



# Sahtu Land Use Planning Board

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Requested changes documented in these notes do not mean that the Board will make these changes. Some requests are beyond the Board's mandate or jurisdiction to address. The Board must consider all comments and requests and balance the interests of multiple parties. The Board will revise the Plan as it deems appropriate to achieve the right balance.

## SSI COMMENT REVIEW SUMMARY NOTES (TELECONFERENCE)

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**April 13, 2011, 10:00 am – 12:00 pm**

### **Participants:**

Heidi Wiebe, Plan Development Lead  
Dick Spaulding, Legal Counsel  
Ida Mak, Communication Coordinator/Planner

John Donihee, SSI Legal Counsel  
Ethel Blondin-Andrew, SSI President

Meeting start time: 10:22 am

### **1. Introductions and Context**

Heidi explained that we generally meet with approving parties once we receive written submissions so that we can clarify areas of confusion and give the party a chance to highlight the most salient points in their comments.

Heidi invited SSI to give opening comments.

### **2. General Overview of Comments (SSI to highlight key points & SLUPB to highlight overall impressions)**

Ethel: SSI held a meeting in FGH and John went through the CRs with the Board. He did a really good job and I think we all have a better understanding of the Plan.

John: It was clear that the District Land Corps and Communities were going to provide their own input and SSI would provide higher level input while supporting community direction. Peter Menacho expressed concerns about the GBLWMP and Joe Grandjambe wanted the Group



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Trapping Area included in the Plan. The communities wanted SSI to reflect their concerns and make the plan more effective. We've left it to the communities to give detailed comments regarding zoning and appropriate levels of protection for different areas.

The communities were concerned about proper implementation of the Plan and they want the system be a coordinated one. For example, SSI believes that the SLUPB would be best to determine conformity as opposed to other regulators.

A few Board members commented on the Gwich'in situation where to date, no Actions have been implemented. If this is where the Board runs into a jurisdictional limit, we have to make sure that there is another way for Actions to be implemented. We don't want the Actions to be orphaned. Some of them are very good.

As for CRs, we considered places where there would be overlaps between the Plan and what is already being implemented on the ground right now. Some things are being carried out by other bodies and do not need to be duplicated in the Plan.

Ethel: The SLUP has to be affordable on an implementation level and we have to identify the body that will be responsible for different levels of implementation. We had a lot of elders at the meeting there and when we were done the level of confidence was good.

Heidi: SSI's submission provides a lot of detail on implementation issues and there is quite good alignment with government and industry comments on these but I am concerned with areas where SSI's comments diverge from community direction.

One of our big struggles is to come up with clear direction of what everyone wants. The feedback we've gotten from the 2 governments over the years has been to develop broad goal-based direction, as opposed to prescriptive terms. In your submission you're asking for the more prescriptive approach. Where you suggest that we need more clarity, it would be helpful to tell us what you would like to see and provide the SLUPB with more direction. What exactly should the policies and protocols that we develop say and achieve? We write the Plan but we get our input and direction from the approving parties and other parties in the process.

Ethel: You said that SSI's comments diverged from community interests. I'd like you to list them so I have them on the top of my head. But we do need to remember that at the end of the day, we need a Plan that will be approved by the Federal government.

John: I think there's a misunderstanding here. We have told you that the way that the CRs are worded, it won't work. SSI is not disagreeing with the content of the CRs. SSI is strongly in support of the goals of the CRs but they need to be re-written. It's fine for the GNWT and INAC to ask for goal-based CRs but agencies like the NEB have the people power and technical ability to develop authorizations that will work for goal-based direction. That is not the case in the Sahtu. If CRs move to become more goal-based then the communities will be at a disadvantage. The fulfillment of the CRs will become subject to the interpretation of each regulator's corporate culture as each person interpreting the CR will be different from one regulator to another. The more specific the CRs are, the less room there is for interpretation.

