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Our File: 4733

October 21, 2014

LARP Review Panel  
c/o Land Use Secretariat  
9<sup>th</sup> 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 the Lower Athabasca Regional Plan  
Information Request #2**

We write on behalf of the Athabasca Chipewyan First Nation and further to our correspondence to the Panel and Minister, dated October 17, 2014.

On September 3<sup>rd</sup>, 2014 the LARP Review Panel issued its second information request to the government of Alberta, on behalf of the Crown (“Information Request #2). The government of Alberta responded to Information Request #2 on September 18<sup>th</sup>, 2014 advising that it once again was objecting to producing the information requested by the Panel on the basis that it:

- is already in the Panel’s possession;
- does not exist;
- may be in the Crown’s possession but cannot be provided;
- if it exists, the Applicants are best placed to provide it; or
- relates to matters outside the Panel’s jurisdiction.

**The government of Alberta’s incorrect interpretation of the Rules**

The Athabasca Chipewyan First Nation submits the government of Alberta has once again adopted an extremely restricted interpretation in response to the Panel’s Information Request #2.

The Rules of Practice for Conducting Reviews of Regional Plans, March 2014 (the “Rules”) state at sections 28 and 29 that:

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28. After the Panel has received and reviewed the written submissions, the Panel may request that a party provide further information necessary to permit a full and satisfactory understanding of the matters in the review.
29. An information request by a Panel under section 28 must
  - a) be in writing,
  - b) be directed to the party from whom a response is sought,
  - c) contain specific questions for clarification about the party's evidence, documents or other material that may be in the possession of the part and relevant to the proceedings, and
  - d) set out the date on which a response is required.

The Athabasca Chipewyan First Nation submits that Information Request #2 is in compliance with the above cited Rules. As such, the government of Alberta's response indicating that "the Panel's role is not review the process leading up to LARP enactments, such as to inquire what the Crown may or may not have contemplated prior to LARP enactment" is completely inaccurate.

The government of Alberta itself points out in its response to Information Request #2 at page 2, "the Crown's views in relation to the submissions by First Nations and how those concerns are addressed in LARP are outlined in the Response to Aboriginal Conclusion on the Lower Athabasca Regional Plan documents already referenced in the Crowns' response to the review requests". The Athabasca Chipewyan First Nation submits that Information Request #2 was merely seeking to clarify the party's evidence as per section 29(c) of the Rules and this information is "necessary to permit a full and satisfactory understanding of the matters in review" and is very much "relevant to the proceeding".

The Athabasca Chipewyan First Nation agrees with the Chipewyan Prairie Dene First Nation and Fort McKay First Nation that the information requests were not premature, that the information requested is necessary for a full and satisfactory understanding of the matters in review, and that the government of Alberta's failure to respond to the Information Requests #1 and #2 denies the Athabasca Chipewyan First Nation its procedural rights to respond pursuant to Rule 32 of the Rules, and that this undermines the LARP's Review Process.<sup>1</sup>

Additionally, due to the government of Alberta's failure to provide any information in response to Information Request #1 and #2, the Athabasca Chipewyan First Nations submits that currently there is no information before the Panel that indicates the LARP is being implemented in accordance with information being released to the public (including the "Response to Aboriginal Consultation on the Lower Athabasca Regional Plan").

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<sup>1</sup> See October 17<sup>th</sup>, 2014 correspondence.

The Athabasca Chipewyan First Nation submits that Alberta's refusal to respond thwarts what the Alberta Court of Appeal has explained as the purpose of the public hearing,<sup>2</sup> the Panel's duties, and ultimately the will of the legislature.

The clear legislative intent of ALSA is that Cabinet decisions regarding amendments requested as part of a Section 19.2 review are to be made with the benefit of the findings and recommendations of an independent Panel (i.e. see ALSA section 19.2(3) – report and recommendations must be presented; and sections 4(1) and 5 re: amendment).

The Alberta employees (we assume they are employees) instructing Alberta Justice counsel not to file responses to the Panel's information requests are not only depriving ACFN of its procedural rights, they are also depriving the elected leaders of Alberta the opportunity to make informed and legally defensible decisions in relation to the Panel's recommendations on potential amendments to LARP.

