



# Sahtu Land Use Planning Board

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## \*Disclaimer

These summary notes were recorded by SLUP staff. They are subject to errors of interpretation or omission. This document presents a summary of key discussion points. It is not intended to serve as transcripts of the meetings.

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.

## Follow-up Meeting with GNWT on Actions

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**Date: February 18, 2011, 1:30 – 4:30 pm**

**Location: 5<sup>th</sup> Flr Boardroom, Scotia Centre, Yellowknife**

### Participants

Heidi Wiebe, Sr. Planner, SLUPB

Dick Spaulding, Legal Counsel, SLUPB

Joel Holder, ENR, GNWT

Kris Johnson, ITI, GNWT

James Fulford, DOJ, WT

### Opening Comments

Joel asked for an update from the Board's morning meeting with INAC.

Heidi briefly described the outcome of that meeting.

Dick added that one of INAC's big screening factors is Actions that require new funding to implement.

Joel: The GNWT cannot sign off on a Plan that includes Actions that are mandatory. We don't have a concern with the intent of the actions, but overall our position is that Actions cannot be binding.

James: We don't see any basis for mandatory actions in the MVRMA.

Since James Fulford is new to these discussions, Heidi asked Dick to outline the Board's rationale for mandatory Actions in the Plan.



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Dick: The Board cannot plan for anything – it has constraints under 41(1) and 41(2). It can only plan for land use, which includes water and other resources under the Act. Once a Plan is approved, S. 46(1) says the Plan must be implemented by government to the extent that the government has jurisdiction. S. 46(1) lists 3 categories of implementing bodies: 1) First Nations, 2) Federal and Territorial Government departments and agencies, 3) and any body with authority to issue licences, permits and other authorizations. Implementation is limited to powers that bodies already have – the Board doesn't contemplate bodies implementing the Plan beyond their jurisdiction. The MVRMA does not direct land users to implement land use plans.

The Plan breaks out Plan provisions into two categories – the regulatory side (CRs) to be implemented by bodies authorizing land use, and other provisions outside the regulatory process to be implemented by departments and agencies (Actions). This breakdown is done similarly in Nunavut plans; not so much in the Gwich'in Plan. The Act doesn't require this breakdown. It is there for the sake of land users, so that they can see easily which Plan requirements control whether they receive the authorizations they apply for and on what terms. The Act sets out the process for determining conformity with CRs in the Plan. You don't have a conformity determination process for Actions. You have a general SLUPB monitoring responsibility and a 5-year review. The fact that there is no conformity measure for Actions doesn't mean they are not mandatory. There is no conformity measure for implementation of adopted EA measures in the Act either, yet they are binding (MVRMA s. 136(2)). Such measures are legally enforceable through a declaration of a court.

The other northern land use plans approved by government in the NWT and Nunavut all contain mandatory Actions. The wording in those land claims is substantially similar to that of the SDMCLCA. On the EA side, several of the JRP Recommendations are similar in character to the Actions in the Plan and are considered legally binding based on wording in s. 136(2) that is substantially similar to s. 46(1). For example, Recommendation 11-4 from the JRP requires the territorial government to provide the results of its ecological representation assessments to specified recipients, and the territorial government accepted that recommendation. Looking at municipal land use plans, where land use planning originates in Canada, supportive provisions like the Plan's Actions are a common component. When you go back to the origin of planning in the NWT, the 1983 cabinet document, this type of requirement is contemplated.

James: I understand the link with S. 136(2) but I'm not sure it's appropriate. When looking at key sections of the MVRMA, in particular S. 41 on what a plan should talk about, you should be talking about subsection (3).

Heidi: Section 3 includes statements, forecasts, policies and guidelines.

Dick: I understand you as saying that there is a question of scope on what the Plan can contain (s. 41 (3)). We currently might disagree on the scope. We could benefit by talking further on this. INAC has not taken issue with how the Board sees its scope, which seems to be the case here.

(Legal Counsel then had a discussion on interpretations of the relevant provisions of the MVRMA and the SDMCLCA. It was agreed that legal issues could benefit from further discussion between counsel.)



Heidi: Asked to bring the discussion back to policy issues. Quite often what government is willing to accept is narrower than the board's legal mandate anyways. Perhaps going through the details on each Action may give us some solutions.

