



WITTEN LLP | Barristers & Solicitors

**KELTIE L. LAMBERT**

Direct Telephone: (780) 441-3206

In Reply Please Refer to File No.:

81621.008-KLL/AC

E-Mail Address: klambert@wittenlaw.com

August 30, 2013

**Via Courier**

**Land Use Secretariat**

9<sup>th</sup> Floor, Centre West Building  
10035 – 108 Street  
Edmonton, AB T5J 3E1

**Attention: Stewardship Commissioner**



Dear Madam:

**RE: Submission by Cold Lake First Nations  
Request for Review of Lower Athabasca Regional Plan, Form LUS-01**

---

Please be advised that our law firm represents Cold Lake First Nations (“CLFN”) and we write upon their express direction and behalf.

CLFN is an Indian Band pursuant to the *Indian Act*. Its members are the beneficiaries of Treaty 6, which affords them land use rights pursuant to the Treaty, the *Natural Resources Transfer Agreement* and s. 35 of the *Constitution Act, 1982*. Amongst these rights, are the right to carry on their traditional vocations of hunting, fishing, trapping and gathering (the “*Dene Way of Life*” or “Traditional Land Uses” or “TLU”) in a manner consistent with the way in which they carried on these activities prior to Treaty. Pursuant to Treaty 6 and the *Indian Act*, CLFN is the beneficial owner of four reserves which are situated within the Lower Athabasca Region. Further, pursuant to the Primrose Claim Settlement and Access Agreements entered into between Canada, Alberta and CLFN<sup>1</sup>, CLFN’s members have the legal right to enter the Cold Lake Air

---

<sup>1</sup> Settlement Agreement, dated October 15, 2001, between Her Majesty the Queen in Right of Canada and Cold Lake First Nations; Access Agreement, dated October 10, 2001, between Her Majesty the Queen in Right of Canada, Cold Lake First Nations and Her Majesty the Queen in Right of the Province of

[www.wittenlaw.com](http://www.wittenlaw.com)

Suite 2500 Canadian Western Bank Place  
10303 Jasper Avenue • Edmonton • Alberta • Canada • T5J 3N6  
t: 780.428.0501 f: 780.429.2559 e: lawyers@wittenlaw.com

Weapons Range (“CLAWR”) to exercise their Traditional Land Uses. The current membership of CLFN, according to Aboriginal Affairs and Northern Development (2013), is 2,695.

For the reasons outlined below, CLFN brings this application for review of the Lower Athabasca Regional Plan (“LARP”) on its own behalf and on behalf of its members (collectively, “CLFN” or the “Nation”) pursuant to s. 19.2 of the *Alberta Land Stewardship Act*, RSA 2009, c. A-26.8, and the Regulation thereunder on the basis that CLFN is a person directly and adversely affected by LARP. As the submissions demonstrate, there is a reasonable probability that CLFN’s health, property, income and quiet enjoyment of property will be more than minimally harmed by LARP. Further to the submissions within, CLFN requests that the Stewardship Minister establish a panel to conduct a review of LARP.

### **PART 1: Details of Request for Review**

Name of Regional Plan: Lower Athabasca Regional Plan

***A. Clearly identify the specific provision (section) of the Regional Plan that you believe is directly and adversely affecting you, or will directly or adversely affect you.***

(i) The LARP does not identify any plan for the CLAWR. Specific provisions:

- None. The LARP is absolutely silent as to land use planning within the CLAWR notwithstanding that Alberta Environment and Sustainable Resource Development (“ESRD”) and the Alberta Energy Regulator

("AER") continue to approve applications and grant dispositions permitting the development of oil sands development activities within CLAWR. We understand the purpose of LARP is to provide overall policy direction for land use in Alberta, yet this major area of LARP (approximately 5,000 km<sup>2</sup>), which is of unique importance to CLFN has been left entirely out of the plan. Because of the lack of planning for the CLAWR, LARP does not address conservation areas within CLAWR, management thresholds for activities within CLAWR nor does it protect the continued ability of CLFN members to engage in TLU within the CLAWR in accordance with the Access Agreement and CLFN's constitutional rights.

