

File 121093

No. 090157928P1

**IN THE PROVINCIAL COURT OF ALBERTA
CRIMINAL DIVISION**



BETWEEN:

HER MAJESTY THE QUEEN

- and -

SYNCRUDE CANADA LTD.

BEFORE THE HONOURABLE
JUDGE K.E. TJO SVOLD
AT ST. ALBERT, ALBERTA

) ON FRIDAY, THE 22nd DAY
)
) OF OCTOBER, 2010.
)

**ORDER PURSUANT TO SECTION 13(1.1) AND SECTION 16
OF THE *MIGRATORY BIRDS CONVENTION ACT*
AND PURSUANT TO SECTIONS 228(2) AND SECTION 234
OF THE *ENVIRONMENTAL PROTECTION AND ENHANCEMENT ACT***

WHEREAS Syncrude Canada Ltd. ("Syncrude") stands convicted of the following two Counts:

Count 1: On or about the 28th day of April, 2008, at or near Fort McMurray, in the Province of Alberta did fail to keep or store a hazardous substance in a manner that ensures that the hazardous substance does not directly or indirectly come into contact with or contaminate any animals, contrary to section 155 of the Environmental Protection and Enhancement Act and did thereby commit an offence contrary to section 277(k) of the Environmental Protection and Enhancement Act

Count 2: On or about the 28th day of April, 2008, A.D., at or near Fort McMurray, in the Province of Alberta, Syncrude Canada Inc. did unlawfully deposit a substance that is harmful to migratory

birds, or permit such a substance to be deposited, in waters or an area frequented by migratory birds or in a place from which the substance may enter such waters or such area, contrary to Section 5.1(1) of the Migratory Birds Convention Act, 1994, S.C. 1994, c. 22, as amended, thereby committing an offence under Section 13(1) of that Act.

AND WHEREAS in addition to the penalty of \$300,000.00 imposed under the *Migratory Birds Convention Act*, and having regard to the nature of the offence and circumstances surrounding its commission;

AND WHEREAS in addition to the penalty of \$500,000.00 imposed under the *Environmental Protection and Enhancement Act* and having regard to the nature of the offence and circumstances surrounding its commission;

AND WHEREAS the Crown and Defence Counsel have made a joint submission to this Honourable Court pursuant to Section 16 of the *Migratory Birds Convention Act* and Section 234 of the *Environmental Protection and Enhancement Act* for the following sentencing projects (collectively the "Sentencing Projects"):

- (a) to provide funding for an independent research project at the University of Alberta that will assess and identify avian species and migration in the northeast region of the Alberta, provide information to help and advance bird protection in the oil sands region of Alberta, and recommend the optimal deterrent practices to protect avian populations from industrial developments;
- (b) to provide funding to a joint venture of environmental conservation organizations to acquire and preserve high value waterfowl habitat; and
- (c) to provide funding to develop a curriculum for students in a Wildlife Management Program at Keyano College to have a specific focus on avian monitoring and protection.

AND WHEREAS \$250,000.00 from the penalty under the *Environmental Protection and Enhancement Act* be applied to the Sentencing Projects pursuant to Section 234 (1)(h) of that Act, to establish a total contribution of \$2,450,000.00.

IT IS HEREBY ORDERED THAT pursuant to the provisions of the *Migratory Birds Convention Act* and the *Environmental Protection and Enhancement Act*, Syncrude Canada Ltd. ("Syncrude") shall comply with the following conditions:

