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Submitted via EBR and e-mail to Ms. Bertha Sutherland

**RE: Constance Lake First Nation Community Terms of Reference Community Based Land Use Plan - EBR
Registry Number: 012-2229**

Dear Chris and Bertha,

Thank you for the opportunity to provide comments on **Constance Lake First Nation's Terms of Reference** for their Community Based Land Use Plan. We are submitting this input 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 grateful for the opportunity to comment on this process and to learn from you both directly at various meetings, including the Matawa Land Use Planning meetings in Thunder Bay, hosted by Ontario Ministry of Natural Resources and Forestry (MNRF) and Four Rivers.

We remark below on two issues. First, mainly directed at MNRF, we focus on issues related to the implementation of Ontario's *Far North Act* (hereafter "Act"), given its objectives as well as the what is actually emerging from approved community-based land-use planning (CBLUP) processes. We think these comments are broadly relevant to the current Terms of Reference (ToR) and subsequent proposals developed by MNRF. It

¹ WCS Canada (www.wcscanada.org) was established in May 2004 as a Canadian non-government organization with a mission to conserve wildlife and wild lands 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.

also seems that the ultimate success of meeting the ambitious mission and objectives of Constance Lake First Nation's (CLFN) land use plan hinge on careful implementation of the FNA. We try to make this link between CBLUP processes and the Act explicit. Second, we provide some specific comments on the current policy proposal.

1. Land-Use Planning under the Act

CBLUP has an important role to play in the Far North given that First Nations are the main population and have Aboriginal and treaty rights across the region. The current approach developed by MNRF addresses Objective 1 of the Act by creating a significant role for First Nations in planning. Under CBLUP, Ontario recognizes the need for planning with First Nations and the importance of consultation. We are aware that 32 of 36 First Nations communities are currently engaged with MNRF, suggesting most communities are interested in pursuing planning using this process. Finally, our experience suggests there are both social and economic opportunities afforded to First Nations communities that agree to engage with Ontario's planning process. We do, however, have the following concerns about CBLUP to deliver conservation and development outcomes mandated in the Act.

- In general, the CBLUP 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. Objective 3 focuses on the maintenance of biological diversity, ecological processes, and ecological functions, including the storage and sequestration of carbon in the Far North. We suggest the Far North Land Use Strategy, also mandated by the Act, could be a regional-scale planning approach to meet Objective 3. While we are pleased that MNRF has finally begun the process of releasing its vision for the Strategy to the public, the initial release provides no detail on how MNRF will address conservation and development at a regional scale or how this Strategy will affect current CBLUP processes and outcomes like those desired by CLFN. It is not clear how this Strategy will apply (retroactively) to approved land use plans. To be clear, we think the Far North Land Use Strategy should address Objective 2 to meet the conservation target, Objective 3 of the Act, and identify how it will enable Ontario to meet their existing regional policy commitments (e.g., species at risk) 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. While this current ToR acknowledges that it will take into account the Strategy, if it is in place at the time the land use plan is prepared, it remains less clear how it will do so. We suggest that the ToR, as well as the draft plan, should indicate how the goals and objectives of the Far North Land Use Strategy will be met.
- 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. Given this, it is impossible to determine how effective MNRF 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 solely on terrestrial-based trapline boundaries.
- Concurrent environmental assessment processes where development decisions are being made occur regardless of CBLUP processes. Development decision-making processes affect the AIP directly, indirectly, and/or cumulatively depending on the location and nature of the developments. This lack of

integration puts First Nations, the environment, and Ontario's public interest at significant risk because neither address sustainability, downstream impacts, cumulative effects of industrial development and climate change at adequate scales. Infrastructure (and access) 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, we suggest these needs have been well known for a number of decades and did not require community planning to make happen. At present, most of the impetus for infrastructure (roads, rail, transmission) and energy in the Ring of Fire is driven by industry² and Ontario.