Dick: Explained how he plans to handle legal issues prior to the Hearing, to reduce time during the hearing on detailed legal issues. I intend to speak with all legal counsel before hand to try to resolve or at least identify points of legal difference clearly. This will let the hearing focus on policy issues.

## Action #1 – Plan Implementation Monitoring

*In order for the SLUPB to monitor implementation of this Plan, Regulators that authorize a land use activity in the SSA shall provide copies of such authorizations to the SLUPB on request within a reasonable time.*

### Considerations:

- Administrative Action necessary to implement the Plan, should occur as a matter of process
- No specific comments received

**Approach:** No change

### Discussion:

Kris: If you're talking about all types of authorizations, this would be a problem. We're still concerned with tourism authorizations being subject to the Plan. Kris asked to see the list of authorizations being worked on in the Dehcho because something similar could be considered in the Sahtu.

Dick: The Dehcho and Sahtu processes are different. The Sahtu plan has a statutory basis, the Dehcho does not. Identifying the legal parameters for a land use plan in the Sahtu is very different than that for the Dehcho. If the parties are picking and choosing which authorizations are subject to the Plan in the Dehcho, that is something Parliament took out of the hands of the planning parties here in the Sahtu. The MVRMA says that every body having authorizing authority has to implement the Plan. The Board does not have the mandate to select who implements the plan.

Kris: The CRs wouldn't be applicable for most of these low threshold activities so why require the effort of going through them for no significant result?

Joel: The more applications people have to review, the less time they have to focus on those that really do have an impact. It's about creating an efficient process.

Dick: Parliament's call is that any authorization relating to land use is subject to the Plan. The Board does not make the call about which authorizations are subject to the Plan. If the authorization does not relate to land use, it is not caught.

James: We seem to be talking about different things. We're just suggesting limiting this particular action to request copies of specific authorizations, rather than all authorizations.

Other meeting participants clarified that we had previously discussed this concern in a much broader context (application of the Plan to all authorizations).



Kris: Just think about how many authorizations you want to deal with on the ground, both in terms of this action and in the overall Plan. Authorizations must relate to the use of land and water, and deposit of waste. Authorizations that have a potential to impact land and water are already captured because they require a land use permit and/or water licences. There needs to be some consideration of authorizations that have as little impact as going for a walk on the land or fishing with a fishing licence.

## **Action #2 - Sahtu Working Group**

*The SLUPB shall establish and lead a Sahtu Working Group with representation from SSI and other designated Sahtu organizations, the federal and territorial governments, the SRRB, the SLWB, industry (oil and gas, mining, others), and non government organizations as a collaborative forum through which to discuss, study and resolve key regional land use issues and informed decision making. The Sahtu Working Group will work on Actions 3-6 below to develop appropriate measures for consideration and integration into future Plan revisions.*

### **Considerations:**

- Both INAC and GNWT support the intent of this Action and Actions 3-6 and expect to be at the table.
- Others have raised concerns with the fact that participation is self-funded (described in the context section). We will need to find a funding solution to make this Action work.

**Approach:** No change

## **Action #3 - Community Engagement Guidelines**

*The Sahtu Working Group shall collaborate to develop community engagement guidelines that define guiding principles, processes, and roles and responsibilities of government, industry and community organizations for community engagement in the SSA within 4 years. These may be incorporated into future revisions of the Sahtu Land Use Plan.*

### **Considerations for Actions 3-6:**

- The SLUPB will have to set priorities for the SWG and more realistic timelines for when these Actions can reasonably be fulfilled. They can't all be done in 4 years.

### **Approach:**

- Delete "within 4 years" from each
- Consider grouping into 1 and prioritizing or organizing them in some way.

### **Discussion**

James: What about all the community engagement guidelines currently out there? There are several that exist already amongst government and the different regulatory boards.

Heidi clarified that the intent is to come up with one set for the Sahtu region with clear roles and responsibilities so everyone doesn't have their own.

James: Maybe reword to speak about harmonizing existing guidelines rather than adding a new set. We don't want to create a whole new set of guidelines. Would the new one replace all the existing ones?



