

October 6, 2010

Our File: 5320

LARP Phase 2 Workbook
c/o Stantec Consulting, PC 1165
200 - 325 25th Street SE
Calgary, Alberta T2A 7H8

RE: Lower Athabasca Regional Plan

To Whom It May Concern,

Introduction

The Environmental Law Centre (ELC) is a charitable organization incorporated in 1982 as a public source of information on environmental law and policy in Alberta. The ELC's mission is to ensure that laws, policies, and legal processes protect the environment. The ELC is pleased to provide this letter submission regarding the *Advice to the Government Regarding a Vision for the Lower Athabasca Region (RAC Recommendations)* in addition to its online workbook submission.¹ The comments and recommendations set out below provide further details regarding the translation of the *RAC Recommendations* into the Lower Athabasca Regional Plan (LARP) that were not captured adequately in the workbook submission.

The ELC's comments are separated into general comments about the *RAC Recommendations* approach and specific comments about specific recommendations.

General Comments

The ELC's general comments relate to the vision for the region, the reliance on future planning processes, accountability for outcomes and striking an appropriate "balance" in creating the LARP.

i) Vision

The vision for the Lower Athabasca seeks a "balanced" approach to development.

¹ Lower Athabasca Regional Advisory Council, *Advice to the Government Regarding a Vision for the Lower Athabasca Region*, (August, 2010), online: Government of Alberta Land-Use Framework <<http://www.landuse.alberta.ca/RegionalPlans/LowerAthabasca/documents/LARP-VisionForLowerAthabascaRegion-Aug2010.pdf>> (hereinafter the *RAC Recommendations*).

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Sustainable economic, social and environmental outcomes are balanced through the use of aboriginal, traditional and community knowledge, sound science, innovative thinking, and accommodation of rights and interests of all Albertans.²

The vision statement qualifies the “balanced” approach by including the “accommodation of rights and interests of all Albertans”. This inclusion of rights accommodation in balancing environmental outcomes with social and economic outcomes is problematic as it favours the status quo. Specifically, the historic and continuing vesting of “rights and interests” leads to an undermining of environmental outcomes. The environment and the services it provides has not been vested with any legally recognized rights or interests. A true balance can only be obtained where all outcomes are given equal legal footing. The vision statement should be amended to reflect this proposition.

(ii) *Operationalizing the next steps*

The *RAC recommendations* rely heavily on future planning processes to lead to management actions. The success of such planning processes, particularly when they are collaborative and multi-stakeholder in nature, is mixed in Alberta, with a tendency towards failure.³ Further, this reliance raises significant questions about the timely creation and implementation of plans. The delay in having applicable planning actions in place, in the absence of any regulatory transition provisions to deal with developments, will further undermine the balancing that must take place in the region.

Further, collaborative processes begin as inherently unbalanced where those at the table have vested interests, in the form of mineral tenures and public land dispositions. These dispositions and tenures, in the absence of any intent to retroactively amend these instruments, set an uneven stage for collaborative negotiation.

Questions about the financial and technical resources that will be required to develop and implement all the relevant plans and frameworks must also be addressed.

These issues require that clear rules of engagement in future planning processes are established and that transitional provisions that are protective of the environment be immediately implemented.

(iii) *Accountability*

The issue of accountability looms large over the land use planning process. The *RAC Recommendations* are ambitious and overarching. If the LARP is similarly overarching, the question becomes who is accountable for the plan outcomes. Accountability in a land use plans

² *Ibid.* at 8.

³ This is particularly the case where issues are highly contentious, there is uneven bargaining power, and there is no government intent to force change to meet objectives. It should be noted however that the *RAC Recommendations* specifically identify strengthening of multi-stakeholder groups as a stand-alone objective (Objective 3.3 at 16.).

requires that the plan include standards and thresholds, robust monitoring systems, and that there exist appropriate legal and regulatory tools for plan implementation and compliance.

For instances, regulatory or policy tools are required to integrate watershed plans and biodiversity plans and frameworks into both the regional plan and into relevant departments' mandates.⁴

Outstanding questions of accountability in the *RAC Recommendations* are illustrated by the objective regarding monitoring and reporting land, air, water, and biodiversity which states:⁵

Work with local communities to develop stewardship responsibilities, accountability and roles for local communities in air, land biodiversity and watershed monitoring and reporting.