1. That on or before the 30th day of November, 2010, Syncrude shall deposit the amount of \$1,300,000.00 into a trust account ("the University Trust Account") at the University of Alberta for the sole purpose of funding the Research on Avian Protection Project. This project will compile the critical compendium of all historic and current information concerning the migratory pressures experienced by birds in the oil sands region and will include field studies to update, validate and verify this information. The project will be coordinated with any new monitoring requirements in the industry and carry out a critical analysis of bird deterrent systems and provide the information needed to improve the protection of migratory bird populations in the Fort McMurray Area. Further particulars of this project are set out in Appendix "A" to this Order.
2. All of the studies and reports produced in accordance with the project in paragraph 1 will be available to the public and may be posted on the website of the University of Alberta and the University Trust Account will be managed in accordance with the Conditions of Funding as set out in Appendix "B" to this Order.
3. That on or before the 30th day of November, 2010 Syncrude shall deposit the amount of \$900,000.00 into an account with the Alberta Conservation Association ("Waterfowl Habitat Fund") to acquire fragmented acreage of the Golden Ranches Waterfowl Habitat Project which has been designated as a conservation high priority area by the Alberta Conservation Association, the Nature Conservancy of Canada, Ducks Unlimited, the Alberta Fish & Game Association and the Edmonton & Area Land Trust. This land provides important habitat for migrating and nesting waterfowl. Additional information pertaining to the Golden Ranch Waterfowl Habitat Project, including the funding provisions, are set out in Appendix "C" to this Order.
4. The Alberta Conservation Association will provide a report and accounting of the Waterfowl Habitat Fund in paragraph 3 within six months of receiving the funds to the Coordinator of Environmental Protection, Alberta Justice or her designate and to the appropriate officer at Environment Canada.

5. That on or before the 30th day of November, 2010 Syncrude shall also deposit the sum of \$250,000.00, being one-half of the penalty under the *Alberta Environmental Protection and Enhancement Act*, (the "Education Fund") with Keyano College to develop a curriculum for the Wildlife Management Technician Diploma Program with a specific view to enhancing the curriculum to address avian monitoring and protection practices. This initiative is committed to a collaborative relationship with the University of Alberta. Further particulars of this program are set out in Appendix "D" attached to this Order.
6. The Education Funds shall be managed in accordance with the conditions of funding as set out in Appendix "E" attached to this Order.
7. Syncrude shall undertake and complete, within three months from the publication or posting on the University of Alberta website of the final recommendations of the Research on Avian Protection Project, a review of its Waterfowl Protection Plan and incorporate any measures Syncrude identifies as reasonable, reliable and cost effective enhancements to water bird deterrents for its operations. Syncrude will then submit within 30 days of its review, a revised Waterfowl Protection Plan to the Director of Approvals with Alberta Environment with a request that Syncrude's Approval 26-02-00 be amended to adopt the revised Waterfowl Protection Plan.
8. Syncrude will further provide a copy of its revised Waterfowl Protection Plan to the Coordinator of Environmental Prosecutions, Alberta Justice or her designate and to the appropriate officer of Environment Canada. If any one or more of those individuals believe that Syncrude should have incorporated one or more other recommendations from the Advisory Committee's final recommendations and the parties are unable to resolve that concern, then the matter will be referred to an independent environmental auditor, agreed to among the parties, for final determination. Syncrude will re-submit the revised Waterfowl Protection Plan incorporating the decision of that auditor to the Director of Approvals for final approval in accordance with Alberta Environment Approval 26-02-00.
9. Upon payment of the monies as required by the foregoing paragraphs of this Order, Syncrude shall have no further responsibility for the funds in the University Trust Account, or Waterfowl Habitat Fund or the Education Fund. However, Syncrude shall continue to be responsible to fulfill the requirements of paragraphs 7 and 8.

10. If any of the conditions or requirements of this Order cannot be met, Counsel for the Public Prosecution Service of Canada and the Attorney General and Syncrude shall meet to resolve the issue, failing which the parties hereto shall appear before this Honourable Court for further direction.

DATED this 22nd day of October, 2010.



The Honourable Judge K.E. Tjosvold
Provincial Court of Alberta

CONSENTED TO:

Per:

Per:

_____ **Kent C. Brown and Alexander R. Bernard for the
Public Prosecution Service of Canada**

Per:

_____ **Susan L. McRory
for the Attorney General of Alberta**

Per:

_____ **John J. Marshall Q.C.
Macleod Dixon LLP**

and

Per:

_____ **Ronald M. Kruhlak
McLennan Ross LLP**

Counsel for Syncrude Canada Ltd.

