

**Parks Canada Written Brief for the
Standing Senate Committee on Energy, the Environment and Natural Resources
Bill C-248, “An Act to Amend the *Canada National Parks Act*
(Ojibway National Urban Park of Canada)”**

EXECUTIVE SUMMARY

The National Urban Parks Program was supported by Budget 2021’s historic investment with up to \$130.9 million specifically toward the commitment to create a network of up to 6 national urban parks by 2025.

To advance this commitment, Parks Canada has been actively collaborating with local and provincial governments, local stakeholders, environmental non-governmental organizations, and Indigenous organizations and governments on candidate national urban parks, with sites at various stages in the process toward designation.

The National Urban Parks Program contributes to three interconnected core objectives: conserving nature, connecting people with nature, and advancing reconciliation with Indigenous peoples. It also represents a new, innovative, and cost-effective model for national park establishment. The program proposes that the majority of national urban parks are designated as partnership models, meaning Parks Canada will not acquire land directly in many sites nor bear the full financial, administrative, or legal responsibilities for the majority of the national urban parks.

Parks Canada is developing a National Urban Parks Policy to guide the designation and management of new national urban parks that are not owned and operated by Parks Canada. Under this approach, partner-based national urban parks will operate under a range of flexible governance models, with the majority falling under a partnership model.

The Policy sets the stage for eventual framework legislation for national urban parks, to provide the enduring legislative protections that some seek. It should be noted that the legislation would apply only to lands within national urban parks that Parks Canada administers; the jurisdiction of partners will continue to be respected. While this legislation is in development, the Policy provides effective protection measures, while also ensuring the flexibility needed to respect local circumstances, to allow for an appropriate governance arrangement, to operate in a complex urban environment.

Parks Canada has been exploring a national urban park in Windsor, Ontario, with local partners since July 2021. Significant progress has been made, including engaging with rights-holding First Nations of the Three Fires Confederacy and supporting their participation in the exploration of the park, relationship-building with local partners, securing the protection of Ojibway Shores through transfer of the property from Transport Canada, supporting the acquisition of other strategic property and its naturalization, establishing a partner committee and advancing discussions with all partners regarding preferred boundary, governance, and collaborative operations, identifying a study area and completing initial assessments and baseline studies of

the area in terms of natural and cultural heritage, access, land use, and land ownership, and concluding the pre-feasibility phase with the publication of a pre-feasibility report.

In February 2022, Private Members' Bill C-248 was introduced by NDP Member of Parliament Brian Masse (Windsor West): An Act to amend the Canada National Parks Act (Ojibway National Urban Park of Canada).

Bill C-248 proposes a different approach to creating a national urban park in Windsor than the Parks Canada process, which seeks to designate under a National Urban Parks Policy. Rather, Bill C-248 seeks to establish a park under the *Canada National Parks Act*, effectively creating a new national urban park under this legislation subject to provisions of the *Act*. While the approaches differ, they both seek the same outcome: the creation of a national urban park in Windsor.

If passed in its current form, Bill C-248 would present several challenges, such as:

- The *Canada National Parks Act* and its relevant regulations would apply to lands that Parks Canada does not have title to, including private, municipal, and provincial lands. This could prevent the landholders from exercising the rights attached to their interest.
- The bill would create vague boundaries, without reference to the legal descriptions typically used to describe land in an urban setting.
- The *Canada National Parks Act* would not give Parks Canada the ability to authorize access to, or maintenance and repair of, existing (or new) municipal and provincial infrastructure.
- The Government of Canada would be exposed to a reputational risk due to lack of fulsome engagement and consultation with all rights-holding First Nations within the Bill's coordinates.

Budget 2024 announced the allocation of \$36.1 million over five years, starting in 2024-25, including \$8.2 million in remaining amortization and \$4.6 million ongoing to create Ojibway National Urban Park in Windsor, Ontario. This announcement increases financial certainty for the future of the national urban park in Windsor, Ontario, but does not inform which process (the National Urban Parks Policy or the *Canada National Parks Act*) should be used to create the national urban park.

IMPLICATIONS OF PASSING BILL C-248

The implications of passing Bill C-248 include creating practical challenges for fourteen private landowners, the City of Windsor, and the Province of Ontario. Passing the bill would also bypass consultation with all rights-holding First Nations in the area.

