

DRAFT SAHTU LAND USE PLAN: REVIEW SUMMARY

February 24th, 2012

This document provides a summary of Aboriginal Affairs and Northern Development Canada's (AANDC) recommendations for the Draft Sahtu Land Use Plan. These recommendations are based on previous submissions and discussions from the technical workshops. To prepare for the tri-partite discussion in May, AANDC land use planning staff will work toward confirming departmental positions. The Planning Board is encouraged to contact land use planning staff for further detail if required.

1.0 CONFORMITY DETERMINATION

- With regard to regulatory efficiency, a proponent's ability to provide complete, clear, and well described project applications is key to expediting project screenings and approvals. It is the function of the Land Use Plan to provide clear instruction to proponents on what is required for an application to conform.
- **AANDC Preferred Approach:**
 - (1) The conformity determination process diagram should refer to the 'Regulatory Authority' – not only the Sahtu Land and Water Board. Refer to the process diagram in the Gwich'in Land Use Plan for an example of a clear and easy-to-interpret conformity determination diagram.
 - (2) A summary table of Conformity Requirements that apply to each authorization (as per inclusion list) should be added to the main body of the Land Use Plan. This will provide a road map for both proponents and Regulatory Authorities as to which CRs must be met for each authorization. This will improve the overall clarity and ease of implementation of the Plan.
 - (3) Subsurface and surface rights issuances will only be subject to zoning-related CRs. The proponent will be responsible to meet additional CRs when applying for specific land use authorizations (ex. Land Use Permits).

2.0 CONFORMITY REQUIREMENTS (CRs)

CR#1 – Land Use Zoning

- Zoning Balance – AANDC supports the current balance of zoning for economic development and cultural/ecological conservation (as per Public Hearing, May 2011).
- **AANDC Preferred Approach:**
 - (1) **Mackenzie Gas Pipeline** – AANDC maintains that the pipeline corridor (as approved by NEB) should be included in the Zoning Map (#4) for context. Reference to the project should be added to the Plan given its potential economic significance to the region.
 - (2) **Mackenzie River Special Management Zone (#3)** – In the zone description, there should be a reference to the Mackenzie Gas Pipeline corridor included in the subheading on economic values.
 - (3) **Pipelines** – AANDC requests that reference to 'pipelines' in the Land Use Plan be replaced with 'pipeline corridor' in order to reflect all facets of pipelines within the

Plan. The approved Gwich'in Land Use Plan uses this terminology as well, and it will help maintain consistency in land use plans throughout the Mackenzie Valley.

- (4) **Subsurface Access to Conservation Zones** – AANDC requested that subsurface access to oil and gas resources should be allowed under Conservation Zones. AANDC has not revised or withdrawn this request.
- (5) **Seismic exploration in Conservation Zones** – AANDC requested that low-impact seismic should be permissible in Conservation Zones under specific circumstances. AANDC has not revised or withdrawn this request.

CR#2 – Protection of Special Values

- The effectiveness of this CR will depend on it being clearly described in the revised Plan. The 'Specific Values' to be managed, for example, are not always clearly described in the zone descriptions.
- **AANDC Preferred Approach:** Please edit the Plan accordingly to ensure that specific values to be managed are clearly described.

CR#3 – Project Specific Monitoring

- AANDC does not expect any duplication with monitoring requirements already required or carried out by proponents. The plan should require proponents to identify their monitoring programs and demonstrate community input.

CR#4 – Community Engagement and Traditional Knowledge

- Land and Water Boards currently require evidence of community engagement before the permitting process proceeds. Specific Community Engagement Guidelines were recently released by the Land and Water Board for review. The Planning Board should align this CR with those guidelines for the Final Plan submitted for approval.
- Many proponents already take this step before starting operations in the Sahtu. This CR will standardize the approach.
- **AANDC Preferred Approach:** This CR should be aligned with the Land and Water Board's Guidelines for Community Engagement.

