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Annex A

Ms. Heather Bourassa
Chairperson, Sahtu Land Use Planning Board
Box 235
FORT GOOD HOPE, NT X0E 0H0

Dear Ms. Bourassa:

Aboriginal Affairs and Northern Development Canada, on behalf of the Government of Canada is pleased to provide the Sahtu Land Use Planning Board with its analysis of the proposed changes to the Draft Sahtu Land Use Plan. The review document reflects the collaborative efforts of nine federal departments and agencies with a role in land use planning. The goal is to provide the Sahtu Land Use Planning Board and approving parties with constructive feedback to prepare for the Tri-partite meeting on September 6-7, 2012 in Yellowknife.

Canada is pleased to continue assisting the Sahtu Land Use Planning Board towards the successful completion of a final draft land use plan. Should you have any questions on this submission, please contact Robert Jenkins, Acting Director, Renewable Resources and Environment Directorate at (867)669-2574.

Sincerely,

Kathryn Bruce
Regional Director General, NT Region

Encl.: Federal Review of the Proposed Revisions for the Final Draft Sahtu Land Use Plan: Working Toward an Approvable Sahtu Land Use Plan

c.c.: Ethel Blondin-Andrew, Chair, Sahtu Secretariat Incorporated
c.c.: Ernie Campbell, Deputy Minister of Environment and Natural Resources, GNWT

AADNC-AANDC

Federal Review of the Proposed Revisions for the Final Draft Sahtu Land Use Plan

Working Toward an Approvable Sahtu Land Use Plan

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Executive Summary

Key Approval Issues: Federal Review Summary of the Proposed Revisions for the Final Draft Sahtu Land Use Plan

A meeting of the approving parties (SSI, the GNWT, and AANDC) is being hosted by the Sahtu Land Use Planning Board on September 6-7, 2012 in Yellowknife, NT. The intent of the “Tri-Partite” meeting is to identify and discuss outstanding critical issues that, if left unresolved, may affect parties’ ability to approve the Final Sahtu Land Use Plan. This document summarizes the federal issues deemed critical for Plan approval as determined through a coordinated review process. This table represents a summary of key federal approval issues that should be discussed at the tri-party meeting. Further rationale for each issue is discussed in detail in the body of the document.

The ideas described throughout this document are without prejudice and subject to change.

Issue	Dept	Reasons for Approach	Alternatives for an approvable land use plan
<i>Plan Implementation</i>			
<p>1. Dual conservation designation</p> <p>The Plan proposes additional protection for protected areas by zoning the area as ‘Conservation’ when requested to do so by the sponsoring agency.</p>	AANDC	<ul style="list-style-type: none"> Zoning a National Wildlife Area or Territorial Park as a Conservation Zone may be inconsistent with the protected area’s management plan - leading to regulatory confusion and/or duplication. In the case of National Wildlife Areas, communities are directly involved in setting and amending the management goals, including prohibited or permitted activities. 	<ul style="list-style-type: none"> The Plan should not direct a legislated authority once a National Wildlife Area or Territorial Park is established. The Plan should either leave the established area ‘un-zoned’ or create a new zone (e.g. Established Protected Area Zone) that defers to the area’s management plan. For the Final Plan, candidate areas should remain zoned as Proposed Conservation Initiative Zones, with the understanding that the Plan will be amended once the areas are officially established.
<p>2. Conformity Determination (CD)</p> <p>Departments have concerns that the conformity determination process is</p>	AANDC DND/CF	Both options (A and B) should be available for the CD process with option B being the standard approach as it will improve clarity with regard to the shared	<p>In AANDC’s view, the CD process should:</p> <ul style="list-style-type: none"> not include mandatory referral; include a binding time line for the Planning Board

Issue Description of Issue	Dept	Reasons for Approach	Alternatives for an approvable land use plan
SLUPB Proposed Wording (if available)			
not clearly described enough to be understood.		roles and responsibilities in the regulatory system.	<p>to make decisions on referred applications (e.g. 10-15 business days);</p> <ul style="list-style-type: none"> fit within existing regulatory timelines; and (for Land Use Permits and Water Licences) occur at the 'completeness check' stage.
<p>3. Authorizations that implement the Plan / Application of CRs, and Minimum Thresholds</p> <p>Canada and proponents require full understanding as to which authorizations would be subject to the Plan.</p>	AANDC	<ul style="list-style-type: none"> Federal authorities can only implement CRs where they have authority to do so. For some AANDC rights issuances, only CR#1 is triggered. A 'CR-Authorization' table will clarify which CRs are applicable for each authorization and avoid unnecessary confusion for regulators and proponents. There is still confusion amongst parties and the Planning Board as to which authorizations will be used to implement the Plan. For clarity, it is recommended that the Planning Board confirm which authorizations are subject to the Plan via a defined inclusion list. With regards to their wording, CRs in the draft plan are often directed solely at regulators (e.g. "Regulators will ensure..."). Given that land use plans provide important guidance to proponents for the development of clear regulatory applications, CRs should place appropriate onus on the proponent. 	<p>AANDC requires that the Final Plan include:</p> <ul style="list-style-type: none"> a CR Authorization Table that includes defined inclusion list of all authorizations (Federal, GNWT, and SSI issuances) that are subject to the Plan; this table shall clearly state which CRs are applicable for each authorization as per the specific legislative authority; due consideration of Canada's analysis as to which CRs can be implemented by federal authorizations; and <p>To assist in this regard, AANDC supports the pre-ambble provided for CR#10: "Any land use activity requiring...must be designed and carried out in a manner that..." For clarity and consistency throughout the plan, AANDC suggests this approach be used for all CRs, where</p>

Issue Description of Issue	Dept	Reasons for Approach	Alternatives for an approvable land use plan
SLUPB Proposed Wording (if available)			

applicable.