The point of the submission was not to disagree with the content of the CRs but to speak to the language used because we did not think that it currently will work.

### **3. Scope of Authorizations**

Heidi: We've always worked off S.46 of the MVRMA which says that the Plan applies to all licences, permits and authorizations. The GNWT asked us to exclude tourism and archaeological



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authorizations. Dick's perspective has always been that it is not the Board's job to pick and choose which authorizations it applies to but to apply broadly to all authorizations. We agree that the Plan should not apply to business licences and administrative type authorizations, but anything that authorizes use or an activity, or gives a right, should be subject to the Plan.

I am wondering if SSI is using a more narrow definition of land and is limiting the scope of jurisdiction that the Plan should apply to. The MVRMA clearly says that the Plan shall address land, water and other resources. "Land" and "waters" are not defined terms. The list of authorizations included in SSI's submission omits authorizations associated with key land uses such as forestry, tourism, power development and research – land uses which the Plan is intended to apply to.

John: We anticipate that the Plan will apply to any activities that apply to the use of land, water or disposal of waste. The issue that I have with the Plan's approach is that it seems to apply to every activity that could possibly take place on the land. (Read 25.2.9 of the SDMCLCA to come up with the list as it is paramount to the MVRMA). I don't think that a business licence or an archaeological permit should fall under the plan.

The list of authorizations in the Plan are all issued by different agencies. Sometimes there will be 2 or 3 different agencies looking at the same activities and they may have different interpretations of the Plan. So our take is that you need to have a look at 25.2.9 of the SDMCLCA and take a narrow interpretation of it so that there is some sort of reasonable number of general authorizations that the Plan will apply to that will include 99% of the applications for permits, licences and authorizations.

It is not helpful for the Plan to apply to every possible authorization because any activity will involve standing on or being on the land in one way or another. I'm speaking rhetorically. It does not mean that it needs to be captured under the SLUP. The Board shouldn't be leaving any regulator free to make its own call.

Heidi: The list of authorizations that we currently have in Draft 3 was taken from the Gwich'in land use plan, which has been approved. So government has already agreed to it.

John: So what?

Heidi: It's the only approved Plan in the Mackenzie Valley. It's the logical place to look to see what is acceptable in a land use plan. INAC and GNWT approved the list of authorizations there. The GNWT is taking a narrower approach on the scope of authorizations for this Plan but the Gwich'in Plan is currently being implemented on the basis of that list of authorizations.

Dick: But let us ask ourselves why other parties are proposing a different approach from the Gwich'in Plan on this issue. Governments are working on the Dehcho Plan and the parties there have been disagreeing for some time over the authorizations that should or should not be included. But the Dehcho does not have a land claim agreement or the MVRMA to work under. We need to recognize this difference. The Sahtu has a treaty that has been signed. We have an implementation statute which has been passed and worked on. And we also have another land use plan, the Gwich'in Plan that has been approved under the implementation statute. The SLUPB can learn from this. There may be mistakes or areas for improvement in the Gwich'in plan, but it shouldn't be disregarded.

To open up S. 46.1 of the MVRMA and say that the Board is leaving it up to all the regulators to decide which authorizations the Plan can speak to if the Board does not include a closed list for approval in the Plan is to ask the Board to substitute its decision for Parliament's. Having the



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Plan apply to all authorizations does overlap but this is Parliament's call; it is also how the environmental review process works in the MVRMA and elsewhere. My advice to the Board was not to provide a closed list of authorizations because the Plan development process is not the place to settle which authorizations the Plan should or should not apply to. The term "land" in 46(1) comes from the treaty. I would be surprised if the Sahtu communities did not see forestry as a use of land, and that's a reasonable interpretation of their treaty.

You raised some good points John, such as research permits. Some of the authorizations listed in the Gwich'in plan are near the edges of activities that relate to land. The intent is only to catch significant activities that involve the use of land and water. The Board cannot say that the use of land and water does not include the use of other resources. I don't think it's so simple to say that the Board has abandoned its proper role in leaving it to the other parties to decide which authorizations the Plan applies to and which it does not.

