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**Re: North Spirit Lake First Nation Terms of Reference for a Community Based Land Use Plan (EBR Registry Number: 013-2199)**

Dear Mr. Sanders,

Thank you for the opportunity to provide comments on North Spirit Lake First Nation Terms of Reference (TOR) for a Community Based Land Use Plan.

We are submitting this feedback in our respective capacities as Wildlife Conservation Society (WCS) Canada scientists specializing in fish and wildlife ecology, conservation biology, cumulative effects, and landscape ecology in northern Ontario. WCS Canada is a national organization and our research and conservation priorities in Ontario are largely focused on the Far North. WCS Canada has provided comments on elements of the planning process for various Far North First Nation communities including: Pikangikum, Marten Falls, Constance Lake, Cat Lake and Slate Falls, Webequie, and Kashechewan. WCS Canada staff have also met with various MNRF planning and policy staff engaged with these processes over the years and provided public comments on the Far North Land Use Strategy.

Our comments are organized to support community- and regional-scale planning efforts in the Far North and we provide our comments in two sections. The first section addresses implementation of Ontario's *Far North Act, 2010* (Act) being led by Ontario Ministry of Natural Resources and Forestry (MNRF), including the Far North Land Use Strategy. These comments are broadly relevant to the TOR as well as the community-based land use planning process. The second section includes specific comments on the current policy proposal.

**Section 1. Comments on processes created by MNRF to meet the Objectives of the *Far North Act, 2010***

**1.1. Community Based Land Use Planning**

***Recommendation 1. Make the link between individual plans and ecological objectives in the Act more explicit and measurable.***

***Recommendation 2. Planning processes must consider cumulative effects on social and ecological values at relevant scales e.g., traditional territory, watersheds, ecoregions.***

Community-based land use planning has an important role to play in the Far North given that First Nations are the main population and hold individual and collective Aboriginal and Treaty rights. The current approach developed by MNRF addresses Objective 1 of the Act by supporting and creating a significant role for First Nations in planning. This approach is a significant advance over previous government-led land use planning processes in Ontario such as "Lands for Life" where First Nations were treated as stakeholders. We respect the need for a distinct relationship between First Nations and the Government of Ontario based on government-to-government relations and commitments. We also expect the Government to act on the public interest in protection and conservation of the region as well as address reconciliation with First Nations across Treaty No. 9. The current process offers some opportunity for MNRF to deliver on these relationships. In addition, we appreciate that community-based land use planning provides those First Nations who are engaged with some economic benefits and opportunities to collect traditional land use information, and reaffirm or restore relationships with the land, Elders, and youth. That said, we have the following concerns about this MNRF-led planning approach.

We remain concerned about the ability of MNRF, through community-based land use planning, to deliver on conservation and protection objectives mandated in the Act. Although the Act does not specifically mandate regional-scale planning, three of its four objectives are really only measurable at regional or broad scales. For example, Objective 3 requires thresholds around ecological integrity, given the emphasis on the maintenance of biological diversity, ecological processes and ecological functions, including the storage and sequestration of carbon in the Far North. Yet, the main mechanism for implementation is a piecemeal community-based land use planning process. However well the community-based land use planning process is being implemented by MNRF, reliance on zoned plans that emerge at different spatial and temporal scales is insufficient to deliver ambitious broad-scale ecological and socio-economic objectives. More importantly, current land use planning approaches do not consider the rate or intensity of land use – decisions which have important implications for the location, size and value of protected areas. It is assumed these aspects will be considered as plans are updated by which time, impacts may already be occurring. In addition, environmental assessment processes in Ontario, particularly around new roads in the Ring of Fire with Webequie and Marten Falls, and new transmission into the Far North, are being conducted concurrently. The direct and cumulative impacts of these developments together with climate change will affect the area of interest for planning.

To date, none of the boundaries for approved land use plans or TOR that we've either reviewed or provided commentary on have any obvious relationships to ecological boundaries. This makes it difficult to proactively consider freshwater conservation (quality, quantity, fisheries, protected areas), cumulative effects, and other ecological processes such as fire at scales beyond those such as traplines which seem to be a main focus in creating the boundaries for the planning area of interest.

