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Via e-mail: jill.entwistle@ontario.ca

RE: Marten Falls Community Based Land Use Plan Terms of Reference 2013 - EBR Registry Number: 012-0783

Dear Jill,

Thank you for the opportunity to provide comments on Marten Falls First Nation Community Based Land Use Plan Terms of Reference 2013. We are submitting comments in our respective capacities as Wildlife Conservation Society (WCS) Canada scientists¹ specializing in fish and wildlife ecology, conservation biology, co-management, and landscape ecology in northern Ontario. We are also grateful for the opportunities we have had to learn from you directly on the value of land use planning in the Far North including the presentations at the Matawa Land Use Planning meetings in Thunder Bay, hosted by Ontario Ministry of Natural Resources (MNR) and Four Rivers.

We provide our comments below on two issues. First, we present a number of comments about the implementation of Ontario's *Far North Act* given the objectives outlined in the act as well as the what is actually emerging from approved community-based land use plans (CBLUP). We think these comments are broadly relevant to the current Terms of Reference (ToR) and subsequent plans developed by MNR. We try to make this link explicit. Second, we provide some specific comments on this current policy proposal.

¹ WCS Canada (www.wcscanada.org) was established in May 2004 as a Canadian non-government organization with a mission to conserve wildlife and wildlands by improving our understanding of and seeking solutions to critical problems that threaten key species and large wild ecosystems throughout Canada. We implement and support comprehensive field studies that gather information on wildlife needs and then seek to resolve key conservation problems by working with First Nation communities, Government and regulatory agencies, conservation groups, and industry.

1. Comments on meeting the Objectives of the *Far North Act*

Community Base Land Use Planning

We agree that CBLUPs have an important role to play in the Far North given that First Nations are the main population and have aboriginal and treaty rights. This approach addresses Objective 1 of the act by creating a significant role for First Nations in planning. Ontario's current approach with First Nations represents a significant advance over previous land use planning processes with First Nations in Ontario such as "Lands for Life". We are aware that 32 of 36 First Nations communities are currently engaged with MNR, at some level, in this planning process which also create economic opportunities in communities. However, we have the following concerns about CBLUP in practice.

- We remain concerned about the ability of CBLUP to deliver conservation and development outcomes mandated in the act. In general, the community planning approach is occurring at various scales depending on the Area of Interest for Planning (AIP). As such, CBLUP cannot adequately address the ecological processes and functions Ontario is committed to conserving under Objective 3 of the act, that focuses on the maintenance of biological diversity, ecological processes and ecological functions, including the storage and sequestration of carbon in the Far North. Concurrent environmental assessment processes where development decisions are being made regardless of land use planning processes also affect the AIP directly, indirectly and cumulatively depending on the location and nature of the developments. Yet, the current focus on zoning in CBLUP cannot address decision-making about the intensity or rate of land use which has implications for the location, size and nature of protected areas being decided in CBLUP. In addition, the boundaries of CBLUP developed to date, lack obvious relationships to ecological boundaries. As such they are not able to consider freshwater conservation (quality, quantity, fisheries), cumulative effects, and other ecological processes such as fire which have implications for land use planning and create issues related to scale that are not being addressed in other policy. Given this, it is impossible to determine how effective MNR is being in tracking toward meeting Objective 3 or meeting the minimum conservation target mandated in Objective 2. We suggest one consistent change would be to include the ecological value of the AIP from both a terrestrial and aquatic ecological classification rather than relying on terrestrial based trapline boundaries.
- We are also concerned about the plan-by-plan approach to addressing overlap. This is particularly challenging for understanding how CBLUP unfolds in the face of Ring of Fire developments and planning for infrastructure will be addressed by CBLUP underway with Matawa communities and downstream Mushkegowuk communities.
- We see little evidence that CBLUP addresses Objective 4 in the act regarding sustainable development that benefits First Nations. Other than create zones for potential developments, we think more attention at the planning stage needs to be given to the discussion and inclusion of legacy effects of mines, the boom-bust nature of development in the north, and the implicit reliance on single industries for economic opportunities. We suggest CBLUP needs to include much more attention to sustainability (e.g. assessments, criteria) than it currently does and find ways to consider intensity and rate of development rather than relying on environmental assessment processes. In addition, the current negotiations between Ontario and Matawa First Nations explicitly include infrastructure and environmental assessment, both of which have significant implications for CBLUP and create uncertainty in the value of CBLUP with Matawa communities at this stage. Because the *Far North Act* includes provisions for Ontario to exempt development activities (s. 12(4)) "in the social and economic interests of Ontario" and can override community based land use plans, we remain skeptical of the ability of MNR to deliver positive conservation outcomes for the sustainability of First Nations and the

