

December 1, 2014

LARP Review Panel
c/o Land Use Secretariat
9th Floor, Centre West Building
10035 – 108 Street N.W.
Edmonton, AB T5J 3E1

VIA EMAIL: LUF@gov.ab.ca

Dear LARP Review Panel:

**Re: Review of Lower Athabasca Regional Panel
Information Request #4 Directed to the Crown**

We write on behalf of Chipewyan Prairie Dene First Nation (“CPDFN”) in reply to the Crown’s response to Information Request No. 4 (“IR #4”). In this reply, “Crown Response” refers to Ms. Semenchuk’s letter of November 14, 2014 and “Annual Report” refers to the *Land Use Framework Regional Plans Progress Report: A Review of our Progress in 2013*.

As described below, both the Crown’s Response and the Annual Report confirm that LARP as it exists does not address, nor provide protections for, CPDFN’s treaty and aboriginal Rights, traditional lands use, use and enjoyment of reserve lands, culture and identity (“Constitutional Rights”). Both the Crown Response and Annual Report confirm that Alberta has no intention of directly and addressing CPDFN’s Constitutional Rights and its reliance on ongoing aboriginal consultation is inadequate in protecting treaty and aboriginal rights and traditional uses in LARP as it fails to identify decisions that have direct and adverse impacts on aboriginal communities or translate consultation into action.

Annual Report

The Annual Report’s Indicators Report, confirms that LARP does not address or provide protections for CPDFN’s Constitutional Rights. For example, this is demonstrated at page 25 of the Annual Report which reports that Outcome 7 is on-track, citing consultation with respect to the Surface Water Quality and Tailings Management Framework in 2014 and anticipated consultation on the Biodiversity Management Framework, the Landscape Management Plan and the Regional Strategic Assessment. However, as submitted in CPDFN’s Application for a Request of a Review of LARP, this indicator cannot be “on track” in fulfilling Alberta’s stated “commitment to honour the constitutionally protected rights of

Aboriginal peoples” and opportunities for traditional knowledge to “inform land and natural resource planning,” (Annual Report at p. 17) because LARP seeks to substitute consultation on frameworks that reflect Alberta’s view of a healthy ecosystem and environment rather than develop management tools based on the needs and requirements of CPDFN’s Constitutional Rights. Until such needs are directly addressed and acknowledged by Alberta, consultation on any of the frameworks or initiatives currently contemplated in LARP is futile.

The Annual Report’s Progress Summary and the details provided in support on pages 5-17, confirm that LARP prioritizes oil sands developments while failing to address CPDFN’s Constitutional Rights. For example, while the strategic environmental assessment approach for south Athabasca Oil Sands Area has been delayed to determine whether oil sands development is in the public interest, the rest of the strategies for the optimization of oil sands development, including providing tourism opportunities to attract a skill labour force (LARP at page 32), have proceeded as scheduled. The Annual Report Progress Summary and details in supported on pages 5-17, confirm that as of July 2014, Alberta has no intentions to develop traditional land use management framework as recommended by the Joint Review Panel 2013 decision on the Shell Jackpine Mine Expansion (CPDFN Application at Report Joint Review Panel SJME at para. 36).

Crown Response

CPDFN responds to the Crown Response by stating generally that it confirms Alberta’s view that merely scheduling meetings with aboriginal people without taking any substantive action in incorporating any consideration of treaty and aboriginal rights and traditional use into the regional plan suffices to address CPDFN’s Constitutional Rights. CPDFN objects to Alberta’ position and maintains its position that its Constitutional Rights must be directly considered, addressed and protected, and no consultation on environmental management framework intended to serve Alberta’s view of a healthy environment can serve as a proxy for such action. CPDFN makes the following comments on the specific responses to the Crown’s Response in the order provided in the Crown Response.

1. Traditional Land Use Locations of Culture and Spiritual Significance

The Crown Response states Alberta continues to work with First Nations to protect traditional use sites of a historic resource nature and currently has 124 traditional land use sites listed for aboriginal peoples in LARP. This appears inconsistent with the Annual Report that states as of 2013, LARP contained only 13 sites (Annual Report at p.25). CPDFN seeks further information on Alberta’s claims that it designated over 100 new traditional land use since 2013 and seeks information on whether any of these sites correspond with CPDFN’s traditional land use locations.