### **Documents submitted by the Athabasca Chipewyan First Nation**

As the government of Alberta has proven to be uncooperative in the LARP Review Process, the Athabasca Chipewyan First Nation kindly requests for the Panel to review the following to ensure it has access all documents put forth by the Athabasca Chipewyan First Nation:

1. Correspondence addressed to the Office of the Minister and Land Use Secretariat from the Athabasca Chipewyan First Nation, dated August 19th, 2013 and enclosures; and
2. Correspondence addressed to Alberta Justice from the Athabasca Chipewyan First Nation's legal counsel, dated August 31st, 2013 and enclosures.

Should the Panel require additional copies of any of these documents we would be pleased to provide same upon request.

### **Traditional Land Use Areas**

With respect to the Panel's request for Traditional Use Areas for the six First Nation applications being considered by the LARP Review Panel, the Athabasca Chipewyan First Nations submits it is important to note that the traditional lands is not defined in a manner that fits neatly within European patterns of land use and land holding.<sup>3</sup> We have enclosed with this submission a report completed by Dr. Patricia McCormack, which speaks to the concept of traditional lands, among other matters.

Aboriginal land use and concepts of lands have been poorly understood by Europeans and Euro-Canadians. The Athabasca Chipewyan First Nation, have been asked to identify boundaries where their legitimate interest in the land stop and start. Such boundaries are European

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<sup>2</sup> *Kelly v. Alberta (Energy Resources Conservation Board)* 2012 ABCA 19 at paras. 31 and 34.

<sup>3</sup> Dr. Pat McCormack: An Ethnohistory of the Athabasca Chipewyan First Nation at pages 108-139. [*Ethnohistory of the ACFN*].

constructions that not part of traditional Chipewyan land management practices, which are instead grounded in the understanding of the land as autonomous living being.<sup>4</sup>

At different times, the Athabasca Chipewyan First Nation have used tools such as maps and planning units or ones in an attempt to explain its use and occupation on its traditional lands in a manner that might be understood by non-Chipewyan decision makers.<sup>5</sup> For example, although an early traditional use study *Footprints on the Land* attempted to explain the core areas of the Athabasca Chipewyan First Nation's traditional lands in part through the use of a map, the authors carefully to explain that

in the context of the large, nomadic territory likely occupied by the Chipewyan people and the context of the continually evolving culture and adaptation of these aboriginal people, it is inappropriate to speak of boundaries.<sup>6</sup>

The traditional territory of the Athabasca Chipewyan First Nation is geographically defined by social networks. It did not in the past nor does it now have clear boundaries that can be surveyed. The use of maps by the Athabasca Chipewyan First Nation is for communication purposed with other governments and represents its good faith attempts to reconcile an Indigenous concept of territory that is broad in nature with a Euro-Canadian concept of territory that is intended to erect boundaries and confer restricted rights of ownership and use.<sup>7</sup>

Further, in an attempt to communicate its land use values in a manner which the government of Alberta's representative could understand, the Athabasca Chipewyan First Nations presented some its traditional lands in the form of planning units ("Cultural Protection Areas") in its submissions on the LARP. These Cultural Protection Areas include Homeland Zones – areas of critical importance to past, present and future practice of the Athabasca Chipewyan First Nation's rights within core traditional lands. Based on available information, each zone is integral and necessary to the meaningful practice of rights by ACFN members within core traditional lands. Proximate zones are another type of Cultural Protection Area, which is relied upon for the practice of rights by the increasing number of the Athabasca Chipewyan First Nation members living in and around Fort McKay and Fort McMurray. ACFN also identified Critical Waterway Zones. These areas recognize the integral importance of water quality and quantity to the ACFN membership and their practice of rights. The Critical Waterway Zones are interconnected zones which extend 5km on either side of waterways that are critical for the practice of ACFN rights.<sup>8</sup> The above noted Cultural Protection Areas were provided to Alberta in 2010.

The Cultural Protection Areas identified by ACFN reflect the culture reality that different parts of traditional lands are relied on for different resources, at different times. It also reflects the fact that the Dene cultural reality that knowledge about the land is more than simply physical features that can be empirically discovered and charted.

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<sup>4</sup> *Ethnohistory of the ACFN* at pages 108, 110 and 115.

<sup>5</sup> *Nih Boghodi: we are stewards of our land* (April 2012).

<sup>6</sup> *Ethnohistory of the ACFN* at page 123.

<sup>7</sup> *Ethnohistory of the ACFN* at page 125.

<sup>8</sup> ACFN advice to Government of Alberta on LARP, enclosed with August 19, 2013 letter. *Ethnohistory of the ACFN* at pages 178 – 183.