Heidi: We can't speak to what others would do with these guidelines, but that would be the ideal situation.

#### **Action #4 – Best Practices**

*The Sahtu Working Group shall build on and refine the Plan's Conformity Requirements into a set of Best Practices for land use for the Sahtu Settlement Area within 4 years. The results may replace the Plan's Conformity Requirements through future Plan amendments.*

#### **Action #5 – Sahtu Cumulative Effects Management Plan of Action**

*The Sahtu Working Group shall develop and begin implementation of a Sahtu Cumulative Effects Management Plan of Action within 4 years. Through the Plan of Action, the Working Group shall identify key knowledge and data gaps, design and implement research and data gathering projects to address those gaps, identify and test interim management strategies including targets, and implement chosen management strategies. The results of this work may be integrated into future Plan amendments.*

#### **Action #6 – Sahtu Environmental Monitoring Program**

*Within 4 years, the Sahtu Working Group shall develop a Sahtu Environmental Monitoring Program that defines regional monitoring priorities, practices and direction for work carried out under the Cumulative Impact Monitoring Program within the Sahtu Settlement Area. In developing the Sahtu monitoring program, the Working Group should consider research and monitoring recommendations identified in the "Great Bear Lake Watershed Research and Monitoring Plan", and "Rakekée Gok'é Godi: Places We Take Care Of".*

#### **Discussion**

James: There is already a CIMP program. If communities have an issue with CI monitoring, why don't they just take their issues right to CIMP and deal with it there?

Kris: CIMP exists. It should be dealt with there. This doesn't need to be in the land use plan.

Joel: The first sentence talks about defining regional monitoring priorities, practices and direction for work carried out under CIMP – maybe reword to something more generic that doesn't look like you're taking away their mandate.

Heidi explained the intent of Actions #2-6. They are intended to bring everyone together in a manageable group size to work together on significant issues. It's intended to be a new approach to planning that emphasizes collaborative discussions and decision making, rather than everyone giving their input individually to the Planning Board and leaving it to us to balance their interests. If everyone talks with each other instead, perhaps some of these issues will be resolved, as some are a result of a lack of communications. It will also build more support and buy-in for the results as everyone will have been involved in developing the solutions.

Kris: The Board could do all of these Actions (Actions #2-6), but not write it in the land use plan. If you wanted to start this next year before the Plan is approved, wouldn't you just do it? If it's not in the Plan, it wouldn't prevent you from taking the initiative and starting a Sahtu



Working Group. We're not opposed to doing the work, but it is not something that should be in a land use plan. There is already legislation requiring CIMP.

## Action #7 - Inspection and Enforcement Priorities

*All government departments and agencies and other bodies having monitoring and enforcement responsibilities shall give priority, where reasonable to do so, to inspection and enforcement of activities occurring within Conservation Zones and Proposed Conservation Initiatives, followed by Special Management Zones, then General Use Zones.*

### Considerations:

- INAC and the GNWT raised concerns that they have other considerations in setting enforcement priorities, such as the type of project, risk of impact, and the proponent's compliance history.

### Approach:

**Possible Rewording:** All government departments and agencies and other bodies having monitoring and enforcement responsibilities shall consider the zone designation in setting their inspection and enforcement priorities, recognizing that Conservation Zones and Special Management Zones have been identified as sensitive areas requiring a higher level of care.

### Discussion

Joel: I took this to our enforcement people and they did not have a problem with the possible rewording.

## Action #8 – Community-Government Monitoring and Enforcement Strategy

*Within 4 years, responsible authorities with enforcement responsibilities shall collaborate with appropriate community organizations (land corporations, renewable resources councils, First Nations, community councils) to develop and begin implementing a Sahtu community - government strategy to partner in patrols, monitoring, inspection and enforcement responsibilities. The strategy should emphasize training initially with a long term goal to maximize community involvement in these areas of responsibility.*

### Considerations:

- NEB: Cannot be implemented by the NEB because of their quasi-judicial status – recommended adding “where reasonable to do so” to address this issue.
- DFO: Does not have the funds or capacity to undertake this action at this time. Suggested deleting the 4-year time frame and adding “as human and fiscal resources permit”.
- INAC: Asked what would be sufficient to meet the requirement to collaborate.
- GNWT: No specific direction.
- Costs would be mostly in implementing this strategy, not in developing it; it would cost little to assess areas of responsibility, identify areas where they could increase community involvement and consult communities on it (maybe 3 or 4 meetings over a few years).