Bill C-248 assumes a particular governance model by automatically applying the *Canada National Park Act* to coordinates of the bill without the lands being transferred to the federal government with clear title (i.e., no easements or other infrastructure or access rights on the lands).

Moreover, passing the bill would effectively circumvent the due diligence in the Treasury Board's Directive for the Management of Federal Real Property, the purpose of which is to ensure that real property is planned, acquired, used, and disposed in an effective and appropriate manner.

Challenges Applying the *Canada National Parks Act* in Urban Areas

If passed in its current form, the coordinates included in the bill will be immediately subjected to the *Canada National Parks Act*. As such, any private, municipal, or provincial infrastructure included in the bill's coordinates will become subject to the *Act* and its relevant regulations. This will include everything from sewer lines to roadway allowances, and in some cases, part of private backyards.

While Parks Canada remains committed to a national urban park in Windsor, the *Canada National Parks Act* is not the ideal mechanism to reach this outcome. The *Act* is better suited to the creation and management of national parks located in less-populated areas, as it does not adequately address the different needs national urban parks near or within cities will require in terms of permits, infrastructure, and enforcement. For that reason, the *Canada National Parks Act* does not provide the flexibility needed for national urban parks located in metropolitan centres, which are dynamic environments with public infrastructure demands that may require adjustment of park boundaries or authorizations not well provided for in the *Act*.

Rouge National Urban Park in the Greater Toronto Area, Ontario, was created under dedicated legislation as a result of these unique operational needs and legal constraints (agriculture, urban infrastructure). This was deemed necessary following assessments conducted by Parks Canada that found the *Canada National Parks Act* and relevant regulations would not be appropriate in an urban setting and may be impractical to implement. Specifically, the *Rouge National Urban Park Act* provides the Minister with necessary additional powers to enter into leases, grant easements, issue licenses of occupation and flexibility to dispose of small plots of land for public infrastructure purposes.

A similar situation may arise in Windsor if Bill C-248 is passed. It is expected that the Minister will require additional powers that are not accounted for in the *Canada National Parks Act* in order to operate a federally-administered national urban park. Without the same additional powers that are in the *Rouge National Urban Park Act*, Parks Canada would be left in a situation where it is not able to effectively manage the park.

Boundaries

Bill C-248 does not follow the usual practice for scheduling lands under the *Canada National Parks Act*. If passed in its current form, this bill would require Parks Canada to operate in a complex and uncertain legal environment, where landowners retain title to lands within the park.

For example, this would mean that landowners, while still owning title rights, would need to seek permits from Parks Canada for activities, such as manicuring their yards.

Bill C-248's coordinates identify lands for inclusion in the national urban park, which appear to correspond with the City of Windsor-owned Ojibway Park, Spring Garden Natural Area, Black Oak Heritage Park, and Tallgrass Prairie Park, the Province of Ontario-owned Ojibway Prairie

Provincial Nature Reserve, Parks Canada-owned Ojibway Shores, and others with a fee-simple or other interest in the land, such as private landowners and utility companies.

A proper legal description of the park boundaries is required when a park is scheduled under legislation; however, the coordinates in Bill C-248 do not sufficiently satisfy this requirement. They are problematic in not recognizing legal ownership of the land and severing some parcels in half, such as roadways and alleyways owned by the City of Windsor. Typically, lands are transferred to the federal government before a park is tabled to be established under the *Act*. This is following a thorough due diligence analysis of title, environmental condition and other legal considerations as per Treasury Board directives. This process usually takes 1 to 2 years.

Through the fall of 2022 and winter of 2023, Parks Canada worked with Natural Resources Canada to extensively examine Bill C-248's coordinates and confirmed that 6 privately owned parcels of land are fully within the bill's coordinates, and 10 privately owned parcels are affected by the quality of the legal description to describe the boundary of the park in an urban area. Normally, a thorough due diligence analysis, as dictated by Treasury Board directives, is conducted before acquiring lands, and subsequently added to a park, so land ownership, liabilities and risks are fully understood. If the bill is passed, the *Canada National Parks Act* and associated Regulations would apply to these private lands without the consent of the landowners. These landowners may not be aware that their land is included within the coordinates.