Appendix "A"

Research on Avian Protection Project

Project description:

The overall project would be overseen and given direction by a multi-stakeholder advisory committee. Prospective members of the advisory committee are outlined below:

- Colleen Cassady St. Clair (University of Alberta)
- John Gulley (Golder Associates Ltd.)
- Darrell Martindale (Industry)
- Dave Fairless (Alberta Environment)
- Joel Ingram (Canadian Wildlife Service)

The Advisory Committee would review information and attend meetings or conference calls to discuss the Terms of Reference and refine the Work Plan for the different components of the research being undertaken. They would operate on a majority view and record differing opinions. It is anticipated that the Advisory Committee will convene semi-monthly during the first 4 months of the project, and thereafter based on need. Tentatively, they will subsequently meet every other month except in February of each year when more frequent meetings may be needed to support impending field work and approval of the final recommendations.

The project is comprised of four parts which are described in more detail below.

1. Compendium of information of bird use and deterrence practices in the oil sands region and review of avian deterrents in other industries.
2. Field study research and analysis.
3. Integration with monitoring protocols.
4. Identification of best practices.

Part 1. Compendium of Information

The initial portion of this multi-year research project would consist of completing two reviews. The first would collect in one place all of the historic and current information that is available on the use by birds of the oil sands region. This compilation would describe the timing, volume, spatial distribution and species composition of avian migration in the region. Relevant data would be gathered from published literature, wildlife biodiversity reports conducted in relation to the environmental impact assessments for various projects, the rather extensive surveys conducted in the late 1970s and early 1980s, and other sources. The compilation of this information would be made publicly available to support current and future research in the region. This review would also include an amalgamation of information available on historic and current bird deterrent practices in the oil sands region.

A second review would critically assess the types and success of avian deterrents used at industrial, airport, agricultural, and aquacultural sites around the world. This review would categorize deterrent types and efficacy in relation to risk to both wildlife (e.g., pond toxicity) and humans (e.g., bird strike at airports).

Both reviews would help to identify information gaps in the existing oil sands literature. It is anticipated that these reviews would be carried out primarily by a student or postdoctoral fellow with input and review from the Advisory Committee and a research professor from the University of Alberta.

Part 2. Field Study Research and Analysis

The second portion of this project would consist of field studies of current bird use of the oil sands ponds and adjacent natural wetlands. This data and related data analysis would be compared to the amalgamated historical data to identify potential species, locations, and time periods of special concern. It is anticipated that this portion of the project would also be coordinated by the research professor(s) identified above, to be completed primarily by students who would use the field studies in furtherance of their educational programs, likely at a Masters level, with support by a postdoctoral fellow with input and review by the Advisory Committee.

Part 3. Integration with Monitoring Protocols

Studies will be coordinated to complement the newly-standardized monitoring protocols required by Alberta Environment and will be coordinated with work underway by other regulators. For all project components, steps will be taken to ensure efforts are complementary and not redundant with government agencies or oil sands operators.

Parts 1, 2 and 3 of this project are intended to provide the increased level of knowledge that is needed to identify areas of potential improvement in the current bird deterrence systems used by oil sands operators. These studies would be undertaken under the direction and review of the Advisory Committee.

Part 4. Identification of best practices and recommendations

The background data, described above, such as migration patterns and the presence of certain bird species in the oil sands region, is necessary in order to provide a backdrop against which to study the current systems of bird deterrence used by operators in the oil sands region and identify potential areas which can be improved.

The final portion of this project would synthesize the first 2.5 years of research to generate predictive models of pond risk and standardized recommendations for the use of deterrents that would provide optimal avian protection. The Advisory Committee will provide input on the resources needed to complete this component and approve the work and recommendations.

Ultimately, the Research in Avian Protection Project is expected to provide information to help advance bird protection in the oil sands region of Alberta.

