

## **Castle-Crown Wilderness Coalition**

**Presentation to C5 Crowpac Meeting  
October 5th 2005**

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The CCWC has been identified as a stakeholder in this C5 planning process from the outset.

The CCWC has had serious reservations about the ability of this process to resolve land-use decision-making issues in the Castle portion of the C5 Unit, but we have demonstrated our willingness to participate in the consultation process. I would refer you here to the fact that, on a number of occasions in 2003 and 2004, Jeffrey Emmett (CCWC's Executive Director) had correspondence with either Tim Juhlin or Darryl Johnson about presenting our input to your committee. We were assured of that opportunity more than a year ago. A couple of weeks ago we finally received an invitation to come to your final meeting.

In response to that invitation, I requested that we have the opportunity to review the current version of your Draft documents and the Preliminary Draft Timber Supply Allocation and Sequencing maps, so that our input to your deliberations could be meaningful and to the point, and, where appropriate, could be site-specific in nature. The CCWC was refused access to any of this material. The CCWC Board has nevertheless instructed me to prepare this "Brief" and we submit it to be accepted in your formal documentation of your input from stakeholders.

The Terms of Reference for the C5 Planning Process explicitly state, in your section on Public Participation and Communications (Section 9.0, page 16):

**"Stakeholder meetings, comprised of identified groups or individuals with a vested interest in C5, will occur to facilitate the sharing of information, provide constructive alternatives, and comment on the draft proposal as it is being developed."**

Tim Juhlin and Darryl Johnson have both stated that "*the Committee needs to hear the Castle-Crown's position and general philosophy*". Unfortunately they also have denied the CCWC access to any preliminary draft documents. As I will demonstrate below, the CCWC has more explicit, concrete expectations of the C5 process than simply talking about philosophical positions. But since we have been asked to address this topic, I will do so.

### **Protected Areas Legislation for the Castle**

As you can discover for yourself, either from a visit to the CCWC's website or from our brochures which have been in circulation in this community since 1992, our vision for the Castle portion of the C5 Unit is to retain the wilderness values of the Castle region so that the remaining wildlands and the wildlife that presently live here may thrive, so that future generations will be able to share and enjoy the richness of the natural beauty and diversity that was identified as worth protecting nearly 100 years ago.

The CCWC's goal of achieving legislated protection for the Castle region, including the Front Range Canyons, remains consistent with the stated intent of any number of Alberta Government policy iterations for the Castle since the Rocky Mountain Forest Reserve was first designated in 1910 (at which time, I would note, a good part of what is the Castle Special Management Area today, was then part of Canada's National Park system as part of Waterton Lakes National Park). Specifically, when the Bow-Crow Forest was designated in 1911 by the Federal Government, the Purpose was described as:

***"These are areas of non-agricultural land established for the protection and reproduction of timber, for the protection of watersheds, and for the maintenance of conditions favourable to a continuous water***

*supply and for the protection of animals, birds and fish. The scenic and recreational values of these forests are now deemed to be resources of major importance.”*

It is also worth re-reading the purpose of the Forest Reserve Act: *“All forest reserves within Alberta are set apart and established for the conservation of the forests and other vegetation in the forests and for the maintenance of conditions favourable to an optimum water supply”*. (Alberta Forest Reserves Act, 1964)

Ten years later, the Castle portion of the Forest Reserve was singled out as a candidate for Provincial Park designation. If you then look at more recent policy directions for the area, as they have been articulated in the 1977 Eastern Slopes Policy, which was the foundation document for our present Castle River Sub-Regional Integrated Resource Plan (adopted in 1985 and Revised in 2001 to accommodate the Special Places recommendations made in 1998), the role of commercial forestry and timber harvest takes a low order priority in the Broad Resource Management Objectives for the Castle:

*“The 1985 IRP indicates that watershed, recreation and tourism resource management objectives have the highest priority in the Castle River area and are consequently listed first. Implementing key recommendations contained in “A Living Document” will necessitate a change in emphasis in resource management in the Castle area. A greater emphasis will now be placed on retaining biodiversity, maintaining ecological integrity and preserving critical wildlife habitat.”* (p 32 Revised Castle River Sub-Regional IRP 2001)