CR#5 – Community Benefits

- The SDMCLCA establishes processes for community engagement and developer commitments regarding local economic opportunities and benefits in specific circumstances.
- Information for the Planning Board: AANDC is working on updating the guidelines for Canada Benefits Plans under COGOA. The Planning Board should not expect access to signed AANDC Benefit Agreements due to their confidential nature.
- **AANDC Preferred Approach:**
 - (1) The context section of this CR should make a connection between the SDMCLCA and the proposed CR wording.
 - (2) The test for conformity should be clarified for the Final Draft Plan (as per discussions during the third workshop).

CR#6 – Community Land Use Monitors

- **AANDC Preferred Approach:** AANDC supports this CR as a Recommendation rather than a Conformity Requirement.

CR#7 – Archaeological, Burial and Historic Sites

- This is a GNWT lead. AANDC approves the current approach for this CR.

CR#8 – Watershed Management

- Combined, the SDMCLCA, NWT Waters Act, and the MVRMA define watershed and water management in the Sahtu and NT. Land and Water Boards currently assess applications for Water Licenses against the SDMCLCA and ensure that proposed activities do not substantially alter the rate or quality of flow of water.
- Any revised wording should be consistent with the SDMCLCA, NWT Waters Act, and MVRMA.

CR#9 – Drinking Water

- Draft revised wording from Workshop #3 provides clarity as to what is required for this CR.
- Since GNWT (ENR, MACA) is the lead on implementing issues relating to Drinking Water through the NWT Waters Act, ensure that the CR is consistent with GNWT guidelines and applicable legislation.
- **AANDC Preferred Approach:** The watershed map presented is somewhat vague and open to interpretation – AANDC suggests re-writing the CR to exclude reference to the map, and to refer to community water intakes instead.

CR#10 – Wildlife

- AANDC understands that many of these issues are considered during preliminary screening. In the interest of regulatory efficiency, it is appropriate that these interests are addressed as part of the application process.
- GNWT, Environment Canada, and the Sahtu Renewable Resource Board are the lead bodies of expertise for this CR. The Planning Board should ensure that the wording and information captured in the CR is approved by these organizations.
- **AANDC Preferred Approach:** AANDC would support simplifying this CR by (i) shifting the specific details to the conformity determination description, and (ii) revising the wording to “*Land use activities should prevent and mitigate impacts on sensitive wildlife and wildlife habitat as identified in Tables X, Y, & Z and Maps A,B, & C*”.

CR#11 – Species Introductions

- This CR infers GNWT approval is required for introduction of non-native species. AANDC will seek assurance that GNWT supports the current approach.
- AANDC will determine what the current enforcement approach is with regard to recommending seed mixes for site reclamation, and share pertinent information to the Planning Board for consideration.

CR#12 – Sensitive Species and Features

- The issue of minimum thresholds was addressed by the Planning Board. The CR now specifies that it applies only to MVRMA authorizations.
- Spatial data for these features should be available through the Sahtu Land Use Planning Board website and the Prince of Wales Northern Heritage Center.
- AANDC understands that many of these species and features are considered during preliminary screening. In the interest of regulatory efficiency, it is appropriate that these interests are addressed as part of the application process.
- GNWT, Environment Canada, and Sahtu Renewable Resource Boards are the leading bodies of expertise for this CR. The Planning Board should ensure that the wording and information captured in the CR is approved by these organizations.
- **AANDC Preferred Approach:**
 - (1) AANDC would support simplifying this CR by (i) shifting the details to the conformity determination description or Implementation Guide, and (ii) revising the wording to “*Land use activities that require a land use permit or water license at or near sensitive features (see Map 8), shall avoid or mitigate any negative impacts to those features as specified in the Implementation Guide/Tables X, Y, & Z*”.
 - (2) The Planning Board should provide a list of applicable references or links on the SLUPB website in order to improve access to required information.