Appendix "B"

Research on Avian Protection Project Administrative Framework

Conditions of Funding

The trust fund established by this Order in favor of the Department of Biological Sciences at the University of Alberta may be used by the University of Alberta on the following conditions:

1. The funds shall be used to develop the Research on Avian Protection Project within the budget included below.
2. Professor C. C. St. Clair is the designated representative of the University of Alberta for this project and will manage the project in conjunction with the oversight and guidance of the Advisory Committee established for the project.
3. The Research on Avian Protection Project shall be completed within three years.
4. The following limitations apply to the Research on Avian Protection Project.
 - a. At the conclusion of each segment of the Project, the University of Alberta shall submit a filed written report with this Honourable Court, and to the Environmental Coordinator Regulatory Prosecutions, Alberta Justice or her designate and to the Director of the Public Prosecution Service of Canada or his designate.
 - b. The reports prepared pursuant to paragraph 3(b) shall be in the public domain.
5. The following will not be considered legitimate expenses of the Project:
 - a. Operating expenses of the University of Alberta that are not related to this Project;
 - b. Purchase of land;
 - c. The regular activities of the University of Alberta;
 - d. Fees or honoraria for members of the University of Alberta, other than the costs directly associated with the Project; and
6. At the conclusion of the Project, the University of Alberta shall provide this Honourable Court with the final written report and a financial statement outlining and accounting for the funds directed to this project by this Order and shall return any unused funds to the Clerk of the Court, St. Albert Provincial Court House, St. Albert, Alberta within six months of completion of the Project to be dealt with thereafter as this Honourable Court may direct.

7. If for any reason the funds directed to this project cannot be used in the manner set forth in this Order, or if the University of Alberta is for any reason unable or unwilling to comply with this Order, all funds directed to this project shall be held by the University of Alberta in trust until further direction of this Honourable Court.

Proposed Budget

A more detailed budget will be established upon a more detailed description of the project components and the development of an execution plan.

The primary costs associated with this project are estimated to include the following:

- | | | |
|----|--|---|
| 1. | Salaries and honorariums for Post-doctorate fellow, Master of Science students, field assistants, advisory committee, honoraria and expenses, administrative support | \$700,000.00
(three years for these foregoing positions) |
| 2. | Field research including costs for travel, accommodations, field travel, off road vehicles, repairs and maintenance, various field equipments | \$400,000.00
(2 to 3 years of expenses) |
| 3. | Other equipment expenses such as computers, software, and office support | \$135,000.00 |
| 4. | Provision for administrative expenses. | <u>\$65,000.000</u> |
| | | \$1,300,000.00 |

Appendix "C"

October 13, 2010



Lisa Semenchuk
Legal Counsel
McLennan Ross LLP
600 West Chambers
12220 Stony Plain Road
Edmonton, AB., T5N 3Y4

Ms. Semenchuk,

As per our recent telephone conversations I am sending you this letter to provide you with the details of our proposal for the use of \$900,000 in creative sentencing funds. As you are aware Alberta Conservation Association (ACA) has been working very closely with Nature Conservancy of Canada (NCC), Alberta Fish and Game Association (AFGA) and Edmonton and Area Land Trust (EALT) to complete the purchase of the 1500 acre Golden Ranches. The following proposal is the result of a collaborative effort between our respective groups to determine the best use of the funds for the conservation and restoration of wetland habitat in the area.

Golden Ranches is located on the shore of North Cooking Lake, in Strathcona County, approximately 27 km east of Edmonton. The property lies within a North American Wetlands Conservation Act (NAWCA) target area for conservation and provides significant wetland habitat values. In addition to the 8 km shoreline of North Cooking Lake that will be conserved, there are also numerous ephemeral and permanent wetlands that occur throughout the property. An added bonus to the Golden Ranches is the potential for restoration of wetlands on the property to further increase the wetland values associated with the purchase.

We have been fortunate, in that the current owners of the Golden Ranches have allowed our conservation groups to purchase Golden Ranches in smaller parcels, as funds have become available. These creative sentencing funds will allow us to complete the purchase of all Golden Ranches parcels, with the exception of the home quarters.