(ii) The LARP does not address the management of ongoing TLU by CLFN or other Aboriginal communities. Specific provisions:

- Regulatory Details Plan, s. 1(e)
- Strategic Direction: Managing Air, Water and Biodiversity, and Minimizing Land Disturbance (p. 27-29)
- Outcome 3 (p. 42-46) and Outcome 4 (p. 46-58)

(iii) The LARP designates new conservation areas without considering the impact on CLFN's TLU or whether such areas support CLFN's TLU. Specific provisions:

- Strategic Direction: Creating New Conservation Areas (p. 29-31)
- Outcome 3 (p. 42-46), including Regulatory Details Plan ss. 13-21 and Schedules F and G

(iv) The LARP designates new tourism and recreation areas without considering the impact on CLFN's TLU. Specific provisions:

- Strategic Direction: Providing New Recreation and Tourism Opportunities (p. 32-33)
- Outcome 6 (p. 60-63), including Regulatory Details Plan ss. 39-45 and Schedules D, F and G

(v) The LARP's "inclusion of Aboriginal peoples in land-use planning" fails to be effective or meaningful. Specific provisions:

- Strategic Plan: Inclusion of Aboriginal Peoples in Land-use Planning (p. 34)
- Outcome 7 (p. 63-65)

***B. Explain how the provision (section) in the Regional Plan you identified in A (above) is directly and adversely affecting you, or will directly or adversely affect you.***

*(i) LARP does not identify any plan for the CLAWR.*

The boundaries of CLFN's Traditional Territory are shown on the enclosed map which was acknowledged by Canada, Alberta and Saskatchewan during the settlement of CLFN's grievances related to the establishment of the CLAWR and pursuant to the Settlement and Access Agreements between CLFN, Canada, Alberta and Saskatchewan. These agreements provide a measure of compensation for the severe socio-economic impacts suffered as a result of CLFN's forced expulsion from CLAWR and have allowed CLFN members to regain limited access to the CLAWR for traditional

and cultural pursuits. The Access Agreement acknowledges that a key component of the Settlement Agreement reached between Canada and CLFN was access to and use of the CLAWR for traditional purposes. In particular, it was agreed that CLFN and its members would have access to the CLAWR for purposes such as:

- a. Trapping;
- b. Fishing for domestic and commercial purposes;
- c. Hunting big game and wildlife;
- d. Harvesting fruits and berries, wild mushrooms, roots, dye plants and natural medicines;
- e. Heritage or cultural activities;
- f. Gathering bark and other materials for crafts and specialty forest products; and
- g. Undertaking archaeological and historical research;

It is an express and implied term of this binding agreement that the CLAWR would maintain sufficient ecological integrity to permit and support the continuing exercise of these activities. Yet, LARP makes no plan for the CLAWR at all. The failure of LARP to plan for activities within CLAWR results in no apparent planning to protect the plants, air, water and animals upon which CLFN and its members rely for the exercise of their Access Rights. CLFN members repeatedly raised this concept during public LARP consultations to no avail.

Within the CLAWR is an area of particular importance to CLFN – the Wildlife Preservation Area (“WPA”). Since time immemorial, the WPA was recognized as an area for large ungulates and other wildlife to birth and rear their young. No Dene person

would hunt or trap within the WPA unless faced with starvation – this would ensure that the Nation would always have a reliable source of food. Wildlife are known to CLFN members to regenerate within the WPA and to disperse throughout the Traditional Territory. The WPA is an area of critical importance to ensure the meaningful exercise of the Nations' Treaty and Aboriginal rights into the future as it provides a conservation area which supports the maintenance of healthy wildlife populations.

The failure of LARP to consider the cumulative impacts of oil and gas development coupled with military uses in the CLAWR will have an adverse impact on wildlife habitats and species in the CLAWR and within CLFN's surrounding Traditional Territory. For example, caribou herds in Alberta face an extremely dire situation – particularly the CLAWR herd which is near extirpation.<sup>2</sup> In order to ensure the survival of sufficient numbers of animals to support the meaningful exercise of CLFN's Treaty and Aboriginal rights, land use planning in the Lower Athabasca Region must consider oil and gas development and wildlife management within the CLAWR. The failure to do so will have a direct and adverse impact on members of CLFN in the exercise of their Treaty and Aboriginal rights both within CLAWR and throughout CLFN's Traditional Territory.