environment through CBLUP. We are less clear on the impacts of CBLUP decisions on treaty and aboriginal rights.

We suggest CBLUP is not designed to address many of these issues in its current form and needs to be reframed within a broader, regional and strategic process for environmental planning (e.g., Far North Land Use Strategy).

Far North Land Use Strategy

The Far North Land Use Strategy is mandated by the act. We hoped that this Strategy would provide the framework for regional and strategic planning and were pleased that MNR has finally begun the process of releasing its vision for the Strategy to the public. However, the initial release provides no detail on how MNR will address conservation and development at a regional scale or how this Strategy will affect current CBLUP processes and outcomes like Marten Falls First Nation. It is not clear how this strategy will apply to approved land use plans. We suggest that the ToR for each CBLUP as well as the draft plan must indicate how the goals and objectives of the Far North Land Use Strategy are being met. To be clear, we think the Far North Land Use Strategy should address Objective 2 on meeting a conservation target as well as Objective 3 of the act in addition to Ontario's existing regional policy commitments and strategic plan on climate change adaptation. Because neither the detail nor the process for the Strategy are available at this stage, we are unable to comment on whether it will in fact be adequate in providing the "big-picture, broad-scale interests" to CBLUP.

Protected Area Planning under Ontario's Far North Act

Ontario's Far North Science Advisory Panel recommended MNR consider a "conservation matrix model approach" to land use planning in the Far North because of the intact and globally significant nature of the ecological systems in the region. This approach requires landscape-scale planning, identification of "benchmark" areas with no development, and a proactive approach to development planning to support adaptive management. On the latter, monitoring and the collection of scientific and traditional knowledge are essential to support decision-making. We remain concerned that MNR continues to address conservation principles in planning following a model born in response to fragmented and degraded landscapes. There is no regional perspective to protected area planning for aquatics, wetlands and peatlands and only limited attention to conservation of wide-ranging mammals - caribou remain an important exception to this issue. Protected area planning at a regional scale should also support Ontario's interests in addressing climate change mitigation and adaptation planning and could provide an important vehicle for addressing ecosystem services, a conversation that is surprisingly absent in Ontario's Far North planning processes. We urge MNR to revisit how it may implement the conservation matrix model in CBLUP and the Far North Land Use Strategy.

Lack of Integration between Land Use Planning under the Far North Act and Environmental Assessment

We think the concurrent approach for two significant environmental planning regimes - land use planning and environmental impact assessment - puts First Nations, the environment, and Ontario's public interest at significant risk because neither address sustainability, downstream impacts, and cumulative effects of industrial development and climate change at adequate scales. Infrastructure planning, in particular, needs to be considered at a regional scale with more comprehensive assessment of the ecological and social direct, indirect, and cumulative impacts than Ontario's current planning approach, whether through project-by-project environmental assessment or CBLUP can deliver. We agree that CBLUP may identify First Nation interests in all-weather roads, new transmission, etc. and help create an approved zone for this use, but we would suggest these needs have been well known for a number of decades and did not require community planning to make happen. Most of the impetus for infrastructure (roads, rail, transmission) in the Ring of Fire for example, is

driven by industry². In the case of infrastructure in the Ring of Fire, Ontario is also facilitating this process through the Development Corporation established in November 2013. We urge MNR to consider, with relevant ministries such as Ontario's Ministry of Environment and Ontario's Ministry of Northern Development and Mines, the creation of a regional strategic environmental assessment (R-SEA) that can consider future scenario planning for industrial development in watersheds, infrastructure planning, climate change, and the legacy impacts of mining and boom-bust economic models on First Nations and the environment in the Far North (*sensu* sustainability). Specifically, we support the Environmental Commissioner of Ontario's recommendation that the Government of Ontario "establish a strategic environmental review and permitting process for the Ring of Fire that expressly addresses cumulative impacts" (ECO 2013: 75)³. This recommendation recognizes that development proposals and infrastructure plans in the Ring of Fire continue apace regardless of the proponent engaged, the status of land use planning with communities, and the capacity of First Nations to engage in both processes. We think an R-SEA could help address the risks created by project-by-project planning and piecemeal land use planning.