In any event, LARP does not address and consider CPDFN’s Constitutional Rights as the reference made in LARP to *Historical Resources* at page 2 with respect to promoting cultural heritage and activities relegates the designation of these historical resources to cultural artefacts desirable for attracting the increasing oil sands labour force to the

region's provincial parks rather than committing to their protection from and constraints to oil sands development.

2. Developing the Biodiversity Management Framework and Landscape Management Plan within Reasonable Proximity to First Nation Communities.

The Crown Response confirms Alberta's view that it can substitute engagement that is procedural in nature on environmental management frameworks and strategies that do not directly address or consider the requirements of treaty and aboriginal rights and traditional uses instead of ensuring that CPDFN's Constitutional Rights can be exercised within proximity to their reserve lands. CPDFN views this approach as wholly inadequate as demonstrated by the "completed" Air Quality and Surface Water Quality Frameworks that do not address or incorporate CPDFN's Constitutional Rights such as the impact on oil sands development on avoidance behaviour and consider CPDFN's view of human health. The Crown Response confirms its view that as long as it meets with aboriginal peoples without any indication of the incorporation of their input in the substance of Crown decisions, Alberta has met its consultation commitments in LARP. CPDFN submits this fails to address and protect its Constitutional Rights.

3. Engagement with Aboriginal Communities on air, water, land and biodiversity frameworks.

Please see comments to Crown Response at 2.

4. Sustaining Woodland Caribou Populations

CPDFN submits that LARP fails to adhere to Alberta's Woodland Caribou Policy for Alberta, which cannot be remedied by reliance on any consultation it took with aboriginal peoples in respect of the Biodiversity Management Framework. As one example, the Policy identifies maintaining caribou habitat as an immediate priority, with such things as legislated and non-legislated designated conservation areas (Policy at page 2). Yet, when CPDFN identified key caribou habitat to Alberta in recommending areas for designation as Conservation Areas (CPDFN Application at Ecological Considerations by MSES at p. 7), Alberta disregarded this habitat as requiring protection but instead designated the area as prioritized oil sands development. This is evident by comparing Figure 5 in CPDFN Application at Ecological Considerations by MSES with CPDFN's Application LARP Fig6 CRWS CumEff 12Apr10 Appendix B.

Alberta's failure to substantively respond to the action Alberta has taken in achieving naturally sustaining caribou populations, also confirms Alberta's view that mere procedural engagement without any substantive incorporation of input by First Nations suffices to meet its commitment to consult with aboriginal communities in LARP.

5. Regional Parks Plan and Regional Trail System

The Crown Response confirms that despite LARP's strategy to continuously consult with aboriginal peoples on decisions that may directly and adversely affect their rights before decisions are made (LARP at pages 63-64), Alberta fails to do so. This is evident from the fact that despite the adverse impacts of LARP's promotion of recreational land use and tourism, and restrictions on motorized vehicles in areas in which traditional land use is permitted, the Crown has made no efforts to consult with aboriginal peoples in identifying trails for the Regional Trail System or nearing the completion of the Regional Parks Plan. This confirms Alberta's incorrect view that LARP's promotion of recreational land use within traditional land use areas has no impact on treaty and aboriginal rights and traditional uses. This is despite that recreational land use not only increases competition for resources necessary for the exercise of CPDFN's Constitutional Rights; decreases opportunities for traditional use due to increased safety concerns restricting hunting opportunities; and increases traffic and other human activity, which could not only increase wildlife mortality, and the time and inconvenience of accessing its lands for traditional use, but which are also incompatible with Constitutional Rights. Therefore, it can also be inferred that Alberta did not consider these adverse impacts in designating LARP areas for recreation/tourism, 9 of 14 which are located within highly significant traditional land use areas for CPDFN.

6. Richardson Backcountry Stewardship Initiative

The Crown's Response confirms that LARP does not address and protect CPDFN Constitutional Rights as First Nations consulted with respect to the Richardson Backcountry Stewardship is a supporting indicator for achieving LARP Outcome 7 (LARP at p.69), but which does not involve CPDFN's participation.

7. Tourism and Cultural Synergies

The Crown Response confirms that despite LARP's strategy to continuously consult with aboriginal peoples on decisions that may directly and adversely affect their rights before decisions are made (LARP at pages 63-64), Alberta fails to do so. This is evident from the fact that despite the adverse impacts of LARP's initiatives to promote tourism based on outdoor recreation in the region (LARP at p. 32), Alberta has made no efforts to consult with aboriginal peoples on its tourism strategies identified but rather considers consultation on token aboriginal tourism opportunities as adequate.