*(ii) LARP does not address the management of ongoing TLU by CLFN or other Aboriginal communities.*

The members of CLFN possess constitutionally protected Treaty and Aboriginal rights, which include the right to carry out the Denesuline way of life after Treaty as before. This was the promise made by Treaty negotiators – that the Nation be able to carry out the Dene way of life without interference. This includes hunting, fishing, trapping,

---

<sup>2</sup> *Recovery Strategy for the Woodland Caribou (Rangifer tarandus caribou), Boreal population, in Canada*, Environment Canada (2012).

gathering, ceremonial activities and wildlife management practices which are all inter-related and depend on a healthy environment.

Over the past century, the ability of CLFN members to participate meaningfully in traditional activities has been substantially eroded. Some land-uses, such as croplands and parks, are partially available to CLFN, but are not conducive to traditional activities. Other areas, such as the CLAWR and industrially developed lands, create barriers to prevent CLFN from accessing natural landscapes. When considered cumulatively, these overlapping land-uses have restricted CLFN to a very small fraction of its Traditional Territory.<sup>3</sup>

While the LARP purports to take a cumulative effects based approach to the management of environmental effects in the region, a similar approach is not taken in respect of TLU issues. The following are specific examples of how LARP fails to adequately address the management of TLU issues:

- (a) Data: The LARP contains no data relating to Aboriginal land and resource requirements (e.g. traditional knowledge and/or scientific study). An assessment of the current state of the environment and quantity and quality of resources needed to sustain the practice of Treaty and Aboriginal rights is required to adequately measure cumulative impacts on those rights. A consideration of thresholds, frameworks and land-use trade-offs cannot be properly made without this information.
- (b) Thresholds: While LARP and its frameworks contain certain impact thresholds, the thresholds must be developed in a manner that reflect the conditions necessary to sustain the practice of TLU. There is no indication that this is the case.

---

<sup>3</sup> *The Cumulative Effects of Historic, Current and Future Land-uses on the Peoples and Landscape of Cold Lake First Nations*, ALCES Landscape and Land-use Ltd. (October 2012).

- (c) Cumulative impacts to date: The LARP does not appear to consider the existing land and other disturbances that are already affecting (cumulatively) the exercise of Treaty and Aboriginal rights.
- (d) Frameworks: The LARP describes how Alberta will work with First Nations in developing a biodiversity management framework and landscape management plan and that managing cumulative effects is important to the needs of Aboriginal communities holding traditional use rights (p. 29). However, we note that Outcome 3, which details the strategies for developing a biodiversity management framework and landscape management plan, makes no mention of TLU.
- (e) Area to practice TLU: Alberta's position that "First Nations' exercise of constitutionally protected rights to hunt, fish and trap for food can continue to occur within reasonable proximity of First Nations' main population centres" (p. 29) is contrary to the historic record. Reserves were not set aside with the intention that TLU would be restricted within or near to the reserves. Rather, Treaty negotiators specifically understood and promised that First Nations would not be confined to reserves and could continue to practice TLU on their traditional lands. Even with this more restrictive view, there is no area reasonably proximate to CLFN's Reserve lands where it can freely exercise its TLU.
- (f) Priority for TLU: The LARP, including its frameworks and initiatives, does not mention the priority for traditional uses and the Constitutional protection thereof.

The foregoing demonstrates that LARP does not provide any mechanism to address or prevent cumulative effects on the exercise of TLU in the Lower Athabasca Region. This was recognized by the Joint Review Panel in its decision on the Shell Canada Energy



Jackpine Mine Expansion Project.<sup>4</sup> In order to ensure the continuation of TLU, LARP must incorporate some type of TLU management framework to inform land use planning and allow for a better assessment of cumulative effects on TLU. The absence of any type of framework or thresholds that are specific to traditional land use make it impossible to evaluate the impact of land use decisions on TLU. The failure of LARP to address cumulative impacts on TLU by Aboriginal communities will result in a direct and adverse effect on the practice of Treaty and Aboriginal rights by CLFN members.

*(iii) The LARP designates new conservation areas without considering the impact on CLFN's TLU.*

The designation of new conservation areas under LARP will directly and adversely affect CLFN members in the exercise of their Treaty and Aboriginal rights. One of the five new conservation areas created under LARP (Dillon River Wildland Park) is established in the northern portion of CLFN's Traditional Territory (created by Regulatory Details Plan, s. 13 and Schedule G).

