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Caribou Recovery Program
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May 24, 2019

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Dear Janet Hughes:

The Canadian Energy Pipeline Association (CEPA) appreciates the opportunity to provide comments on the Draft Section 11 Agreement and Draft Partnership Agreement for British Columbia's (B.C.) caribou recovery initiative. CEPA members collectively operate 117,000 kilometres of transmission pipeline in Canada. These energy highways are the safest and most environmentally friendly means of transporting oil and natural gas across Canada and North America. CEPA and its members are committed to ongoing dialogue with the B.C. government, Indigenous groups and stakeholders regarding caribou protection and recovery plans and measures.

With over 60 years of experience in the construction and operation of pipelines, CEPA members have established and implemented caribou habitat restoration strategies and offset measures that contribute to the conservation and recovery of woodland caribou in Canada. These measures are developed to avoid or reduce predicted residual project effects and offset a project's incremental contribution to cumulative effects on caribou and caribou habitat in a manner that aligns with provincial and federal policies, management plans and priorities. These restoration and offset measures are ecologically relevant, strategically located and protected where possible to minimize potential for re-disturbance by human activity. CEPA members have been successful in establishing ecologically appropriate vegetation communities for caribou on trajectory to be compatible with the surrounding landscape.

CEPA believes it is important that any final agreements recognize the operation and maintenance of existing and approved but not-yet constructed infrastructure. Given the importance that resource development has to the local and Canadian economy, these agreements should allow for continued energy and pipeline development, including pathways access to the pacific coast.

Through ongoing dialogue, CEPA and its members are seeking additional clarity regarding the implementation of proposed measures under the Draft Partnership Agreement as outlined in the attached list of questions and comments. These address the following primary concerns:

1. CEPA has significant concerns regarding the proposed moratoriums in the Draft Partnership Agreement in areas A2, B2 and B3 prohibiting statutory decision-makers from adjudicating applications, particularly with respect to existing and permitted projects. CEPA understands that section 14(a) of the Draft Partnership Agreement would exempt applications related to the construction of approved, but not yet constructed pipeline infrastructure from the moratorium. However, CEPA seeks clarity that this exemption would apply to ancillary or additional approvals/permitting required for existing and approved but not yet constructed infrastructure (e.g., access roads). These ancillary or additional approvals are necessary to safely construct



and operate existing and approved infrastructure and thus should be exempted from any moratorium. Further, CEPA seeks clarity regarding what process would be followed in the consideration of applications for exempted activities and whether or how the Caribou Review Committee would be involved in decisions regarding exempted activities.

2. With respect to the proposed Caribou Review Committee, CEPA seeks clarification on how the consensus-based recommendation process will operate. In particular, CEPA seeks clarity regarding the process and timelines for the Caribou Review Committee. CEPA and its members have concerns regarding what will occur in the event that consensus is not reached after the dispute resolution mechanisms provided for in the Terms of Reference for the Caribou Review Committee are implemented.

CEPA and its members look forward to continuing our participation on caribou recovery in B.C. and would welcome the opportunity to further engage with the B.C. government, Indigenous groups and stakeholders on the ongoing review. Please do not hesitate to contact the undersigned if you have any questions or require clarification regarding any of the comments made above.

