



August 29, 2013

Via Fax: 780-644-1034

Land Use Secretariat
9th Floor, Centre West Building
10035 – 108 Street
Edmonton, AB T5J 3E1

Attention: Stewardship Commissioner

Dear Sir:

**RE: Submission by Onion Lake Cree Nation
Request for Review of Lower Athabasca Regional Plan**

OLCN 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 ("Traditional Land Uses") 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*, OLCN is the beneficial owner of reserve land in Alberta which is situated just south of the southern border of the Lower Athabasca Region. The Traditional Territory of OLCN extends into the area covered by the Lower Athabasca Regional Plan ("LARP") and, like all members of Treaty 6, OLCN members have the right to engage in Traditional Land Uses on all unoccupied Crown land in the Province of Alberta. Recently, Alberta acknowledged it has a duty to consult with OLCN in respect of land use decisions and the taking up of land within OLCN's Traditional Territory in Alberta. OLCN is also the legal owner of parcels of land in and near Lloydminster, Alberta some of which were purchased as part of OLCN's Treaty Land Entitlement claim. Accordingly, OLCN has



legal interests which are directly affected by Alberta's land use planning decisions and, in particular, LARP.

OLCN brings this application for review of the Lower Athabasca Regional Plan ("LARP") on its own behalf and on behalf of its members 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 OLCN and its members are persons directly and adversely affected by LARP. As the submissions demonstrate, there is a reasonable probability that OLCN's health, property and quiet enjoyment of property will be more than minimally harmed by LARP. Further to the submissions within, OLCN requests that the Stewardship Minister establish a panel to conduct a review of LARP.

OLCN also supports the requests for review of LARP that have been or will be made by other adversely affected First Nations in Treaty 6, 8 and 10. Given that this is just the first land use plan developed by Alberta, we trust that you will take our concerns seriously and provide a fair opportunity for review of LARP.

Should you have any questions concerning this submission, please do not hesitate to contact the writer directly.

PART 1: Details of Request for Review

Name of Regional Plan: Lower Athabasca Regional Plan

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 address the management of ongoing traditional land use ("TLU") by OLCN members. Specific provisions:

- 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)

(ii) The LARP designates new conservation areas without considering the impact on OLCN's TLU or whether such areas support OLCN'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

(iii) The LARP designates new tourism and recreation areas without considering the impact on OLCN'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

(iv) 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 and C: 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; And 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).

(i) LARP does not address the management of ongoing TLU by OLCN

The members of OLCN possess constitutionally protected Treaty and Aboriginal rights, which include the right to carry out TLU activities in the same manner after Treaty as before. This was the promise made by Treaty negotiators and has been recognized by numerous Supreme Court decisions. These rights and activities include hunting, fishing, trapping, gathering, ceremonial activities and wildlife management practices which are all inter-related and depend on a healthy environment.

Over the past century, most of OLCN's Traditional Territory within the LARP region has been taken up by military, agricultural, municipal settlement, provincial parks and industrial oil and gas land uses. There are few areas close to OLCN which retain suitable habitat to support ongoing TLU activities.

While the LARP purports to take a cumulative effects based approach to the management of environmental effects in the region, LARP does not address TLU issues specifically. Furthermore, OLCN does not believe that TLU issues can be addressed simply by assuming that the thresholds established for various ecological indicators are protective of TLU activities. The maintenance and sustainability of TLU activities depends upon a number of factors which are not accounted for in LARP. These include: location and availability of traditional ecological resources, quantity of traditional ecological resources, confidence in the quality and safety of ecological resources, access to ecological resources, and more complex cultural and spiritual factors.

Unfortunately, at this point LARP fails to address TLU at all. In particular LARP contains no data relating to TLU ecological requirements, no consideration of cumulative impacts to TLU to date, no forward looking thresholds for land uses which

conflict with TLU, and no prioritization of TLU in accordance with its constitutionally protected status. In particular, LARP identifies no areas within OLCN's Traditional Territory which will be consistent with OLCN members exercising their TLU.

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.¹ 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 First Nations will result in a direct and adverse effect on the practice of Treaty rights by OLCN members.

It is clear from the foregoing that the failure of LARP to effectively address TLU by OLCN members will have a direct and adverse effect on the practice of Treaty Rights by OLCN members. The specific adverse effects that OLCN 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 Cree people since time immemorial. Even though much of OLCN's Traditional Territory has been taken up by the Crown for various purposes, OLCN members continue to harvest foods and medicines today for subsistence, social and ceremonial purposes. A decrease in the ability to practice subsistence hunting and gathering has an effect on the income of those OLCN

¹ 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, CEAA Reference No. 59540.

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 used to be readily available to them.