Conformity Requirements (CRs)

<p>4. CR# 5 – Watershed Management</p> <p>This CR adds confusion to Claim interpretation by (i) attempting to define ‘substantially alter’, and (ii) not acknowledging that compensation is only applicable to Sahtu Lands.</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>“A land use activity must not substantially alter the quality, quantity and rate of flow of surface or ground water within Special Management Zones, Conservation Zones and Proposed Conservation Initiatives.”</p> </div>	AANDC	<ul style="list-style-type: none"> ● The proposed wording would extend the SDMCLCA clause for substantially unaltered water beyond Sahtu Lands. The CR should reflect the rights as agreed to in the Claim. AANDC cannot approve a CR that may oblige parties beyond what is stipulated in the Claim. ● The first alternative recommended by AANDC clearly stipulates the expectations set forth in the claim for Sahtu Lands, and request the substitution of ‘<i>impacts to waters</i>’ or ‘<i>significant impacts</i>’ for ‘substantially alter’. The Planning Board may wish to consider ‘impacts to waters’ as a value to address in the zone descriptions for SMZs as well. ● As the Planning Board acknowledged, defining ‘substantially alter’ is problematic. Yet a Land use plan must have clearly defined implementation guidance for proponents and regulators. ● Communities currently have numerous opportunities to influence and guide activities affecting waters in CZs, SMZs, and PCIs through the Land and Water Board process. 	<ul style="list-style-type: none"> ● To accurately reflect the clause in the SDMCLCA, and the intent of protecting waters that flow into important Zones (that are not Sahtu Lands), AANDC suggests that the CR be revised to: <i>“For water licences and land use permits, Land and Water Boards will ensure that the proposed land use activity:</i> <ul style="list-style-type: none"> a) <i>subject to legislation, does not substantially alter quality, quantity, or rate of flow for waters that flow on, through, or are adjacent to Sahtu lands*, and</i> b) <i>includes mitigation measures to minimize potential [or significant] impacts to surface and ground waters (outside of Sahtu Lands) that flow into CZs, SMZs, or PCIs.</i> <p>* The following information should be included in the context section for the CR: <i>Subject to 20.1.15 and 20.1.16 of the SDMCLCA, where a compensation agreement between the applicant and Sahtu Tribal Council (SSI) can allow for the Land and Water Board to authorize substantial alteration of waters on Sahtu Lands OR where</i></p>
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Issue	Dept	Reasons for Approach	Alternatives for an approvable land use plan
Description of Issue			
SLUPB Proposed Wording (if available)			
		<ul style="list-style-type: none"> A minimum threshold of MVRMA/NWTWA authorization is logical given that any land use that might substantially alter waters would require such an authorization. Land and Water Boards also have the expertise to interpret and set appropriate terms and conditions to meet both parts (a) and (b) of AANDC's suggested wording. For further consideration: Would this CR apply outside of the Sahtu, for example, would applicants in the Tlicho, Yukon, or Nunavut that are part of a regional watershed that flows into a CZ, SMZ, or PCI be expected to meet the requirement of this CR? 	<p><i>the Land and Water Board has made a ruling on compensation where a compensation agreement could not be agreed to accordingly within the time limit established by the Land and Water Board."</i></p> <ul style="list-style-type: none"> The implementation guidance for this CR must define or set guidelines for 'impacts to water' or 'significant impacts'. AANDC would also be open to exploring SSI's (May 2011) recommendation that the Planning Board consider a "policy framework that focuses on source control and waste management rather than non-degradation". This could be done in cooperation with GNWT's Community Source Water Protection Planning initiative and the NWT Water Strategy.
<p>5. CR#13 – Closure and Reclamation</p> <p>This CR overlaps with existing processes and regulations. In AANDC's view, it is difficult to determine how conformity can be accomplished at the land use planning phase.</p>	AANDC	<p>Reclamation goals are addressed through current regulatory processes. AANDC encourages all interested parties work with the land and water boards, AANDC, and other regulators on existing reclamation planning processes.</p> <p>With regards to timing and sequencing, it remains difficult to determine how 'conformity' can be achieved at the application phase, i.e before work has started, and any potential impacts are realized.</p>	<p>As the primary land manager in NWT, Canada has a mandate to NWT residents and Canadians to ensure that sites are appropriately reclaimed to eliminate or reduce risk of future clean-up expenses. Given this obligation, and the existing regulatory processes for managing closure and reclamation planning, AANDC requires that this CR (as currently written) be removed from the Plan.</p> <p>The importance of closure and reclamation goals could be included in the Plan in a new section such as 'Priority</p>
<p>"On termination or abandonment of a land use activity, Regulators shall ensure that any area affected by the</p>			

Issue Description of Issue	Dept	Reasons for Approach	Alternatives for an approvable land use plan
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land use activity is restored to a viable, self-sustaining ecosystem consistent with the surrounding ecosystem or expected future uses of the area as determined in consultation with residents, communities and responsible authorities. Progressive reclamation is encouraged.”		In AANDC’s view, the land use plan is not an effective or a suitable tool for achieving reclamation.	Concerns’.
<p>6. CR#15 – Ecological Integrity</p> <p>The objectives of this CR are met through the other CRs.</p> <p>“Any land use activity in the Great Bear Lake Watershed must be consistent with the maintenance of the ecological integrity of the watershed, and the present and future well-being of affected residents and communities.”</p>	AANDC	In AANDC’s view, the goals of ecological integrity (Goal#2 of the Sahtu Land Use Plan) are collectively achieved through other land use planning CRs, Special Management Zone operating requirements within the Great Bear Lake watershed, existing legislation, and best practices.	<p>AANDC understands the importance of maintaining ecological integrity for Great Bear Lake and all of the Sahtu Settlement Area. The completed Plan, in conjunction with regulation and best practices contribute to an integrated set of tools for meeting this goal. To avoid regulatory duplication and maximize clarity, AANDC requires that this CR be removed with the understanding that its objectives will inherently be met.</p> <p>AANDC recommends that the Planning Board add text to the Plan that encourages proponents proposing land use activities in the Great Bear Lake Watershed to refer to the <i>Water Heart: Great Bear Lake Watershed Management</i></p>

Issue	Dept	Reasons for Approach	Alternatives for an approvable land use plan
Description of Issue			
SLUPB Proposed Wording (if available)			

Plan in both (i) section 1.9.2 of the Sahtu Land Use Plan, and (ii) the zone descriptions for the Great Bear Lake Watershed Special Management Zones.

Actions

7. Action #6 – Climate Change

AANDC

Climate change is more suitably addressed in a land use plan via zoning or special management conditions (i.e. limiting certain land use activities in flood zones or areas where permafrost is melting).

AANDC requires that this Action be removed from the Plan, but encourages the Planning Board to consider other measures to address climate change through conditions or zoning.

A land use plan is most effective when the focus is on directing land use activities through zoning and conditions as specified by communities. This CR directs regulators and associated processes quite generally.

CR #10– Permafrost, is an excellent example of an appropriate measure to address climate change in a land use plan.

Regulators and responsible authorities shall build processes to meaningfully address climate change considerations in project reviews, such as greenhouse gas emission standards, emission reporting, and monitoring requirements.