From a social and cultural perspective, we appreciate the attention to overlap issues in creating these boundaries, but we remain concerned about the plan-by-plan approach for the Far North, and the lack of decision-support tools and mechanisms for adjacent or downstream communities. In short, this planning approach has social and ecological limitations that are not explicitly addressed by the MNRF, and seem less rigorous than planning approaches conducted elsewhere in Ontario.

Ultimately, it is difficult to determine how effective MNRF will be in meeting Objective 3 of the Act. By encouraging a piecemeal approach to planning in this largely intact and ecologically significant region of

Ontario, it remains to be seen how relevant the conservation target of 50% protection (i.e., Objective 2), will actually be for ensuring cultural and ecological integrity.

***Recommendation 3. State explicitly how community-based land use planning will address Objective 4 (sensu sustainability) under the Act.***

Zoning for potential industrial and economic development does not provide the necessary context or framework for addressing sustainable development in the Far North and it seems disingenuous to suggest planning will deliver on this. More attention at the planning stage should include a discussion of the legacy effects of mines, the boom-bust nature of mineral exploration and mining, the implications of developing and maintaining new infrastructure on communities given a changing northern climate, and the implicit reliance on a single-sector industrial economic model tied to markets that are not even aware of the social and environmental realities in the Far North. Environmental planning in the Far North should address sustainability more explicitly through assessments in planning by developing locally and regionally relevant social, ecological, and economic indicators and criteria.

Planning should also consider, more explicitly, the implications of the intensity and rate of land use development under different scenarios (e.g., climate, high-growth, low-growth) rather than rely on Ontario and Federal environmental assessment processes at the project-level that also fail to consider sustainability (but see Gibson 2006). WCS Canada has explored the use of a number of tools such as A Cumulative Effects Simulation (ALCES) Online tool as well as scenarios to consider the implications of different land use and climate change scenarios on the land, water, and wildlife. We see no reason why MNRF planning teams cannot include these approaches in planning at the community level.

Finally, the Act includes provisions for Ontario to exempt development activities from community-based land use plans if they are considered to be “in the social and economic interests of Ontario” (Section 12(4)). As such, it is difficult not be skeptical of the ability of the MNRF to deliver positive conservation outcomes for the sustainability of First Nations and the environment through this planning process. As both the manager of Crown lands and the lead on Far North land use planning process, it is not clear how MNRF addresses the impact of this planning process on Aboriginal and Treaty rights. WCS Canada scientists have recommended that a regional-scale framework or approach is needed in order to support community-based land use plans.

## **1.2. Regional Scale Issues in the Far North**

***Recommendation 4. The Far North Land Use Strategy, while limited in its ability to address how regional-scale issues will be considered in planning, should be finalized and released for public review.***

We remain concerned that community-based land use planning processes continue to unfold without a Far North Land Use Strategy (or any regional scale policy direction) providing enforceable direction on how to address the cumulative effects of climate change and land use on freshwater, fish, and wildlife among other critical regional-scale processes that affect First Nations communities.

The Ministry of Natural Resources and Forestry is mandated, by the Act, to develop the Far North Land Use Strategy. This Strategy is supposed to address the “big-picture, broad-scale interests” at community planning tables. The Far North Land Use Strategy should address Objective 2 and Objective 3 of the Act explicitly by offering measurable indicators as well as pathways for *how* to address key broad-scale interests such as climate change and cumulative effects. To date, the advice and guidance has been

insufficient and we have provided substantive and critical feedback on this document since it was first introduced for public input in 2014. We have been very appreciative of the opportunities we've had to express these concerns to MNRF staff directly. Yet, we remain concerned about how this advice is being provided to community planning tables in the absence of any strategic or regional framework or assessment of MNRF commitments under existing policy and legislation including Ontario's Biodiversity Strategy and the *Endangered Species Act*.

### **1.3. Protected Area Planning in Ontario, particularly the Far North**

***Recommendation 5. Develop a plan for expanding the protected areas system to meet the 2020 international goal including a systematic and robust assessment of the current status of the protected areas system, key opportunities for expansion, and a provide a public commitment to achieving, and eventually exceeding, the 17% conservation target in Ontario's Biodiversity Strategy<sup>1</sup>.***

***Recommendation 6. Modernize protected area planning in Ontario, including the Far North.***

MNRF continues to focus on conservation principles in protected area planning in the Far North that are fundamentally suited to fragmented and degraded landscapes typical of southern Ontario. There is no regional or systematic approach to protected area planning for ecosystems such as boreal forest, largely considered "unmanaged" in Ontario's policy and action planning on climate for example. Only limited attention to protection has been given to wide-ranging mammals, particularly those that are at risk - caribou remain an important exception on this front. Little or no attention has been afforded to freshwater fish or source water protection. A systematic planning approach for protected area should be considered to meet commitments to protection under the Ontario Biodiversity Strategy and under the Act.