CR#13 – Closure and Reclamation

- AANDC will analyze the revised version of this CR, but does not have a final position at this time. We look forward to discussing the final revised wording for this CR at the tri-partite meeting in May 2012.
- **AANDC Preferred Approach:**
 - (1) Consideration for Part (1) Security:
 - a. Ensure that the Land and Water Boards (Sahtu and Mackenzie Valley) can implement this section of the CR, since it will require security determination for all authorizations that are issued.
 - (2) Considerations for Part (2) Reclamation:
 - a. Information for the Planning Board on current practices: (i) The Sahtu Land and Water Board requires consultation for all phases of final closure and reclamation plans (preliminary, interim, and final). (ii) AANDC notifies communities and responsible authorities on lease applications via the Land Advisory Committee. Feedback from the Committee is considered before a lease is issued. Terms and clauses in leases specifically refer to requirements upon abandonment of the leased land.
 - b. It is still unclear how conformity would be met for this part of the CR during the application stage. At the application stage, would a proponent’s intent to consult on and complete a Reclamation Plan meet the test for conformity?
 - c. In order to provide flexibility for the final reclamation goal - which varies between projects and land uses - the Planning Board should remove the wording “...*viable, self-sustaining ecosystem or expected future uses*” . This project-specific goal would be addressed through consultation for the applicable Closure and Reclamation Plans.

- d. Set MVRMA authorizations as the minimum threshold for this part of the CR. As interpreted now, this CR would require extensive consultation and a Reclamation Plan for all land use activities.

CR#14 – Permafrost

- Information for the Planning Board: AANDC is drafting a Permafrost Guidelines document as part of the “Northern Land Use Guidelines” Series. However this will not be available until 2013. This document will compliment the CR at the five-year revision period.

CR#15 – Climate Change

- **AANDC Preferred Approach:** AANDC supports this CR as a Recommendation rather than a Conformity Requirement.

CRs SPECIFIC TO CERTAIN GREAT BEAR LAKE WATERSHED ZONES

CR#16 – Ecological and Cultural Integrity

- Implementation and test for conformity are still not clear as of last revision document.
- **AANDC Preferred Approach:** In order for AANDC to approve the Plan, conformity determination must be standardized and clear for both proponents and Regulatory Authorities. To help achieve this outcome, the Planning Board could provide a template for meeting conformity based on information and discussion from Workshop #3.

CR#17 – Fish Farming and Aquaculture

- AANDC supports the current wording and approach. The Planning Board should ensure that other government departments with relevant authority also support the approach.

CR#18 – Disturbance of Lakebed

- AANDC supports the current wording and approach. The Planning Board should ensure that other government departments with relevant authority also support the approach.

CR#19 – Use of Sentinel Islands

- AANDC supports the current wording and approach. The Planning Board should ensure that other government departments with relevant authority also support the approach.

OTHER ZONE SPECIFIC CRs

CR#20 – Water Withdrawal (Zones 33 & 53)

- AANDC supports the current approach and wording with caution. Potentially affected communities should be cognizant of the impacts of this CR for land use activities including oil and gas exploration or development, and community ice road construction.

3.0 ACTIONS

AANDC supports that Actions are not legally binding but do commit approving parties to make 'reasonable efforts' to achieve the actions listed in the Plan.

Action #2 – Sahtu Working Group

- **AANDC Preferred Approach:**

(1) The Working Group's work plan [Part 3(a-f)] should be left as general as possible in order to allow for shifting priorities and time lines.

(2) As discussed at Workshop #3, NWT CIMP should not be directly implicated in the description of working towards solutions for cumulative effects management. However, CIMP encourages the Planning Board to apply for funding annually to support research and monitoring programs. See www.nwtcimp.ca for more detail on how and when to apply for funding.

(3) AANDC will not provide additional funding for the Sahtu Working Group. To reflect this reality, AANDC recommends the following wording for the narrative associated with Action #2: *"The SLUPB will ensure that it manages its budget accordingly within the amount provided through the Sahtu Implementation Plan in order to incorporate the operational expenses of the Working Group. Working Group members will participate at their respective organization's expense."*

Potential Revised Wording for Action #2:

"1) The SLUPB will establish and lead a Sahtu Land Use Working Group as a collaborative forum through which to discuss key regional land use issues, and Plan implementation issues.