Recommendations

8. Recommendations 4-6, 8, 10,

AANDC

- AANDC’s opinion is that even ‘non-binding’ Recommendations in an approved Land Use

Unfortunately, AANDC cannot approve a Plan that includes commitments to which it (or any other federal

Issue	Dept	Reasons for Approach	Alternatives for an approvable land use plan
Description of Issue			
SLUPB Proposed Wording (if available)			
<p>12-14</p> <p>Certain recommendations go beyond what the Federal Government can consider with regard to funding or policy decisions.</p>		<p>Plan imply a clear commitment.</p> <ul style="list-style-type: none"> • AANDC and other federal departments must consider the fiscal and policy risks to the Department for committing to Recommendations. • AANDC maintains that Recommendations must be within the scope of a land use plan. 	<p>department) cannot honour or make reasonable efforts to consider. AANDC requires that Recommendations 4-6, 8, 10 and 12-14 be removed from the Plan, and suggests that the Planning Board to list its recommendations in a non-statutory document.</p>
<p>Recommendation 4 – Community Research Liaison</p> <p>Recommendation 5– Communication and Coordination</p> <p>Recommendation 6 – Inspection and Enforcement</p> <p>Recommendation 8 – Building Capacity</p> <p>Recommendation 10 – Granular Resource Allocation Plan</p> <p>Recommendation 12 – Mapping of the Underground River</p> <p>Recommendation 13 – Contaminated Sites</p> <p>Recommendation 14 – Strengthening Culture and Education</p>			

Issue	Dept	Reasons for Approach	Alternatives for an approvable land use plan
Description of Issue			
SLUPB Proposed Wording (if available)			
<i>Overall</i>			
9. Comments on Draft 3 Plan	Parks Canada	There are key recommendations regarding references to National Parks and National Historic Sites that should be addressed.	PC comments on the Draft 3 Sahtu Land Use Plan must be incorporated in to the Final Draft Plan.
10. Sovereignty Operations	DND/CF	When DND/CF plan sovereignty operations, timing and review of applications is very important.	In order to address regulatory efficiency, there should not be a mandatory referral to the Planning Board. In addition, if a referral for conformity determination is made to the Planning Board it should have a binding timeline (e.g. 10-15 business days).
11. Definitions	DND/CF	The term project with regards to future proposed development has not been defined in the section. In addition, the term 'operation' such as a military operation requires clarification. Although land use activity has been defined, it is not clear if DND/CF military operations are captured by the definition.	The Plan must include definitions for 'project' and 'operations'.
12. Minimum Flight Altitudes	TC AANDC	Minimum flight altitudes are not enforceable.	Since the minimum flight altitudes are not enforceable, they cannot be included as a legally binding requirement. The recommended flight altitudes could be captured in the implementation guidance as a non-enforceable guideline.

Issue Description of Issue SLUPB Proposed Wording (if available)	Dept	Reasons for Approach	Alternatives for an approvable land use plan
13. National Wildlife Area Permits	EC	The NWA Policy on permitting is very stringent and only small-scale operations would be permitted (e.g. Tourism or Outfitting), and only if permitted through the area's management plan.	The Plan must not apply to National Wildlife Area permits.
14.	DFO	<i>Pending submission.</i>	<i>Pending submission.</i>

Additional issues that must be addressed by the Planning Board prior to plan approval:

1. Exemptions for Existing Uses: On Page 6 and Page 8 (3.A) – The list of exemptions must include Prospecting Permit, Mineral Claim, Mineral Lease, Dredging Lease, Coal license, Coal lease, and Coal Permit.
2. Conformity Requirement #2 – Community Engagement: The Planning Board should further address the definition of ‘community organizations’. It is still unclear which opinion would be considered for conformity determination if there were differing opinions (ex. RRC versus Band Council).
3. Conformity Requirement #3 –Community Benefits: (1) The Final Plan must refer to ‘*COGOA Benefit Plans*’ not ‘*AANDC Benefit Agreements*’. (2) A COGOA Benefit Plan may not be approved before conformity determination for an authorization, the proponent should have an alternative method for meeting conformity. For example, the proponent could include a brief description of how residents and communities will benefit from the proposed land use activity.
4. Conformity Requirement #9 – Sensitive Species and Features: The wording for this CR should be simplified, with the details to be listed in the conformity criteria. For example: “***Land use activities that require a land use permit or water licence at or near sensitive features shall avoid or mitigate negative impacts to those features as specified in the conformity criteria.***”
5. Conformity Requirement # 12 – Financial Security: “Minister of Aboriginal Affairs and Northern Development” should be changed to the correct legal reference “***Minister of Indian Affairs and Northern Development***”.
6. Conformity Requirement #17 – Disturbance of Lakebed: The Planning Board must include a clause that exempts maintenance, repair, or replacement of community water intakes.
7. Action #1 – Sahtu Working Group: (i) The Board must acknowledge that it will be undertaking the creation and management of the Sahtu Working Group at its discretion, understanding that funding for this specific purpose may not be consistently available, as Canada does not view creating this

separate structure as part of the Board's mandate. The Board will need to manage its existing resources received for fulfilling its mandate pursuant to the SDMCLCA and the MVRMA, and (ii) the Working Group's agenda or details on 'to-do' list should be left general and flexible.

8. Action #2 – Inspection and Enforcement: *“Shall”* must be replaced with *“will make reasonable efforts to”*, in keeping with the intent and expectations of actions.
9. For consideration: In order for the Planning Board to be as flexible and autonomous as possible when making recommendations, AANDC suggests that the Planning Board consider removing all Recommendations from the Plan.
- 10.** Process before Final Plan is submitted to the Minister of AANDC for approval: Canada requests that the Planning Board circulate a full version of the Draft Final Plan for review by the parties prior to submitting the Plan for approval. This will allow departments to see their comments incorporated into the Plan as a whole, and avoid the risk of the Plan not being approved due to small-scale issues (e.g. names of legislation, typos, etc.).

Federal Review of the Proposed Revisions for the Final Draft Sahtu Land Use Plan:

Working Toward an Approvable Land Use Plan

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Introduction

As the federal Minister responsible for the approval of land use plans in the Northwest Territories (NWT) (s.43 *Mackenzie Valley Resource Management Act, MVRMA*), Aboriginal Affairs and Northern Development Canada (AANDC) has coordinated a collaborative federal review of the Proposed Revisions to the Draft Sahtu Land Use Plan. Twelve federal departments and agencies with interests in land and resource management contributed to this review. This document provides a set of coordinated federal comments for achieving an approvable Sahtu Land Use Plan (the Plan). As with previous reviews, the analysis was based on a set of review criteria that include, but are not limited to, the following expectations (see Appendix 1 for further detail):

- 1. Legal and Policy consistency and accuracy** – A land use plan must accurately reflect land claims agreements and legislation, and be consistent with applicable Government of Canada policy.
- 2. Effective, Efficient, and Credible Planning Process** – A land use plan must be based on effective, efficient, and credible planning practices. The process must be transparent, credible, and based on accepted professional practice. It must also reflect input provided by its key stakeholders.
- 3. Clarity** - A land use plan must be clearly written so that it is well understood by its stakeholders. Provisions in the Plan (namely land use zones and conformity requirements) must be sufficiently clear so that they can be implemented without risk of misinterpretation.
- 4. Governance & Implementation** – A land use plan must reflect the authority, roles, and responsibilities of its implementing bodies. Provisions requiring regulatory conformity are to be directed to the appropriate body. That body must have the legal authority and the mandate to take action. Plan approval and implementation should not create new capacity requirements from Government. Capacity requirements must be clearly defined and well understood.
- 5. Regulatory Improvement & Efficiency** - A land use plan should contribute positively to the environmental regulatory regime. It should establish regional objectives to guide and streamline project proposals, environmental assessments, regulatory approvals, and environmental monitoring. It should provide additional certainty to proponents, regulators, and key stakeholders. It should complement and not duplicate the existing regulatory regime.