2. Comments on the ToR.

Principles:

- We are very supportive of the vision and the underlying *anishnabek* principles, including the responsibilities of MFFN to take care of the land. These principles are important to communicate.
- We hope the draft plan will outline how MFFN can deliver on these principles through CBLUP. We also encourage presentation of how MFFN are engaging with, and getting feedback from, the approximately 2/3 of its members that live off reserve.
- We also recommend MNR provide their Statement of Environmental Values in the draft land use plan to communicate their principles and their commitment to the public interest through CBLUP.

Goals:

- We respect the goals outlined. MFFN goals support the interest and needs of the people on the land to maintain a role and responsibility for taking care of that land.
- We also understand the need to balance new industrial development from MFFN perspectives on the future, particularly that in the Ring of Fire. Given the importance of the values of protecting the land and the cultural and spiritual relationships of MFFN *anishinabek* with the land, we encourage attention be paid in the draft land use plan to show how the proposed zoning plan actually "harmonizes" **traditional use** with proposed new land uses. We suggest a more critical assessment of cumulative impacts, awareness of legacy effects of proposed new mines, and the social and ecological impacts of infrastructure and climate change in land use planning decisions.

² Hjartarson, J., L. McGuinty, S. Boutilier, and E. Majernikova. 2014. Beneath the Surface: Uncovering the Economic Potential of Ontario's Ring of Fire. Ontario Chamber of Commerce. 35 pp. Available online: <http://www.occ.ca/portfolio/beneath-the-surface-uncovering-the-economic-potential-of-ontarios-ring-of-fire/>

³ Environmental Commissioner of Ontario (ECO). 2013. *Serving the Public*. Annual Report 2012–2013. Environmental Commissioner of Ontario, Toronto.

Objectives:

- As described in our initial comments on the implementation of Ontario's *Far North Act*, we do not see how these the act's objectives are being addressed in this ToR. We request that MNR make this accounting more transparent and explicit in the draft land use plan to show how the objectives of the act are being met in this plan.

Expected Outcomes:

- The interests of MFFN in documenting traditional knowledge, occupancy and land use is vital to any land use planning process with indigenous peoples. MFFN also have aboriginal and treaty rights to the land. We suggest MNR provide adequate resources to ensure that First Nations can pursue these studies in ways that make the most sense to them, particularly given the dearth of scientific data in the Far North.
- As mentioned above, the planning area should be justified in the draft plan and we encourage some discussion of the relevance of this area for ecological (e.g., watershed, ecozones/ecoregions) and social processes. Given that many MFFN members live off reserve, it is important to document how these members have contributed to planning, including the designation of the boundary.

Scope of Planning:

- Figure 1 could include a polygon for the *Taashykwawin* Land Use Plan. This could be depicted as a draft AIP. In addition, we are aware of planning with Constance Lake First Nation in the Far North. This could also be included though we are not sure what the boundaries are.
- It is difficult to see the "gradually shaded area" in Figure 1 representing the extent of the traditional use of MFFN.
- It is unclear why the Figure includes areas south of the Far North Land Use Planning Area when the ToR states on page 4 that the final planning area is restricted to the Far North. This should be clarified in the draft land use plan. This is then contradicted in paragraph 6 where the ToR indicates that the planning team will address the area south of the Far North area. How is MNR working with MFFN to harmonize across these planning regimes?
- It is not clear how this approach to scoping of the traditional territory for MFFN considers treaty and case law that has defined and characterized aboriginal rights. We recommend this be clarified in the draft land use plan.