One emerging area that needs more explicit consideration in protected area planning in Ontario is Key Biodiversity Areas (KBAs). The Key Biodiversity Areas standard<sup>2</sup> was developed by the IUCN to provide a rigorous and standardized approach to identifying these areas of particular importance to biodiversity. This approach is now being implemented around the world by the Key Biodiversity Areas Partnership<sup>3</sup>, a formal partnership of 12 of the world's largest conservation organizations. This new standard aims to identify areas important for the global persistence of biodiversity. It applies to all taxa (mammals, birds, plants etc.) and all levels of biodiversity (species, ecosystems and genes). The standard also provides for the adaptation of the global standard to the Canadian context; WCS Canada's Dr. Justina Ray is a Canadian member of task force. Advice and guidance on the standard has been provided to the National Advisory Panel as part of the Federal Pathway to Target 1 process and the standard should be considered more explicitly within Ontario's planning processes in the Far North.

In addition to science-based approaches such as KBAs, 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

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<sup>1</sup> <http://docs.assets.eco.on.ca/reports/environmental-protection/2017/Good-Choices-Bad-Choices-06.pdf>

<sup>2</sup> <https://portals.iucn.org/library/node/46259>

<sup>3</sup> <http://www.keybiodiversityareas.org/what-are-kbas>

making. Decision-support tools such as Marxan<sup>4</sup> and Prioritizr<sup>5</sup> could also be considered to understand where and how to protect 50% based on various values, including biodiversity, to both assess current protected areas and identify new areas for consideration in planning.

Protected area planning at a regional scale could also support Ontario's interests in addressing climate change mitigation and adaptation and could provide an important vehicle for addressing ecosystem services which is missing in much of Ontario policy and planning processes, particularly related to the Far North.

***Recommendation 7. Acknowledge ongoing efforts, particularly the Pathway to Target 1, to address identification and governance of protected areas in Ontario's Far North by First Nations.***

Under the Biodiversity Strategy, Ontario is committed to protecting at least 17 per cent of terrestrial and aquatic systems through protected area networks and other effective area-based conservation measures (OECM). Similarly, at the Federal level, an important step for Canada in achieving Target 1 by 2020 should provide information on how Ontario (and other provinces and territories) could encourage and recognize Indigenous-led protection and conservation, particularly in the Far North where MNRF is leading planning with First Nations regarding protection. There are good examples of these approaches in Canada (e.g., "Tribal parks"<sup>6</sup>).

We have recommended that MNRF take up the International Union for the Conservation of Nature (IUCN) recognition of Indigenous Peoples and Community Conserved Territories and Areas (ICCAs), the IUCN UNESCO guidelines for Sacred Natural Sites, and IUCN UNESCO World Heritage Sites. These designations go beyond the Dedicated Protected Area mechanism available in the Act, designation under Ontario's *Protected Area and Conservation Reserves Act*, or withdrawal mechanisms for site-based values (e.g., bones, artifacts, burial sites) under section 35 of the *Mining Act* which have tended to be small in extent. In addition, the Federal commitments to Indigenous Circle of Experts (ICE) creates an important precedent that Ontario can consider in its commitments to protected area targets and reconciliation with First Nations, particularly in the Far North.

The planning process with First Nations in the Far North could be an important vehicle for enabling "co-management" and addressing jurisdiction more equitably while supporting Ontario's commitment to reconciliation with First Nations. There is nothing that limits MNRF in considering and supporting the identification and implementation of Indigenous Protected and Conserved Areas (IPCAs). Finally, MNRF should focus on elevating the role of First Nations in protecting and monitoring change in the Far North, support Indigenous knowledge systems and find ways to have both ways of knowing inform planning, support Indigenous legal traditions, and enable alternative governance models to the Band Council (imposed under *The Indian Act*) in conservation and protection.