As the Sahtu Land Use Planning Board (Planning Board) works to finalize its Final Draft Plan for submission and approval, Canada wishes to emphasize the importance of achieving a plan that finds harmony between community values and the interests of the approving parties. While this is a challenging task, we trust that the Planning Board will fairly consider input from all parties when making final decisions about what to include in the Final Draft Plan.

The tri-party meeting among the approving parties (SSI, GNWT, and AANDC) on September 6-7, 2012 will be an excellent opportunity to discuss key outstanding issues, and Canada looks forward to working with the Planning Board and parties to develop creative solutions. This review document offers Canada's support for many aspects of the Plan, and proposes options and advice to resolve outstanding issues.

1.0 Overall comments on the proposed revisions and path toward Plan approval

Experience in the north and elsewhere shows that regulatory processes are enhanced by sound planning. In addition to their basis in comprehensive land claims and legislation, the Government of Canada considers land use planning an important tool for balancing investment and development opportunities with environmental stewardship and community aspirations.

The Sahtu Land Use Plan will be an important guide for resource management for the Sahtu Settlement Area. Many of the Conformity Requirements incorporate or state requirements of the Sahtu Dene Métis Comprehensive Land Claim Agreement (SDMCLCA) that pertain to land and water use in the Sahtu Settlement Area. This is an effective way to ensure that proponents are informed of the expectations of Sahtu participants in how proponents should meet the obligations under the Claim. Once approved, the Plan will reduce problems with the regulatory system and lead to more efficient resource management in the Sahtu.

As requested at the technical workshops and in submissions from the parties, the Planning Board provided new information on how the Plan would be implemented. In particular, the Board has listed Information Requirements and Conformity Criteria for the Conformity Requirements (CRs). This additional information has helped reviewers gain insight into what will actually be required to meet conformity. With this new and detailed perspective brings understanding and acceptance, and also new questions and suggestions regarding the necessity and interpretation of the CRs. Canada's analysis is focussed on providing options that will improve or address issues raised in assessing the new information. Many parts of the Plan are ready for approval, while others (provided suggestions from the approving parties are incorporated) are well on their way to being acceptable for an approvable Plan.

2.0 Specific comments from Aboriginal Affairs and Northern Development Canada (AANDC)

For consistency, AANDC used the following format to describe comments on the proposed revisions:

- a. Issue(s)
- b. Page number in the Revision document
- c. **Alternatives for an Approvable Land Use Plan:**
 - ***Provides the level of support for the approach taken in the Planning Board's Revision Document and proposes options to reach the goal of a land use plan that reflects community values, but is also approvable.***
- d. Reasons for Approach:
 - i. *Describes regulatory, policy, and process issues with the specific topic. (E.g. why the current wording does not fit into the regulatory system, or how the current approach either improves or adds to regulatory inefficiency).*
 - ii. *A list of key issues for approval was provided to the Planning Board in advance of this more detailed document. **Key issues for plan approval are emphasized in yellow highlighting throughout this document.***
 - iii. *Editorial notes.*

2.1 Application of the Plan to Protected Areas

- a. Issue: Dual conservation designation of protected areas

b. Page 2

c. **Alternatives for an Approvable Land Use Plan:**

- Since it would lead to regulatory duplication and confusion, AANDC cannot support dual conservation designations for protected areas. National Parks are currently the only federal or territorial protected area designation that automatically includes full subsurface protection. For all other designations, requests for accompanying subsurface withdrawals will be reviewed on a case by case basis. In a National Wildlife Area (NWA), surface activities and access are managed through the Wildlife Area Regulations, the management plan for the area, and the *Policy When Considering Permitting or Authorizing Prohibited Activities in Protected Areas Designated under the Canada Wildlife Act and Migratory Birds Convention Act, 1994*. Once an NWA or Territorial Park is established, the Planning Board should consider the following options:

- a. leaving the area 'un-zoned', or

- b. create a new zoning designation that would defer to either the National Wildlife Area's or Territorial Park's legislated management plan (i.e. Established Protected Area Zone). The Plan should not further direct or conflict with the management plan in the protected area.

d. Reasons for Approach:

- i. Where the community or working group members have identified that subsurface protection is required for a protected area, this item should be negotiated with the applicable governments (Canada or GNWT).
- ii. For National Wildlife Areas, communities should closely examine Environment Canada's *Policy When Considering Permitting or Authorizing Prohibited Activities in Protected Areas Designated under the Canada Wildlife Act and Migratory Birds Convention Act, 1994*¹, and determine if the policy and applicable management plan for the protected area will be sufficient to meet the conservation values identified by the communities.
- iii. Concerns around wording have been raised which suggest communities do not have an influential role in the protected area strategy process. Chapter 17 of the SDMCLCA provides the opportunity for communities to negotiate a protected areas agreement regarding the establishment of a protected area in the Sahtu. According to s. 17.2.6, "...a protected area agreement may include provisions relating to (e) participation of the participants in the management committees or other similar structures relating to the development and administration of the protected area". As a result, communities have the opportunity to shape their own decision-making authority through the negotiation of this agreement. For this reason the wording regarding communities having 'less decision-making authority' within a protected area is potentially misleading.
- iv. The NWT Protected Areas Strategy (PAS) is a community-driven process, where decision-making regarding the type of protected area/sponsoring agency, the determination of the boundary and recommendation to protect the site is/are made at the community/Working Group level. Final designation by government will be made in consultation with communities and stakeholders and will be respectful of requirements set out under the SDMCLCA. A conservation zone designation is a duplication of these efforts. Furthermore, the addition of a conservation zone designation may cause confusion as conservation zone requirements are not necessarily consistent with protected area management regimes.
- v. Communities will have a role in management committees as noted in comments above regarding the Protected Areas Agreement and the *Policy When Considering Permitting or Authorizing Prohibited Activities in Protected Areas Designated under the Canada Wildlife Act and Migratory Birds Convention Act, 1994*.