Who will pay for this monitoring and reporting? Is this monitoring and reporting in addition to proponent obligations to do the same? How are local communities to “develop...accountability”? What is an appropriate budget for monitoring such an area?

The government must clearly outline the responsibilities and authority that will result in reaching the LARP outcomes. Where roles are delegated outside of government there is a need to expressly address issues of capacity and authority to implement and require compliance with plan objectives.

(iv) The balancing act

The issue of balance is cited in the RAC's vision statement and this is reflected in the recommendations as promoting all aspects of development and conservation. Yet a balance inherently requires that tradeoffs are made. The ELC is of the view that, to date, the environment has not received “balanced” consideration. Impacts on the environment are rarely avoided; rather, development impacts on the environment are framed in terms of mitigation with little discussion of how and whether the mitigation mechanisms actually protect environmental integrity.

The concern then becomes whether, with the motherhood promotion of everything, the plan will lead to continuing with the status quo with the exception of a “payout” to the environment in the form of designating 20% of the land as conservation lands (with varying degrees of allowable activities). Flipping this notion on its head, with only 20% of the land base subjected to any industrial or municipal development, is illustrative of the bluntness of this approach to “balance”.

A rigorous system of performance measurement and reporting is required to track whether a “balance” is being achieved in the area.

⁴ Watershed plans, watershed management plans, or integrated watershed management plans are created through the Watershed Planning and Advisory Council process formalized by the *Water for Life* strategy.

⁵ *Ibid.* at 16 (Objective 3.2 (b)).

Detailed recommendations

The ELC recommends that the government incorporate the following amendments or augmentation to the *RAC Recommendations* in creation of the LARP. The government should:

- Create a riparian policy based on scientific information that results in mandatory management and protection of riparian buffers. This would drive future protections of riparian areas in the riparian corridor overlay as proposed in the *RAC Recommendations*;
- Formulate environmental management frameworks based on scientific information for the protection of ecological integrity and health;
- Implement a wetland policy that mandates no net loss of wetland structure and function;
- Prescribe how watershed plans will be implemented into regional plans on an ongoing basis;
- Implement a mineral tenure buy back program for tenures underlying conservation areas;
- Implement policy and regulations that prescribe how objective 4.2(a) (regarding cumulative impact assessment in land disturbance) will alter future management decisions;⁶
- Indicate the criteria to be used to determine when reclaimed land will be used for outcomes other than maintaining and restoring biodiversity;⁷
- Indicate how community monitoring and reporting programs will be resourced and how they will maintain capacity;⁸
- Ensure a robust monitoring framework is in place encompassing all relevant point sources and a sufficient ambient monitoring network;
- Ensure all monitoring data is publicly available;
- Indicate the legislative and policy directions that will be pursued to ensure the recovery of species designated as endangered or threatened under the *Alberta Wildlife Act*;⁹
- Specify how the proposed plan will impact specific species at risk, for example, how the LARP will likely impact individual herds of woodland caribou;

⁶ This is particularly relevant in light of the inability of the Cumulative Effects Management Association to arrive at collaboratively generated recommendations to deal with cumulative effects.

⁷ *Supra* note 1 at Objective 4.2.(c)

⁸ *Ibid.* at Objective 3.2.(b).

⁹ *Ibid.* at Objective 54.3(n).

- Implement an agricultural land preservation plan;¹⁰
- Provide biannual reports regarding budget allocations to specific plan outcomes; and
- Provide biannual reports on performance measures for each relevant outcome.

Conclusion

In translating the *RAC Recommendations* into a regional plan there is a need for government to detail how the plan will be implemented. The LARP must incorporate environmental protection measures that have thus far eluded management and regulation of development in the Lower Athabasca region. There is the need to ensure that reliance on future planning process is minimized and where necessary that these planning processes have clearly outlined goals and are adequately resourced to derive and implement plans in a timely fashion.

Should you have any questions or concerns regarding the foregoing please contact the ELC.

Yours truly,

[original signed]

Jason Unger
Staff Counsel

¹⁰ *Ibid.* at Objective 1.4.(a).