After our partnership discussions we believe the best use of the funding would be as follows. We propose to purchase three parcels of land directly adjacent to North Cooking Lake (part of Area 7, Area 9 and Area 11). These three parcels are approximately 60

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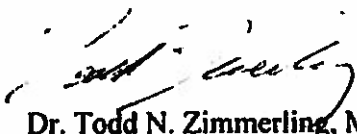
acres in area with a purchase price of \$1,392,000. ACA will provide half the money to make this purchase (\$696,000) from the creative sentencing funds. Our conservation partners (NCC, AFGA, EALT) will work with the current owners to receive the remaining value associated with the lands as a donation through the Federal Ecogift Program. This arrangement will result in the conservation partnership receiving \$1,392,000 in land value for \$696,000 in cash and will stretch the creative sentencing funds to a value of at least \$1.596 million. The remaining creative sentencing funds (\$204,000) will be put towards the land stewardship endowment on the purchased parcels.

As soon as ACA receives the creative sentencing funds, an offer to purchase half and Ecogift half of Area 7, 9 and 11 will be submitted to the current owners. We anticipate that the purchase will be complete before the end of 2010. Once there is an accepted offer ACA will transfer the \$696,000 to ACA's lawyer, in trust, to aid in completing the purchase. The remaining creative sentencing funds will be placed in ACA's stewardship endowment fund account to provide the long-term stewardship of the land.

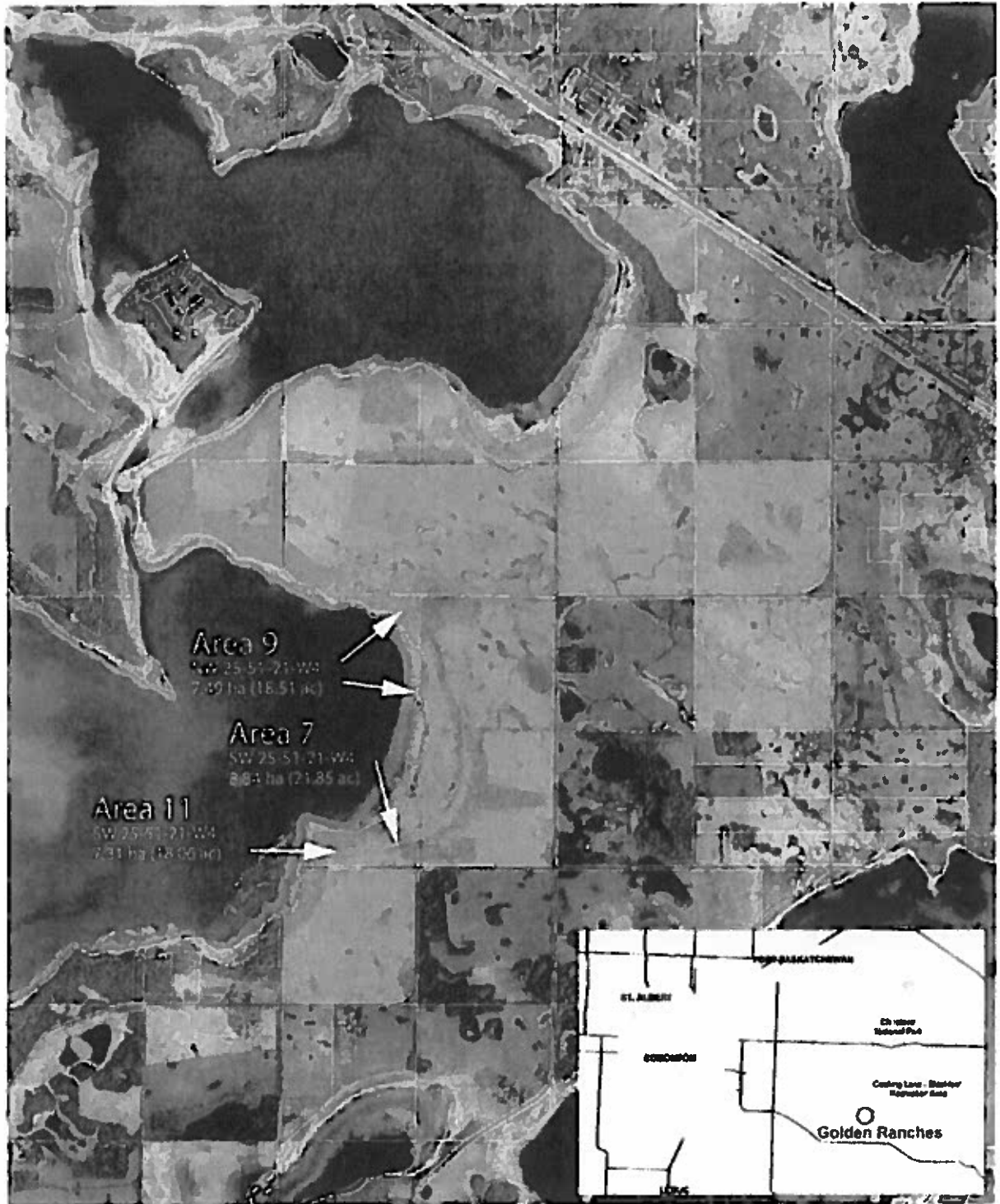
The selection of the Golden Ranches as a project to direct these creative sentencing funds towards is an excellent choice, not only with respect to the wetlands and the migratory birds that use these habitats, but also in terms of conservation of overall biodiversity in the Captial Region. In addition, the location of this property, within 27 km of Edmonton, provides and excellent opportunity for the general public to experience this natural area and develop a greater appreciation for wildlife and the habitat they depend on.