John: Why include a list of authorizations in the Plan at all?

Dick: The list currently included in the plan is for illustrative purposes. If you would like the Board to remove it then the Board could consider that.

Ethel: Regarding the list of authorizations that you currently have in the plan, I think that there would be different community responses to different authorizations. The tone that I understand from your response is, where we included detail, you don't want it and where we did not give detail, you want it. SSI did not deal with zoning because we don't have any land. The zoning should come from the communities.

Heidi: The issue is that the list of authorizations that SSI drafted that it feels the Plan should apply to is much shorter than the list that the SLUPB has been considering until now.

Ethel: If we work off an onerous list of authorizations that the Plan should apply to, we might not even get past the first day of negotiations with the parties.

Dick: I'm looking at the April 10, 2010 list in the Gwich'in Plan's 5-year review document. It is a similar list to the SLUPB's.

Ethel: These days, a longer list will not go through. We can ask for the stars but in this political environment, we won't get it. What do you want SSI to do?

Dick: If I could make a few points. Although there is a disagreement here, it is a technical disagreement. It is about whether or not the Board should put a list in the Plan of authorizations that the Plan should apply to. This is a debate about what's in the MVRMA. If we can avoid doing that, let's avoid it.

Ethel: If we can get away with it.

Dick: The Board was trying to illustrate, not define what the Plan applies to. In fairness I think John read the plan as defining what the Plan applies to and it did not intend to go that far.

John: I think I'm not necessarily comfortable with the SLUPB's interpretation of land. When you read the SDMCLCA and the MVRMA together, it does not imply that all of these licences and authorizations necessarily fall under the Plan.

It will be up to each regulator to do a Conformity Determination. I am suggesting that the Board do the conformity determinations. In our submission, we tried to identify the main authorizations that relate to land and water. They include about 99% of the activities where permits will be required. Other activities that are not in the list will require authorizations at one



point in their development anyway so they will not fall under the radar. There will never be a hydro project that will not at some point be subject to applications that will have to go through the Plan. But you don't need to apply to all of the authorizations under the sun.

If you intend to say that some authorizations like business licences in tourism do not need to pass conformity under the plan, you will need to be much clearer. You will have to state clearly that despite this list, some applications will or will not be subject to the plan. That is not clear now.

This Plan is more complex than what the Gwich'in have in place. It will be a tough job for some of the organizations that do not deal with these authorizations to figure out whether or not the applications conform. In my view there are compelling reasons to narrow the list to those that manage 98% of the activities that take place on the land.

We should probably move on. It's not just a legal issue. The SSI's submission relates a lot to what we think can be approved and implemented.

Dick: I would like to discuss this with you John, in a follow-up call.

Ethel: We will never get complete agreement and there will always be someone who is not satisfied. But most leaders are reasonable and understand that we need to consider what is possible. We need to practice the art of the possible. We want to get the best deal that we can but there is no perfect deal. You will not have a perfect land use plan. Sometimes you have to accept that it's as good as you'll get.

Heidi: At the Public Hearing when you make your comments, it will be important to specify that you do not feel that forestry, tourism, hydro and research licences need to be included because they will already require licences, permits or authorizations that are included on your short list. I did not understand that from your comments and I thought you just wanted the plan to not apply to those activities. That will be an important distinction to make at the Hearing because in reading your submission I did not get that message.

John: That will be helpful. We just felt that there really are some things that are below threshold. We were trying to find a way to provide more clarity for organizations such as SLWB, DFO, Transport Canada, etc., when they issue authorizations.

#### **4. Recommendation to develop policy statements, protocols or guidance for CRs in collaboration with affected parties to provide clear direction on implementation**

Heidi: What do you picture as statements, protocols or guidance?

John: We are not necessarily suggesting that this needs to be a document with legal force or prescriptive power. We just wanted the SLUPB to give more information and clarity so that more direction is provided.

