



ALBERTA WILDERNESS ASSOCIATION

"Defending Wild Alberta through Awareness and Action"

Honourable Mel Knight,
Minister of Sustainable Resource Development,
#404 Legislature Building,
10800 97 Avenue,
Edmonton, AB
T5K 2B6

September 3, 2010

Re: Public Lands Act Regulations consultation

Dear Minister Knight

Alberta Wilderness Association (AWA) appreciates the opportunity to provide comment on the new *Sample Regulations* for the *Public Lands Act* document. As you and your ministry know, AWA works throughout Alberta towards more representative and connected protection of Alberta's unique and vital landscapes that are the source of our abundant clean water, clean air and vital habitat for wildlife in each one of our six natural regions. We have been working in Alberta for more than forty years to raise the profile of Alberta's spectacular wilderness, and to help Albertans learn more about the value of our wilderness and wildlife, and participate in opportunities to protect and care for the legacy that we will leave for future generations. Throughout our history, AWA has consistently emphasized the need for a publicly developed public lands policy to deal with all aspects of public land, including access, sales, management, and conservation and yet today no such policy exists. In the absence of a Public Lands policy, there is no framework to guide any other legislation or regulations; AWA maintains there is an urgent need for such a policy.

In the absence of a public lands policy, we believe the Act and the Regulations must recognize the duty of the Crown, in managing public lands, to represent the interests of the broader public and to make sure that the values of the land – including environmental and social values as well as economic – are maintained for future generations.

AWA recognizes that there are important provisions within the *Sample Regulations* which could allow for more effective management of the province's public lands, and an increased recognition of the many values which this land carries, including wildlife habitat, recreational opportunities and supply of clean drinking water. Your ministry's candour in acknowledging that "The government's ability to manage vacant public land was not strong until changes to the *Public Lands Act* came into force April 1, 2010" (Consultation Discussion Paper, August 2010) is appreciated. At the same time we remain uncertain that these draft regulations facilitate enforcement and ways to conserve and deal with specific, identified circumstances when wildlife or landscapes are at risk.

AWA is deeply concerned about the lack of attention to conservation and protection of wilderness values for public lands, as demonstrated in the *Sample Regulations*. Although the *Public Lands Act* emphasizes conservation – “The Minister may establish and support programs and initiatives for the purpose of conservation and resource management” (Section 11.1, p21) – such a commitment is lacking in the regulations. We look forward to more details on how Wildlife Act responsibilities and specific recovery plans will be incorporated into operating plans and land notations so that new, renewed and even active dispositions will not be allowed on inappropriate lands. This is particularly urgent for species such as sage-grouse which face imminent extirpation in Alberta

AWA requests clarification from your ministry about how management of public lands will contribute to Alberta’s biodiversity commitments. Alberta has important national and international biodiversity commitments, and the promised Alberta Biodiversity Strategy must be a driver or integral underlying element informing regional land-use plans, regulatory ‘streamlining’ and Cumulative Effects management. Prompt completion of the Alberta Biodiversity Strategy is imperative as these other processes are well underway, Nowhere does the document specify that decisions must be based on the best available science, nor is there any requirement for public input into any of the decisions being made.

AWA also recognizes that some of the provisions in the new *Sample Regulations* have existed for some time but have not been consistently applied due to lack of enforcement staff, or lack of knowledge. For improvements in the regulations to make a recognizable difference on the landscape, there will need to be increased funding for staffing to monitor, implement and enforce the regulations.

Consultation Discussion Paper

Alberta SRD’s *Consultation Discussion Paper* proposes “Streamlining approval processes by enabling enhanced approvals for routine oil and gas and industrial development on public land.” AWA does not oppose streamlining if it means better integration and increased efficiencies, while guaranteeing stringent scientific oversight of decisions being made. AWA believes that the existing approval process is inequitable - the current approval process inadequately represents the non-monetary values of public land - and that these regulations need to address this inequity. According to Alberta Government public surveys, 74.3 percent of Albertans believe that “(at) present, the balance between developing and using our land versus conservation of our land is too focused on economic development and growth” (*Land-Use Framework Workbook Summary Report*, October 2007).