Planning Subjects:

- Historical and contemporary Indigenous use
 - Please clarify what is meant by "strategic direction" and where that direction (e.g., policy, law, regulation) is coming from in MNR?
- Protection/conservation/protected areas
 - Provisional protection under the *Far North Act* as well as opportunities to withdraw land for cultural and sacred values under the *Mining Act* should be included and discussed in the draft plan for public input. We suggest highlighting this in the ToR would also support better

awareness of these mechanisms, particularly in the Ring of Fire where development and negotiations are still underway.

- We recommend MFFN and MNR consider examples where the governance of protected areas, following IUCN categories, includes local communities and/or Indigenous Peoples⁴. Local communities and/or Indigenous Peoples worldwide are being increasingly recognized for their role in protecting and conserving biodiversity as well as cultural values through Indigenous Peoples and Community Conserved Territories and Areas (ICCAs). ICCAs are being recognized throughout the world, including North America⁵, through the work of the ICCA Consortium⁶.
- Renewable Energy
 - It is unclear how the hydroelectric development opportunities are being presented. We are aware of the recent report about Northern Hydro Assessment Waterpower Potential in the Far North of Ontario produced by the Ontario Waterpower Association⁷ which we understand has been prepared to help First Nations consider hydroelectric development potential in land use planning. We suggest this analysis requires careful thought in presentation to communities as providing potential opportunities for renewable energy development.
- Water and Waterways Use
 - The ToR should direct that land use plans address the broader region in which waterways and fisheries resources are embedded. This is significant because the infrastructure such as roads and transmission that require regional perspective have the ability to impact aquatic systems significantly.
 - Given significant changes to fisheries protection and habitat conservation due to federal legislation (*Fisheries Act, Navigable Waters Act*), MNR should try to convey the implications of these changes on planning by First Nations in Ontario.
 - MNR could acknowledge the development of its Provincial Fish Strategy for Ontario which will provide strategic level direction on fisheries management including for Aboriginal people.⁸ It is unclear how this interacts with current planning efforts in the Far North.
 - MNR should acknowledge it is undertaking a comprehensive review of commercial and recreational bait use⁹ which will be relevant to First Nations interested in tourism and recreational fishery economies as well as bait activities in protected areas and conservation reserves. It is unclear how this process interacts with current planning efforts in the Far North.
- Finally, we recommend that MNR and MFFN address climate change and cumulative effects more explicitly in plans. We recommend scenario planning under a variety of development and climate change futures and the development of cumulative effects assessment, particularly for communities that will be affected by the Ring of Fire proposals. WCS Canada is aware that MNR is addressing some of these issues for the Ring of Fire through Dr. Rob Rempel's work and we have also explored a possible tool for addressing cumulative effects in an effort to support conversations in both land use planning

⁴ https://www.iucn.org/about/work/programmes/gpap_home/gpap_capacity2/gpap_bpg/?13678/Governance-of-Protected-Areas-From-understanding-to-action

⁵ http://www.iccaconsortium.org/?page_id=192

⁶ http://www.iccaconsortium.org/?page_id=55

⁷ <http://www.owa.ca/assets/files/NorthernHydroFinal-Executive-Summary.pdf>

⁸ <http://www.ebr.gov.on.ca/ERS-WEB->

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⁹ <http://www.ebr.gov.on.ca/ERS-WEB->

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and environmental assessment at scales beyond the boundaries of individual CBLUPs or projects (see A Fork In the Road available at: <http://www.wcscanada.org/AboutUs/Publications.aspx>).

We thank you for the opportunity to comment on this important document and process and we are available to discuss any of the information in our letter. As you know, Cheryl is based in Thunder Bay and more than willing to meet in person with you and/or the planning team, if requested.

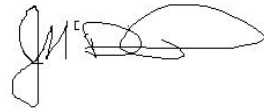
Yours sincerely,



Cheryl Chetkiewicz, Ph.D.



Justina C. Ray, Ph.D.



Jenni McDermid, Ph.D.

cc: Harry Baxter, Land Use Planning Coordinator

cc: Elizabeth Achneepineskum, Community Based Land Use Planner