



July 31, 2009

Ms. Judith Wright-Bird  
Chairperson, Sahtu Land Use Planning Board  
Box 235  
Fort Good Hope, NT X0E 0H0

Dear Ms. Wright-Bird:

**Re: CAPP Comments on Draft 2 of the Sahtu Land Use Plan**

CAPP appreciates the opportunity to provide comment on the draft Sahtu Land Use Plan (the Plan). We recognize the efforts of the Board and staff to engage the oil and gas industry in the development of the Plan, and look forward to continued discussions on Sahtu Land Use Plan.

In reviewing the Plan, CAPP has considered a number of principles which we believe a land use plan must reflect:

- Balance and clear value trade offs - reflecting what is socially acceptable, economically enabling to fulfill the expectations of Sahtu residents, and ecologically appropriate;
- Adaptive and continually improving – critically important in a relatively undeveloped region like the Sahtu where new information about the resources and likely development scenarios is constantly evolving;
- Integrated and consistent with differing jurisdictional initiatives (e.g. economic development objectives, Protected Areas Strategy); and
- Effective and efficient, transparent and fair to all parties, including existing rights holders.

In light of these principles, CAPP finds the recent draft of the Plan to be an improvement over the previous draft. There are several areas where we believe the Planning Board has made solid improvements that should be maintained or enhanced in future revisions, in particular:

1. The shift to an outcome or goal-based conformity requirements from a prescriptive approach is positive, consistent with the level of guidance appropriate for a land use plan. This will also better enable continuous improvement in operations in the Sahtu.
2. The reduction in area of many conservation zones to smaller, more localized zones is positive and we believe indicative that development does not preclude retention of ecological and cultural values.
3. Many of the actions targeted at governments and the Sahtu Secretariat Incorporated (SSI) to complete key policies or guidelines are welcomed. Properly developed guidelines (consisting of clear scope and objectives, and consultation with industry as appropriate) could increase transparency in key areas and provide greater certainty for industry operations.

In reviewing the Plan, we have provided comments on those areas where the Planning Board has specifically requested feedback as well as other areas where we believe there is an opportunity for further

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improvement. In addition to these general comments, we have also provided some more detailed comments with specific wording suggestions.

### **Vision and Goals**

CAPP generally supports the vision identified for the Sahtu. In particular, we are pleased that the Vision acknowledges the importance of non-renewable resource assessment in the region, and seeks to “promote” economic development opportunities. We believe this appropriately reflects the positive benefits that responsible development can bring to the Sahtu region and the need for deliberate action to ensure they occur.

In considering the goals identified, CAPP again supports the idea of promotion of responsible development, however we believe overall the goals identified are too broad and should be clarified. Several of the identified goals fall outside the scope of land use planning and this should be acknowledged.

### **Existing Use (Grandfathering)**

CAPP appreciates the Plan recognizes that existing rights held prior to the approval of the Plan are exempt from its provisions. However, there does appear to be some ambiguity in the Plan as to the extent of this exemption related to the renewal or issuance of new permits related to existing rights. Given the short time period of land use permits and water licences, and the low levels of development in the Sahtu, CAPP believes that the exemption should apply without condition.

Further, we believe it is important for the Planning Board to recognize that the Sahtu is relatively unexplored from an oil and gas perspective. Development of discoveries made to date and existing rights held is largely contingent on further discoveries being made to prove their economic viability. Accordingly, provisions such as conservation zones or conformity requirements applicable to future activity may have significant impacts on the economic viability of exercising existing rights. In a worst case scenario, an existing right could be held in a conservation zone with no opportunity to further explore or prove up sufficient reserves to justify commercialization of the resource. We believe the Planning Board should consider this in their deliberations, as well as the possibility of including compensation for rights holders adversely impacted by the provisions of the Plan.

### **Dual Designation of Legislated Protected Areas under the Plan**

CAPP does not support the “dual designation” being considered whereby the Plan would apply to legislated protected areas advanced through the Protected Areas Strategy (PAS). CAPP believes that governance of activities in the Sahtu should avoid overlap and duplication. Areas advancing through the PAS undergo evaluation of what legislative options best fit with the values being protected. Overlaying the Plan on top of that legislation and subsequent management plans would create unnecessary overlap and at worst inconsistent or conflicting direction for industry.

The specific concern referenced in the draft Plan as to why this is necessary is that many legislated protected areas do not have the ability to withdraw subsurface access. CAPP does not believe that it is necessary or appropriate to withdraw sub-surface access, as will be expanded on below.