This confirms Alberta's incorrect view that LARP's promotion of tourism developed on recreational land use within CPDFN's traditional land use areas has no impacts on treaty and aboriginal rights and traditional uses. This is despite the fact that recreational land use not only could increase competition for resources necessary for the exercise of CPDFN's

Constitutional Rights; decreases opportunities for traditional use due to increased safety concerns restricting hunting opportunities; and increases traffic and other human activity, which could not only increase wildlife mortality, and the time and inconvenience of accessing its lands for traditional use, but which are also incompatible with Constitutional Rights.

8. Traditional Environmental Knowledge

The Crown Response confirms that Alberta has little intention of meaningfully consulting with aboriginal peoples on the decisions that direct and adversely impact them, as the response fails to provide any substantive response as to how traditional environmental knowledge has been incorporated in LARP's existing frameworks and initiatives or identify commitments to integrate traditional knowledge into the development of future frameworks. Based on this response, the Panel can infer that LARP's commitment to consult with aboriginal peoples on land use planning has not been fulfilled by Alberta.

9. Implementing Key Recommendations in Connecting the Dots

CPDFN has not seen evidence of implementation of this policy.

10. Expansion of Tourism Supply and Products

See response to number 7.

11. Tourism Opportunities Assessments

See response to number 7.

12. Biodiversity Management Framework

See response to 2.

13. Develop and Integrated Landscape Management Plan

See response to 2.

14. Coordination and Development of Regional Trail System

See response to 5.

15. Outcome 7 Inclusion of Aboriginal Peoples in Land Use Planning Strategies

See response to numbers 2, 3, 5, 6, 7 and 8.

16. Note 6 regarding Hunting, Fishing and Trapping (including aboriginal peoples)


The Crown Response states it is unclear what the Panel is seeking in requesting a status update on aboriginal hunting, fishing and trapping in the designated land use areas under LARP. This confirms that Alberta's fails to understand and appreciate the impacts of LARP on CPDFN's Constitutional Rights making its commitment on the ongoing consultation with respect to decisions that adversely affect aboriginal peoples as inadequate in addressing and protecting CPDFN's Constitutional Rights.

The Crown Response at 16 confirms that CPDFN's hunting, fishing, and trapping in Conservation areas may continue in accordance with existing provincial laws. However, these existing laws just mean that CPDFN's hunting, fishing and trapping are legal in the Conservation Areas. The legality of these activities is irrelevant to whether this traditional land use is actually practiced in the Conservation Areas, it is possible and can practicably in the area and to what extent. Further, the Annual Report confirms at page 1 that Alberta does not assess whether Conservation Areas support traditional land use it has not established programs pursuant to Part 2 of the Regulatory Details to evaluate this.

Alberta has not yet resolved the land use conflict between oil sands development and traditional land use, both of which are permitted uses in the 'mixed-use' lands of LARP. CPDFN can also advise that projects continue to be approved in the mixed-use area despite their incompatibility with the exercise of CPDFN's Constitutional Rights despite the absence of any initiative to address and protect its Constitutional Rights. The existence of LARP, even in its incomplete state, it used as a justification for approving projects because oil sands development is a permitted use under LARP (See AER Decision on Dover Commercial Project, 2013 ABAER 014 at para.46). Traditional land use is also permitted under LARP, but this use is not being operationalized in planning or project approvals. This land use incompatibility is also relevant for the new Public Land Areas for Recreation and Tourism which also permit oil sands and other industrial development. Further, LARP's provincial parks areas for recreation are too small to support CPDFN's Constitutional Rights and the ones that do not permit motorized vehicles cause impacts on CPDFN's Constitutional Rights. Therefore, the permitted use of Note 6 is not supported in any of the land use zones designated under LARP.

In conclusion, the Crown Response confirms that LARP is wholly inadequate in addressing and protecting CPDFN's Constitutional Rights as it fails to understand and address the impacts of the prioritization oil sands development, including by promoting recreational and tourism opportunities, on CPDFN. Alberta's failure to appreciate the adverse impacts of activities advanced by LARP on CPDFN makes its commitment to ongoing consultation as in achieving Outcome 7 as a means to protect CPDFN's Constitutional Rights as ineffective and meaningless. Further, Alberta's response confirms it has taken no steps to development a traditional land use management framework or any other initiatives that addresses or acknowledges the specific requirements of Constitutional Rights, and therefore, no consultation on the management frameworks and initiatives contemplated by LARP will address and protect CPDFN's Constitutional Rights.

Sincerely,



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