



Déline Renewable Resources Council

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May 29, 2007

John T'Seleie
Executive Director
Sahtu Land Use Planning Board
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Re Review of Draft 1, Sahtu Land Use Plan (Draft Dated February 16, 2007)

Dear Mr T'Seleie;

We are pleased to submit our comments on the February 16/07 draft of the Sahtu Land Use Plan (the "Draft SLUP" or the "Draft Plan"). We commend the Board for the work it has put into the Draft Plan, surely a difficult task, given the different places that Sahtu districts and organizations are at with the larger land use planning process in the Sahtu Settlement Area. And we thank you for your work to date.

Our detailed comments and recommendations are summarized in the attached report (the Report). In general, we recommend that the Board fully incorporate the Great Bear Lake Management Plan into the next draft of the SLUP.

We would be pleased to sit down with you as you consider the preparation of the next draft of the SLUP. We look forward to hearing from you. Again, thank you for your extensive work to date.

Sincerely,
Original signed

Dolphus Tutcho
President DRRC



SUMMARY OF COMMENTS AND RECOMMENDATION ON THE DRAFT SAHTU LAND USE PLAN (PLAN DATED FEBRUARY 16, 2007)

1. PURPOSE AND STRUCTURE

This report (the “Report”) summarizes our comments and recommendations on the Draft Sahtu Land Use Plan (Draft dated February 16/07: the “Draft SLUP” or the “Draft Plan”). We submit these comments for the Sahtu Land Use Planning Board’s consideration.

We have kept our summary as brief as possible, on the expectation that the Board will likely receive a large number of comments. Providing that we receive sufficient notice (please allow 3 weeks minimum), we would be pleased to sit down with the Board to discuss the preparation of the next draft of the Sahtu Land Use Plan (the “SLUP”).

We have separated comments and recommendations on the Draft SLUP into five categories:

- a. Incorporation of Great Bear Lake Management Plan into the SLUP;
- b. Vision, goals, objectives and purposes, etc;
- c. Presentation of information: layout of the Draft SLUP;
- d. Special Management Zone in the Déline District;
- e. Conservation Zones in the Déline District; and
- f. Exemptions from Zoning.

2. INCOPORTATION OF GREAT BEAR LAKE MANAGEMENT PLAN

On May 31 2005, the Great Bear Lake Working Group recommended that the Sahtu Land Use Planning Board incorporate the Great Bear Lake Management Plan into the Draft SLUP. The Great Bear Lake Working Group was a broad coalition of Déline and regional management authorities, federal and territorial management agencies, and an environmental non-government organization. The Working Group’s Great Bear Lake Management Plan represented fully 3 years of dedicated work, inspired by the Elders of Déline, and the consensus of the entire Working Group. That consensus is a significant achievement.

We have reviewed the Draft SLUP. We can see that parts of the Great Bear Lake Management Plan have been incorporated into the Draft SLUP. We are not, however, satisfied with the partial incorporation of the Management Plan into the Draft SLUP. The Great Bear Lake Management Plan’s visions, goals, objectives, key concepts, Elders’ teachings and general policies are all missing from the Draft SLUP¹.

¹ For an amplification of this point, please see parts 3 and 5 below.



We recommend that the Sahtu Land Use Planning Board incorporate the entire Great Bear Lake Management Plan, amended as set out below, into the next draft of the SLUP. If that is not possible, we recommend that the Board incorporate story of the water heart (Executive Summary, Part 2) and all of Parts 4 and 5 of the Great Bear Lake Management Plan, amended as set out below, into the next draft of the SLUP, and that the Management Plan as a whole, amended as set out below, be appended to the Land Use Plan, as part of the SLUP.

Below, we suggest minor amendments to the Great Bear Lake Management Plan. We believe these amendments to be consistent with the consensus of the Great Bear Lake Working Group. We would be happy to discuss them and the incorporation of the Management Plan into the SLUP with you.