Eg. CR#2 talks about community engagement and the SLWB is working on community engagement policy and guidelines. It would be helpful to have something to refer applicants to. You could say for example, "if you will be on settlement lands, complete an ABA" because we can assume that the land corps will have the best interest of the community involved.

If there could be some guidance provided for example, you could say, go see what the MVEIRB has done and what the L&WBs have done for community engagement so that the proponent has more guidance and knows what to do.



Heidi: So these are not intended to replace the CRs but to add to them? Have you looked at the Implementation Guide? We do provide a bit more guidance there. We tried to point to specific guides and policies in the Dehcho and tell people to follow those but it wasn't acceptable to the regulators in that process so we haven't done this here. We might be able to include more detail like that now. Perhaps things are different in the Sahtu.

John: If your community engagement includes a number of CRs then it will be best to provide more clarity. It does not need to be in the Plan but it should be provided.

Heidi: We referred people to 2 different documents for community engagement. FGH asked us to use the community engagement process from the Prospecting Permit Protocol negotiated between SSI and INAC as the definition for community engagement. In principle we agree but we need all the parties to agree to it.

John: I would caution against using "Crown consultation" guidelines drawn from the case law because community engagement expectations are significantly different.

## **5. GUZ vs SMZs**

### **a. Discussion of differences – CRs #14 & 15**

### **b. Alternative approaches?**

Heidi gave a bit of history. Most of the Draft 2 CRs moved from SMZs to being included in the GUZs because most parties agreed that all of the CRs should be taking place in GUZs. The result was that the SLUPB needed to define what made SMZs different. The distinction is that values of specific interest are identified in the zone descriptions of the SMZs and proponents and regulators are to take extra care in protecting these values. As a result, only CR#14 (monitoring) and 15 (impact assessment) distinguish GUZs from SMZs. The specific values have not been identified for the general use zones.

John: When an application is put in that is subject to screening, the agency will review the maps and if that agency is the conformity determiner then they will have to look at the Plan. I don't see how CR#14 will change what is already being done in the regulatory system because special values of interest will be identified and impacts to them mitigated. If you are re-iterating what is already happening then that's fine but if you think that this CR is providing further intention or direction then I don't believe that it does.

If the communities have asked for GUZs and SMZs that seem fundamentally the same, then that's fine. But we were confused about the difference. We were not intending to challenge the zoning but to ask what the difference was. Monitoring and assessment are already part of the regulatory process so they don't seem to add to what is already happening on the ground. But this topic is not a hill to die on for us.

## **6. Recommendations for CRs (Table on Pages 8-10 and supporting detail)**

John stated that SSI understands that the communities are in agreement with CR#2. The SSI does not oppose its intent but does not see how it can be implemented with the current wording.

Heidi: CR#2 – we're glad to hear that this should not be scrapped. We have received similar suggestions on the wording e.g. its not possible to determine if an activity will be "carried out" in accordance with the requirements because that happens after the regulatory approvals are provided. We met with the SLWB between Drafts 2 and 3 to review all the CRs. They said that the CRs provided a necessary foundation for the types of requirements they are already setting



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for proponents. Others view the CRs as duplicating existing processes but they are actually supporting those processes.

John: In discussions that I had with Dick, we understood that CRs are not legally drafted but we should remember that they will be legally interpreted. For this reason it will be important to carefully consider the wording.

Heidi: CR#3 – This was an orphaned CR from the MGP section we had in Draft 2 but which has been removed. We got very strong feedback from the SLWB and the NEB that this can't be implemented. We know it has to change, we just don't know in what way yet.

John: It shouldn't be an issue for settlement lands because land corporations negotiate ABAs.

Heidi: This was never intended to relate to financial benefits only. Communities want this and want it to be made stronger.

John: If the financial benefits are not the focus then you need to be clearer. If it is a public interest test then that needs to be made explicit.

