



## SIKSIKA CONSULTATION OFFICE

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### ***Submitted via Email***

Impact Assessment Agency of Canada  
De Havilland Field Project  
Email: Dehavilland@iaac-aeic.gc.ca

To Whom this May Concern,

**RE: Siksika Nation comments on the Initial Project Description for the 2150038 Alberta Inc. De Havilland Field Project**

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This letter is sent on behalf of Siksika Consultation Office (SCO). This office is responsible for the day-to-day management of Siksika environment and resources, including activities related to the benefit of use, and development of land, for individual, collective and economic purposes. The De Havilland Field Project is located 23 km away from the Siksika Nation reserve and is in an area of historical and contemporary importance to the Nation.

We have reviewed the Initial Project Description for the De Havilland Field Project (the "Project") and, based on our below detailed response, Siksika Nation agrees that this Project is designated as per Section 46(a) of SOR/2019-285 *Physical Activities Regulations* as the Project exceeds the specified runway length of 1,000m or more. Further, Siksika Nation requests that this Project require an Impact Assessment as per Section 16(2)(c) of the *Impact Assessment Act*, 2019. This will ensure that the Project's adverse effects on Indigenous rights and interests, which are under federal jurisdiction, are adequately considered and that any adverse direct or incidental effects on Siksika Nation rights are assessed, particularly as a Provincial Environmental Impact Assessment is not expected to be required.

The requirement of an Impact Assessment will ensure the more robust requirements of the assessment of potential project impacts to areas of federal jurisdiction including Indigenous rights. This is of particular importance to Siksika Nation in relation to the combined impacts of this Project which may act cumulatively with existing agriculture and municipal developments to effectively extinguish Siksika Nation's rights; particularly as the Project will not be decommissioned. It is also of particular importance in relation to impacts to Siksika Nation governance and biophysical impacts of importance to the Nation.



While Siksika Nation is aware, from the Project Description, of the proponent's aggressive construction timeline of April 2024, this must not be a consideration for the Impact Assessment Agency. Instead, the

Agency must weigh the areas under federal jurisdiction, including Indigenous rights, as well as factors to be considered under the *Impact Assessment Act*.

Please see below for more detailed comments which can be used in support of our request.

### **Comments on the Initial Project Description**

#### **Engagement and Indigenous Rights**

While the Project Description references outreach to Siksika Nation in late 2022 and 2023, Siksika Nation and the De Havilland Field Project Team have only recently met to discuss the Project.<sup>1</sup> Additionally, Siksika Nation was not involved in preliminary environmental studies undertaken by the proponent such as the biophysical assessment undertaken by Trace Associates Inc. in 2020.

This lack of involvement is highlighted in the Project Description through the impoverished view of Indigenous rights; whereby, the proponent indicates that because the Project anticipates beyond-negligible effects on air quality, water quality, fish, wildlife and vegetation health, impacts on Treaty rights or Indigenous land use is not anticipated. This interpretation does not consider impacts from noise or impacts to cultural, spiritual, and ceremonial activities, Siksika Nation's insights into wildlife relations and species of cultural conservation concern as well as governance/self-government rights. It does not consider the need for further archaeological work or consider the impact of the Project on the cultural well-being and identity of Siksika Nation. Further, it draws these conclusions without engagement with Siksika Nation in relation to our rights and potential interactions from the project; meaning important context in relation to Siksika Nation rights is missing and this determination is premature.

Additionally, this determination is flawed as impacts to rights cannot be completely correlated to impacts to biophysical components. Indigenous rights have unique characteristics and considerations. For example, Indigenous rights must be exercised in a preferred way.<sup>2</sup> This means projects must consider Indigenous groups' preferences and potential negative perceptions when considering biophysical impacts to, in this example, air quality and noise. Further, while it is understood that the project is located on private land, impacts from project development can extend off the project site and into the surrounding area. These impacts are typically considered in an Impact Assessment by assigning a spatial extent referred to as a Local Study Area or Local Assessment Area. In this way, Siksika Nation land use and occupancy data must be collected and understood using an appropriate spatial extent, as defined with consideration of Siksika Nation's interests, so that potential impacts from the Project can be understood to quantify any impact and identify subsequent mitigation and accommodation measures.

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<sup>1</sup> Siksika met with De Havilland on June 5, 2023.

<sup>2</sup> As per *R. v. Sparrow*, [1990] 1 S.C.R. 1075 in order to identify whether a *prima facie* infringement has occurred, three questions must be asked including whether the limitation is unreasonable, does the limitation impose undue hardship, and does the limitation deny the rights holder their preferred means of exercising the right.