In taking this position, the Revised IRP recognised that a significant portion of the CSMA had already been identified by the Natural Resources Conservation Board (NRCB) in 1994 for designation as the Waterton-Castle Wildland Recreation Area (WCWRA). The NRCB’s detailed review of the then current state of the Castle watershed was explicitly addressing the issue of ecosystem health and sustainability over time, and remains the only comprehensive scientifically-based review for the area. The Board’s prognosis for the area was not overly optimistic, but recommended that, consistent with the 1974 Provincial Parks “Consultative Notation”, the WCWRA *“would achieve the intent of the Castle River IRP, as well as ensuring the protection of significant natural values.”*

Furthermore, when the Special Places Committee made their recommendations for the Castle they particularly noted that existing legislative options were inadequate to address the needs of the area. The present revised IRP reflects that position under Section 3.4 that deals with Protected Areas Legislation: *“Recommendations in “A Living Document” state that the Castle Special Management Area (CSMA) and/or the Zone 1 and Zone 2 lands in the planning area should be legislated to provide the Castle ecosystem with a higher level of protection than currently exists. Existing options for legislating the CSMA were seen to be unsatisfactory by the Local Committee when the Committee presented its recommendations to the Minister of the Environment in 1997. New designation alternatives, to be identified in new protected areas legislation, could be applied to the CSMA in the future.”* (pp27/28, Revised Castle River Sub-Regional IRP 2001)

We are still awaiting this *“new protected areas legislation”*, which was first drafted at the time of the government’s Special Places policy and was presented as Alberta’s Natural Heritage Act in 1999. In the absence of this legislation, the revised IRP is at pains to emphasise that the management of the resources should focus on the retention of the previously referenced highest priority objectives and that in seeking a balance between human use and environmental integrity *“particular emphasis will be placed on the retention of wildlife populations and biodiversity in review processes”*. The C5 Planning process is precisely one such review process.

In the meantime, and almost contradictory to this policy direction, your committee is being asked to commit the forestry resources of the C5 Unit (including the approximately 20 per cent timber allocation currently theoretically in the Castle area) to a timber harvest allocation process that is supposed to provide systematic exploitation of forest resources for the next 20 years. To emphasise this point, I draw your attention to item #2, page 34 of the 2001 Revised IRP. This states : *“In the long term, to manage the forest land base to provide a supply of timber on a sustained yield basis to meet industrial and local requirements.”*

## **NO SUCH RECOMMENDATION WAS EVER MADE BY THE SPECIAL PLACES COMMITTEE.**

Rather than bringing the timber harvesting management section of the IRP into line with the recommendations of the Committee, this statement entrenches a management regime that has proven to be counter to the protection of all other values that we associate with a natural forest ecosystem. The Special Places recommendations are clear in stating that all activities should contribute to, and not compromise, the preservation of biodiversity and should complement the dynamics of natural systems (Recommendation #5, p 11, "A Living Document"). "*Sustained Yield Forestry for industrial requirements*" was never mentioned by the Special Places Committee and has no place in the Castle. It is also an oxymoron, given both the economic and environmental limitations of timber harvesting in this area (if we discount the government and environmental subsidies to the industry).

On this matter, I draw your attention to the letter submitted to your Committee by the Canadian Parks and Wilderness Society on July 15, 2004, that challenges the economic viability of commercial forestry in this area, when set against other societal values. Likewise, our own letter to Darryl Johnson at the same time last year referred to the Alberta Government's own report "*Parks and Protected Areas: Their Contribution to the Alberta Economy*" that found that legislated parks, on a hectare by hectare comparison, contribute as much economic activity to the Alberta economy as the logging industry.