- We see little evidence that CBLUP addresses Objective 4 in the Act regarding sustainable development that benefits First Nations. For example, the current focus on zoning in CBLUP cannot address decision-making about the intensity or rate of land use within the general use zone in particular. This can have significant implications for the location, size and nature of protected areas being decided in CBLUP. We urge more attention be given, at the planning stage, to 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 some uncertainty about the outcomes of CBLUP with Matawa communities at this stage. Because the Act includes provisions for Ontario to exempt development activities (section 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 MNRF 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 are concerned about the overall plan-by-plan approach to addressing overlap. This is particularly challenging for understanding how CBLUP unfolds given the Ring of Fire developments and planning for infrastructure which affects multiple Matawa communities and downstream Mushkegowuk communities.

in conclusion, we suggest CBLUP is currently not designed to address many of these issues in its current form of practice and needs to be reframed within in a broader, regional and strategic process for environmental planning and we urge MNRF to consider, with relevant ministries such as Ontario's Ministry of Environment (MOE) and Ontario's Ministry of Northern Development and Mines, the creation of a regional strategic environmental assessment (R-SEA)³. Our recent report highlights these issues and includes information on

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 Chetkiewicz, C. and Lintner, A.M. 2014. Getting it right in Ontario's Far North. Wildlife Conservation Society Canada and Ecojustice. 136 pp.

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). Our recent report also supports 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)⁴. It is our contention that a regional environmental assessment process could help address the risks created by project-by-project planning and piecemeal land-use planning.

Planning for Protection under Ontario's *Far North Act*

Ontario's Far North Science Advisory Panel recommended MNRF 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 MNRF continues to address conservation principles in planning following a model derived from fragmented 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. 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 MNRF to consider how to apply the conservation matrix model in CBLUP and the Far North Land Use Strategy.

2. Comments on the ToR.

Vision and Mission Statements:

- We are very supportive of the vision and mission statement put forward by Constance Lake First Nation (CLFN), including the importance of Elders, and maintaining the relationships to keep the land for the continued way of life of the people.

Introduction:

- CLFN has committed to planning for "portions of its traditional territory north of the AOU." It would be helpful to understand (in the draft land use plan) how these portions were determined. Not unlike Mushkegowuk communities, it appears that the Far North Planning boundary splits CLFN's traditional territory (Figure 2). Ideally, the planning area would respect traditional territories and watersheds.
- We applaud CLFN for collecting information on its territory in advance of decision-making about development and to support planning.

1.1. Reasons for Planning

- The recognition by CLFN and the value placed on traditional knowledge as well as engagement with youth and sharing of knowledge are significant goals for planning processes.

⁴ Environmental Commissioner of Ontario (ECO). 2013. *Serving the Public*. Annual Report 2012–2013. Environmental Commissioner of Ontario, Toronto.

2.0. Goals, Objectives, and Principles:

- We respect the goal outlined by CLFN and anticipate the land use designations and zones will represent CLFN interests and values. We encourage attention be paid in the draft land use plan to show how the proposed designations and zoning plan actually "balances" **the protection of community interests with sustainable development**. We strongly suggest a more critical discussion with MNRF about 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.
- The considerations provide a more clear statement of what objectives in Section 5 of the Act will be addressed. We look forward to seeing these details in the draft land use plan. However, it is not clear what is meant by a "comprehensive land use plan".
- We respect and support the principles developed by CLFN for planning guidance.

3.0. Training and Education:

- The expected outcome of training and education to support learning and capacity within CFLN is clearly described and a priority for the community. The two-way transfer of knowledge for learning is also a significant outcome. We look forward to learning how this is being accomplished and offer support if requested.

4.0. Scope of Planning:

- We appreciate the additional information about how the AIP was determined and the designation of decision-making processes. This governance mechanism is unique and similar to approaches in modern treaties or land claim agreements. It is not clear how MNRF or other Ontario ministries are engaged in decision-making on these different areas given the *Far North Act*.
- Colour choices on Figure 1 make it very difficult to see the Core Area and the Shared Planning Areas. Please consider a different way of representing these area. It would be useful to understand the area and % of the traditional territory that the Core Area (e.g., hatching).
- Figure 2 is very helpful and identifies clearly how CLFN have to accommodate the current planning process around the arbitrary (from an ecological and social perspective) Far North Planning boundary. That said, it is not clear how this approach to scoping, for the purpose of land-use planning with MNRF, considers treaty and case law that has defined and characterized the Aboriginal rights of CLFN. We recommend this be clarified in the draft land use plan.

4.2. Shared Lands

- CLFN's recognition of Mushkegowuk and Matawa neighbours in the ToR is significant. A shared areas committee seems like a useful governance approach to addressing mutual issues on shared lands. We look forward to learning how implementation proceeds.

4.3. Planning Subjects:

- It is unclear whether planning subjects in different areas have the same priorities. That is, are protected areas in Core Areas more important than in Sharing Planning Areas. Please clarify in the draft LUP.

