



ALBERTA WILDERNESS ASSOCIATION

"Defending Wild Alberta through Awareness and Action"

Dear Minister Knight

February 1, 2011

Re: Public Lands Act Sample Regulations

In September 2010, Alberta Wilderness Association (AWA) was invited by your ministry to submit comments on the *Sample Regulations* for the *Public Lands Act*. On September 3 2010, AWA submitted its comments.

December 13 2010, we received a response from SRD, including the second version of the *Sample Regulations* for the *Public Lands Act* and also a 24-page document, *Government Response to Consultation*.

AWA recognizes the efforts that Sustainable Resource Development are making to improve public land management, but at the same time we are still acutely aware of a number of deficiencies in the second version of the sample regulations. AWA was very disappointed that, having been invited to submit comments on the first *Sample Regulations* for the Act, only one minor recommendation was adopted in the second *Sample Regulations*. Please find attached a summary of AWA's comments and the responses received. While we appreciate that many different stakeholder groups have comments to make, it is profoundly disappointing to have so many concerns effectively ignored.

Yours truly

ALBERTA WILDERNESS ASSOCIATION

Nigel Douglas,
Conservation Specialist

cc: David Swann, MLA, Leader Alberta Liberal Party
cc: Brian Mason, MLA, Leader New Democrat Party
cc: Paul Hinman, MLA, Wild Rose Alliance
cc: Dave Taylor, MLA, Alberta Party

Analysis of SRD Response to AWA comments on ‘Sample’ Public Lands Act Regulations

February 2011

AWA comment on <i>Sample Regulations</i>	SRD response
<p>Conservation “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.”</p>	<p>No response</p>
<p>Biodiversity “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.”</p>	<p>No response</p>

AWA comment on <i>Sample Regulations</i>	SRD response
<p>Enforcement 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.</p>	<p>“No additional fines or increases are proposed in the PLAR at this time.</p> <p>“SRD is currently conducting a review of enforcement across the department and will consider this issue as part of the review.</p> <p>“SRD recognizes the challenges of enforcement on vacant public land and will continue to work with partner agencies such as Solicitor General and the RCMP to deliver.</p> <p>“Effective enforcement will depend on resources and the circumstances of each case.</p> <p>“SRD is conducting an internal review and inventory of its enforcement resources. This review and inventory will result in the deployment of resources to effectively enforce the rules. As more resources are made available by and to government, the new rules will provide effective tools for enforcement and stewardship of public land by all users. Stewardship is the responsibility of all users.” (No Action)</p>
<p>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.”</p>	<p>No response</p>

AWA comment on <i>Sample Regulations</i>	SRD response
<p>Prioritization of sensitive lands</p> <ul style="list-style-type: none"> • “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.” 	No response
<p>Regulations on <i>all</i> Public Land</p> <ul style="list-style-type: none"> • “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.” 	“If OHVs were banned from vacant public land, it would be a heavy-handed restriction on hunters, anglers, leaseholders and other responsible users.”
<p>Sale and disposition of Public Lands (Section 6, p25)</p> <ul style="list-style-type: none"> • “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.” 	“Sales of public land occur for many reasons and under many programs in government. In some cases, the programs are consulted upon, in other cases, such as direct sales, no consultation occurs. The PLAR is not intended to change the rules affecting land sales.”

AWA comment on <i>Sample Regulations</i>	SRD response
<p>Access</p> <ul style="list-style-type: none"> 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. 	No response
<p>Access</p> <ul style="list-style-type: none"> 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. 	<p>“Off-highway vehicles are used by disposition holders, government, anglers, hunters, First Nations, among many others. In most cases, their responsible use does not create a large impact. Events, including those involving off-highway vehicles can have a high impact on the landscape, which is why events of any kind require access permits.</p> <p>If OHVs were banned from vacant public land, it would be a heavy-handed restriction on hunters, anglers, leaseholders and other responsible users.”</p>
<p>Access</p> <ul style="list-style-type: none"> 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 licenseholder. 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. 	No response

AWA comment on <i>Sample Regulations</i>	SRD response
<p>Trappers' cabins (Section 5, p24)</p> <ul style="list-style-type: none"> • There need to be strict regulations to address concerns about abuse of cabin privileges. 	No response
<p>Reclamation of land (Section 18, p37)</p> <ul style="list-style-type: none"> • 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. 	<p>"The intention behind the ability to waive the requirement is to give a transparent, fair option to the director to permit a disposition holder to "walk away" if the state of the land is such that a new holder can convert it to another approved use. To require reclamation even though the proposed end use is acceptable does not make sense and causes unnecessary expense to industry."</p>
<p>Trespass (Sections 35, 36, pp48-49)</p> <ul style="list-style-type: none"> • 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. 	<p>"The access prohibition on beds and shores is intended to capture motorized access that causes unreasonable loss or damage."</p> <p>Sample 2 changes exclude "other recreational purposes that do not involve the use of 8 wheeled or tracked conveyances and that are not events."</p>
<p>Grazing Land Range Improvement (Section 69, p61)</p> <ul style="list-style-type: none"> • 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. 	No response

AWA comment on <i>Sample Regulations</i>	SRD response
Panther Corners (Part 7, p196) <ul style="list-style-type: none">• This section has been included in error and needs to be re-written. Motorized access must not be opened in the Panther Corners.	No response

<p>Appeals (Section 227, page 138)</p> <ul style="list-style-type: none"> • 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. 	<p>“Efficiency, subject matter expertise, “if it is not broken, do not fix it”, timely decisions, and mitigating the risk of expanding scope creep are goals that led to the proposed system. It is believed these outweigh the risk of perceptions of impartiality.</p> <p>“Appeals in the Public Lands Act context are a dispute resolution system and are not intended to introduce another layer of regulatory appeals.”</p>
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