CAPP also believes the Plan should address how changes in the boundaries of Proposed Conservation Initiatives will be incorporated. As areas advance through the PAS process, it is possible that boundaries will change. Should this occur, we believe the Plan should state that areas not within any legislated protected area will revert to a General Use Zone.

### **Sub-Surface Withdrawal**

CAPP does not believe the Plan should make any recommendations or zoning decisions that withdraw subsurface access. The zoning of the Plan is based on surface values. However, it is possible to protect surface values (by prohibiting surface access) while still allowing subsurface rights to be accessed. This could be accomplished through the use of horizontal or directional drilling. Allowing sub-surface access in areas of the Sahtu with oil and gas potential would maintain maximum flexibility as new information about the sub-surface becomes available.

### **Prohibition on Oil and Gas Activities in Conservation Zones**

The prohibition on oil and gas activities in conservation zones is written very broadly and appears to prohibit a number of oil and gas related activities that do not have any surface impacts, for example rock and soil sampling, or ground gravity and aerial surveys. These activities could be valuable in helping obtain information on projects occurring outside the conservation zones, and would leave no physical footprint within the conservation zone. However, they would likely require a regulatory approval and hence trigger the prohibitions in the Plan. CAPP suggests that there is room in the Plan to limit the prohibition on oil and gas activity to only those activities that have a surface impact.

### **Cumulative Effects**

CAPP understands that the cumulative effects provisions of the Plan are still under development. CAPP would like to offer the following suggestions for how cumulative effects can be addressed successfully.

- Any decision should be science-based, but ultimately be made in a context that provides balance and incorporates trade offs to achieve the multiple goals of the Plan;
- Cumulative effects management should be based on clear goals and objectives that all parties can understand. Prescriptive tools may restrict industry activity without achieving the intended goal.
- Decision-making processes should be clear and provide for improvement over time. Understanding how decisions are being made and what values are being considered will give all stakeholders greater comfort in the process, while a process for review will allow managers to adapt and improve over time.
- Any approach should be integrated with existing programs, such as the Environmental Stewardship Framework and Cumulative Impact Monitoring Program.

Recognizing that the Planning Board has not yet made any decisions about the incorporation of targets/thresholds as part of the cumulative effects, we offer the following comments. Thresholds are a largely unproven and untested concept in land management, and the effects they have on the attractiveness of the region for industry investment is unknown. To date, the Sahtu has little development or industrial footprint. Accordingly, we believe the Planning Board should consider whether there is need at this time for a prescriptive approach like targets/thresholds. We believe there is greater value in a cumulative effects approach that follows the principles outlined above to deliver a more flexible approach that will managers to adapt to new information (such as new science or development opportunities) as they arise.

### **Implementation**

We are concerned with the process outlined in the Plan whereby the Planning Board would receive a proponent's application from the Sahtu or Mackenzie Valley Land and Water Board and make a conformity determination at that time.

1. If the intent is to have a concurrent conformity determination and preliminary screening, time and effort will be spent on regulatory reviews that could ultimately prove non-conforming. This is an inefficient use of both the proponents and regulators' resources.
2. There is no timeline established for the conformity determination.

3. The conformity requirements lay out a number of requirements that overlap with the role of the Land and Water Board in doing a preliminary screening. As such, we are concerned about the resultant duplication and the additional Planning Board resources that will be required, from both a personnel and expertise perspective.

As such, CAPP suggests that in the interests of promoting an effective and efficient regulatory environment, the responsible Land and Water Board should undertake a conformity determination as part of their screening. The Planning Board would continue to play a role in monitoring the success of the Plan, and processing requests for amendments and variances.

### **Plan Sections, Conformity Requirements, Recommendations, and Actions**

#### Section 2.5.5 – Oil and Gas

The expenditure figures quoted do not reflect the full level of industry activity and economic contributions. Other operators have been active in the region and should be included to provide a complete picture. INAC should be able provide information on benefits, although that would not include any access or benefits expenditures on private lands. CAPP suggests that this information needs to be included in full, or omitted.

Further, we note that the approach taken with the oil and gas section is different than for mining, which focuses more on the mineral tenure and phases of mining. The purposes of these sections and why they are included in the Plan needs to be better articulated.

#### Bulk Water Removal

CAPP suggests that the prohibition on bulk water withdrawal should be clarified to state the prohibition is on water being exported outside the Northwest Territories. It is our understanding that this prohibition is not intended to impact industry activities that require water volumes greater than 40 litres.