Sincerely,

Kai Horsfield
Manager, Regulatory and Policy

CEPA Member Comments - B.C. Government Caribou Recovery Strategy

DRAFT INTERGOVERNMENTAL PARTNERSHIP AGREEMENT	
Topic	CEPA Response
General comments/ questions	<ul style="list-style-type: none"> • Regarding regulatory measures, how will this agreement interact with other regulatory decision-making bodies and processes (e.g. National Energy Board, BC Environmental Assessment Office, BC Oil and Gas Commission, BC Parks, BC Forests, Lands, Natural Resource Operations and Rural Development)? • The Partnership Agreement currently suggests a new regulatory process; however, it is unclear how this will be executed, what parties need to be engaged and associated timelines. • How is the B.C. Government defining "exempted infrastructure projects" as referenced in section 15 of the Agreement? CEPA's current understanding is that existing permits/approvals/authorizations (including approved Management Plans as conditioned within the EAC process) will be grandfathered in the Partnership Agreement areas. That being said, with respect to the "moratorium for development", will pipeline projects holding a valid Environmental Assessment Certificate be permitted to proceed through the current, BC Oil and Gas Commission process, to permit and construct temporary or permanent ancillary sites within the moratorium zones? • Is the B.C. government's intention to excise approved rights of way from permanent protected areas, and if not, ensure allowance for access to the ROW and ongoing operational maintenance activities as allowed for in permits? • Where Caribou Mitigation and Monitoring Plans, required by condition of the EAC, have not been developed, what is the expectation of proponents for developing mitigation and offset plans? New guidance for developing Caribou Mitigation and Monitoring Plans are to be developed by the province by December 2021 as well as a test version of an Offset Tool- is there an opportunity for proponents to provide input into these provincial initiatives? • Regarding Indigenous and stakeholder engagement, CEPA has the following questions: <ul style="list-style-type: none"> ○ Will a full socio-economic assessment be conducted on the outcomes of this agreement? ○ For section 31, stakeholder consultation on boundaries, will existing pipeline corridors be excluded from the park? ○ For section 33, will the review process consider and complete a socio-economic assessment for road reviews and cut blocks? • How will engagement and collaboration with Indigenous communities, stakeholders and industry including feedback, be taken into consideration and reflected in the Agreement? Specifically, how will the materials from the "what we heard" report be integrated in the Agreements? • What kind of steps will be taken to address the economic consequences of the pending deferrals referred to in section 33? • What is the basis for the Indigenous Guardian Program and how will this be funded? • The Agreement references "deep consultation" with a variety of Indigenous communities, CEPA would like to understand how the B.C. government defines "deep consultation" and how this differs from other forms of consultation that may take place through this process. Additionally, how, for EAO approved projects, will the interests of other Indigenous Groups that are not part of the Partnership Agreement be considered in future regulatory proceedings? • How and when will the Caribou Review Committee be enacted within the regulatory process? What are the timelines for review and or decision/making? • Would a proponent be able to provide supplemental application information (related to last two bullets under Schedule 1 on next page) to the Caribou Review Committee? • How is the B.C. Government defining "exempted infrastructure projects" as referenced in section 15 of the Agreement? • How will Projects with existing environmental assessment certificates be incorporated into future regulatory changes? • Would the government consider a buffer zone as part of the Agreements around those existing assets and projects within or adjacent to the moratorium areas to allow for future development along the existing right of way? • How will the province deal with projects that have approvals but have not yet been constructed? • Regarding identified Zones A1 and A2: <ul style="list-style-type: none"> ○ What data sources were considered in determining these zones? For example, the Agreement identifies some areas where small islands are classified as A2 in an area of A1. ○ How is "disturbance" defined for Zones A1 and A2? For example, was this determined using only direct footprint or indirect disturbance as well? ○ What is the threshold for development in each Zone? • As outlined in section 35, will industry be consulted or given the opportunity to provide feedback to the habitat mitigation and offset program? Additionally, how would financial contributions be determined, and would they be designed for a one time or on-going allotment? • Regarding section 38, is the Central Group Caribou Motor-Vehicle Closure Engagement Plan publicly available and how will the implications to industry be considered? • Regarding Section 45 – what are the appropriate steps that may be taken to restrict development in other areas of the caribou habitat which may experience increased development due to the conservation measures implemented within the zones? • Should the caribou objectives be met prior to the expiration of the Agreement as dictated in section 63, what would the implications for the Agreement be? For example, would the Agreement then be reviewed and cancelled?