The inclusion of private lands could raise a constitutional issue, may lead to complex land transfers, and could cause significant delays. Additionally, removing these private parcels of lands from the schedules of the *Canada National Parks Act* could only be accomplished through an amendment to the *Act* rather than by Order in Council, which can be a lengthy and time-consuming process.

Consultations with First Nations

It has not been confirmed whether fulsome and meaningful consultation with all affected rights-holding First Nations has taken place in the development of the bill.

The proposed park is within the traditional Three Fires Confederacy First Nations, including Caldwell First Nations, Walpole Island First Nations, and Chippewas of the Thames First Nations. Caldwell First Nation does not represent all of the First Nations in this region.

Consultations with First Nations are important to defining park boundaries and determining a shared governance arrangement for the park. Caldwell First Nation, Walpole Island First Nation, and Chippewas of the Thames First Nation have consultation protocols in place that provide the road map regarding how they want to be formally consulted.

If Bill C-248 passes in its current form, consultation and cooperation with impacted Indigenous peoples may be required under section 5 of the *United Nations Declaration on the Rights of Indigenous Peoples Act* to the extent that aspects of the bill intersect with the *United Nations Declaration on the Rights of Indigenous Peoples*. This would lead to significant delays in this project, likely be costly, and may impact Canada's path to Reconciliation, as the passage of the

bill may further undermine the relationship and trust between the Crown and Indigenous Peoples.

Size

The size of the proposed national urban park defined in Bill C-248 is approximately 323 hectares (ha). The proposed study area by Parks Canada totals approximately 875 ha and includes all boundaries listed in the bill (see Annex A for map comparison). The proposed study area, agreed upon by the partner committee, encompasses lands under consideration, although a boundary has not yet been finalized.

The areas that are not currently in the bill, but are within the study area being proposed by Parks Canada, include:

- Oakwood Park and a connecting overpass over the Herb Gray Parkway to Spring Garden Natural Area
- Additional parks and natural areas in the City of Windsor (Malden Park, South Cameron Woods) and Town of LaSalle (Brunet Park, LaSalle Woods and other green spaces including along Turkey Creek), Ontario Ministry of Transportation lands (Chappus Natural Area), Hydro One transmission corridor, and St. Clair College Prairie and Woods.
- Additional areas of Tallgrass Heritage Park, Spring Garden Natural Area and Ojibway Prairie Provincial Nature Reserve.

Of note, the bill's coordinates for the Ojibway Prairie Provincial Nature Reserve do not reflect the full administrative boundary, possibly due to an incomplete title search, which means only portions of the reserve would be included and would remain under provincial jurisdiction.

If Bill C-248 passes in its current form, these additional lands would not be included in the national urban park in Windsor. To add these or other lands to the park, under the *Canada National Parks Act*, a new bill would need to be tabled in Parliament or through an Order in Council, if Parks Canada can demonstrate it has clear title¹, which is unlikely in an urban environment. This would be subject to agreement by current landowners, following thorough consultation, appropriate due diligence, and a willing transfer to Parks Canada.

While the bill's coordinates are smaller than Parks Canada's proposed study area, there would be a greater cost to the Crown. Similar to other federally administered sites, Parks Canada would bear all financial, administrative, and legal responsibilities should the bill be passed. In contrast, under a Parks Canada partnership process, these responsibilities would be shared among partners.

¹ Clear title means there are no encumbrances attached to the land. For example, an easement is considered an encumbrance and there are many easements on title in an urban area.

PARKS CANADA'S NATIONAL URBAN PARKS PROGRAM

In August 2021, the Government of Canada announced a new program to support the creation of a network of national urban parks. The National Urban Parks program will contribute to Canada's commitment to protect biodiversity and conserve 30 percent of land and inland waters and 30 percent of marine and coastal areas by 2030.

Parks Canada is collaborating with partners, including Indigenous peoples, to create a network of national urban parks in Canada's large urban centers. Each national urban park is planned, created, and managed through meaningful collaboration and cooperation between municipalities, provinces, local governing authorities, Indigenous governments, organizations and communities, key stakeholders, and other interested organizations and individuals.

Together, these parks will create a network with a shared vision of three core objectives: conserving nature, connecting people with nature, and advancing reconciliation with Indigenous peoples.