**1.4. Lack of Integration between Land Use Planning under the *Far North Act, 2010* and project-level environmental assessment**

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<sup>4</sup> <http://marxan.org/>

<sup>5</sup> <https://prioritizr.github.io/prioritizr/index.html>

<sup>6</sup> See <http://www.tribalparks.ca/>

***Recommendation 8. Create and invest in a regional environmental approach in the Far North that can assess and monitor the direct and cumulative effects of industrial development and climate change in order to better inform land use planning.***

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 planning process addresses sustainability, downstream impacts, and cumulative effects of industrial development and climate change at relevant 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 which Ontario continues to scope narrowly if at all. Planning processes in such an intact region and where communities are vulnerable to both land use and climate change, should be informed by a cumulative effects framework.

We have recommended previously that MNRF consider, with relevant ministries such as the Ministry of Environment and Climate Change and the Ministry of Northern Development and Mines, the creation of a **regional environmental approach** for the Far North that can consider future scenario planning for industrial development in watersheds, infrastructure planning and climate change (see for example the Northern Ontario Multimodal Transportation Strategy<sup>7</sup>), and the legacy impacts of mining with its associated boom-bust economic models under business as usual approaches to approvals and project-based assessments. This approach 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). 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 are optimistic that with the recent version of the new federal *Impact Assessment Act*<sup>8</sup>, First Nations will see an opportunity to capitalize on the opportunity to request regional assessments in order to consider cumulative effects. The current Bill contains language that would enable the federal Minister to establish a committee or authorize the Impact Assessment Agency to conduct regional and strategic assessments on federal land and, in agreement with any jurisdiction listed in Section 2, on areas partially or wholly outside of federal lands.

## **Section 2. Comments on the TOR**

### **Introduction**

- WCS Canada is supportive of *Maymayquashwak* desires to regain the powers of knowledge and will and connection with the land in order to become an independent and self-determining nation. The responsibility felt by *Maymayquashwak* in protecting their homeland through traditional activities and customs, and the efforts undertaken by the community to gather information about the peoples' relationships to the land through traditional activities and customs, including language, in order to "live life well", are vital for creating a natural and cultural landscape for current and future generations. We also appreciate that *Maymaquayshwak* "are part of the land, not managers (in a western sense) of it" and their

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<sup>7</sup> <https://nomts.ca/>

<sup>8</sup> <http://www.parl.ca/DocumentViewer/en/42-1/bill/C-69/first-reading>

customs and traditional manage people's actions and responsibilities to remain connected with the land.

- Given the language in the TOR that *Maymayquayshwak* have a lead role in decision making, First Nations' views in planning, as well as other recommendations identified in the Calls to Action<sup>9</sup> by the Truth and Reconciliation Commission, particularly around UNDRIP<sup>10</sup>, we encourage MNRF to consider how these processes can be used as a foundation for *reconciliation* with First Nations.
- We recommend MNRF provide their Statement of Environmental Values in the draft CBLUP plan to communicate their principles and commitment to the public interest in land use planning.

### **Purpose of Land Use Planning: *Maymayquayshwak* Vision**

- WCS Canada is supportive of *Maymayquashwak* vision for the future and the focus on strong, healthy, and respectful future generations that know their language and their relationship to the land that created the language.
- We are also supportive of the focus on re-invigorating the relationship with the land as restoration of the land and *Maymayquashwak* relationships with it. We are open to the invitation to work with *Maymayquashwak* in helping them do, particularly through science and finding ways to *braid* traditional and scientific knowledge in order to support *Maymayquashwak* vision.
- We recognize that until recently, the central goals of Canada's policy towards First Nations and other Indigenous peoples was to eliminate Indigenous governance and governments; ignore Indigenous rights; terminate the Treaties; and, through a process of assimilation, cause Indigenous peoples to cease to exist as distinct legal, social, cultural, religious, and racial entities in Canada. The establishment and operation of residential schools were a central element of this policy, that has been described by the Truth and Reconciliation Commission as "cultural genocide."<sup>11</sup>
- We acknowledge that many First Nations in northern Ontario are engaged in different processes with the Government while dealing with the trauma associated with residential schools, the Stolen Generations of children through the Sixties and Millennial Scoops, inadequate housing, infrastructure, and services on reserve and systemic racism off reserve. As such, we remain cautious about the ability of this land use plan to *deliver* on wellbeing and instead recognize this approach remains a *potential* way to improve the wellbeing of *Maymayquashwak* and the other sentient beings that share the Maymaquayshoo Saagheguning territories.