One of the key criterion for selecting conservation areas in LARP is for areas that support Aboriginal traditional uses (p. 30). However, LARP also provides that hunting, fishing and trapping "will continue in accordance with existing provincial laws" (p. 30). In other words, conservation areas purported to support the exercise of Aboriginal and Treaty rights will be subject to the laws governing those areas, which themselves restrict the exercise of these rights.

Moreover, the new conservation areas have been designed to accommodate multiple uses such as low-impact recreation, nature-based tourism and commercial guiding, out-

---

<sup>4</sup> Report of the Joint Review Panel, *Shell Canada Energy Jackpine Mine Expansion Project: Application to Amend Approval 9756 Fort McMurray Area* (July 9, 2013), 2013 ABAER 011, CEEA Reference No. 59540 [*Jackpine*].

fitting and hunting (p. 30) that have the potential of being adverse to traditional land use by Aboriginal peoples. In some cases, even industrial activity will be permitted in the designated conservation areas (Regulatory Details Plan, s. 16(2) and Schedule F, Note 1).

Neither is it clear that any ecological or cultural evaluation has been done to determine whether the designated conservation areas will support TLU. It appears that these areas were set aside without regard to the quality or quantity of land and other resources necessary for the exercise of Treaty and Aboriginal rights.

Even with all of the noted issues with the Dillon River Conservation Area, CLFN notes that this small area, north of the CLAWR is the only area within CLFN's Traditional Territory that has been set aside as a conservation area. Such a small, remote area cannot be expected to provide enough of a land base to allow for preservation of sufficient animal populations upon which CLFN relies for TLU. As noted, CLFN has proposed that Alberta recognize the WPA area within the CLAWR as potentially mitigating some of these concerns, but as of yet LARP provides no plan for the CLAWR whatsoever.

In sum, the designation of new conservation areas under LARP does nothing to ensure that CLFN members will be able engage in the meaningful practice of their Treaty and Aboriginal rights and, in fact, will adversely affect members by restricting the practice of those same rights.

*(iv) The LARP designates new tourism and recreation areas without considering the impact on CLFN's TLU.*

The development of recreation and tourism in the Lower Athabasca Region will also have a direct and adverse effect on CLFN members. We note that two of the nine new

provincial recreation areas (Clyde Lake and Winifred Lake) are in or near CLFN's Traditional Territory (created by Regulatory Details Plan, s. 42 and Schedule F and G). We further note LARP identifies Lakeland Country as an area for development into an "iconic tourism destination" offering "tremendous tourism potential" (p. 33 and Schedule D).

CLFN's Traditional Territory is almost completely taken up by agriculture, municipalities and industrial development. Implementing a tourism plan for the Lakeland area and creating two new recreation areas within CLFN's Traditional Territory puts added pressure on the Nation and further decreases the area within which its members may practice their traditional rights.

Increased tourism and recreation in CLFN's Traditional Territory has the potential to directly and adversely affect the exercise Treaty and Aboriginal rights as follows<sup>5</sup>:

- Decreased access to preferred areas (e.g. barriers that prevent access such as gates across trails);
- Restriction of harvesting practices in parks (e.g. collection or removal of plant or animal life is not allowed in parks without the permission of the Minister, possession or discharge of a firearm is restricted within a park and the dressing, hanging and storing of big game is not allowed in a provincial park);
- Overnight camping is typically only allowed in designated areas (generally inappropriate for multi-family traditional camps);
- Decreased quality and quantity of key resources (e.g. contamination);

---

<sup>5</sup> *Cold Lake First Nations Jié Houchálá (Berry Point): Traditional Land Use and Occupancy*, Origins Heritage Consultants (February 2012).

- Incompatibility, conflict and competition with the interests of non-Aboriginal recreational users (e.g. campers, hunters, fishermen, snowmobilers);
- Concerns about safety (e.g. hunting in populated areas, lone harvesters may feel intimidated when coming into contact with recreational users and avoid areas altogether); and
- Construction and maintenance of structures is generally not allowed (interferes with infrastructure such as cabins, smoking/drying racks, sweat lodges, etc.).