National urban parks are places of natural or historical significance to the nation, located in or near a major city in Canada. They may be one large area or a group of smaller areas that do not need to be physically connected to each other.

Rouge National Urban Park became the first national urban park in Canada in 2015, before the launch of the National Urban Parks Program. It is administered by Parks Canada under its own legislation, the [Rouge National Urban Park Act](#), to address the unique needs of an urban setting.

As of April 2024, collaborative work is underway to explore the possibility of national urban parks in the following urban centres: Victoria region, British Columbia; Edmonton region, Alberta; Saskatoon region, Saskatchewan; Winnipeg, Manitoba; Windsor, Ontario; and Halifax, Nova Scotia. Parks Canada has also begun exploratory discussions in the Greater Montreal Region, Quebec.

The National Urban Parks Program seeks to create national urban parks based on collaborative governance rather than under the administration of Parks Canada. This allows for greater flexibility within the urban environment, and for each site to reflect local needs and interests. Options include federally administered places (e.g., Parks Canada administered properties, like Rouge National Urban Park, or other federal department administered properties), third party administered places (e.g., municipal, provincial, and Indigenous sites), and partnership models (e.g., parks that are co-managed under one name). The governance model for each national urban park will be determined by local circumstances, and in collaboration with partners.

The National Urban Parks Program represents a new, innovative, and cost-effective direction. For most national urban parks, Parks Canada will not acquire land, or develop infrastructure. Consequently, it will not bear the financial, administrative, and legal responsibilities associated with their operation, management, and upkeep.

Parks Canada's designation process for national urban parks is flexible and informed by local contexts. In general, it follows a [four-step process](#):

- **Pre-feasibility:** determine if the candidate site aligns with the program objectives; identify level of support from local partners.
- **Planning:** develop a park vision, governance model, draft budget, and begin operational planning; determine site boundaries; conduct stakeholder and public engagement.
- **Designation:** finalize proposal, roles and governance, and operational plan; secure operational funding, complete operational preparations and begin operation of the national urban park.
- **Implementation:** make final operational preparations, including implementing a governance model; designing facilities, amenities and programs; and beginning conservation activities.

Each candidate national urban park site is led by a partner committee to guide exploration of the proposed park, make key decisions about boundaries, and establish a governance and management model. Committee members can include representatives from municipalities, provinces, local governing authorities, and/or Indigenous governments. As advancing reconciliation is one of the program's key objectives, Parks Canada engages local Indigenous communities early in the process and is committed to respecting Indigenous rights and honouring nation-to-nation relationships in the spirit of reconciliation.

[National Urban Parks Policy](#)

Parks Canada is developing a new National Urban Parks Policy to guide the designation and management of new national urban parks across Canada. The policy, which is expected to be released in late Spring 2024, will be the formal mechanism for designating national urban parks and ensuring consistency in their designation and management, while allowing flexibility for local implementation.

The draft policy was informed by feedback from partners at candidate national urban parks, including Indigenous governments and organizations, local and national stakeholders, and national Indigenous organizations, as well as members of the public, following public engagement in Spring 2023.

Designation of a national urban park under the National Urban Parks Policy will allow more flexibility for governance, management and permitted activities. This includes flexibility to expand the size of a national urban park as opportunities arise, as well as flexibility to adjust boundaries to fit urban infrastructure needs.

This level of adaptability is important for urban settings given they have existing and often complex jurisdictional regimes, land use and tenure arrangements, infrastructure, and regulations.

Under the policy, it is expected that operational costs will be shared among organizations responsible for the governance and stewardship of the national urban park.

Parks Canada will also explore options for framework legislation, which would apply federal legal protections for lands that Parks Canada will administer, while respecting the legitimate jurisdictions of partners.

PROPOSED NATIONAL URBAN PARK IN WINDSOR

Located in Windsor, Ontario, the study area for the proposed national urban park under the Parks Canada process is centred on the Ojibway Prairie Complex (a complex of predominantly City of Windsor-administered municipal parks and natural areas and the Ojibway Prairie Provincial Nature Reserve). Parks Canada's 875 ha study area also includes Ojibway Shores (federal lands); other municipal parks and natural areas in Town of LaSalle and City of Windsor; and protected areas associated with the Rt. Hon. Herb Gray Parkway administered by the Ontario Ministry of Transportation, Hydro One Networks Inc., and St. Clair College.

