

December 1, 2014

TO: J. Gilmour, Chair, LARP Review Panel

FROM: Cold Lake First Nations ("CLFN")

RE: Reply to GOA's Response to Information Request No. 4

CLFN writes in response to Alberta's Response to Information Request No. 4 on November 14, 2014 (GOA Response #4).

CLFN has also had the opportunity to review the Reply submissions filed by Athabasca Chipewyan First Nation dated November 30, 2014 ("ACFN Reply #4"). CLFN shares the concerns raised in ACFN Reply #4 that GOA Response #4 contains broad assertions which are unsubstantiated by any evidence. CLFN agrees it would be an error to give any weight to the assertions of Alberta's legal counsel related to "consultation" in the absence of any concrete evidence that CLFN's traditional land use information, concerns or submissions regarding LARP (or its contemplated frameworks) were actually incorporated in some meaningful way into LARP. As described in CLFN's Reply to GOA's Response to Information Request No. 5, it is clear that Alberta cannot demonstrate, in any way that it incorporated CLFN traditional land use information into LARP. To date no evidence has been provided that any First Nation's traditional land use information was relied upon to inform LARP.

CLFN submits GOA's responses to all of the requests included in Information Request #4 are non-responsive and/ or inadequate. It has been CLFN's uniform experience that when Alberta refers to "consultation" with First Nations or when it describes that a plan or document has been prepared with "First Nations input", this is GOA code for describing low-level Alberta staff attending an information session or meeting with First Nations. Information may be collected from First Nations at the meetings, but CLFN cannot identify a single example of when that information was actually incorporated into Alberta's plan or document. CLFN submits that unless GOA can provide specific examples of where First Nation's "consultation" has resulted in changes to Alberta's plans or policies, no weight can be given to their description of past engagement or promises of future engagement.

CLFN takes this opportunity to add to the disappointing examples that were provided in ACFN Reply #4, on three key points:

Historical Resources

Request from Panel: The GOA collaborates with aboriginal communities toward protecting traditional use locations of culture and spiritual significance. Update Status.

As described by ACFN, CLFN has not experienced any circumstances under which Alberta has used the *Historical Resources Act* to protect traditional use sites. As far as CLFN knows, there is no regular or transparent process by which the Aboriginal Consultation Office collects information about traditional use sites or transmits the information to Alberta Culture. CLFN has no records of being contacted by Alberta Culture in regards to protection of traditional use sites. As far as CLFN knows the only “protection” that is gained by having a traditional use site recorded on the *Listing of Historic Resources*, is that the location can be identified by a project proponent in a desk-top review. Listing a site is no guarantee of any protection as Alberta Culture is empowered to permit interference with or the destruction of such sites. As far as CLFN is aware, there are no sites which are protected for the purposes of harvesting berries, medicinal plants, or animals. Rather, the sites tend to be archaeological or historical features (such as cabins). Furthermore, where archaeological sites have been located and investigated, Alberta Culture has not “collaborated” with CLFN to determine where artefacts should be stored and whether those artefacts should remain with or be repatriated to CLFN.

Biodiversity Framework

Request from Panel: In developing a biodiversity management framework and a landscape management plan, the GOA will work with First Nations to consider how 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 centers. Update status.

Alberta’s response is misleading at best. GOA’s shallow response is to list meetings that have occurred. What is not described is the disappointing lack of meaningful content in the meetings and lack of responsiveness to the issues raised in the meetings. For example, CLFN attended a GOA workshop on August 21, 2014 related to the Biodiversity Management Framework (“BMF”). Following the meeting, CLFN wrote to the Land Use Secretariat on September 15, 2014 describing its disappointment with the approach taken and expressing that “the BMF materials do not demonstrate that the indicators and thresholds will protect treaty and aboriginal rights, nor do the BMF Materials, or the process by which AESRD has been “engaging” First Nations on this matter, demonstrate any real effort to develop the BMF in a manner protective of treaty rights.”

At the August 21, 2014 workshop, GOA staff could not provide answers on how the BMF would protect treaty rights. Alberta had not gathered any specific information on how First Nations exercise their Treaty Rights. In fact, GOA staff seemed unaware of this requirement in relation to the BMF. They could not answer any questions about how specific information related to the exercise of Treaty Rights had been or would be considered in the development of the BMF. In short, Alberta could provide no evidence that the BMF would actually a) consider how First Nation's exercise of Treaty rights can continue to occur within reasonable proximity of First Nations' main population centers or b) ensure that the constitutionally required obligation to ensure the meaningful exercise of Treaty Rights is preserved is kept.

CLFN posed 5 questions to GOA, which have not been answered. These include:

Questions to Alberta:

1. While Treaty 6 rights are commonly recognized as including the rights to hunt, fish and trap, has Alberta determined what traditional resources are required to exercise those rights, and in what qualities and quantities, and in which places, in order to sustain CLFN's treaty rights? What evidence is this based on?
2. What actions has Alberta taken to protect CLFN treaty rights? For those actions taken, what has Alberta done to monitor their effectiveness and to validate whether such measures do, indeed, protect rights? What actions does Alberta take in instances where it is found that measures to protect rights are not working?
3. How do CLFN's treaty rights link to biodiversity, including the indicators and thresholds being considered in the development of the BMF? What evidence are you basing this on?
4. How will protection of biodiversity protect CLFN treaty rights? What evidence are you basing this on?
5. If the BMF only applies to the green area and provincial parks in the white area, and does not apply within the Cold Lake Air Weapons Range (CLAWR), the value of it for protection of CLFN's rights is likely negligible. If this is one of Alberta's "tools" to protect rights and it cannot protect CLFN's rights, what actions will Alberta take to address this gap?

Woodland Caribou

Request from Panel: The GOA is committed to achieving naturally sustaining woodland caribou populations. Planning and implementation will consider: a) provincial and federal legislative requirements; b) First Nations rights and traditional uses; c) social/ economic impacts; and d) stakeholder interests. Submit policy update with First Nations have been consulted.

Unfortunately, CLFN has had the same experience as ACFN in relation to Alberta's "commitment" to woodland caribou—GOA has not taken any effective steps to fulfill its commitments. The fact is, Alberta has had the Alberta Woodland Caribou Recovery Plan in place for 10 years and caribou herds have declined to the point of extirpation. Alberta's "commitment" is another demonstrable failure.

CLFN has made numerous submissions to Alberta regarding the state of the woodland caribou and put significant time, money and effort into documenting its Wildlife Preservation Area (the "WPA") within the Cold Lake Air Weapons Range. The WPA has been traditionally protected by CLFN and avoided by CLFN hunters as a place to allow large ungulates to replenish themselves. Western scientific analysis confirms the location as excellent caribou habitat which remains relatively undisturbed (see enclosed PowerPoint). AESRD was presented with all of this information in October and November 2012 and requests were made by CLFN for further engagement to explore the efficacy of protecting this critical area within the Cold Lake Air Weapons Range Caribou Herd Range. Unfortunately, no further engagement occurred. CLFN submits it is clear that GOA's "commitments" to protecting this key species is hollow.