The Athabasca Chipewyan First Nation have been clear that the planning units and zones represented on the LARP and *Nih Bohodi: we are stewards of the land*, are just that – planning units and zones based on traditional use and other factors – subsets of the traditional lands viewed as critical for continued and meaningful rights practice, rather than definitive statements regarding the entirety of Athabasca Chipewyan traditional lands.

### **Recreation and Tourism Areas**

With respect to the Panel’s request for information on Recreation and Tourism areas, the Athabasca Chipewyan First Nation submits that the LARP at page 23 states:

If approvals are granted in the future for a mining development in the new Richardson PLART, the boundaries of this area will be re-examined if deemed necessary and acceptable as a result of the regulatory review for the mine development.

The effect is that the LARP will still allow development- all existing oil sands, metallic, industrial or coal exploration or exploitation, commercial forestry, grazing leases, activity and multi-use corridors within the parks.

Further, almost all of the areas identified for the Richardson Wildlife Provincial Park have existing metallic and industrial mineral tenures in the form of permits. The entire proposed Richardson Public Land Area for Recreation/tourism public use has existing metallic and industrial mineral tenures in the form of permits and one lease, while a number of permit and lease applications are pending.

As noted in the Athabasca Chipewyan First Nation’s response to the government of Alberta’s reply on August 25, 2014, parks under the LARP are explicitly meant to be used for all recreation and tourism opportunities and these are precisely some of the impacts that the Athabasca Chipewyan First Nation has identified as problematic, as it interferes with ACFN’s exercise of its Treaty rights in the area. The park designations may encourage further consumptive and non-consumptive sport and commercial hunters and fishers, as well as increasing numbers of recreational snowmobiles, all terrain vehicles and other backcountry transportation users in the Athabasca Chipewyan homeland areas. They may also support commercial tourism development.

Finally, the new Lake Athabasca and Richardson Recreation/Tourism areas in LARP fall within homeland areas that have been identified by the Athabasca Chipewyan First Nation as places that its members’ wish to protect as sanctuaries for their current use and that of future generations. By way of contrast, the goal of LARP for these areas is “to provide additional recreation opportunities and attract tourism investment” and to “address the growing demand for recreational opportunities and provide an attractive land base for tourism investment”.

There is a high potential that the LARP land use designations will attract tourism-based investment and/or government induced infrastructure such as trails and campgrounds, which

would potentially encourage incremental and new sport and recreation use in the homeland areas of the Athabasca Chipewyan. In turn this will further restrict the Athabasca Chipewyan First Nations members' use of the area for hunting due to safety concerns as more non-indigenous and recreation users will be in these areas.

### **The government of Alberta's view at the time of LARP's approval**

In further response to the government of Alberta's decision to not provide the Panel with any information whatsoever, for the second time, the Athabasca Chipewyan First Nation takes this opportunity to respond and provide the Panel with the information below.

1. Correspondence from Diana McQueen to Minister Leona Aglukkaq, dated October 30, 2013; and
2. Affidavit #1 of Nicole Nicholls, dated February 25, 2014.

The Athabasca Chipewyan First Nation believe the above noted documents speaks to the government of Alberta's view at the time of and approximately one year after the LARP's approval, including the major disconnect between what the government of Alberta states about the LARP as compared to the content contained in and implementation of the specific provisions of the LARP. In short: traditional land use and Treaty Rights were simply not given proper consideration nor priority.

The Athabasca Chipewyan First Nation put a number of submissions forward on the inadequacies of the LARP in the protection of its Treaty rights and those submissions have not been incorporated or addressed in the final LARP. The Athabasca Chipewyan First Nation submits that the government of Alberta lacked transparency in the drafting of the LARP and continues to do so through the LARP Review Process.

Yours truly,  
WOODWARD & COMPANY



Melissa Daniels

MD/bb

Enclosures

Dr. Patricia McCormack, An Ethnohistory of the Athabasca Chipewyan First Nation  
Letter from Alberta Minister of Environment and Sustainable Resource Development dated October 30, 2013  
Affidavit #1 of Nicole Nicholls dated February 25, 2014  
*Kelly v. Alberta (Energy Resources Conservation Board)* 2012 ABCA 19  
*Nih Boghodi: we are stewards of our land* (April 2012)  
Correspondence addressed to the Office of the Minister and Land Use Secretariat from the Athabasca Chipewyan First Nation's legal counsel, dated August 19th, 2013 and enclosures; and  
Correspondence addressed to Alberta Justice from the Athabasca Chipewyan First Nation's legal counsel, dated August 31st, 2013 and enclosures.

Cc

ACFN Chief and Council

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