Health and wellness: Traditional land uses are 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 OLCN members and of the community as a whole. OLCN believes that as its members find it harder and harder to engage in TLU activities—because the opportunity for those activities are farther and farther from home its members have to rely on more and more purchased foods. These non-traditional foods have had a negative impact on OLCN member's health, contributing to higher rates of heart disease, cancers and diabetes.

Furthermore, there is no indication in LARP that the thresholds set for certain air, water and land pollution indicators are protective of human health for traditional land users. OLCN believes that because its members are closer to the land and these traditional foods they are more likely to ingest pollutants and chemicals which may be harmful to their health. By failing to consider which thresholds are protective of traditional land users, LARP risks the health and safety of OLCN members.

Culture and language: Traditional land use is a venue for the development of language and cultural practices. OLCN has been and remains at the foreground in educating its students in the Cree language. OLCN understands that the development of Cree language skills, spirituality and cultural practices are intimately tied to the land. While engaging in TLU activities on the land, grandmothers and grandfathers, parent and children are together. They learn the Cree ways and Cree stories. Our next generations become connected to our land and our culture. These activities are

severely inhibited and adversely impacted when families have to drive for hours to find suitable, clean and quiet locations.

(ii) The LARP designates new conservation areas without considering the impact on OLCN's TLU.

One of the key criterion identified for selecting conservation areas in LARP is to locate areas that support Aboriginal traditional uses (p. 30). However, there are no conservation areas within OLCN's Traditional Territory and there are no conservation areas that are reasonably proximate to OLCN or reasonably accessible by OLCN members.

Furthermore, LARP 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. Existing conservation areas have been designed to accommodate multiple uses such as low-impact recreation, nature-based tourism and commercial guiding/outfitting/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). OLCN does not believe that all of these contemplated uses can be squeezed into the relatively small areas designated for conservation.

In sum, the designation of new conservation areas under LARP does nothing to ensure that OLCN members will be able engage in the meaningful practice of their Treaty Rights.

(iii) The LARP designates new tourism and recreation areas without considering the impact on OLCN's TLU.

Two of the nine new provincial recreation areas (Clyde Lake and Winifred Lake) are in the Treaty 6 region (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). As described, OLCN’s Traditional Territory is almost completely taken up by land uses that conflict with TLU. Unfortunately, increased tourism and recreation plans are also highly likely to conflict with OLCN’s ability to access land, water and resources for TLU purposes. Some of the impacts that OLCN members have already experienced when Crown land has been converted to parks and provincial recreation areas include: regulatory restrictions on harvesting activities within the parks, conflict with parks employees and enforcement officers, conflicts with recreational users of parks, increased competition for fish, game and berries, interference or limits on abilities of families to camp in large groups for extended periods of time, interference with quiet enjoyment of natural areas by campers and partiers.

(iv) The LARP’s “inclusion of Aboriginal peoples in land-use planning” fails to be effective or meaningful.

Rather than include First Nations 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 First Nations’ involvement to discrete lower-level decisions, the LARP fundamentally misunderstands what is required to meaningfully involve First Nations 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. OLCN has already seen evidence of this approach in AER’s recent decisions in the *Dover* and *Jackpine* decisions, in which it has been made clear by the Regulator that in considering

site specific impacts of Projects in the public interest, it must follow LARP designations. There being no designations in LARP for TLU, the Regulator appears to feel constrained from acknowledging or addressing TLU in a meaningful way. A similar approach is currently imposed by ESRD through Alberta's First Nation's Consultation Policy. Implementation of that Policy has demonstrated that ESRD will inappropriately focus its attention only on "site specific concerns" while leaving larger cumulative impacts to the meaningful exercise of Treaty Rights to larger land use planning initiatives. We assume by this that ESRD is referring to LARP, but LARP does not address TLU issues. So, OLCN is left to question when and where these issues will be dealt.

In short, the failure of LARP to engage First Nations at higher, strategic level and the failure to engage First Nations at a project specific level 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 OLCN members to practice their Treaty Rights. OLCN considers this to be a serious breach of Alberta's obligations under Treaty 6 and the Honour of the Crown.

PART 2: Requested Relief

OLCN understands that Traditional Land Use Management Plans have been proposed by other First Nations and OLCN would also support a plan developed jointly and respectfully with Alberta which would support OLCN's ongoing TLU. The development of such a plan should recognize OLCN's status on a Nation to Nation basis as a political foundation to move forward. OLCN has been and continues to take a stewardship role in the management of land and resources within Treaty 6.

OLCN 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, which would allow for the meaningful consideration of the issues raised in this letter.

Yours truly,

Onion Lake Cree Nation

Per:

A handwritten signature in black ink, appearing to read "W. Fox", written in a cursive style.

Chief Wallace Fox