These issues are of such serious concern to CLFN members that it successfully sought a judicial review of Alberta Park's decision to expand a recreation area at English Bay on Cold Lake.<sup>6</sup>

*(v) The LARP's "inclusion of Aboriginal peoples in land-use planning" fails to be effective or meaningful.*

Rather than include Aboriginal peoples in land-use planning processes and decisions at strategic, high levels, the LARP proposes to conduct consultations on individual decisions "in accordance with applicable government policy as it may be from time to time" when those decisions may adversely affect the exercise of rights. By restricting the scope of Aboriginal involvement to discrete lower-level decisions, the LARP fundamentally misunderstands what is required to meaningfully involve Aboriginal peoples in land use planning. It is almost an impossibility to ensure the protection of ongoing traditional land use at more discrete stages of decision making under the LARP when those considerations have not been made at the regional planning level.

---

<sup>6</sup> *Cold Lake First Nations v. Alberta (Minister of Tourism, Parks and Recreation)*, 2012 ABQB 579.

Moreover, while LARP appears to involve First Nations at a higher level in respect of a single sub-regional initiative (First Nations-Richardson Backcountry Stewardship Initiative), it does so by unilaterally prescribing the issues to be focussed on and the outcomes to be reached. We also note that an indicator of success for the initiative is the “participation of First Nations” rather than the meaningful incorporation of Aboriginal people and knowledge in the land planning process.

In short, the failure of LARP to engage First Nations at higher, strategic level (*at all*) and the failure to engage First Nations at a lower level (*adequately*) results in a land-use framework that does not adequately address traditional land uses which will have a direct and adverse impact on the ability of CLFN members to practice their Treaty and Aboriginal rights.

***C. Explain the adverse effects that you are suffering or expect to suffer as a result of the specific provision (section) you identified in A (above).***

It is clear from the foregoing that the identified sections of the LARP (or absence thereof) will have a direct and adverse effect on the practice of Treaty and Aboriginal rights by CLFN members. The specific adverse effects that CLFN members are suffering or expect to suffer as a result of the decreased ability to engage in traditional land uses is as follows:

- Subsistence and income: Hunting, trapping and gathering have been the primary means of sustenance and nutrition for the Dene people since time immemorial. Even after the devastating exclusion of the CLFN people from the CLAWR, members supplemented their incomes and household economies with food and medicines taken from the land. CLFN members continue to harvest foods and medicines today for subsistence purposes. A decrease in the ability to practice subsistence hunting and gathering has an effect on the income of those CLFN

members who must spend for a commercial replacement and who must now travel farther and expend more resources to hunt, fish, trap and gather those foods and medicines that were once on their doorstep.<sup>7</sup>

- Health and wellness: The health of the CLFN community is tied to the nutrition, satisfaction, active lifestyle and fulfillment of social and spiritual relationships that are a part of a traditional diet.<sup>8</sup> Traditional land uses are also important for building relationships amongst community members (psychological health) – whether from time spent on the land sharing knowledge and skills or from sharing the harvest with family and other community members. A decrease in the ability to engage in TLU adversely affects the physical and psychological health of CLFN members and of the community as a whole. CLFN elders and members frequently report how difficulties in harvesting traditional foods contributes negatively to their health and wellness. Many are of the view that increased rates of diabetes, heart disease and cancer are related to decreasing availability of traditional foods.
- Health and food: Traditional land users are likely to ingest greater amounts of soil than urbanites. Consequently, the threshold for certain levels of contamination that would be acceptable or low risk in an urban environment are not likely to be protective of human health for traditional land users. This disparity is important when considering the failure of LARP to address cumulative effects as they relate to TLU. LARP's limits and thresholds don't appear to consider that traditional land users may be affected by cumulative effects in a different way than the general population of Albertans. This creates an increased concern that the health of CLFN members may be negatively impacted by the policy decisions expressed in LARP.

---

<sup>7</sup> *Cultural and Ecological Value of Boreal Woodland Caribou Habitat*, A Joint Report by the Assembly of First Nations and David Suzuki Foundation (June 2013).