Parks Canada and the City of Windsor signed a Statement of Collaboration in July 2021. Throughout the fall of 2021, Parks Canada started working with the City of Windsor and local First Nations to explore the possibility of a national urban park in Windsor, to be designated under the National Urban Parks Policy.

A partner committee was established in May 2022 to guide the exploration of the proposed national urban park, as well as arrive at agreement on a boundary, governance arrangement and collaborative management. Members of the Windsor partner committee include land-owning entities and rights-holding First Nations. The partner committee includes representatives of Caldwell First Nation, Walpole Island First Nation, Chippewas of the Thames First Nation, City of Windsor, Town of LaSalle, Province of Ontario, Hydro One Networks Inc., and Parks Canada.

Parks Canada is actively engaging the participating First Nations in discussions of shared governance for the park. In March 2024, an MOU was signed between Parks Canada and Caldwell First Nation to demonstrate interest on both sides towards ongoing exploration of shared governance and collaborative management for a proposed national urban park.

Parks Canada has completed initial studies of the area through pre-feasibility assessment work, including natural heritage studies (including ecological land classification, species movement, old growth trees, amphibians, invasive species), cultural heritage assessment, assessments of connections and access, land-use and land ownership.

Currently, Ojibway Shores is the only part of the study area that is owned by Parks Canada. At 13.5 ha, Ojibway Shores has the last remaining undeveloped, natural shoreline along the Detroit River in Windsor. Parks Canada succeeded in transferring Ojibway Shores from Transport Canada in April 2023; this after decades of local effort to secure its protection. It has significant value for its potential to provide a physical link between the river and the study area lands, providing important ecological connectivity between the Detroit River and the rest of the study area.

Initial public and stakeholder engagement was held from November 2022 to June 2023, with a summary published in December 2023 (<https://letstalk.citywindsor.ca/national-urban-park-windsor>). Input from those sessions was very supportive of the idea of a national urban park and is informing a shared vision for the national urban park.

Parks Canada supported City of Windsor's acquisition of the strategic Titcombe property, a strategic parcel which has since been remediated by the removal of built structures and readied to form part of the park.

In April 2023, the Government of Ontario announced its interest in transferring provincial lands to Parks Canada for the national urban park in Windsor; however, the province has not yet provided further information regarding the possible transfer.

Parks Canada has published a pre-feasibility report (<https://parks.canada.ca/pun-nup/potentiels-candidates/windsor>), and as of May 2024, the project remains at the planning phase, during which the boundary and governance arrangement is defined, and operational planning discussions and budget requirements for the national urban park are explored.

The Policy sets the stage for eventual framework legislation for national urban parks, to provide the enduring legislative protections that some seek. It should be noted that the legislation would apply only to lands within national urban parks that Parks Canada administers; the jurisdiction of partners will continue to be respected. While this legislation is in development, the Policy provides effective protection measures, while also ensuring the flexibility needed to respect local circumstances, to allow for an appropriate governance arrangement, to operate in a complex urban environment.

Annex A – Area Comparison: Private Member’s Bill C-248 coordinates and proposed national urban park in Windsor study area

- The national urban park study area identified by Parks Canada is more than twice the size of the area encompassed by Private Member’s Bill C-248 coordinates.
 - Private Member’s Bill identified area is approximately 323 hectares.
 - Parks Canada national urban park study area is approximately 875 hectares.
- Both areas include Ojibway Shores and the Ojibway Prairie Complex (Black Oak Heritage Park, Ojibway Park, Tallgrass Prairie Natural Area, Spring Garden Natural Area); however, the Private Member’s Bill contains only some parts of the Ojibway Prairie Complex parcels.
- Parks Canada’s national urban park study area includes additional parks and natural areas in the City of Windsor and Town of LaSalle, as well as Ontario Ministry of Transportation lands (Chappus), Hydro One transmission corridor and St. Clair College lands.
- The map appended below compares Parks Canada national urban park study area with the Private Member’s Bill coordinates.

**Private Members' Bill (PMB) C-248 Coordinates
(Proposed National Urban Park in Windsor)**

- Proposed National Urban Park in Windsor – Study Area
- PMB C-248 Coordinates
- Municipal Boundary