Furthermore, the *Discussion Paper* states that “SRD is owner, landlord, and regulator on more than 50% of Alberta’s land base.” This is mis-stated and must be corrected. SRD is **not** owner of land! As stated in Section 21. of the Public Lands Act, the Crown is the owner of Public Land, and certainly not the Ministry of Sustainable Resource Development! (who manages the land on behalf of all Albertans).

AWA has a number of comments and suggestions which we believe would serve to strengthen the *Sample Regulations* as they have been made available for public consultation. Responses are categorized according to the three themes as suggested by your ministry:

- Land management
- Compliance and enforcement
- Appeals and dispute resolution

Land Management

Total area of Public Land

- Does the Alberta government have clearly defined targets for how much public land there should be in Alberta? **AWA is adamantly opposed to the sale of any public lands.** It is not appropriate for the *Sample Regulations* to allow a Minister to dispose of public land without any overarching policy basis for doing so. Without specific targets then sale of public land is unlikely to be anything more than an ad hoc process, decided on a case-by-case basis.

Prioritization of sensitive lands

- Environmentally Significant Areas mapped by the Alberta government are not recognized in the *Sample Regulations*. Land recognized as *Internationally, Nationally, or Provincially Significant* needs to have higher standards for reclamation, and must also undergo more rigorous public assessment before sale or transfer of land or issuance of any dispositions, including access permits and mineral surface leases.
- Habitat for species at risk also needs to be addressed in these regulations. Once again, habitat for known species at risk needs to be subject to more rigorous assessment before sale or transfer of land or issuance of any dispositions, including access permits and mineral surface leases.

Regulations on all Public Land

- The *Sample Regulations* allow for the designations *Public Land Use Zone, Public Land Recreation Area, and Public Recreation Trail*. What is not clear from the *Sample Regulations* is what proportion of public lands these designations cover. What regulations apply to those pieces of public lands which are **not** included in these designations? AWA believes that provisions to prohibit motorized recreation except in areas other than those specifically designated for that purpose should apply to **all** public lands, regardless of designation. This should apply to “vacant” public land **and** to land under a disposition.

Sale and disposition of Public Lands (Section 6, p25)

- There is an obvious deficiency in the *Sample Regulations* in regard to defining a meaningful public process for notification of plans for sale, trade and disposition of public lands.
- The *Sample Regulations* need to specify a public consultation process if public lands are to be sold or traded. Once again we will emphasize that AWA is adamantly opposed to the sale of any public lands. The *Sample Regulations* propose enabling the Minister to “exchange public land for other land if, *in the opinion of the Minister*, adequate compensation is obtained for the public land” (emphasis added). This provision has not been well applied in the past when the advice of Fish and Wildlife staff about the conservation value of a piece of land has been ignored. AWA believes that deferring to the “opinion of the Minister” is not adequate; there must be a defined public process.
- A public process for the disposition of public land should be graded according to the environmental significance of the land: more environmentally significant land should go through a more stringent process.
- Provisions for re-acquisition of land for conservation or biodiversity purposes are absent from the *Sample Regulations* and must be included.

Compliance and enforcement

Access

- Any access on public land needs to be based on what the landscape itself can sustain, in terms of biodiversity, watershed value and surface disturbance. Targets must be defined and enforceable. If any activity is demonstrably having a negative effect, then there must be provisions to remove that activity.
- The regulations need to include provisions such that, if motorized access is being abused within a designated *Public Land Use Zone*, *Public Land Recreation Area*, or *Public Recreation Trail*, and access is routinely taking place off designated trails, then the Minister or his representative has the right and obligation to suspend or remove permission for such access.
- AWA recognizes the significance and importance of the change in philosophy regarding motorized access that we read in these sample regulations. We believe the principle that motorized access will not be allowed unless an area is signed for motorized access cannot be over-emphasized. Motorized access must be limited to designated trails, and not allowed off-trail **anywhere** on public land.
- This principle for access management must permeate the entire set of regulations and must apply to **all** public land, not just public land designated as Public Land Use Zone, Public Land Recreation Area, or Public Recreation Trail.
- Section 88, p66 on Closing Roads must be changed to specify that the Director can close roads to non-licensees at his own discretion, with or without the consent of the license-holder.
- The *Sample Regulations* seem to give SRD more tools to manage motorized access, but will there be the will or the funding to implement? Many of these tools have been available in the past but have not been used consistently.