Heidi: CR#4 – SSI could provide more comments if it wanted. But we did get lots of feedback on this.

John: The use of the term "suspected sites" was an issue for SSI.

Heidi: We heard you. We want sites mentioned by communities to be considered even if they are not documented. We don't want proponents to use just the Prince of Wales data and think that all the sites are documented. We can say that without using "suspected sites" though.

John: For large scale projects you could ask that proponents conduct an archaeological survey but you would not want this for all projects.

Heidi: CR#5,6 – I took information from the LWB's new policy on water quality and effluents. It states that in pristine areas, which most of the SSA is, the LWBs would follow a non-degradation policy to manage water quality as described in the CCME guidelines. So that's what I used.

John: If you want to work in a GUZ, it may be in a watershed that will flow into SMZs. In following CR#5 and 6, you will need to apply SMZ restrictions to GUZs because impacts will flow downstream. I'll talk to the LWBs about their watershed policy because they may be restricting allowable activities. The Plan may be fettering the Board.

Heidi: The Plan doesn't speak to not letting LWBs set conditions for water treatment. We're just trying to follow community direction that asks us to help keep the water clean and healthy. It's very broad and general as the GNWT and INAC have asked us to be.

John: But what is clean? That needs to be defined for us. The concern regarding CR#5 and 6 is that we should not have CRs that conflict with the regulatory system. Right now LWBs look at waste and this would not allow proponents to operate if the long term quality of water would be affected. That's where the concern about the non-degradation framework comes from. Surface disposal of waste is common practice but it will not get past this CR.

Heidi: We are certainly not telling the LWBs that they can't issue licences for disposal of waste. We will work on this more and if you could provide us with help on the wording that would be appreciated.

Heidi: CR# 7 – Wildlife – You're asking us to define habitat protection measures. What do you mean by that?



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John: Provide some examples or ask the regulators if they have standard criteria that you can include for proponents. Proponents need to know how to design their land use activity to meet the requirement of the CR. The agencies should address how the CR should be achieved.

Heidi: CR# 9 – Climate Change – We agree that air quality is one of the current gaps in the regulatory process but the Plan is future focused and should not necessarily be limited by current constraints but should work to address future goals. Perhaps this will be addressed in the upcoming MVRMA amendments. Also, everybody has told us that the plan needs to address climate change.

John: In a normative sense, the plan is doing the right thing but our point was that there is no hammer right now for this kind of CR. If there is no permit requirement then it might not happen.

Ethel: Rick Hardy said that the SSI should not lose the ability to refer a project to environmental review in any amendments that are made to the MVRMA.

Heidi: CR#10 – This CR came from SSI in their Draft 2 comments. CAPP and the GNWT also gave us similar comments on this CR. Are you suggesting this become a Recommendation? Incidental harvest items would include timber and meat from outfitters.

John: The issue is a timing problem with the CR.

Ethel: The outfitters have been excellent at this but we need to ensure proper distribution.

John: If you want to leave it as a normative statement then it is acceptable but we would like to word it so that it actually happens.

Heidi: CR#12 – Does SSI have a preference one way or another about karst?

John: Not really. We recognize them as sensitive areas. We didn't get to that level of discussion with the board.

Heidi: The 1000m buffer around mineral licks was provided by ENR biologists and the PAS science team.

John: These areas are important at some point, particularly in the spring time but if you're only giving 500 m to a burial site, is 1000m needed for a mineral lick? The seasonality of mineral licks should also be considered.

Heidi: CR#13 – INAC has agreed with the requirement to collect security but the amount to be posted is a matter of discretion.

John: Both the amount and whether or not security should be posted are currently matters of discretion.

Heidi: We understand that the legislation says the LWBs may collect security and that the Plan is over-riding that. The Plan can fetter regulatory discretion and this is one instance where we believe it is necessary. We understand that the SLWB has not been collecting security. The communities and INAC want it collected.