3. VISION, GOALS, OBJECTIVES, PURPOSES, ETC.

We make the following comments and recommendations on the vision, goals, objectives and purposes of the Draft SLUP:

- a. **Vision, Goals and Objectives:** A land use plan is a statement of:
 - i. vision, goals, objectives, key concepts etc. — that is: what future the plan envisages for the planning area;
 - ii. whatever situation analysis is needed to help readers understand the context within which the plan was developed; and
 - iii. a strategy to help achieve the stated vision, goals, objectives, etc., given the situation analysis.

The Draft SLUP speaks of building a vision, but the stated vision consists only of “a balance between development and conservation” (p. 10 & 11). This vision is not sufficient to direct those who will use the Plan. The Plan needs a fuller statement of the future it envisages for the Sahtu settlement area, before turning to zoning. Zoning is merely a means of achieving the Plan’s vision, goals and objectives. When future land and water use applications come before the Sahtu Land Use Planning Board and regional licencing bodies (e.g. the Sahtu Land and Water Board), these Boards will need to determine whether applications are consistent — or not consistent — with the Plan’s vision and goals. This fundamental component of the Draft SLUP is currently missing. Every applicant for a land use permit or water licence would probably say that it’s proposal is consistent with “a balance between development and conservation”. The SLUP must articulate a vision of where that balance lies, as well as a strategy for achieving it.

- b. **Sample Vision, Goals and Objectives:** The Great Bear Lake Management Plan has set out a vision, goals and objectives for the Special Management Zone and Conservation Zones in the GBL Watershed. See Parts 4.2, 4.4, 5.2 and 5.4 of



that Plan. The Board may wish to consider these in further developing the vision, goals and objectives of the Draft SLUP.

- c. **Resident and Community Well-Being:** The primary purpose of the SLUP is as set out in subsection 25.2.4(a) of the Sahtu Land Claim Agreement (the “SLCA”): “to protect and promote the existing and future **well-being** of the residents and communities of the settlement area having regard for the interests of all Canadians” [emphasis added]. It is important to understand the central place of that the concept of resident and community well-being plays in the SLCA — a constitutionally-recognized treaty between the Crown and Sahtu Dene and Metis — and the central place this concept must play in the SLUP. At present, this concept not sufficiently reflected in the Draft SLUP and its vision, goals and objectives. It should be central to the SLUP.
- d. **Elders’ Principles and Values:** After reviewing the earlier “Sahtu Preliminary Draft Land Use Plan”, one Déline elder concluded: “There’s nothing of us here”. Elders — and the principles and values that they represent — are central to Sahtu well-being. Elders’ principles and values will always need to be adapted to the changing modern context, but they should nonetheless be more directly represented in the Draft SLUP. Please see elders’ stories and teachings throughout the Great Bear Lake Management Plan for potential reference materials that the Draft SLUP could use.
- e. **Fundamental Concepts: Ecological Integrity and Community Well-Being:** Two concepts are fundamental to the Great Bear Lake Management Plan: ecological integrity and cultural integrity. They are discussed in Part 4.1 of the Management Plan. Cultural integrity is the same as residents’ and communities’ well-being, as set out in subsection 24.2.4(a) of the SLCA. An explicit discussion of these concepts would help strengthen the SLUP.
- f. **Summary of Above:** The Draft SLUP currently consists of a series of rules (zones) without the vision, goals, objectives, purposes, elders’ teachings and concepts to animate and give reason to these rules. The SLUP needs vision, goals and objectives etc. to direct those who will use it.