¹ Available online at: <http://www.ec.gc.ca/Publications/default.asp?lang=En&xml=CEA0F36C-9E24-4AF6-881B-39A66EA68ED3>

- vi. Typo on p.5 (Ts'ude niline Tu'eyeta) *"The communities and governments did not reach consensus in the recommendation report about the level of protection to be established within the ~~park~~ National Wildlife Area."*
- vii. With respect to Ts'ude niline Tu'eyeta - at the June 14, 2011 SLUP meeting in Fort Good Hope the community recommended that areas not included in the final boundary be zoned as follows: Crown land should be a Special Management Zone; the portion of Sahtu private land parcel 21 within the interim withdrawal should be a Conservation Zone; and, the remaining private land parcels (14, M5 and M6) should be General Use Zones.
- viii. An example of how Land Use Plan Zoning can work in cooperation with a protected area designation is available from the Draft Regional Land Use Plan for the Labrador Inuit Settlement Area². The *"Torngat Mountains National Park Designation"* states that the allowable use within the zone is *"A park operated under the jurisdiction of Parks Canada with uses permitted by Parks Canada"*. This description clearly directs proponents and regulators to the appropriate managing authority – Parks Canada³. A similar approach is advisable for National Wildlife Areas and Territorial Parks in the Sahtu (i.e. *"Ts'ude niline Tu'yeta National Wildlife Area Zone"*); allowable uses are *"A National Wildlife Area operated under the jurisdiction of Environment Canada with uses permitted by Environment Canada (as described by the management plan and Protected Areas Agreement between Kasho got'ine and Environment Canada)."*
- ix. Canada recognizes that the areas in question are not likely to be designated until after Plan approval, so the designation would remain *"Proposed Conservation Initiative Zone"* until the areas are established.

2.2 Exemption for Existing Uses

- a. Issue: Editorial
- b. Pages 6 & 8
- c. **Alternative for an Approvable Land Use Plan:**
 - **AANDC is supportive of the Planning Board's proposed approach to grandfathering existing rights, provided that the following additions are made:**
 - a. **On Page 6 and Page 8 (3.A) – The list of exemptions must include Prospecting Permit, Mineral Claim, Mineral Lease, Dredging Lease, Coal licence, Coal lease, and Coal Permit.**
- d. Reasons for Approach:
 - i. These additional authorizations would still have grandfathered rights after Plan approval.
 - ii. Information for the Planning Board - When renewing or assigning an active land tenure authorization, AANDC Land Administration requires documentation from our Resource Management Officers (RMO) that the land is being used for the purpose it was issued and the RMO relays information to Land Administration regarding the environmental condition of the site. The renewal or assignment does not take place until all issues are satisfactory to the resource management officer. A request to change the use or size of the lease would require AANDC Land Administration to repeat the land advisory committee process.

2.3 Authorizations that Implement the Plan

- a. Issue: Further clarity for implementing and understanding the Authorizations that Implement the Plan

² LISA Regional Planning Authority, 2012. Draft Regional Land Use Plan for the Labrador Inuit Settlement Area. Available online: www.lisaplan.ca

³ Of note: Torngat Mountain National Park is operated and managed through a co-operative management board established to advise the federal Minister of Environment on all matters related to park management.

- b. Page 10
- c. **Alternative for an Approvable Land Use Plan:**
 - **The Final Plan should have a CR Authorization Table that provides a defined list of all authorizations (Federal, GNWT, and Sahtu Secretariat Incorporated [SSI] issuances) that are subject to the Plan. This table should clearly state which CRs are applicable for each authorization as per the powers of the specific legislation, and provide due consideration of Canada’s analysis as to which CRs apply to federal authorizations. This concept is discussed in the requirement section 2.4 ‘Application of CRs and Minimum Thresholds’.**
- d. Reasons for Approach:
 - i. AANDC authorizations as listed are acceptable, but the Planning Board should refer to comments from other parties.
 - ii. Information for the Planning Board for lease applications- At this time, when AANDC Land Administration receive a Crown land application for a hunting and fishing cabin lease in the Sahtu Settlement Area we require the applicant to provide our office with a letter from the applicable Renewable Resources Council stating the parcel they have applied for does not conflict with Chapter 13 of the SDMCLCA before tenure is issued. Land Administration must also ensure that the appropriate Renewable Resource Board in the region receives a copy of the lease application for review and comments through AANDC RMO's in that district. The Sahtu Land and Water Board (SLWB) is also a part of the Land Advisory Committee.

2.4 Application of CRs and Minimum Thresholds

- a. Issues: Planning Board does not agree with AANDC interpretation for rights issuances; Clarity and utility of the Land Use Plan
- b. Page 22
- c. **Alternatives for an Approvable Land Use Plan:**
 - **AANDC cannot approve a Plan that does not accurately reflect the legal power of each authority to implement CRs of the Plan.**
 - **In the interest of plan implementation and clarity, AANDC requires that the Final Plan include (i) a CR Authorization Table (similar to Table 1) that provides a defined list of all authorizations that would be subject to the Plan, and (ii) this defined list shall clearly state which CRs apply to each authorization. The table of authorizations must include rights issued by District Land Corporations to Sahtu Settlement Lands, and applicable GNWT authorizations.**
- d. Reasons for Approach:
 - i. Table 1 is an analysis of the powers of federal legislation and whether or not the relevant department would have the powers to enforce certain CRs as per s.46(1) of the MVRMA. A detailed rationale is provided in Appendix 2.
 - ii. AANDC’s expectation is that GNWT and SSI authorities would also be included in this table (or similar), and that the table would be included in the Final Plan as an exhaustive list of which authorization are subject to the Plan. This table will provide the clarity required for regulators and proponents to understand how the Plan will be implemented.
 - iii. While AANDC may not have legal powers to implement all CRs in the Plan, there might be an option include information to applicants on the other CRs and best practices in the Sahtu. For example, there is a package that all prospecting licensees receive that includes pertinent information for operating in the NWT.
 - iv. In addition, for all surface leases, licences of occupation, and easements, AANDC would meet some of the CRs via policy and advice offered through the Land Advisory Committee process.

- v. Although legislation does not have the powers to implement the majority of CR's, many of the issues related to these CR's are covered during the tenure approval process as a matter of good land management practice. These are indicated by a 'P' in Table 1. Larger projects such as proposed pipelines, mine sites or transmission lines that require land tenure, would address these CRs through an environmental assessment and review process, and commitments during hearings or information requests have to be signed off by the Responsible Minister before tenure is issued.
- vi. Note for the Planning Board: should the Plan be approved as is, it is very likely that the section listing authorizations that implement the Plan will have to be amended post-devolution as GNWT will be the new lead in issuing mineral, onshore oil and gas, and surface/subsurface tenure.