It is Siksika's view that the *Impact Assessment Act* requires the federal regulator to conduct an Impact Assessment for this project. This action will trigger the Crown's Duty to Consult and initiate a process by which it can be discharged. Following the initiation of an Impact Assessment, capacity funding must be provided by both the proponent (to allow for sufficient data collection to satisfy the procedural aspects of consultation) and the Impact Assessment Agency of Canada (to allow for comprehensive review of the Impact Statement and Impact Assessment report). The requirement for sufficient capacity has been recognized in many regulatory processes and, most recently, in a decision from the Ontario Superior Court of Justice, Divisional Court. Within the *Saugeen First Nation v. Ontario (MNR)*, 2017 ONSC 3456 decision, it was acknowledged that:

*"The expense of consultation arises as a result of a proponent's desire to pursue a project, usually for gain, and the Crown's desire to see the project move ahead. The Crown should not reasonably expect SON to absorb consultation costs from SON's general resources in these circumstances."* (para 159)

Similarly, Siksika Nation should not be expected to bear the cost of data collection and review of proponent documents which will inform and allow the Crown to discharge their Duty to Consult. Instead, this cost must be shared by the proponent and the Crown Agency.

#### Reliance on Existing Legislative or Regulatory Processes

Within the Project Description, it is noted that the Project is subject to existing legislative or regulatory processes that manage or accommodate effects to watercourses and waterbodies in Alberta. This is noted as a reason why adverse effects to migratory birds and fish, fish habitat and aquatic species are not expected.

While these legislative or regulatory processes may be sufficient to address the biophysical effects which may result from the Project, these processes do not adequately consider Indigenous rights. In fact, there is substantial disconnect between provincial and federal approaches to Indigenous consultation and consideration of rights. The *Impact Assessment Act*, Section 22(1) **requires** an Impact Assessment to include the details related to any impact the designated project may have on Indigenous groups and any adverse impact that the Project may have on the rights of Indigenous Peoples of Canada, recognized, and affirmed by section 35 of the *Constitution Act, 1982*. This distinguishes it from provincial legislation, which is noted to be applicable to this Project, including:

- The *Water Act*
- The *Environmental Protection and Enhancement Act*
- The *Wildlife Act* and Wildlife Regulation
- The *Weed Control Act* and Regulation
- The *Historical Resources Act*

All of which are silent on Indigenous rights and the assessment of rights. Even provincial guidelines which refers to consideration of Indigenous information (e.g., the *Government of Alberta's Guidelines on Consultation with First Nations on Land and Natural Resource Management 2014*) still heavily relies on site-specific impacts as a model. Current use/site-specific impacts to land is



too narrow of a metric to understand the full scope of impacts from a proposed project on section 35 rights. The Alberta process is insufficient in determining impacts of a project of this scope.

Siksika Nation is familiar with federal planning phase documents available on the registry including the *Practitioner's Guide to the Impact Assessment Act* and has reviewed *Tailored Impact Statement Guidelines* produced for other projects regulated under the Impact Assessment Agency of Canada. This has allowed us to conclude that the best way for Indigenous rights to be considered is through a federal Impact Assessment process.

#### Absence of Issues and Concerns

Within the Project Description there is extensive listings of "frequently asked questions" received by the proponent through feedback from adjacent neighbors and surrounding communities. This includes questions related to:

- The Aerodrome
- Employment
- The Environment
- General Inquiries,
- Visual Quality (Interface and Screening)
- Safety
- Quality of Life
- Servicing
- Site Concept and Location
- Timeline
- Transportation

Currently, the Project Description and the proponent are unaware of the issues and concerns held by Siksika Nation due to a lack of adequate engagement. In reviewing these "frequently asked questions" from adjacent neighbors and surrounding communities, additional unique examples of issues and concerns related to Siksika Nation rights can be identified. For example, De Havilland makes note of a Wildlife Management Plan, however this is only mentioned anecdotally and there is no identification of Siksika Nation's involvement in the development and execution of this plan.

Additionally, in relation to the "frequently asked questions", there is a reference to the development of "...several environmental mitigations to help minimize the potential effects to migratory birds, their nests and eggs, as well as wetlands and vegetation." This is problematic for a variety of reasons. Firstly, the development and application of mitigation prior to a fulsome evaluation of the potential effects is inappropriate; and secondly, development of mitigation without Siksika Nation's unique input and insights into wildlife protection is inappropriate.

Further, in relation to the "frequently asked questions", the proponent states they will adhere to Wheatland County Landscape and Screening Guidelines to reduce the visual impact of operations. This is without reference to visual quality in the existing conditions sections and without engagement with Siksika Nation on the impacts of visual quality changes to its members.