2) The SLUPB will chair the Working Group, which will have one representative each from SSI, the seven community land corporations, AANDC, the GNWT (ENR), the SRRB, the SLWB, the oil and gas industry, the mineral exploration industry, and environmental non-government organizations. Other participants may be invited from time to time to participate as resource people.

3) The SLUPB will hold in-person Working Group meetings or conference calls on an as needed basis. [A list of issues for working group consideration is provided in the context description for this Action.]"

Add to narrative for Action #2:

Potential discussion topics for the Sahtu Working Group (expand on topics as the Planning Board sees fit): Plan Implementation Issues, Community Engagement Guidelines, Traditional Knowledge Guidelines, Cumulative Effects Management, Cumulative Impacts Monitoring, Community-Government Monitoring and Enforcement Plan, Best Practices.

Action #3 – Inspection and Enforcement Priorities

Information for the Planning Board: AANDC sets inspection priorities using a risk assessment that considers variables that include site sensitivity (cultural and ecological) and scale of land use activity or project. AANDC currently meets this Action.

4.0 RECOMMENDATIONS

- **AANDC Response to Recommendations:**

AANDC acknowledges the importance of the advice offered in this section of the Land Use Plan. However, as AANDC has stated in previous submissions to the Planning Board, the department does not currently have the fiscal capacity to fulfill Recommendations targeted directly or indirectly at AANDC. AANDC will not approve a Plan that includes Recommendations that the department may not be able to honor.

APPENDIX 1: AANDC CRITERIA FOR REVIEWING LAND USE PLANS

1. Legal and Policy consistency and accuracy – a plan must accurately reflect land claims agreements and legislation, and be consistent with applicable Government of Canada policy.

- ✓ provisions in the draft plan must be consistent with legal requirements in the applicable land claims agreement
- ✓ provisions in the draft plan must be consistent with relevant legislation
- ✓ provisions must be consistent with, and supportive of related policy (e.g., Canada Mining Regulations, or NWT Protected Areas Strategy)

2. Effective, Efficient, and Credible Planning Process –Achieving quality final land use plans requires that planning processes are based on effective, efficient, and credible planning practices.

- ✓ Is this process transparent, credible, and based on accepted professional practice?
- ✓ Does the Draft Plan adequately reflect the federal input?
- ✓ In addition to federal interests, does the draft plan consider and respect interests and perspective of non-federal parties, including territorial governments, Aboriginal governments and organizations, communities within planning region, northern residents, and key stakeholders?

3. Clarity - A plan must be clearly written so that it is well understood by its stakeholders.

- ✓ Are provisions in the plan (namely land use zones and conformity requirements) sufficiently clear so that they can be implemented? Is there significant risk of misinterpretation?
- ✓ As written, would the implementation of these provisions meet objectives identified for a given zone?
- ✓ Is the terminology in the Draft Plan (including acronyms) clear and internally consistent?

4. Governance & Implementation – A plan must reflect the authority, roles, and responsibilities of its implementing bodies.

- ✓ Are provisions requiring regulatory conformity directed to the appropriate body? Does the body that is expected or directed to implement the provision have the legal authority and the mandate to take that action?
- ✓ Are there issues of capacity and resources that need to be considered? (i.e., Will plan approval and implementation create new capacity requirements from Government? Are these capacity requirements well understood?)
- ✓ If a provision (e.g., a conformity requirement) is directed at a body other than government, does the plan make clear what role (if any) government is expected to have in implementing or overseeing the implementation of that provision?
- ✓ Do any provisions in the plan give rise to specific potential issues relating to the Government of Canada's constitutional duty to consult under s. 35 of the *Constitution Act*?

5. Regulatory Improvement & Efficiency - A plan should contribute positively to its environmental regulatory regime

- ✓ Does the plan establish regional objectives to guide and streamline project proposals, environmental assessments, regulatory approvals, and environmental monitoring?
- ✓ Does this plan contribute to regulatory improvement? Does it provide additional certainty to proponents, regulators, and key stakeholders?
- ✓ Does a provision contribute to excessive regulatory burden or procedural complexity that cannot be justified?