Table 1 – Federal Authorizations and Applicable Conformity Requirements

Authorization	Issuing Authority	1 Zoning	2 Community Engagement	3 Community Benefits	4 Heritage Resources	5 Watershed Management†	6 Drinking Water	7 Wildlife	8 Species Introductions	9 Sensitive Species & Features†	10 Permafrost†	11 Project-Specific Monitoring	12 Financial Security†	13 Closure & Reclamation	14 Protection of Special Values	15 Ecological Integrity	16 Fish Farming & Aquaculture	17 Disturbance of Lakebed	18 Uses of Sentinel Isles	19 Water Withdrawal
Land Use Permit (Type A or B)	SLWB*	☑	☑	☑	☑	☑	☑	☑	☑	☑	☑	☑	☑	☑	☑	☑		☑	☑	
Water Licence (Type A or B)	SLWB*	☑	☑	☑	☑	☑	☑	☑	☑	☑	☑	☑	☑	☑	☑	☑		☑		☑
Oil and Gas																				
Exploration Licence	AANDC	☑	☑																	
Authorization for a geological/geophysical program**	NEB	☑	☑	☑																
Significant Discovery Licence	AANDC	☑																		
Production Licence	AANDC	☑																		
Authorization for drilling and production related work**	NEB	☑	☑	☑								☑								
Certificate of Public Convenience	GiC/NEB	☑																		
Mineral and Coal Tenure																				
Prospecting Permit	AANDC - MRO	☑																		
Mineral Claim	AANDC - MRO	☑																		
Subsurface Lease (Mineral Lease)	AANDC - MRO	☑																		
Coal Licence / Coal Lease	AANDC - MRO	☑																		
Coal Permit	AANDC - MRO	☑																		
Dredging Lease	AANDC - MRO	☑																		
Surface Tenure																				
Surface Lease	AANDC OPS	☑	P		P			P		P					P					
Easement and Licence of Occupation	AANDC – OPS	☑	P		P			P		P					P					
Quarry Permit	AANDC -	☑																		

Authorization	Issuing Authority	1 Zoning	2 Community Engagement	3 Community Benefits	4 Heritage Resources	5 Watershed Management†	6 Drinking Water	7 Wildlife	8 Species Introductions	9 Sensitive Species & Features†	10 Permafrost†	11 Project-Specific Monitoring	12 Financial Security†	13 Closure & Reclamation	14 Protection of Special Values	15 Ecological Integrity	16 Fish Farming & Aquaculture	17 Disturbance of Lakebed	18 Uses of Sentinel Isles	19 Water Withdrawal
	OPS																			
Research																				
Scientific Permits	EC - CWS	<input checked="" type="checkbox"/>						<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>					
Scientific Collection Permit	DFO	<input checked="" type="checkbox"/>						<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>					
Other																				
Approval for Works**	TC	<input checked="" type="checkbox"/>															<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>
Commercial Fishing Licence	DFO	<input checked="" type="checkbox"/>						<input checked="" type="checkbox"/>									<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
Fisheries Authorization	DFO	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>							<input checked="" type="checkbox"/>					
Licences under the Nuclear Safety & Control Act	CNSC	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Uranium Mines and Mill Regulations	CNSC	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Table Legend:

	Applies only to Special Management Zones, Conservation Zones, and Proposed Conservation Initiative Zones
	Applies only to Zones in the Great Bear Lake Watershed
	Applies only to Lac Belot, Stewart Lake, and Tate Lake
CR X	AANDC cannot approve a Plan that includes these CRs
<input checked="" type="checkbox"/>	CR applies to authorization given the regulator's legislated power to implement it
<i>P</i>	Although not able to meet the CRs via legislation, AANDC currently meets the expectations of the CR through policy and best practice.
†	CR has minimum threshold of Land Use Permit and Water Licence (either existing or recommended by AANDC)

*	If the project includes areas outside the Sahtu Settlement Area, the MVLWB and other MVRMA Boards may be included in the process
**	Authorization cannot be issued unless the applicant is in possession of an approved Land Use Permit or Water Licence.

2.5 Conformity Determination (CD) Process

- a. Issue: General Issues with Timing, Referrals, etc.
- b. Page 26
- c. **Alternatives for an Approvable Land Use Plan:**
 - **The Conformity Determination process should:**
 - not include mandatory referral;
 - for referrals made to the Planning Board, list a binding timeline for determining conformity with the Plan (e.g. 10 -12 business days from receipt of referral);
 - fit within existing regulatory timelines; and
 - (for Land Use Permits and Water Licences) occur at the ‘completeness check’ stage.
- d. Reasons for Approach:
 - i. AANDC is committed to carry out conformity determinations for as many authorizations as possible. The Mining Recorder’s Office currently uses the approved Gwich’in Plan to make conformity determinations, and AANDC is proposing to follow the same process for all AANDC authorizations (not requiring a referral to the Board for every application).
 - ii. ‘Option A’ would put less strain on regulators but more strain on the Planning Board. Given that this might require additional resources to help accommodate the added workload, it is not the ideal option for carrying out conformity determination as it may lead to regulatory delays.
 - iii. ‘Option B’ puts the onus on proponents to work with regulators early on to develop a proposal that would be in conformity with the requirements of the Plan. If the proponent thoroughly incorporates the requirements in a proposal, regulators will have sufficient time within the ten days to complete their review. However, the completion of the conformity determination may take longer than the ten days indicated for completeness check - particularly if an exception request is made for the Planning Board to consider.
 - iv. AANDC is concerned with adding unnecessary time lags to the existing regulatory system. The conformity determination process must occur within *existing or improved* regulatory time lines. If an application is referred by an organization, there should be legally binding time lines for the Planning Board to make a conformity decision.
 - v. Based on the options provided by the Planning Board: Both options (A and B) should be available for the CD process with option B being the standard approach. Option B will minimize regulatory delays and align with the existing regulatory system.
 - vi. Canada does not support an automatic referral process for all authorizations – even during the initial years of implementing the Plan. The Plan and implementation guidance should be concisely written and clear for regulators to be able to determine conformity ‘in house’ without having to refer every application to the Planning Board.
 - vii. AANDC understands that the Land and Water Boards and some District Land Corporations have concerns about implementing the Plan, and encourages the Planning Board to work closely with any organizations requiring assistance in implementing the Plan, in order to foster independent, regulator-led, conformity determination. The fact that regulators are concerned about determining conformity stems from a lack of available information or explanation of what might be required for conformity. The Planning Board has made an effort to remedy this lack of information by including

- extensive checklists of information requirements and conformity criteria for a land use to meet conformity with the Plan. This information will make it simpler for regulators to determine conformity without referring all applications to the Planning Board.
- viii. AANDC does not support any duplication in a conformity determination process. For example, our understanding is that there is not a separate application sent specifically for meeting conformity. Applicants will prepare the standard application for a particular authorization, and ensure that their application includes the information requirements set out for the particular authorization as described in the CR-Authorization Table. The Regulator would then screen or review the application for completeness, ensuring that all usual information is submitted and that any requirements for conformity with the Plan are also included and conform to the Plan. The conformity determination process is not meant to create a separate and discrete Planning Board process for applicants. The zoning and conformity requirements will be integrated into the existing regulatory system.
 - ix. There is no single legally acceptable process for Conformity Determination, and the Board and approving parties have some latitude in setting out a process so long as the process is consistent with s. 47 of the MVRMA.