Trappers' cabins (Section 5, p24)

- There need to be strict regulations to address concerns about abuse of cabin privileges.

Reclamation of land (Section 18, p37)

- While AWA is broadly supportive of land reclamation provisions, Section 18(2), (c) and (d) allow for too much discretion for the director to waive reclamation requirements. There should be no need for the waiving of restoration requirements except in extreme and defined circumstances.
- Standard operating procedures such as disturbance standards need to be science-based, and consider Alberta's biodiversity and species at risk responsibilities; they must be developed and communicated promptly.
- The *Sample Regulation* specifies that public land be returned to the condition it was in "before the disposition was issued." For this to be achievable, baseline data will need to be gathered, and made publicly accessible, and submitted before disturbance takes place.

Trespass (Sections 35, 36, pp48-49)

- Section 36(2) states "entry ... is prohibited... on vacant public land that is (a) a bed or shore of..... (ii) a naturally occurring river, stream, watercourse and or lake." This seems to ban anybody from walking along a creek bank or lake shore on vacant public land. There are exemptions for anglers and snorkelers but not for hikers, photographers etc.

Grazing Land Range Improvement (Section 69, p61)

- AWA believes that it is not appropriate that Albertan taxpayers should pay for fences, roads etc in grazing leases which fragment public land to the detriment of wildlife populations.
- The definition of “Range improvement” (Section 1(1) (kk), p18) must be broadened to include improvement of ecological and watershed integrity.

Panther Corners (Part 7, p196)

- This section has been included in error and needs to be re-written. Motorized access must not be opened in the Panther Corners.

Appeals and dispute resolution

Public involvement

- AWA is concerned with the lack of transparency and opportunity for public input into decisions made about public lands; in particular there is little or no opportunity guaranteed to enable the public to learn about or provide meaningful input into public land sales and trades. Nevertheless AWA does not believe there should be any public land sales and if possible more public lands must be acquired.
- There must be a stated assumption of public disclosure placed in the regulation.
- The *Sample Regulations* must be expanded to include a mechanism to allow interested parties to submit statements of concern regarding applications for dispositions, authorizations and approvals. This approach, used in the *Environmental Protection and Enhancement Act*, would require public notice and filing a statement of concern to the department within prescribed timelines.

Appeals (Section 227, page 138)

- Section 230, p141, Standing to Appeal must be amended to allow for public interest input into the appeal process. Limiting standing to bring an appeal to holders of a disposition or authorization and adjoining landowners does not adequately reflect the public interest in such cases, particularly if endangered species or environmentally significant land is involved. Limiting standing to those who stand to make a direct financial benefit in activities is not sufficient.
- Using department employees to determine appeals decisions represents a potential conflict of interest.

Public comment on these draft regulations

- AWA believes that the on-line survey does not provide adequate opportunity for comments. The questions asked are ambiguous with minimal space allowed for comments on this important and comprehensive set of regulations.

AWA offers these suggestions in the spirit of helping to strengthen the *Public Lands Act Regulations*, and indeed the future management of public lands throughout the province. We would also ask for a response to the need for an overarching public lands policy.

Yours truly,

ALBERTA WILDERNESS ASSOCIATION

A handwritten signature in black ink, appearing to be 'ND' with a flourish, positioned to the right of the name Nigel Douglas.

Nigel Douglas,
Conservation Specialist

cc: Glenn Selland, ADM (Acting), Alberta Sustainable Resource Development Land Management Branch
cc: Chris Hutchinson Government of Alberta Consultant
cc: David Swann, MLA, Leader Alberta Liberal Party
cc: Brian Mason, MLA, Leader New Democrat Party
cc: Paul Hinman, MLA, Wild Rose Alliance