John: The security is held by INAC. The issue of how security is calculated is problematic. Do the communities also understand that they and the SLWB have no control over how that security gets used? In regards to subsection 2, have a conversation with INAC about their reclamation standards. The phrase "viable self-sustaining ecosystem" in the plan is problematic.



Heidi: This wording comes from the INAC mine site reclamation policy and guidelines. We got it from them.

## **7. Appropriateness of Mandatory Actions**

Heidi: We know that INAC and the GNWT will not agree to mandatory actions. What is SSI's position? If SSI is not going to push for mandatory actions then the SLUPB has all the clarity that it needs on these issues.

John: It depends on what INAC or GNWT's submissions or final messages are. SSI does not yet have a response. We want to see what they propose.

Dick: GNWT and INAC oppose mandatory Actions as a matter of policy. We don't anticipate a different position at the hearing from what INAC and the GNWT have been saying. There are 3 parts to their position. They have been saying that the Minister cannot approve an Action that would be binding on it, or another department. This is the jurisdictional position. The second part is that even if it could be done, the Minister would not approve binding actions. This is the policy position. Their third point is that if there were a way to move forward, then INAC would be interested in discussions on revising the content of the Actions. INAC has discussed rewording suggestions. Knowing this, the Board is asking what is SSI's position?

Ethel: John, we didn't discuss that but we should.

Ethel and John will have further discussions on this topic and get back to the SLUPB.

Heidi: Action # 8 – This Action came from the GBLWMP. Deline strongly supports the inclusion of this Action but SSI's comments indicate that they think it falls outside of the SLUPB's mandate.

Ethel: SSI represents the communities.

John: Can you do it? The way it is worded, it is not related to the Plan.

Heidi: Monitoring is about land use so it is related to the Plan. How can we keep the intent of A#8 in the Plan?

Heidi: Action #9 – The intent behind this action is for SSI and the communities to develop its own policy on TK so you can tell others how they should use your TK information. Your comments suggest that others develop this policy but it has to come from you.

Ethel: Maybe the community and the regulators can be the ones to do this. Any time there is development, TK studies should be given back to the communities because often the information never gets back to them. The SLWB and the SRRB would be more trusted than some of the individuals who come along and use the information for their own benefit. Perhaps they should be the bodies to develop the protocols.

Heidi: If this is a situation where you do not have the funding to carry this out then perhaps the direction you should be giving us is to make this a recommendation.

## **8. Plan Implementation:**

### **c. Who does Conformity determinations and when?**

Heidi: There are pros and cons to the SLUPB taking on the conformity determinations. It comes down to what will work best for regulators and all involved. It needs to make sense within the regulatory framework and timelines. One question that comes to mind is, what happens if the



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application is deemed incomplete? Should the SLUPB not wait until the application is deemed complete? We want to make sure that we are doing the CR once and not twice.

John: What recourse does the SLUPB have if it is not happy with how a CR has been carried out?

Heidi: We only have a monitoring function so if we have an issue with how a CR is being applied, we would speak with the regulator once the application has gone forward to see how we can ensure proper future applications of CRs.

Dick: The Act says that if an application is referred to the SLUPB then the Board's determination is final and binding. The Board does not have recourse directly against an applicant or regulator. If a regulator grants a non-conforming authorization it will be at the risk of the applicant if the activity proceeds on the basis of the authorization. The courts could declare the authorization invalid or set it aside. The Act does not require that land use applications go to the Board for a conformity determination but if they are referred, the Board can identify the necessary terms in the Plan that regulators should implement by attaching conditions in their authorizations. The Board's recourse is the same whether the result is that an authorization should not be issued or that a condition should be attached to the authorization.

Heidi: But it would have to be referred to a court first.

Dick: Assuming that regulators know the law, they will not be issuing authorizations for non-conforming applications.

John: Which CRs would fall under this kind, where the Board would identify further conditions to ensure conformity?

Heidi: CR#7, subsection 2 is a good example.