If you have any questions please do not hesitate to contact me.

Sincerely,



Dr. Todd N. Zimmerling, M.Sc., Ph.D., P.Biol.
President and CEO
Alberta Conservation Association



Appendix "D"

Education Proposal

Development of Wildlife Management Technician Diploma Program

Project:

Keyano College proposes to develop a Wildlife Management Technician (Co-op) Diploma program to educate students as they engage in wildlife management with a particular focus on impact of industrial sites.

This proposal will provide for the enhancement of the curriculum to address avian monitoring and protection practices. Keyano College will develop and deliver the program and will undertake a consultation process with the University of Alberta to provide advice on the curriculum related to avian protection based on the findings of the Research in Avian Protection Project. Keyano College will also commit to a collaborative relationship with the University of Alberta as they undertake this project.

Introduction:

This proposal addresses the requirement of a new program stream at Keyano College to support the creation of a field of study devoted to Wildlife Management. It is proposed that this program would begin development during the 2010/11 academic year and would be available for students to enroll by September 2012. The program would be designed in a cooperative education model and would encompass project-based applied research as a component of the curriculum.

Since Keyano College currently offers a two-year Environmental Technology program it is anticipated that students currently enrolled in this program may opt to enter the Wildlife Management stream during their second year of study. As well, graduates of our existing Environmental Monitoring program would be supported for entry into this program through a process of advanced standing. Predominantly the students from our Environmental Monitoring program are Aboriginal and from the Fort McMurray and Fort Chipewyan areas.

Keyano College will support the entry of our Aboriginal students into this program by promoting this program to our current and previous Environmental Monitoring students and supporting our aboriginal students who are interested in this field of study by the development and offering of a pre-wildlife technology program that would assist aboriginal students in the achievement of any academic entrance requirements and a one or two course advanced standing.

Once the curriculum for this program has been developed it is anticipated that existing employees of various organizations will be able to complete this credential on a part-time basis through evening, online or weekend programming. The College will engage and support these learners through a Prior Learning Assessment (PLA) process that will award advanced standing for non-formal learning that can be demonstrated by the student.

Methods:

Cooperative Education Model

The program will include two separate co-op work terms for each student. These work terms should be focused on the Wildlife monitoring and deterring activities at the worksite. The work terms will be supervised by the organization and supported by the Co-operative Education Officer of Keyano College.