<p>SCHEDULE 1 Caribou Recovery Committee Terms of Reference</p>	<ul style="list-style-type: none"> Regarding section 1, will decisions made by the Committee be available for review or provided for information to applicants and/or the public? How will an "activity" be defined as per section 2 for the purposes of the Agreement? Section 2a – more guidance and certainty is required on acceptable mitigation to "ensure no harm to caribou populations or a net-benefit effect on caribou habitat" During the application review, what timelines will be set by the committee and will these be previously established in the terms of reference or be dependent on a case by case basis? Furthermore, how will feedback to the applicant be presented and will applicants have additional opportunity to provide further information once an application has been submitted should the Committee require further documentation? Once an application has been reviewed, what mechanism is in place for the applicant to provide additional information to the committee if consensus has not been reached? In our view, it would be unreasonable to deny an application based on the Committee's inability to reach consensus. In the event of a 'no' decision, will there be an opportunity for proponents to address concerns through an Information Request process? A recommended approach would be to implement a process/decision matrix that includes an opportunity for proponents to address concerns prior to the final decision.
<p>SCHEDULE 2 Caribou Recovery Related Land Use Objectives</p>	<ul style="list-style-type: none"> As the objectives are developed, what criteria and definitions will be used, and will industry be consulted or provided an opportunity to comment on the development of these objectives? For example, how will maximum disturbance be defined and calculated?
<p>SCHEDULE 3 Central Group SMC Technical Working Group Terms of Reference</p>	<ul style="list-style-type: none"> Regarding the technical working group, CEPA has the following questions: <ul style="list-style-type: none"> How will membership of the group be decided? What would constitute "appropriate technical qualifications"? How will the parties' technical qualifications be assessed?
<p>SCHEDULE 4 Implementation Milestones</p>	<ul style="list-style-type: none"> Regarding the implementation of regulatory measures by August 2019, will there be any public or industry consultation on boundaries prior to establishing the final boundaries and type of regulatory measure? What criteria will be utilized and how will decisions be made for regulatory measures? As currently outlined, the process for government to government collaboration and partnership is unclear in terms of involved parties, timelines for engagement and design of the overall process. Timelines for this engagement should be transparent in order to assist in project scheduling. CEPA looks forward to receiving more information on the design and implementation of this process as well as decision making authorities involved. Are their opportunities to amend the content of the agreements based on stakeholder engagement or just proposals for modification of zone boundaries?

DRAFT CANADA BRITISH COLUMBIA CONSERVATION AGREEMENT FOR SOUTHERN MOUNTAIN CARIBOU IN BRITISH COLUMBIA	
Topic	CEPA Response
<p>General Comments</p>	<ul style="list-style-type: none"> Section 5 of the Agreement outlines opportunities for multi-stakeholder committees to have input into recovery programs and strategies. During what part of the process will this opportunity be available? Will engagement only occur once herd plans are developed? Will there be opportunity to make recommended changes or updates once the plans are developed? Section 8 references "Structured Decision-Making Approaches", how will these be defined and implemented? Section 8 also references working with "willing partners" to develop and implement best management practices. How will these partners be selected and what process will be established to gather feedback? Engaging industry will ensure the best management practices encompass all actives involved within each industry (capital projects, operations, and maintenance). Does the B.C. government plan to provide additional opportunity to gather input other than through the "What We Heard" document? For example, the Conservation Agreement mentions the opportunity for stakeholder engagement, how will these processes be defined and executed?
<p>ANNEX 1 Southern Mountain Caribou Groups, Local Population Units, and Herds in the Province of BC</p>	<ul style="list-style-type: none"> Collaboration and engagement with local communities and industry will be critical for successful implementation of identified actions where there are a considerable number of actions planned for future implementation. It would be beneficial for the B.C. government to provide clear directions and guidance to industry as well as set clear expectations as many proponents are in various stages of project applications and permitting processes. How will planned actions for the Northern Group in ANNEX 1 be integrated into the Fort St. John Land and Resource Management Plan update (LRMP) currently underway as well as other LRMP updates?
<p>ANNEX 2 Southern Mountain Caribou Conservation and Recovery Measures - Table 2 Southern Mountain Caribou Habitat Management</p>	<ul style="list-style-type: none"> Which party will be responsible for developing the best management practices and will KPI's or metrics be developed alongside to measure success? Proposed vehicle closures can impact necessary maintenance and operations activities, what are the terms for possible vehicle closures and how will these be managed? Which party will be the responsible authority for the Habitat Conservation Trust Foundation and how will this trust be managed?

	<ul style="list-style-type: none"> As drafted, there are very few concrete measures regarding habitat loss and fragmentation. Table 2, Annex 2 states "Seek to bring forward regulatory measures", however the plan doesn't seem to provide for any interim protections. CEPA seeks clarity on what type of "regulatory measures" can be expected.
<p>ANEX 2 Southern Mountain Caribou Conservation and Recovery Measures - Table 5 Knowledge, Science and Research</p>	<ul style="list-style-type: none"> Does the B.C. government intend to develop the Caribou Climate Prediction Model? Will there be an opportunity for industry consultation and feedback?