The value of timber harvesting from the Castle region is insignificant when set against the natural forest values that have already been identified as the higher priority objectives for the management of the area. Given that priority schema, any timber harvesting would necessarily have to meet Forest Stewardship Certification criteria, as we proposed at your initial Stakeholders' meeting 3 years ago. The Alberta Wilderness Association's Comments on the C5 FMP Criterion, also dated July 15, 2004 submitted to Tim Juhlin, address this matter (AWA, July 15, 2004).

## **CCWC expectations for the C5 Process, based on the Government's own statements in the Courts.**

Beyond these more general observations about the place of the C5 planning process in the overall policy direction for the Castle, the CCWC has more specific and concrete expectations from this process, deriving from the concerns about the environmental impacts on surrounding public lands that will be created by the threefold residential expansion at Castle Mountain Resort. In her letter to our organisation in May 2002, Ms Jillian Flett, the Director of Regulatory Assurance, Alberta Environment, stated: "***After consultation with staff in SRD, I have determined that the potential impacts of the proposed development are manageable and can be dealt with through the Public Lands Act (Licence of Occupation) and EPEA approval processes, as well as through the public review of the Detailed Forest Management Plan for the C5 Forest Management Unit commencing this spring.***" This opinion was later re-stated by the Deputy Minister, on behalf of the Minister of the Environment at the time. His letter to our organisation, dated July 24, 2002, also adds "***a thorough review of potential environmental effects will be completed before any decisions are made on whether to issue the required approvals for this proposed development. There will be an opportunity for individuals directly affected by the development to be involved in the review.***" (Both of these quotes are cited in para 21 of the recent Court of Appeal Decision, Castle-Crown Wilderness Coalition vs Alberta, 2005 ABCA 283, page 9)

This correspondence has been cited repeatedly by Counsel for the Government as we have pursued the Judicial Review of the decision by the government not to order an environmental assessment for CMR's development expansion, not just in the context of being able to manage the impacts but also with regard to meeting the concern for public involvement. Justice Kenny, at Court of Queen's Bench, did not accept this blanket opinion, unsubstantiated by specific actions, as having much merit and challenged the government's position that these "*other processes*" could address the concerns raised by both the Director herself and by the Fish and Wildlife Division of SRD, with respect to wildlife resources in the region and the cumulative effects on regional resources identified by the NRCB in 1993. I have attached a copy of Justice Kenny's Decision as an Appendix to this Brief, should you wish to review her findings on this matter in more detail (paras.83 through 86, pp16/17. Castle-Crown Wilderness Coalition vs Flett, 2004, ABQB 515, attached).

The Government of Alberta chose to Appeal Justice Kenny's Decision, and the Court of Appeal's recent ruling in favour of the Government in this matter puts great emphasis on the ability of these "*other regulatory processes*", (at least according to the provisions of the relevant legislation) to address at least some of the environmental concerns identified by the Director. Whether the appropriate actions to address them has actually been taken, or even will be, is not considered. In closing their arguments that the Director's decision not to order an EIA was reasonable, the Court of Appeal Judges rely heavily on the fact that the Director was entitled to believe the assurances made by the Deputy Minister for SRD that "*wildlife impacts and overall land use in the region can be effectively managed and protected by processes under the Public Lands Act. This may include conditioning the Licence of Occupation issued to CMR, as well as, further consultation this spring among various stakeholders during the review of the C5 Forest Management Unit*" (Memo from Deputy Minister, AENV, to Deputy Minister, SRD, April 9, 2002).

The burden therefore falls upon the C5 Management process, together with the AENV's water approvals process and SRD's Public Lands administration, to deliver on the whole suite of issues raised by the Director: the need for public involvement, the need to address cumulative effects at a regional scale as well as implementing the mitigation measures identified by the Director, which include, as the Court of Appeal Judges note, in paragraph 63 of their Decision, the concerns raised through the 1993 EIA and Hearing before the NRCB, which, they state "are not so dated as to lose all relevance". (para 63, p 20, CCWC v. Alberta, 2005 ABCA 283.)