#### Reclamation and Remediation

It is unclear if the standard of reclamation required in special management zones and conservation zones is an achievable goal. Greater clarification is required as to what is considered adequate restoration to the condition before the land use activity commenced. Does this mean free of contamination? Or does it also mean restoration of the soils and native vegetation communities? This is extremely difficult in a northern environment where soils are shallow, and native vegetation is often unique and adapted. Flexibility should also be provided to accommodate situations where alternative uses of an area are desired.

#### Conformity Requirements

- CR 4 – This recommendation is redundant with the federal Species At Risk Act (SARA) and overlaps with Environment Canada's responsibility. The Planning Board should not be evaluating compliance with a federal statute for which it is not responsible. Suggest this CR be removed.
- CR 8 – It is not clear what the expectation is as it relates to “new technologies” and “adaptive management practices”. The use of new technologies in every application is not always possible. Suggest language encouraging use of “best economically available technology” may better reflect the intent.
- CR9 – Suggest changing “possible” to “practical”.
- CR15 – This CR essentially repeats the goal of preliminary screening. We do not object to the intent, but we do believe it is redundant with existing regulatory requirements. Further, making this type of determination would essentially require duplicating the function of the Land and Water Board. The Land and Water Board should be responsible for this determination.

- CR 16 – This CR contains several prescriptive elements that we do not believe is appropriate or required at the land use plan level. Further, it is not always possible to avoid sensitive habitat features. This CR should include provision for flexibility in the distances and for proponents to apply mitigation.
- CR 19 - Clarity is required on what is meant by no materials being buried on site, and in particular if the intent is for proponents to dig up buried pipelines. The general consensus from other Canadian jurisdictions is that when pipelines have been properly abandoned (as would be regulated by the NEB in the Sahtu), physically removing them causes greater environmental impact than leaving them in the ground.
- CR 19 – The definition of waste needs to be clarified, and specifically whether it includes drilling waste. If so, this CR would effectively prohibit the use of sumps. CAPP suggests that waste needs to explicitly exclude drilling waste (drill cuttings and/or drilling fluids).
- CR 20 – The oil and gas industry is already required to post securities for their activities. This CR should make explicit that the Plan is not requiring an additional security to be posted in these cases.
- CR 21 – What is the scientific rationale backing this CR? DFO has a water withdrawal protocol that determines acceptable water withdrawal levels. It is unclear whether this has been considered in this case.
- CR 23 - CAPP supports the intent of CR 23 which provides for access and infrastructure development through conservation zones. We believe this is consistent with the goal of promotion of economic growth and finding ways to avoid indirectly impacting development opportunities in SMZs and GZs.

#### Recommendations

- R2 - Suggest “maximize” should be changed to “promote”. As written, it is too broad.
- R3 - CAPP *strongly* objects to Recommendation 3 related to the signing of benefits agreements for access to crown lands. We believe this creates an unacceptable precedent for private groups benefitting from access to public lands. This goes beyond what was agreed to in the Sahtu Comprehensive Land Claim and is beyond the mandate of the Planning Board to recommend.
- R4 – Suggest adding “trained and competent” or “qualified” monitors and deleting the second sentence. Alternatively, the purpose and function of the monitor needs to be better defined. As written, the wording that monitors should inform “appropriate authorities” implies a quasi-regulatory monitoring function that is inappropriate.

#### Actions

- A2 & A3 – CAPP suggests these actions should be merged. Consultation guidelines will have the greatest value if they offer guidance that all parties agree to and apply to the entire Sahtu Settlement Area (i.e. should be developed at the SSI level, and not by several Designated Sahtu Organizations). Multiple guidelines and expectations from governments, regulators and different Sahtu organizations should be avoided.
- A4 – This action should be refined to state the purpose of the guidelines relative to incorporating traditional knowledge (TK) into project assessment. The Plan itself reflects a broad level of TK and these guidelines should only serve to augment what is required at a project-specific level. Further, per comment above, the greatest value will come from guidelines applicable to the Sahtu Settlement Area as a whole.

#### **Conclusion**

CAPP appreciates the opportunity to provide comment on the draft Sahtu Land Use Plan. While progress has been made on the Plan, we believe there a number of areas where further modification and

clarification is required. Addressing the issues outlined above will help in delivering a Plan that can help meet the goals of the Sahtu with respect to promoting responsible resource development.

The Plan continues to be of great interest to CAPP and its members. If we can further assist or clarify our comments, please do not hesitate to contact me (403) 267-1130. We look forward to continued dialogue with the Planning Board on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Peters". The signature is stylized and cursive, with a large, sweeping flourish at the end.

Mike Peters  
Manager, Northern Canada Operations