4. PRESENTATION OF INFORMATION: LAYOUT OF SLUP

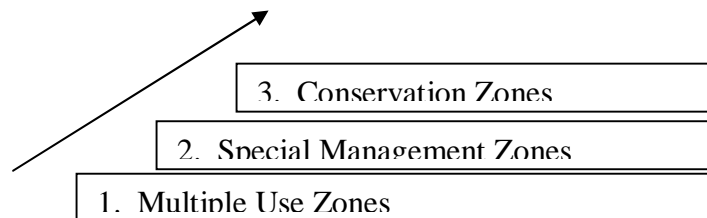
We make the following comments and recommendations on the presentation of information and layout of the Draft SLUP:

- a. **Facts:** As stated above, land use plans typically present a summary of the relevant facts — “situation analysis” of the context within which the plan was developed. The reader of the Draft SLUP is dropped immediately into zoning without sufficient explanation of how the Board got there. While undoubtedly



lengthening the SLUP, some discussion of the relevant facts/current situation might help readers to see how the Board came to its conclusions.

- b. **Presentation of Zones:** It might be easier for the reader of the Draft SLUP to understand the zoning system if the Draft Plan began with the multiple use zones, then discussed the special management zones, and then ended with conservation zones. Each of these zones builds on the basis of the previous, but adds further conditions, given the importance and vulnerability of the resources it is meant to protect. The special management zones add to the requirements in multiple use zones, and the conservation zones add to the requirements of the special management zones, like climbing a series of steps. This progression is illustrated in the diagram below. The Sahtu Land Use Planning Board may wish to consider this layout in the next draft of the SLUP.



- c. The term “activities” is an important one that is used at various places in the Draft SLUP. It needs to be defined. For a potential definition, see Part 2 of the GBL Management Plan.

5. SPECIAL MANAGEMENT ZONE IN THE DÉLINE DISTRICT

We make the following comments and recommendations on the Special Management Zone within the Déline District:

- a. **Great Bear Lake:** Great Bear Lake should be identified as **part of** the Great Bear Lake Special Management Zone.
- b. **General Policies Applicable to Special Management Zones:** In addition to vision, elders’ teachings, goals, objectives and key concepts, the discussion of the Special Management Zones in Part 1.3.4.1 of the Draft SLUP does not state **general** policies applicable to the Special Management Zone. General policies are set out in Part 4.5.2 of the GBL Management Plan. There are three problems with the Draft SLUP’s lack of general policies:
- i. It is impossible, in a collection of specific rules such as those set out in the Draft SLUP, to anticipate and address every situation that the SLUP will need to address. That is why legislation is commonly drafted in **general** terms and why the GBL Management Plan contains more general policies: the



Management Plan's conditions and prohibitions are merely specific extensions of the general policies. If a specific condition or prohibition can't be found to address an issue, those implementing the Plan have the more general policy to rely on and, in any case, the general policy helps to interpret the more specific condition or prohibition. General policies would also help establish in general language what the Draft SLUP is trying to accomplish, and not merely what it prohibits.

- ii. The policies set out in Part 4.5.2 of the GBL Management Plan are written in terms of the protection of ecological and cultural integrity (environmental, resident and community well-being). These policies are reflected in part in 1.3.4.1.B of the Draft SLUP, but that provision of the Draft Plan is not given sufficient prominence. Further, it is not at all clear that the many conditions and prohibitions in 1.3.4.1 P through Z of the Draft SLUP are sufficient to maintain ecological and cultural integrity. Again, more general policies are needed.
 - iii. The drafters of the Draft SLUP have adopted prohibitions from the GBL Management Plan and some of the conditions of that Plan. In 1.3.4.1 P through Z of the Draft SLUP, they have also added a large number of what appear to be standard regulatory conditions from one or more land managers. While useful, many of the latter conditions are repetitive. This ends up in 13 pages of prohibitions and conditions — a pretty onerous-looking Draft SLUP. We wonder whether all of these conditions and prohibitions couldn't be better integrated and amalgamated under the general policies referenced above.
 - iv. Conclusion: The Board should consider incorporating more general policies into the Draft SLUP's discussion of special management zones, and some grouping of the many conditions and prohibitions under the general policies.
- c. We propose the incorporation of the following statement into the next draft of the SLUP and into the Special Management Zone part of the Great Bear Lake Management Plan:
- . "For greater certainty, an all weather road north-west from Déline to ts'oo tue (the southern-most lake in the Luchaniline [Whitefish] River system) is consistent with the Special Management Zone, provided that such a road is constructed and operated in a manner consistent with the policies, conditions and prohibitions applicable to the Special Management Zone as a whole."