John: From an implementation standpoint, when you carry out conformity determinations, the Board will have to say to a proponent, "you conform, subject to you meeting the requirements of CR#7" in which case the Board has no control because you will be at the discretion of the regulator who will issue the actual authorization. You have no recourse either.

Dick: The recourse of the Board is the same whether or not a regulator's condition is called for. The Act says that the regulator will work in accordance with the plan. So if a regulator is uncertain whether or not an application will conform, it can tell the proponent, "we can't tell from your application whether or not you meet the Plan's CRs so we will put condition X in", or "we can't tell so you have to provide more or different information". For most of the CR's it is a choice for the regulator to make. The Board is always going to be a monitoring body, where it can just flag issues for regulators.

John: The regulator will look at an application and the plan and where the plan is specific they will check things off. Where the CR is not specific the Board will run into bigger problems.

If the Board is doing the conformity determination then I don't know how it will do it because in CR#7 (2), the permit can only be issued once the condition is included in the permit. But if the Board carries out the conformity determination, it will have to determine conformity before the permit is issued by the regulator. You have a timing issue.

Dick: Let's say the Plan says that raptors nests cannot be disturbed. S.46 and 47 of the Act work together. On a referral of a proposal for seismic work, the Board can say, "the authorization can be issued if the activity does not disturb raptors' nests". The Board does not have a stick. It is up to the regulator to impose the terms for the proponent to conform. The



regulator can choose to not leave it to a condition. They may want to include it in the application process, for example, “how will you mitigate impacts to wildlife of interest in the area”. That information could identify locations of raptor nests and propose terms to avoid them. It would be up to the regulator to choose how to go about ensuring conformity.

Heidi: With regards to CR#7 (2), this is an area where we do not have clear direction. This CR was jointly developed by ENR, CWS, and the SRRB to protect wildlife. In the other subsections, we have agreement to apply various setback and requirements. In subsection 2, we only got as far as “apply any other conditions you deem appropriate to mitigate impacts to wildlife.” Yes, we recognize that we are leaving this area to their discretion, but after all, they are the experts, not us.

John: To use the seismic example, the wildlife people will not be issuing a permit for shooting of seismic. And some of the things that the communities are going to be concerned about will not be addressed in the regulatory permit. This is perhaps one of those jurisdictional gaps.

RE: CR#7 (2), if it’s not a referral to the Board and it’s a normal review of applications by the regulator, then you are leaving it up to the regulator to decide how the plan can be satisfied. My point was that you are leaving that up to the discretion of another party.

Heidi: Until we have more clarity, we can’t provide more direction. I agree with you in principle but we can’t get specific enough answers so we can’t provide that direction to the proponent.

Dick: If you have more than one regulator whose authority is triggered by the application and one gets the conformity determination right and one doesn’t, John said earlier that there could be gridlock. I think one of John’s themes is, let’s get the conformity determination right in the case of the LWB. If the LWB get’s it right, I’m not sure there is a problem, unless the LWB lacks authority to set a necessary condition. I’m not sure there could be gridlock.

John: My comment about gridlock was mostly regarding a situation where a number of regulators are all making their separate conformity determinations. I wasn’t really so much talking about whether or not a number of agencies arrived at different conformity determinations. My concern is that there will be different regulatory policies and corporate cultures. So what happens if the LWB and NEB say go ahead and DFO says no? Then there will be gridlock.

Heidi: Well then it could be referred to the SLUPB and we would have final say.

John: NPMO could perhaps help with this. GNWT to some extent coordinates as well but this is more at the EA level.

**d. Who is responsible for implementation of CRs?**

Heidi: We received a lot of comments regarding putting the onus for meeting CRs on the applicant and not the regulator. We tried to make this clear in the Implementation Guide but we will be considering how to make this clearer in the CRs as well.

