*

- This phase demonstrates OPG's willingness to partner with the Rights Holders in every aspect of the decision-making process including:
 - i.* Development of alternatives and
 - ii.* Identification of desired outcomes by all parties involved.

5. *Empower*

- In this phase of the proposed works, both the OPG and the WTFN will be in agreement of the desired outcomes of the project. Empowerment can be accommodated and consented to in many ways such as:
 - i.* Resource revenue sharing or Impact Benefit Agreements (IBAs),
 - ii.* Indigenous lead offsetting and mitigation,
 - iii.* Alternatives to the original design, and
 - iv.* Contributions that are beneficial to the Indigenous community's well-being and betterment.

It is strongly recommended from the results of this review that OPG and their engagement team, re-evaluates their methods and how they work with the Rights holders in the areas they operate. It would be refreshing to see OPG become a leader in reconciliation, understanding the call to action #92 in the truth and reconciliation calls to action of Canada. In action 92, it states "We call upon the corporate sector in Canada to adopt the United Nations Declaration on the Rights of Indigenous Peoples as a reconciliation framework and to apply its principles,



norms, and standards to corporate policy and core operational activities involving Indigenous peoples and their lands and resources. This would include, but not be limited to, the following:

- i. Commit to meaningful consultation, building respectful relationships, and obtaining the free, prior, and informed consent of Indigenous peoples before proceeding with economic development projects.
- ii. Ensure that Aboriginal peoples have equitable access to jobs, training, and education opportunities in the corporate sector, and that Aboriginal communities gain long-term sustainable benefits from economic development projects.
- iii. Provide education for management and staff on the history of Aboriginal peoples, including the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations. This will require skills based training in intercultural competency, conflict resolution, human rights, and anti-racism.

Pathways Forward Together, Striving to Achieve Meaningful Participation

This section of the report is to shed light on ways all parties can begin to move forward together in a “good way.”

Indigenous Knowledge and Scientific Design

The inclusion of Indigenous Knowledge (IK) in decision-making became a requirement following court cases such as *Delgamuukw v. British Columbia* (1997) and *Tsleil-Waututh Nation v. Canada* (2018) which concluded that Indigenous oral history and traditions were to be placed on an equal footing as other evidence and that their knowledge was to be included in federal environmental assessments. During the past few decades, the practice of including IK in environmental assessments and decision-making has been evolving along with the practice of bringing science and IK together. The practice began with the addition of IK chapters to impact assessments (IAs) that included select ecological knowledge in the evaluation of environmental effects. IK was used primarily to determine the baseline conditions.

More recent approaches to bringing IK and science together focus on areas where the knowledge systems and community interests converge and diverge. Among the “solutions” are joint research and process efforts where IK holders and science practitioners work together to understand potential impacts.

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Indigenous Lead Environmental Restorations

Indigenous peoples are affected the most by environmental change because they directly rely on their immediate environment to meet basic livelihood needs. Therefore, safeguarding and restoring ecosystem resilience is critical to ensuring their food and health sovereignty and overall well-being. Their vested interest in restoring ecosystems from which they directly benefit and their intimate knowledge of their lands, resources and the dynamics affecting them, position them as key elements in the attainment of the ecological restoration projects goals.

However, the contributions of indigenous peoples continue to be largely absent in international environmental policy fora, in which biological importance and restoration feasibility are prioritised over local concern.

Through traditional practices, indigenous peoples have contributed to managing, adapting, and restoring the land, sometimes creating new types of highly biodiverse ecosystems.

It is in best interest of OPG to look to the Indigenous community for common practices of ecological restoration by the Michi Saagig community.

Indigenous Conservation Goals

OPG should ask the question to the Rights Holders, *“what are the conservation practices and goals of the Michi Saagig?”* By showing humility and compassion then all people can come together to look at protecting and restoring the territory.

It is best interest that OPG meets with Knowledge holders and elected councils to understand their needs and goals.

It is in strong recommendation that OPG reviews and implements some of the targets set forth by Canada on biodiversity.

The Pathway to Canada Target 1 initiative has produced the One with Nature report, which provides broad guidance to meet the terrestrial and inland water elements of Canada Target 1. The guidance includes four priorities but three OPG can be a part of:

- Promote greater recognition and support for existing Indigenous rights, responsibilities, and priorities in conservation.
- Maximize conservation outcomes.

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- Build support and participation for conservation with a broader community

These priorities are designed to address three key challenges to biodiversity conservation in Canada:

- protecting the right amount of habitat to support viable populations of all species;
- protecting the right areas so protected and conserved areas can function as a representative ecological network, not simply as “islands of green;” and
- managing areas in the right way—a way that looks for cooperation across jurisdictional boundaries, and respects natural boundaries where possible.

These challenges can be addressed, in part, using pan-Canadian tools for conservation that support progress towards Canada Target 1 through the creation and recognition of:

- Protected areas,
- Indigenous protected and conserved areas (IPCAs), and
- Other effective area-based conservation measures (OECMs).

The time is right for all Canadians to embrace a collaborative approach to biodiversity conservation— one that:

- recognizes the integral role of Indigenous Peoples as leaders in conservation, and respects the rights, responsibilities, and priorities of First Nations, Inuit and Metis Peoples;
- looks for cooperation across jurisdictional boundaries, is holistic and ecosystem-based, and includes local governments and other partners in conservation;
- considers climate change, ecosystem processes and services, and their associated scales and rates of change; and
- provides opportunities for local conservation economies such as sustainable tourism and recreation, fosters appreciation for nature and Indigenous culture, and promotes active and healthy lifestyles.