6. CONSERVATION ZONES IN THE DÉLINE DISTRICT

We make the following comments and recommendations on Conservation Zones within the Déline District:



- a. **Conservation Zones and Participants' Hunting Fishing and Trapping Rights:** Some people have the mistaken idea that the SLUP can restrict participants' right to travel and establish and maintain hunting, trapping and fishing camps in Conservation Zones (see statement of right in subsection 13.4.11(a) of the SLCA). Section 1.4.3 of the Draft SLUP addresses this issue, but it might help if that section was amplified and displayed more prominently in the next draft of the SLUP.
- b. **Basic Policies Applicable to Conservation Zones:** See comments under 5b above. Like the Special Management Zones, the Conservation Zones need **general** policies to organize and animate the specific conditions and prohibitions applicable within them. Please see Part 5.5.2 of the GBL Management Plan for applicable policies.
- c. **The Great Bear River Conservation Zone (Draft SLUP, s. 2.1.4):**
 - i. **Community Energy Development:** Title to settlement lands in the Déline District, including settlement lands along the Great Bear River, has been assigned to the DLC, and Déline organizations should in any case have a very strong voice in the designation of all conservation zones within the Déline District. We are concerned with the potential designation of the Great Bear River (much of which lies within the Déline District) as a strict conservation zone. We are, however, aware of Tulita's interest, as a downstream user, in the maintenance of the ecological integrity of the River as a whole. We recommend that any designation of the Great Bear River as a conservation zone should explicitly allow for micro hydro development within the Déline District part of the River. There may be concerns with the scale of such hydro development. We recommend that the SLUP address such concerns by limiting hydro development on the Great Bear River to **hydro development sufficient to meet community energy needs**.
 - ii. **Bridge:** Any conservation zone proposed for Déline District portion of the Great Bear River should also allow for the potential future development, within the Déline District, of a winter road bridge across the River.
- d. **Luchaniline/Whitefish River Conservation Zone, Further Management Conditions and Prohibitions (Draft SLUP s. 2.1.5):**
 - i. We agree with the elimination, in the Draft SLUP, of Further Management Condition "a" as found in Part 5.6.1 of the Great Bear Lake Management Plan, that dealt with commercial timber harvesting and gravel extraction.
 - ii. We also agree with the inclusion of parcel M25 in the Great Bear Lake Special Management Zone, and with this parcel's exclusion from the Luchaniline/Whitefish River Conservation Zone.