### **Land Use Categories**

- We are supportive of the interests of *Maymayquayshwak* to bring forward other views of land use besides the three designated by MNRF to generates culturally and ecologically meaningful zones in the area of interest for planning.
- As stated above, we encourage planning members seek more guidance than rely solely on Far North Land Use Strategy for regional-scale issues that may affect the Maymaquayshoo Saagheguning territories such as the interest in protection of *nipi<sup>h</sup>* (waterways) and cultural integrity of *nipi<sup>h</sup>*.

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<sup>9</sup> [http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls\\_to\\_Action\\_English2.pdf](http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls_to_Action_English2.pdf)

<sup>10</sup> [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)

<sup>11</sup> [http://www.myrobust.com/websites/trcinstitution/File/Reports/Executive\\_Summary\\_English\\_Web.pdf](http://www.myrobust.com/websites/trcinstitution/File/Reports/Executive_Summary_English_Web.pdf)

## Scope of Planning

- Figure 1 would be more useful to the public if a legend was included to describe the hatched areas and the current land use designations for Pikangikum and Cat Lake and Slate Falls plans nearby. Given that *Maymayquayshwak* are *nipi<sup>h</sup>* people, major lake and river courses should also be named in both Oji-Cree and English.

## Water

- We are supportive of the focus on all kinds of water systems in the plan including open water, wetlands, ground water, and riparian habitats.

## Cultural Keystone Species

- We are supportive of efforts to address protection of moose in all land use designations given the importance of moose to the land and *Maymayquayshwak*. Similarly, traditional medicines and berries (currently in non-timber forest products) should also be afforded protection in all land use designations.
- We encourage a similar focus on freshwater fish as per Aboriginal and Treaty rights and stated interest in commercial fishing. WCS Canada has a freshwater research program, and we offer that our scientific information and advice can be used to support planning as desired by *Maymayquayshwak*.

## Species at Risk

- WCS Canada has also conducted research on both *geengohongay* and *adtik* in the Far North. Our scientific information and advice can be used to support planning as desired by *Maymayquayshwak* as well as consider trapping best practices for *geengohongay*.
- We recommend the CBLUP make explicit how it is contributing to meeting Ontario's commitments to protection and other targets such as species at risk as identified in the *Ontario Biodiversity Strategy*<sup>12</sup>.

## Infrastructure

- Invasive species, habitat fragmentation and loss as well as access management should be considered in assessing the impacts of both existing road corridors such as the winter roads and future potential road alignments.
- North Spirit Lake First Nation is a member of the 22 First Nation communities who will be connected to new transmission under the Wataynikaneyap Power project. These alignments should be included in the CBLUP.

## Protected Areas

- Consider identify and including KBAs (see above).
- In considering "at least one or more protected area", *Maymayquayshwak* is encouraged to consider the limitation of designated protected areas as the sole mechanism for addressing

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<sup>12</sup> [http://sobr.ca/\\_biosite/wp-content/uploads/OBS\\_Targets.pdf](http://sobr.ca/_biosite/wp-content/uploads/OBS_Targets.pdf)



industrial development in intact regions like the area of interest for planning and also request information on Indigenous Protected and Conservation Areas (IPCAs) and other effective area-based measures that recognize First Nation governance.

### **Climate Change**

- MNRF should identify explicitly *how* the CBLUP contributes to Ontario's commitments to mitigation (e.g., GHG emissions targets) and adaptation goals and objectives as well as Objective 3 under the Act on "carbon storage and sequestration."

### **Planning Structure**

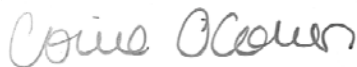
- Figure 3 is very helpful for enabling the public to understand how the teams are working together and within their own institutions and governance structures. We are encouraged to see a strong emphasis on Elders throughout the plan as well as the inclusion of youth in the circle of expertise within the Community Advisory Group.

Thank you for this opportunity to provide feedback. As always, we would be pleased to engage in any discussions regarding our recommendations and comments and you may contact Cheryl Chetkiewicz at 807-472-1440 or [cchetkiewicz@wcs.org](mailto:cchetkiewicz@wcs.org) to do so.

Yours sincerely,



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### **References**

Gibson, R. B. 2006. Sustainability assessment: basic components of a practical approach. *Impact Assessment and Project Appraisal* **24**:170-182.