<sup>8</sup> *Ibid.*

- Culture and language: Traditional land use is a venue for the development of language and cultural practices. Many of the words and concepts in Dene are important for the understanding of harvesting and the spiritual relationship to the land. With a decrease in the ability to practice TLU, there will be a correlative decrease in many of the Dene cultural practices and the Dene language.
- Spirituality: The relationship to the land is an important component of TLU. Quiet enjoyment is an important component of TLU practices due to the spiritual and social importance of same.

The failure of LARP to identify any plan for the CLAWR, to address the management of ongoing TLU and consider TLU in designating new conservation and tourism/recreation areas will also certainly result in a loss to CLFN of the quiet enjoyment of its property.

- CLAWR: We note that the CLAWR is a recognized CLFN trapline and an area where Alberta agreed CLFN can practice TLU activities pursuant to the Settlement and Access Agreements. The failure of LARP to consider the effects of oil and gas development and wildlife management (or lack thereof) on CLFN's traditional land use within the CLAWR will have an adverse effect on CLFN members' quiet enjoyment of the area.
- Reserves: Where industrial or tourism development is near or abutting reserve land, those land-uses have the potential to adversely affect CLFN members' quiet enjoyment of reserve land. For example, light and sound pollution from industry or noise and trespassing from recreational users (campers, hunters, etc.).

The chief difficulty which arises from LARP failing to address TLU and the CLAWR is that CLFN is aware that AER is relying upon LARP in making its decisions regarding the

approval of specific projects.<sup>9</sup> Where LARP fails to set out a plan for activities (i.e. CLAWR) or where the plan does not consider or address TLU (i.e. the entire LARP plan), CLFN does not have a meaningful ability to address its concerns or Treaty rights, traditional uses, or its legal rights under the Access Agreement. As in *Jackpine*, the Regulator is left with an inability to address these important issues because LARP has not provided any guidance.

### **PART 2: Requested Relief**

CLFN requests amendment to the LARP, including those provisions described in Part 1 of this submission, so as to diminish or eliminate the adverse effects identified in Parts 2 and 3 of this submission. CLFN requests that the Lower Athabasca Regional Plan be amended so as to be consistent with the exercise of CLFN's Treaty and Aboriginal rights and Traditional Land Uses.

CLFN supports the development of a traditional land use management plan that ensures development is managed in a way that allows CLFN members to meaningfully exercise their rights. We understand that traditional land use management plans have been proposed to Alberta by other First Nations and reiterate that CLFN is willing to work with Alberta and other Aboriginal communities to put same into effect.

CLFN respectfully requests that the Stewardship Minister establish a panel to conduct a review of LARP pursuant to s. 19.2 of the *Alberta Land Stewardship Act*, RSA 2009, c. A-26.8, and the Regulation thereunder.

---

<sup>9</sup> *Jackpine*, supra note 3; Alberta Energy Regulator, *Dover Operating Corp.: Application for a Bitumen Recovery Scheme Athabasca Oil Sands Area* (August 6, 2013), 2013 ABAER 014.



**Part 3: Other Applicable Information**

Please note that the documents referenced in the within submission are enclosed on a memory stick for your convenience.

**Part 4: Applicant Information**

Cold Lake First Nation  
 P.O. Box 1769  
 Cold Lake, AB T9P 1P4  
 Attention: CLFN Access Committee  
 Email: rmachatis@hotmail.com, bryan-lewis@clfns.com, cecil.janvier@clfns.com  
 and bmartial@clfns.com  
 Fax: (780) 594-3577  
 Phone: (780) 594-7183

**Part 5: Representative Information**

I hereby authorize the named company and/or individual(s) to represent me:

First Name: Keltie Last Name: Lambert

Company Name: Witten LLP

Professional Title: Barrister and Solicitor

E-mail Address: klambert@wittenlaw.com Fax #: 780-429-2559  
By providing an e-mail address, you agree to receive communications from the Land Use Secretariat by e-mail.

Daytime Telephone #: 780-441-3206 Direct Alternate Telephone #: 780-428-0501

Mailing Address: #2500, 10303 Jasper Avenue, Edmonton, Alberta, T5J 3N6

Kindly ensure that all notices regarding this matter are sent to the Applicant and Representative as described above.

Yours truly,

**WITTEN LLP**

Per:



**KELTIE L. LAMBERT**

KLL/ds

cc: Cold Lake First Nation, Chief and Council