- e. **Du K’ets’Edi/ Sentinel Islands Conservation Zone, Further Management Conditions and Prohibitions (Draft SLUP, s. 2.1.5):**
- i. After reconsideration, the DLC wants the next draft of the SLUP to designate all settlement lands on islands in Great Bear Lake, to which the DLC holds title, as part of the Great Bear Lake Special Management Zone, and not as part of the Du K’ets’Edi/Sentinel Islands Conservation Zone.
 - ii. Crown lands on islands in Great Bear Lake should remain part of the Du K’ets’Edi/Sentinel Islands Conservation Zone.
 - iii. The SLUP’s discussion of Great Bear Lake islands should also indicate their importance for nesting birds, and Déline organizations’ concerns that wastes on the islands (including abandoned fuel containers) be cleaned up by the appropriate authorities.
 - iv. The Draft SLUP should add a final sentence to the listed Further Management Conditions, as follows: “The appropriate authorities, including the SRRB, the DRRC, the GNWT and the SL&WB shall not authorize any commercial renewable or non-renewable resource development activities on Du K’ets’Edi.”
- f. **Sahyoue and Edacho (Draft SLUP ss. 2.1.6 & 2.1.7):**
- i. The “Reasons for Protection” section in this part of the Draft SLUP and the Great Bear Lake Management Plan both to be updated, as follows: On March 11/07, the DLC, the DFN and the Minister responsible for Parks Canada signed an MOU committing these parties to work towards the permanent protection and cooperative management of Sahyoue and Ehdacho National Historic Site. On the same day, Minister Baird announced federal government funding of \$5M over 5 years for initial development of the Site + \$700K per year thereafter for the ongoing operational costs of this National Historic Site.
 - ii. The SLUP’s “Management Plan Approach to Sahyoue and Edacho” should be revised to strike the stated assumptions and simply say that the settlement lands within Sahyoue and Edacho National Historic Site are designated as Sahyoue and Edacho Conservation Zone.
 - iii. The SLUP’s “Further Management Conditions” and the Great Bear Lake Management Plan both to be updated, as follows: Pursuant to section 26.2.3 of the SLCA, the DLC has responsibility for managing settlement lands within Sahyoue and Ehdacho National Historic Site, designated by the SLUP as the Sahyoue and Ehdacho Conservation Zone. Activities on settlement lands within the Site shall be as permitted by the DLC. The DLC may permit access across settlement lands within Sahyoue and Ehdacho Conservation Zone



where such access is consistent with the maintenance of ecological integrity, community well-being, and the protection of the heritage values of the National Historic Site.

g. Horton Lake Conservation Zone (Draft SLUP, s. 2.1.8):

- i. We recommend that the “Cultural and Socio-Economic Importance” discussion in the Draft SLUP be amended to reflect Sahtu Dene and Metis traditional use (and not merely K’asho Got’ina use) as follows (amendments indicated by underlining):
 - . “While it is within the Déline District and Déline’s area of traditional use, Horton Lake is currently used primarily by the people of Colville Lake.
 - . Araka Tue is used as a summer retreat by Sahtu Dene and Metis. They return there each summer by floatplane for spiritual renewal and to hunt caribou.
 - . Conservation Zone designation will preserve the physical heritage of Sahtu Dene and Metis, including grave sites ...
 - . It is important for the stories that are associated with the lake, and the history, values and law of the Sahtu Dene and Metis that these stories preserve.
 - . It is a place of spiritual renewal for Sahtu Dene and Metis to strengthen their relationship with land and one another as a people.
- ii. Activities within the Déline District portion of Horton Lake shall be subject to the approval of the appropriate Déline authorities.

7. EXEMPTIONS FROM ZONING

We make the following comments and recommendations on exemptions from zoning in the Draft SLUP:

- a. Section 1.4.1 of the Draft SLUP is too broadly stated, particularly as it applies to permits to prospect. This section is also inconsistent with 1.3.3.1.C of the Draft SLUP. This is a fairly technical issue, needing explanation here. It will also need some explanation in the next draft of the SLUP and revision in the Great Bear Lake Management Plan. Our recommended explanation:
 - i. Representatives of Déline have made it clear that they are opposed to mineral exploration and development in Conservation Zones. They want these places



protected and preserved in their natural state, unpolluted and undisturbed. In January 2004 and January 2005, however, the Director of Mineral Resources of the Natural Resources and Environment Branch of DIAND issued prospecting permits along the north and north-eastern shores of GBL, within the eastern and southern parts of the watershed, and in the western parts of the watershed in the vicinity of the Whitefish River. There are thus now prospecting permits throughout much of the GBL Special Management Zone as well as in parts of the Luchaniline, Du K'Ets'Edi and Tehkaicho Dé Conservation Zones as well as in most of the Edaiila Conservation Zone.