So let's look at the Mitigation section reviewed by the Director in her Initial Screening Report:

#### *"4.6 Mitigation*

*In its decision report, the NRCB concluded "the cumulative effects of development and disturbance have led to a deterioration in the state of the regional ecosystem, both in quantitative and qualitative terms. By deterioration the Board means a decrease in the probability that populations of species forming part of the ecosystem are sustainable in the long term without management intervention". The Board only deemed the VAC proposed expansion in the public interest provided that the Waterton-Castle Wildland Recreation Area was created to mitigate the impacts to the regional ecosystems.*

*"CMR proposes that the formation of the Castle Special Management Area Forest land Use Zone and the designation of the local wetland complex as an Ecological reserve have sufficiently mitigated the impacts of their project. SRD staff do not agree with this position. They indicate that the CSMA/FLUZ only deals with one facet of land management (ie access) and by no means addresses other issues (ie land use) needed to completely develop any appropriate mitigative strategy."*

The CCWC's question to the C5 planning team is: how will your Plan address the issues that have been identified as matters of environmental concern by the Director herself, by the Fish and Wildlife Division of SRD and by the Superintendent of Waterton Lakes National Park? And how will your Plan incorporate the recommendations made to the Director by the Fish and Wildlife Division, particularly? How will your Plan demonstrate to the Alberta Public that the Court of Appeal's expectations of this process are credible and can be validated?

For a list of issues to be addressed you could either go to the Director's own Briefing Notes to her Minister (Briefing Note, Dec 28, 2001, attached) or you could check out a remarkably dismissive memo from Pat Guidera, Regional Director, Lands and Forests Service, to his Assistant Deputy Minister, that clearly reveals the Lands and Forest Service attitude towards the concerns of his colleagues in the Fish and Wildlife Division:

*"Jillian has asked for an EIA because there are outstanding conditions and research from the original 1993 EIA and NRCB ruling that were never completed. Stuff like mitigative measures for wildlife, hand clearing for ski slopes, plans to protect long tailed weasel(sic), long tailed (sic) shrew, red-tailed chipmunk, hoary bat, rare plants, results of surveys for raptor nests, songbirds.....the list goes on and on. Apparently none of this work was done (probably no funding to follow-up) and Jillian sees this as a reason to initiate an EIA. As well, she believes that the private land issues around growth of the population and increasing development is not addressed in our conditions around a ski hill expansion.*

*She believes that an expansion will bring more people and place greater pressure on this area. In her view the work SRD does will not address the public concerns.*

*In summary, Jillian is initiating an EIA because of the social pressure to have public input, and the unfinished business of the previous EIA brought forward by Fish and Wildlife division. I have discussed with Morley (Barret) to convey that we have two Divisions with opposing positions in the same department. I tried to correct this in the field, but to no avail....it was not one of my better days.” (memo, Guidera to Henderson, Dec 4, 2001)*

Pat Guidera is referring here to the report prepared by Dr Carita Bergman, Fish and Wildlife Division, SRD, for her department in November 2001, **“The Relevance of the 1992 West Castle EIA and Final NRCB decision report to future development in the West Castle Valley”** This included a Summary matrix of the available information on the wildlife species in the CMR study area, dealing with such things as population sizes, habitat availability, limiting factors, movement corridors etc. The overall thrust of that analysis was simply that there was not enough information available to make reasonable judgements, and that where there might be adequate information the likely implications were bad news. The body of her report notes that the NRCB itself was faced with the same problem of inadequate information, *“a recognition that led to the formulation of numerous conditions to be adhered to by the proponent, if the development were to take place”*, foremost amongst them the designation of the Waterton-Castle Wildland Recreation Area, which the Board noted, in its *“Public Interest”* section of the Decision Report, should be designated ***“whether or not the proposed development goes ahead”***. (NRCB, 1993, p 12-13). Dr. Bergman also stressed the relevance of three issues that were not addressed in the 1992 EIA *“that warrant careful attention”*: Biodiversity, Wildlife corridor functionality, and Current carnivore management in the area. Dr. Bergman’s 12 page Report for the Fish and Wildlife Division was then reduced to a couple of page summary, and subsequently incorporated into a half page Memo, that reads, in part (full copy attached): ***“No meaningful information has been systematically collected in relation to the Castle Mountain resort proposed development that would diminish the nature or magnitude of the fisheries and wildlife concerns that were identified in the 1993 NRCB Report. Since that time, new concerns about fisheries and wildlife have been identified relating especially to biodiversity, wildlife corridor functionality, impacts to species at risk such as grizzly bear and bull trout, and implications for current large carnivore management in this immediate area that accentuate the validity of earlier concerns”***. To assist the department and CMR to address the inadequacy of this information, Dr. Bergman and Dr. D. Wig, for Fisheries, prepared Draft Terms of Reference to guide the EIA process.