- Government may be overlooking the benefits of this Action in the form of increased monitoring and inspection activity once its up and running.
- Could provide a section on implementation expectations for Actions in the Plan similar to CRs.

**Approach:**

**Possible Rewording:** Responsible authorities with patrol, monitoring, inspection and enforcement responsibilities shall:

- 1) assess their activities for opportunities to partner with community organizations to increase both community involvement and the level of these activities; and
- 2) work with community land corporations, renewable resources councils, First Nations and community councils, to develop a strategy to act on these opportunities.

The strategy should emphasize training initially with a long term goal to maximize community involvement in these areas of responsibility.

Implementation Expectations: Ideally, government would hold an initial meeting with communities to get broad input on how they could assist in monitoring and inspection activities. Then government would do an assessment of their areas of responsibility; write a discussion paper; take it back to communities to discuss options, interest, capacity, opportunities, etc.; revise it; and cost it out (implementation plan). They would likely need a few meetings with communities. It would be up to each department to fulfill this Action individually or they could coordinate.

**Discussion**

James: Is this properly housed in a land use plan?

Joel: We're already creating opportunities for community members to go out with ENR staff. If it's already occurring, does it need to be in a land use plan?

Heidi: If it's not in the LUP, what puts this on someone's radar to do this?

Joel: Our TK policy, recruitment policies, educational programmer, and government determination of its priorities all have this as a consideration.

James: I need to emphasize that it's the government that sets its priorities, not the Plan telling us what those are.

Joel: It's an active part of all of our field programs to have involvement of community participants.

**Action #9 - Traditional Knowledge Guidelines**

*SSI and other Designated Sahtu Organizations shall collaborate with community governments (First Nations, Charter community councils), the SRRB and Renewable Resource Councils to develop guidelines for the collection (including purpose and scope), use and management of traditional knowledge within the Sahtu Settlement Area.*

**Considerations:**

- This Action is directed at the DSOs, not government.
- There were no specific government comments.



**Approach:** No change

**Discussion:**

Heidi: Can I assume that the GNWT would have no issue with Actions that identify other bodies to implement them?

James: It would be up to SSI and the DSOs to accept or reject this. It would not be our call.

**Action #10 - Access to Wildlife Information**

*Responsible authorities (ENR, CWS, SRRB, and DFO) shall develop and maintain current data on important and critical wildlife habitat for fish, furbearers, waterfowl, raptors, barren-ground caribou, mountain and boreal woodland caribou, moose, muskox, mountain goats, Dall's sheep, grizzly bears and black bears and make the data readily accessible to land users and the public.*

**Considerations:**

- The SRRB and ENR raised confidentiality issues with making the data publicly available. Can be addressed by removing “the public” from the distribution list and clarifying the reasons for which it is intended to be distributed.
- DFO raised issues with the cost of implementing this. The intent is not to require a whole ton of new data collection but make current wildlife information more accessible for use in applications. Currently one has to do a lot of digging to compile data from a variety of sources.

**Approach:**

**Possible Rewording:** “Responsible authorities (ENR, CWS, SRRB, and DFO) shall develop and maintain current data on important and critical wildlife habitat for fish, furbearers, waterfowl, raptors, barren-ground caribou, mountain and boreal woodland caribou, moose, muskox, mountain goats, Dall’s Sheep, grizzly bears and black bears necessary to make effective land use decisions, and make that data accessible to applicants and other parties involved in land use planning and regulatory processes.”

We could add additional wording re confidentiality if this doesn’t go far enough. E.g. “Data may be provided confidentially where necessary.”

**Discussion:**

Joel: This is more of an issue of discretion about what information to provide. You would need to include wording about “reasonable information” or selection of target species.

James: It may also need to specifically reference publicly available information or that takes into consideration ATIP requirements. If we have TK, communities generally want that kept confidential but anything we have may be subject to Access to Information requests. James indicated that ATIPP could exempt such information from disclosure.