**e. Discussion on proposed 2-step Conformity Determination Process (application of CR 1 only to land disposition instruments and CRs 2-20 on environmental authorizations (comments p. 7)) – How does SSI see that working?**

Heidi: Can you describe how you envision the 2-step process working?



John: If you take oil and gas as an example, the rights are issued well in advance of when work might happen. At that time, you only need to check if it's an allowed use in the zone. If it's not, you're done. If it is, you can grant the right. It's only when they start applications for exploration work and enter the regulatory system that all the other factors and requirements would come into play.

Heidi: If we looked at forestry, would there be a right or authorization that would be authorized before a land use permit was needed?

John: They would still be getting a timber cutting permit but they would need to get their environmental authorizations as well. There may be some authorizations that can be issued in advance of a land use permit.

Heidi: Nobody wants to issue rights if they can't develop them. This is why I'm concerned that the short list you provided for authorizations doesn't at least cover all the land uses we address through zoning.

John: Regulators want to avoid a situation where they authorize an activity but they can't get the authorization because it doesn't pass the zoning test. The test for a type B permit is very low. It's in S.5 of the MVLURs. There is a type C permit as well (Tlicho).

### **9. Default zoning for lands removed from PCIs**

Heidi: We're down to the Ramparts and we have asked FGH to give us a default designation there. There is a PAS meeting on the Ramparts the week before the Hearing where we hope to get an answer on this. SGN and Edaiila are now CZs in the Plan. We have gotten direction for a default designation of SMZ for areas cut out of Naats'ihch'oh. The Canol Trail will stay as a PCI under the Plan but I don't envision its shape changing.

### **10. Exemption for Existing Rights**

Heidi: We've heard that the exemption should apply to applications in progress and not just renewed. Anyone with an authorization should be trying to renew their authorization before it expires. Is one year not long enough? We don't want proponents to stop all activities and then try to renew their permit the day before it lapses.

John: If the renewal is in process, why penalize them? Perhaps you can include "in good faith" language when you talk about renewal of permits. The shortest EA can take 6-7 months. The average time is closer to 1 yr. Then if you need a water licence renewed, there is no way that you are getting through the regulatory system in a year. This would probably not apply to small-scale developments but larger projects will need longer.

Heidi: Grandfathering – Communities have asked us to write the plan so that when grandfathered authorizations are renewed, the new permits should have to follow the plan's CRs.

John: We are saying that as long as you are just renewing, you should be able to renew based on the conditions that you were operating under before. You should be able to renew without applying for an exception.

Heidi: The intention is not to prohibit activity but to ensure that companies upgrade their practices. The idea is that if you are going for renewal, the plan would gradually bring people up to the conditions of the Plan.



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John: So you are grandfathered but you have to reapply for a renewal. How do you ensure that everyone understands what will be demanded of them by way of improvements?

Heidi: The Board would probably only look at exceptions if the developer can't comply with certain CRs. Having activity within 500 m of a burial site is a good example. If it's already happening, we would have to exempt it. But anything new happening would be expected to comply going forward. The Board would consider exceptions for other CRs based on a variety of reasons included in the Plan (e.g. economically unfeasible), but in general, our expectation is for applicants to comply with the Plan's CRs wherever possible, not request exceptions to the CRs.

John: That waters down the grandfathering but I understand now.

Ethel: John and I will go over our discussion today and have a discussion about how SSI will proceed.

Heidi asked for closing thoughts.

Heidi stated that this is probably the first of a number of conversations. With the other approving parties, the SLUPB has had to hold a number of follow-up conversations and meetings in order to clarify the comments and figure out how best we can address them.

Dick: There are a few areas where John and I should probably have legal discussions. I would like to discuss a little further how EA gets implemented and the conventions regarding expectations on the regulators and a couple of other points.

John: I would like to talk to Ethel first before I get back to you. Would it be just the two of us? I'm comfortable if other counsel take part.

Dick: I think just the two of us works as long as we are just clarifying SSI's comments.

Meeting ended: 2:10pm