4.3.3 Protected Areas

- Provisional protection under the *Far North Act* as well as opportunities to withdraw land for cultural and other values under the *Mining Act* should be included and discussed in the draft plan for public input. We suggest highlighting this opportunity 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 CLFN and MNRF consider examples in their draft land use plan that acknowledges governance of protected areas, following IUCN categories, by local communities and/or Indigenous Peoples⁵. For example, 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 America⁶, through the work of the ICCA Consortium⁷.
- Please clarify what is meant by "sheltered areas" in the draft land use plan.
- The attention to connectivity within the planning process is commendable. WCS Canada scientists would be very interested in supporting further discussions about how to do this from an ecological perspective.

4.3.5 Waterways and Waterbodies

- The ToR should direct that land use plans address the broader region in which waterways and fisheries resources are embedded. This is significant because infrastructure such as roads and transmission require regional perspectives and have the ability to impact aquatic systems and drinking water source protection.
- Given significant changes to fisheries protection and habitat conservation due to federal legislation (*Fisheries Act*, *Navigable Waters Act*), the community should seek explanation from MNRF as to the implications of these changes on planning with First Nations in Ontario.
- We recommend adding identification of waterways and waterbodies that are important for subsistence and First Nations values in addition to recreational values.
- MNRF could acknowledge the development of the Provincial Fish Strategy for Ontario, which will provide strategic level direction on fisheries management, including for First Nations.⁸ It is unclear how this interacts with current planning efforts in the Far North.
- MNRF should acknowledge it is undertaking a comprehensive review of commercial and recreational bait use,⁹ which will be relevant to First Nations interested in tourism and recreational fishery economies as well as bait activities. It is unclear how this process interacts with current planning efforts in the Far North.
- It is unclear how the hydroelectric development opportunities are being presented to non-remote communities.

⁵ https://www.iucn.org/about/work/programmes/gpap_home/gpap_capacity2/gpap_bpg/?13678/Governance-of-Protected-Areas-From-understanding-to-action

⁶ http://www.iccaconsortium.org/?page_id=192

⁷ http://www.iccaconsortium.org/?page_id=55

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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4.3.8 Climate Change Adaptation

- Considering climate change in planning is a step in the right direction. There are a number of scenarios to support adaptation planning that should be considered in the draft land use plan. We suggest that this issue affects infrastructure (4.3.9), renewable energy (4.3.11), and commercial forestry (4.3.6) opportunities and planning and should therefore be considered more explicitly in the planning objectives for these subjects.
- Given the new mandate for MOE to include climate change, we suspect there are new resources and possible opportunities for considering climate change in CBLUP.

Cumulative Effects

- We are pleased to see the consideration of cumulative effects mentioned in the ToR. We recommend scenario planning under a variety of development and climate change futures and the development of cumulative effects assessment. WCS Canada scientists are willing to help in this area where requested (see A Fork In the Road available at: <http://www.wcscanada.org/AboutUs/Publications.aspx>).

We suggest that given the planning outcomes proposed (e.g., species at risk), fish and wildlife should also be considered as a planning subject. Given climate change scenarios, consideration of fire management may also be relevant as a subject for CLFN given interest in commercial forestry.

5.1 Planning Structure

- We appreciate seeing the governance and social institutions developed by CLFN to support land-use planning processes in the community. This level of transparency on roles and responsibilities as well as the accountabilities of each group in the ToR is very encouraging. The make-up of the Joint Planning Team is particularly important and we encourage CLFN to share this structure more broadly with neighbouring communities engaged in planning.
- We also appreciate the attention to seeking resource support in terms of Elders and other experts. WCS Canada scientists would be happy to provide technical advice where requested to ensure the best available information is available.

5.1.4 Planning Process

- The timeline is very helpful. It remains unclear how comments from groups, like our own, on either the ToR or the draft land use plan will be considered in the process. Suggest including a "review, consider and incorporate comments" bullet in Phase 2 at least.

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.

Yours sincerely,

A handwritten signature in dark ink, appearing to read "Cheryl Chetkiewicz". The signature is fluid and cursive, with the first name "Cheryl" being more prominent.

Cheryl Chetkiewicz, Ph.D.

A handwritten signature in dark ink, appearing to read "Justina C. Ray". The signature is stylized and cursive, with the first name "Justina" being the most distinct part.

Justina C. Ray, Ph.D.