**Action: Joel will get back to us on preferred wording.**

Joel: Again, the LUP may not be the place for it. We do this already.



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## Action #11 - Fish Habitat & Water Withdrawals

*DFO shall work with communities*

- a) *to document community traditional knowledge of*
  - i. *fish and fish habitat, and*
  - ii. *water levels and quality; and*
- b) *to discuss*
  - i. *community concerns related to water withdrawal,*
  - ii. *DFO's winter water withdrawal protocol, and*
  - iii. *alternative solutions.*

### Considerations:

- This Action directs DFO, not GNWT or INAC
- DFO suggested revised wording that we are working with them on.
- INAC and GNWT provided no specific comments on this Action.

### DFO suggested wording:

DFO shall work with communities as requested and as resources permit

- a) to document community traditional knowledge of fish and fish habitat; and
- b) to discuss
  - a. community concerns related to water withdrawal, and
  - b. alternative solutions to water withdrawal related to specific projects.

### Possible Rewording:

Action: DFO shall work with communities as requested to discuss community concerns related to water withdrawal, and alternative solutions to water withdrawal related to specific projects.

Recommendation: DFO is encouraged to work with communities to document community traditional knowledge of fish and fish habitat.

### Discussion:

Heidi: Can we assume you're ok on this as it is directed at DFO?

Joel: Yes.

## Action #12 - Air Quality

*(1) ENR shall ensure that interested parties are provided with a paper copy of the Annual Air Quality Report, and directed to ENR's Air Quality Programs Coordinator as necessary.*

*(2) ENR shall continue to study the feasibility and advisability of expanding the air quality monitoring network in the NWT. This will be based primarily on industrial development, population growth, and available resources.*

*(3) ENR shall continue to develop air quality related regulations, guidelines and/or standards, as appropriate, for application within territorial jurisdiction through the NWT Environmental Protection Act. ENR will continue to work with the Land and Water Boards and responsible federal agencies to encourage their air quality objectives for new and existing developments, territory-wide.*



**Considerations:**

- We used GNWT's exact wording as provided to us from their comments on the integration of the GBLWMP.
- INAC provided no specific comments.

**Approach:** No change

**Discussion:**

Joel: I emailed the wording over to our Air Quality specialist and she had no problem with the content so I have no problem with the content. That said, our over-riding direction still stands about whether to include such Actions in the Plan.

James: With subsection 3, this would be telling the GNWT to legislate.

Dick: The MVRMA would not require departments and agencies to legislate. If the wording suggested differently, the Board would need to look at it.

Heidi: As a reminder, this came from GNWT's previous comments on the integration of the Great Bear Lake Watershed Management Plan. We worked hard to integrate that Plan based on everyone's comments. It would be potentially problematic with Déline if the GNWT is opposing its own wording now.

**Action #13 - Emergencies Activities Reporting**

*Where a land use activity is carried out, that would be prohibited under a zoning requirement if not for the emergency exemption, the body responsible for carrying out the activity shall provide a written report to the Board describing the operation, indicating when the emergency is likely to end and what, if any, restorative measures consistent with the vision and goals of the Plan are planned, as soon as possible.*

**Considerations:**

- Administrative action - it was in Chapter 2 previously. We made it an Action to be transparent and consistent in format.
- Neither INAC nor the GNWT provided specific comments on this Action.

**Approach:** No change

**Discussion:**

James: Who is "the body responsible"?

Heidi: Perhaps it is the body that is responsible for dealing with the emergency. If it's an industry land use, then it would be the developer. If it's a forest fire or a road washout, then it's the appropriate government department.

**Action: Joel agreed to propose different wording to clarify this.**

James: I understand the Board wanting to stay informed, but what would it do with this information?

Heidi: It might change the zoning down the road; it might flag an issue that the Plan needs to address in future plan revisions.



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James: I want to check if there are reporting provisions under the EA section of the MVRMA dealing with emergency activities.

Dick: There is wording about this in Bill C-25 (the Nunavut legislation for planning and environmental assessment). It makes responsible the person or entity carrying it out (S. 152).

**Action: Dick will cut and paste these sections from the Act to forward to the GNWT.**

## Next Steps

Joel: We need to have more meetings to continue discussions on other big ticket items prior to Hearing.