Project-Based Applied Research

This program will include within the curriculum model an opportunity for the students to participate in one or two applied research projects sponsored by local industry. The students will engage in the applied research project and be supported and guided by a faculty member from the Wildlife Management Technician program and a project sponsor from the organization.

At the end of the term the students will present their findings and recommendations to the sponsoring organization.

Employment Opportunities for Graduates

To ensure the success of any program at a College it is necessary to ensure that employment opportunities exist for graduates. To ensure that local employment opportunities are available it is important that industry engages in the development of this curriculum to ensure that the terminal program outcomes meet the industry employment requirements. A number of feedback sessions this will be necessary to accomplish this goal and to gain support from industry to accept this credential as an appropriate credential for entry level positions.

Community Engagement

The program will connect to the community through an Advisory Committee process to review the program on an ongoing basis to ensure relevance to the occupations and industry. As well, the program will seek to utilize guest lecturers from industry and the Aboriginal community to support their learning and understanding of the field of study.

Budget:

In addition to curriculum development requirements a new program requires several years of marketing and recruitment to generate significant student applications. Additional specialist faculty focused on wildlife management will be required to support both the development and ongoing delivery of this program. This budget reflects the development costs and the ongoing support for a period of three years.

<u>Development</u>	<u>Expenses</u>
Faculty dedicated to curriculum development (2011/12)	120,000.00
Operations Support (2012/13 Academic Year) Faculty	120,000.00
Project-Based Applied Research	30,000.00
Total	250,000.00

Conclusion:

Once this program has reached maturity during the 2014/15 Academic Year the college would no longer require support to continue to operate this program and would be able to integrate the costs of the program to overall College budget. Ongoing support for co-op placements, project-based applied research projects, Advisory committee involvement and the ability to access guest lecturers, however, would remain.

Project Submitted by:

Mr. Louis Dingley, Chair of University Studies, Science and Environmental Technology, Keyano College

Mr. Guy Harmer, Dean of Academic and Career Programs, Keyano College

Ms. Ann Everatt, Vice President, Academic, Keyano College.

Appendix "E"

Wildlife Management Technician Diploma Program

Administrative Framework & Funding Conditions

Conditions of Funding:

A trust fund is created at Keyano College, as established by this Order, may be used by Keyano College on the following conditions:

1. The funds shall be used to develop the Wildlife Management Technician Program within the budget and timetable prescribed in Appendix "D". The development of the program shall be completed within three years;
2. Ann Everatt VP Academic is the duly authorized representative of Keyano College and will provide the oversight to ensure that the funds dedicated to this project are applied in accordance with this Administrator Framework and Funding Conditions.
3. Keyano College will submit a copy of the curriculum to the Environmental Coordinator of Regulatory Prosecutions, Alberta Justice or her designate and the designated officer at Environment Canada.
4. The information developed pursuant to paragraph 3(b) shall be in the public domain.
5. The following will not be considered legitimate expenses of the program:
 - a. operating expenses of Keyano College not related to the program;
 - b. purchase of land or equipment;
 - c. the regular activities of Keyano College;
 - d. fees of honorary for members of Keyano College other than the costs directly associated with the study; and
 - e. other out of province travel expenses.
6. At the conclusion of this program, Keyano College shall provide this Honorable Court with a financial statement outlining an accounting for the funds directed to this program by this Order and shall return any unused funds to the Clerk of Court, St. Albert Provincial Court House, St. Albert, Alberta, within six months of completion of the program to be dealt with thereafter as this Honorable Court may direct.
7. If for any reason the funds directed to the program can not be used in the manner set forth in this Order or if Keyano College is for any reason unable or unwilling to comply with this Order all funds associated with this program shall be held by Keyano College in Trust until further direction of this Honorable Court.

Action No. 090157926P1

**IN THE PROVINCIAL COURT OF ALBERTA
CRIMINAL DIVISION**

BETWEEN:

HER MAJESTY THE QUEEN

- and -

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