- ii. The prospecting permits have a period of 3 years. They give the permit holder the exclusive right to prospect for minerals, to locate mineral claims and to record mineral claims within the boundaries of the permit, provided that the permit holder meets work requirements set out in the *Canada Mining Regulations*². With the recording of a claim, the claim holder has the exclusive right, subject to various regulations in force at the time, to prospect for minerals and develop any mine within the boundaries of the recorded claim³.
- iii. The prospecting permits complicate the establishment and management of Conservation Zones. Conservation Zones and Protected Areas typically prohibit mineral exploration, development and transportation. If there are third party mineral rights within these sorts of area on their establishment, the area is typically made subject to these mineral rights or (alternatively) the mineral rights are bought out. When such areas are established subject to pre-existing mineral rights, these rights are usually in the form of registered claims or mineral leases. Such rights are limited in their geographic scope and potential impacts. In the case of prospecting permits, however, the right to prospect for minerals, locate mineral claims and record mineral claims **extends throughout the (extensive) area of the prospecting permit**⁴. These are large areas, and the Special Management Zone and the affected Conservation Zones are thus potentially subject to extensive mineral activity and extensive exemptions from zoning.
- iv. The exemption as stated in part 1.4.1 of the Draft SLUP could be interpreted to mean that large areas — including all lands covered by existing prospecting permits — of the Great Bear Lake Special Management Zone and of Great Bear Lake Conservation Zones are effectively exempt from any restriction on mineral exploration and development. Again, this is too wide an exemption. The GBL Management Plan proposed a reasonable alternative. The description below further elaborates the GBL Management Plan's proposed alternative, as follows:

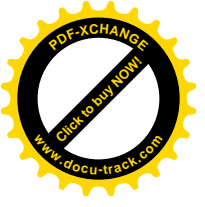
² *Canada Mining Regulations*, ss. 33 & 34.

³ *Canada Mining Regulations*, s. 27.

⁴ *Canada Mining Regulations*, ss. 29(10), 33(2), 34 and 27(1).



- v. For permits, licences or other authorizations in the Special Management Zone issued prior to the approval of the SLUP, including those within existing prospecting permits, the appropriate authorities shall interpret and apply the policies, conditions and prohibitions in Part 4.5 and 4.6 as operational standards applicable to any renewal or substantial amendment of such permits, licences or other authorizations.
- vi. For permits, licences or other authorizations in the Special Management Zone issued subsequent to the approval of the SLUP, including those within existing prospecting permits, the appropriate authorities shall interpret and apply the policies, conditions and prohibitions in Part 4.5 and 4.6 as operational standards applicable to all such permits, licences or other authorizations.
- vii. Unless already authorized in Conservation Zones prior to the approval of the SLUP, the following are prohibited in Conservation Zones:
 - . the issuance of prospecting permits, the locating and recording of mineral claims, and mineral exploration, development and transportation; and
 - . oil and gas exploration, development and transportation.
- vi For prospecting permits issued prior to the approval of the SLUP and its Conservation Zones, the appropriate authorities shall implement the following conditions and prohibitions:
 - . Prospect permit-related licences, permits or other authorizations issued prior to the approval of the SLUP and Conservation Zones may be exercised as non-conforming uses. Prospect permit-related licences, permits or other authorizations issued subsequent to the approval of the SLUP and Conservation Zones shall be subject to the policies and conditions applicable to Conservation Zones. For greater certainty, mineral claims recorded with the Mining Recorder prior to the approval of the SLUP may be developed, but new permits, licences or other authorizations, and any renewal or substantial amendment of permits, licences or other authorizations associated with the development of these claims shall be subject to the policies and conditions of the SLUP. The rights of the holders of recorded claims may be exercised, but only subject to the new regime put in place by the SLUP and contemplated by the SLCA.
 - . With the approval of the SLUP and Conservation Zones, no further mineral claims shall be recorded by the Mining Recorder within the boundaries of prospecting permits issued prior the approval of the SLUP and that now fall within Conservation Zones.



- . On the expiry or relinquishment of mineral rights within the boundaries of prospecting permits issued prior to the approval of the SLUP and Conservation Zones, the prohibitions in v above shall apply; and
- . On the expiry of prospecting permits, no further prospecting permits shall be issued in Conservation Zones.