2.6 General Revisions to CRs

General Comments:

- AANDC commends the Planning Board’s effort to include more detail on implementation guidance, information requirements, and interpretation for each CR. This additional detail greatly assists reviewers in analyzing and understanding the CRs, and will ultimately lead to a Plan that is simple for regulatory authorities to implement, and straightforward for proponents to prepare complete applications.
 - The Board notes that “*CRs are intended to be scale-able.*” Implementation responsibilities will vary from activity to activity based on the size, scale, location, and nature of the activity and the potential for impacts to community values. How will this work in practice? Is it expected that the Board and/or regulators can use their discretion in applying the CRs having regard to the scope and impact of a particular development or authorization? Some guidance is supplied by the “Implementation Guidance” considerations set out after each CR, assuming these will be included in the final draft of the Plan, but the Board should provide further explanation.
- a. Issue: Place the onus of demonstrating conformity onto the proponent rather than the regulator
 - b. (All CRs)
 - c. **Alternative for an Approvable Land Use Plan: CRs should clearly place the onus of meeting conformity on to the proponent. The regulators will be required to check for conformity as per s 46.1 of the MVRMA. Further discussion is required between the Planning Board and parties on this topic.**
 - d. Reasons for Approach:
 - i. AANDC acknowledges that this topic was not discussed at the technical workshops. However, the wording as currently drafted has led to confusion as to whether or not it is the regulator or the proponent that has to meet conformity with the Plan. Regardless of the wording, all regulators will have to enforce the Plan as per MVRMA s 46.1.

- ii. Setting the responsibility on the proponent or applicant would be consistent with the Gwich'in Land Use Plan (GLUP). The GLUP conditions refer to the applicant (e.g. 'proponent should...') or refers to the activity itself (e.g. 'new activities that require...'), and what must be provided to be in conformity with the GLUP.
- iii. From NEB's 2010 submission to the Planning Board: "...wording of this nature creates a situation where it would be impossible for either the SLUPB or a Regulator to determine conformity of a proposed land use activity. That is, the CRs are worded such that the Regulator bears the onus of the conformity test, and thus it would be circular and impossible for a regulator to determine whether it itself is in conformity with the Plan prior to any issuance of authorization (as the conformity determination with the Plan is made prior to a decision regarding authorizations)."

2.7 CR#1 – Land Use Zoning

SLUPB Proposed Revised Wording:

1) *Land must be used in accordance with the land use zones shown in Map 4 and Table 6. The zone types consist of General Use, Special Management, Conservation, and Proposed Conservation Initiatives. Map 4 and Chapter 5 Zone Descriptions identify the location of each zone. Bulk water removal is a prohibited land use in all zone types. The prohibited land uses in Conservation Zones and Proposed Conservation Initiatives are mineral exploration and development, oil and gas exploration and development, quarrying, power development, and commercial forestry. Any land use not prohibited in a zone is permitted, subject to the conditions of this Plan.*

2) *Despite the land use prohibitions that apply in Conservation Zones and Proposed Conservation Initiatives, quarrying, transportation and infrastructure development that would be prohibited, or any water use other than a bulk water removal that would be prohibited is permitted in such zones if and to the extent that it is demonstrated that:*

- a) *such activity is necessary in order to carry out a permitted land use outside the zone, and the user will be authorized to conduct the land use outside the zone (for example, subject to other applicable Plan conditions, water may be taken from a Conservation Zone to the extent necessary to carry out authorized oil and gas activities in a Special Management Zone or General Use Zone, and a pipeline may be built in a Conservation Zone in order to transport hydrocarbons lawfully produced in a Special Management Zone or General Use Zone, or to connect authorized pipelines in other zones);*
- b) *no feasible alternative to carrying out the activity in the Conservation Zone or Proposed Conservation Initiative exists;*
- c) *the activity takes place outside known or suspected significant ecological and cultural areas as identified in the Zone Descriptions (Chapter 5), Background Report or by community organizations (First Nation, charter community, renewable resource council or land corporation; and*
- d) *its location, design, construction, operation and maintenance minimize any foreseeable adverse impacts on the ecological and cultural values identified for the zone, including subsistence use, either by avoiding such impacts or mitigating them to the extent possible.*

- a. Issue: N/A
- b. Page 33
- c. **Alternative for an Approvable Land Use Plan: N/A**
- d. Reasons for Approach:
 - AANDC supports the current approach to zoning and CR#1. The zoning and policies highlighted within this CR will lead to greater regulatory clarity and efficiency in the Sahtu Settlement Area.

2.8 CR#2 – Community Engagement and Traditional Knowledge

SLUPB Proposed Revised Wording:

1) *Before any land use activity is authorized, Regulators shall ensure that land corporations, the first nation and/or community council, and renewable resources council and potentially affected community members have been adequately engaged with respect to:*

- a) *The CRs of the Plan,*
- b) *The proposed activities,*
- c) *Specific locations and issues of concern, and*
- d) *Traditional knowledge that is relevant to the location, scope and nature of the proposed activities.*

2) *Regulators shall ensure that a land use activity is designed and carried out with due regard for community concerns and well-being, and incorporates relevant traditional knowledge.*

- a. Issue: Interpretation for Plan Implementation
- b. Page 37
- c. **Alternative for an Approvable Land Use Plan:**
 - **AANDC supports this CR as part of an approvable Plan, provided that:**
 - **the Planning Board clearly defines which of the organizations or community councils must be consulted (one of them, all of them?);**
 - **the Planning Board confirms that ‘First Nation’ will be defined as in the MVRMA;**
 - **the Planning Board defines what ‘community council’ is (i.e. is it the municipality? The band council?); and**
 - **the Planning Board considers who the ‘community’ is, and which organization’s opinion would prevail if there are differing opinions amongst community organizations.**
- d. Reasons for Approach:
 - i. The Plan should provide further detail for proponents on the definition of ‘community groups’, and what the expectations are when community groups in the same community have differing opinions on proposed land use activities. The land use plan should only require community engagement, not make a judgment call as to which community group is correct/incorrect.

2.9 CR#3 – Community Benefits

SLUPB Proposed Revised Wording:

Before any land use activity is authorized, Regulators shall be informed by applicants how communities will benefit from the proposed land use. In the absence of any definable benefits to residents or communities, Regulators may consider how the activity will benefit the broader public interest.