The Director also had before her a copy of the submission made by the Superintendent of Waterton Lakes National Park that states Parks Canada’s unequivocal concern regarding the regional grizzly bear population, noting that *“the cumulative effects of habitat loss and direct mortality to grizzly bear in the West Castle valley as a result of the proposed development will likely cause a significant and permanent decline in the size and distribution of the regional grizzly bear population”* and that *“no significant mitigation of impacts is possible”*. The Superintendent’s letter to the Municipality of Pincher Creek at the time of their Public Hearing for CMR’s Area Structure Plan states : *“We would ask the Council to endorse the NRCB Review as the most current and relevant assessment to the Area Structure Plan...We encourage Council to ensure that the decision (on the Area Structure Plan) reflects the larger regional issues, given that the impacts will be permanent and irreversible.”* (Letter, Parks Canada, July 19, 2002)

The CCWC’s position has been in agreement with the Decision Report of the NRCB issued in 1993, which was widely held to be the most appropriate compromise solution: that the only way to effectively mitigate for these cumulative impacts was to designate the Waterton-Castle Wildland Recreation Area. Since that time the cumulative effects of all activities on the region have been exacerbated, as was noted by the Alberta Energy and Utilities Board in their 2001 Screwdriver Creek decision on applications made by Shell Canada and Canadian 88. The recently released scientific literature review of this area prepared by Dr. Martin Jalkotzy, and jointly sponsored by Shell Canada, the World Wildlife Fund and the Canadian Parks and Wilderness Society, provides an important contribution for decision-makers here (*Selected Ecological Resources of the Castle-Carbondale Region: a Synopsis of Current Knowledge, 2005*). Another important addition to the literature is Fish and Wildlife Division’s recent review of the *Focal Species of the*

*Headwaters of the Oldman Basin*, which attempts a first cut at addressing biodiversity issues at the landscape level through rigorous scientific modelling - something that was hardly available in 1993.

Today the Castle-Crown Wilderness Coalition, in partnership with other conservation groups, continues to see the designation of the Castle Special Management Area as a Wildland Provincial Park as the long-term solution for reversing the deterioration of the ecosystem, for protecting the wildlife resources of the region, for securing the continued viability of Waterton Lakes National Park and for the provision of long-term social and economic benefits to southwest Alberta. Only by making such a designation can the original, and ongoing, highest priority objectives for the area be reasserted to provide direction for future management.

In the interim, as has been proposed by the Fish and Wildlife Division's recommendations to the Minister, just to look after the grizzly bear population, "*The Department will need to, concurrently, undertake the following mitigative measures on adjacent Crown lands in order to have a successful Bear Management Strategy in the West Castle region:*

- *close access to vehicular traffic in the West Castle valley south of the downhill ski area*
- *implement further vehicle restrictions in the lower South Castle valley*
- *institute provisions to minimise impacts of random camping in the Castle SMA, but as a minimum, institute closures in the summer months when bears are active or relocated into the area.*" (Feb 27, 2002 Memo from Regional Director, FWD to Regional Director, LFS)

This much would be a start, but, as Guidera has said, the list goes on and on.....

The Courts have now set the agenda for SRD to live up to, and through the C5 process identified by the Courts, we expect you to deliver.