Additional to these, the proponent, in relation to the “frequently asked questions” notes that they will be completing a noise study to determine the anticipated noise levels of the project. Siksika Nation has significant concern with noise from this Project. The NNW-SSE orientation of the runway will result in increased noise from inbound and outbound flights which could have impacts to cultural/ceremonial activities at certain times of the year/time of the day and Siksika Nation should be involved in the scoping and execution of the noise study to ensure:

- 1) Types and locations for noise receptors align with areas of importance to Siksika Nation such as the reserve or areas of land and cultural use in proximity to the Project.
- 2) There is an expanded consideration of noise to include key parameters to Siksika Nation such as perception and subsequent avoidance behaviors.
- 3) It can allow for the collaborative development of any required mitigation measures to ensure the initial concerns are addressed.

Overall, the gaps in the Initial Project Description highlight the need for more in-depth and comprehensive consultation by the Crown and engagement by the proponent to ensure issues and concerns of importance to Siksika Nation are identified and addressed; most appropriately through an Impact Assessment process.

#### Biological Environment

Siksika Nation also has concerns with impacts to the biological environment which relate to the completed Phase I Environmental Site Assessment conducted in 2020; particularly as these have direct interactions with Siksika Nation rights and interests.

During the Phase I Environmental Site Assessment, notable wildlife features were identified including two great horned owl nests, one red-tailed hawk nest, and one Swainson hawk nest. These, in addition to others that may not have been considered to date, are species of particular importance to Siksika Nation for a variety of social, cultural, and environmental reasons. For example, these species inform tipi design for Nation members and are culturally critical.

The current results of the Phase I Environmental Site Assessment do not appear to include consideration of aspects of importance to Indigenous groups. There is no discussion within the Project Description of whether these species are of importance to Siksika Nation; or whether additional considerations (e.g., additional invertebrate species of cultural importance such as bees) and assessment will be completed. This is a notable gap that must be filled and linkages between the biophysical environment and Siksika Nation Indigenous knowledge must be identified, understood, and expressed for consideration by the Agency.

#### Project Decommissioning

The Project Description notes that decommissioning and abandonment are not anticipated to occur for the Project. This means that the Project area will be permanently alienated from use and occupancy by Siksika Nation. This requires in-depth consideration, particularly as the area surrounding is heavily developed (e.g., agriculture and municipal developments). The facilities proposed for this project have differing implications than that of agriculture and may constitute a permanent loss/infringement. This must be discussed, and the cumulative impacts of this



permanent facility, in conjunction with existing and reasonably foreseeable developments, must be assessed.

The requirement for this consideration has been crystalized by the recent *Yahey v. British Columbia*, 2021 BCSC 1287 decision. This decision found that rights can be infringed upon through many small projects acting together which erode a Nations way of life, including cultural and spiritual elements. This decision found that the Crown has a responsibility to take proactive measures to address and monitor cumulative effects. This is relevant to this Project and surrounding area as substantial portions of this area have already been taken up for other purposes and are no longer usable by Siksika Nation in the exercise of their rights. This is not a consideration in the current Project Description.

#### Historical Resources

Within the Project Description it is noted that a historical resources review was conducted for the Project and found that there is low potential for intact, unknown historic resources to be present. Despite this determination, Siksika Nation require a full Heritage Resources assessment be completed as this is an area of high historical importance to the Nation and is in proximity to a variety of key cultural locations including Blackfoot Crossing<sup>3</sup>. Siksika Nation members have connection to the Project area and have stories related to the same which can inform and contribute to a Heritage Resources assessment.

#### Information Related to Participation in Impact Assessment Planning Phase

In addition to our comments on the Initial Project Description Siksika Nation would like to signal that, should an Impact Assessment be initiated, Siksika Nation would like to initiate a dialogue on the consultation process with the Impact Assessment Agency. To this end, Siksika Nation would like to indicate our interest in participating in all phases, starting with the Planning Phase. Siksika Nation would like the opportunity to review the Summary of Issues, provide comment on the Indigenous Engagement Partnership Plan, and provide comment on the Tailored Impact Statement Guidelines. Siksika Nation is also receptive to ensuring this process is collaborative with the Crown, as represented by the Impact Assessment Agency of Canada, as well as the proponent.

Based on our above listed items for consideration, we ask that this Project be required to complete an Impact Assessment to ensure a full consideration of Siksika Nation's rights and interests, and a robust consultation and engagement process. Further, Siksika Nation requires fulsome future engagement with the Proponent on the De Havilland Field Project. Thank you in advance for your support and consideration of our request.

Yours Truly,

<original signed by>

Cédric Solway  
Siksika Consultation Coordinator

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<sup>3</sup> Treaty No. 7 was signed in 1877 at Blackfoot Crossing.



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