- a. Issue: Reference to COGOA Benefit Plans & Conformity Determination Criteria
- b. Page 42
- c. **Alternative for an Approvable Land Use Plan:**
 - **The Final Plan must refer to ‘COGOA Benefit Plans’ not ‘AANDC Benefit Agreements’.**
 - **If a COGOA Benefit Plan is not approved before conformity determination for an authorization (specifically a Land Use Permit or Water License), the proponent should have an alternative method for meeting conformity. For example, the proponent could include a brief description of how residents and communities will benefit from the proposed land use activity. NEB Authorizations would not be issued until the COGOA Benefit Plan is approved by the Minister.**
- d. Reasons for Approach:

Upon review of the new conformity criteria and implementation guidance, AANDC has several suggestions to improve the CR in terms of scope and clarity.

 - i. The correct term for a benefit plan for oil and gas activity is: COGOA Benefit Plan (not AANDC Benefit Agreement).
 - ii. An approved COGOA Benefits Plan may not be available at the time of conformity determination. In this case, it must be made clear to proponents that a separate benefits statement would be required in an application (i.e. From Page 44 of the Revision Document - the third bullet for Conformity Criteria would apply in these cases).
 - iii. This CR could be more closely tied to 25.2.4(b)(i) of the SDMCLCA and advise proponents that they should explain how the proposed land use will protect or promote existing and future well-being for Sahtu participants.
 - iv. Several objectives of the SDMCLCA (s.1.1.1) pertain to benefits. These have been drawn into the context for why this CR exists. These include:
 - (d) ...to encourage the self-sufficiency of Sahtu participants
 - (e) ...to provide the Sahtu with specific benefits, including financial compensation, land and other economic benefits.
 - v. Economic benefits for Sahtu participants are provided for via:
 - Canada Oil and Gas Operations Act (COGOA) Benefits Plans;
 - MVRMA s.58 (“...and the Sahtu Land and Water Board...will provide for optimum benefit for residents of their respective management areas and of the Mackenzie Valley and for all Canadians.”);
 - Access and Benefits Agreements for Sahtu Settlement Lands (Sahtu ‘private lands’) which are negotiated between the applicable District Land Corporation and a proponent; and
 - Many mining proponents negotiate Impact Benefit Agreements with affected communities for major projects as a ‘best practice’.

2.10 CR#4 – Heritage Resources

SLUPB Proposed Revised Wording:

1) Regulators shall ensure that land use activities are not located within 500 m of known burial sites, or within 150 m of other known heritage resources unless measures are developed in cooperation with the

Prince of Wales Northern Heritage Centre, affected communities, or in the case of burial sites, with affected families where possible, to fully mitigate all impacts to the site.

2) In areas where there is a high risk of impact to recorded and/or unrecorded heritage resources, as determined by the PWNHC, an archaeological impact assessment must be conducted prior to commencement of a development project.

- a. Issue: N/A
- b. Page 44
- c. **Alternative for an Approvable Land Use Plan: N/A**
- d. Reasons for Approach:
- i. AANDC supports this CR as part of an approvable Plan, provided that GNWT (as the lead authority on Heritage Resources) approves the current approach.

2.11 CR# 5 – Watershed Management

SLUPB Proposed Revised Wording:

A land use activity must not substantially alter the quality, quantity and rate of flow of surface or ground water within Special Management Zones, Conservation Zones and Proposed Conservation Initiatives.

- a. Issue: Extending rights identified in the SDMCLCA / Minimum threshold
- b. Page 46
- c. **Alternative for an Approvable Land Use Plan:**
- **In order to accurately reflect the requirement in the SDMCLCA, and the intent of protecting waters that flow into important Conservation and Special Management zones (that are not Sahtu Lands), the CR could be revised to:**
 - “For water licences and land use permits, the Land and Water Boards will ensure that the proposed land use activity:***
 - (a) does not substantially alter quality, quantity, or rate of flow for waters that flow on, through, or are adjacent to Sahtu lands*, and***
 - (b) includes mitigation measures to minimize potential [or significant] impacts on surface and ground waters that flow into CZs, SMZs, or PCIs.***

*The following information should be included in the context section for the CR: *Subject to 20.1.15 and 20.1.16 of the SDMCLCA, where a compensation agreement between the applicant and Sahtu Tribal Council (SSI) can allow for the Land and Water Board to authorize substantial alteration of waters on Sahtu Lands OR where the Land and Water Board has made a ruling on compensation where a compensation agreement could not be agreed to accordingly within the time limit established by the Land and Water Board.*

- **The implementation guidance for this CR must define and set guidelines for ‘impacts to water’ or ‘significant impacts’. These could be drawn from the Implementation Guidance listed in the June Revision document.**
- **As an alternative, AANDC would also support SSI’s (May 2011) recommendation that the Planning Board consider a “policy framework that focuses on source control and waste**

management rather than non-degradation". This may compliment existing processes such as the Water Strategy and GNWT' Community Source Water Protection Planning.

d. Reasons for Approach:

- i. Upon review of the new implementation guidance and conformity criteria, Canada has concerns that this CR may lead to regulatory confusion, specifically - confusion surrounding the implementation of the SDMCLCA. The suggestions provided by AANDC improve clarity for implementation yet still meet the intent of the CR which is "...to ensure that impacts from land use proposed upstream or near key water bodies are scrutinized for their potential to impact such areas." The conformity criteria for this CR should focus on (a) working with the Land and Water Board to determine if waters that flow on, through, or adjacent to Sahtu Lands would be substantially altered, and (b) requiring the proponent to provide information on how the upstream activity might affect waters in CZs, SMZs, or PCIs, and how those effects will be minimized or eliminated.
- ii. Any land use that would lead to a substantial alteration of water on, through or adjacent to Sahtu Lands or potentially negatively impact waters in CZs, SMZs, or PCIs will require a land use permit or water licence. In addition, few regulators have the appropriate legislative power to enforce this CR, and lack the expertise to deem what substantially alter means, or what acceptable levels of mitigation measures might entail. The LWB has the expertise and have the ability to enforce the SDMCLCA clauses related to substantially alter. A minimum threshold of MVRMA/Northwest Territories Waters Act (NWTWA) authorizations is logical for this CR.
- iii. This condition reflects a right that is described in the SDMCLCA at s.20.1.8 and applies to water that flows through or adjacent to 'Sahtu Lands'. Sahtu Lands are defined by the SDMCLCA as "Sahtu municipal lands and settlement lands". This CR as worded would extend the provision to lands in Conservation, Special Management, and Proposed Conservation Initiative Zones within the Sahtu Settlement Area. Canada is concerned with extending rights already set out in the Claim, and so proposes an alternative approach to address the intent of the CR for non-Sahtu Lands that does not include the wording 'substantially alter'.
- iv. The SDMCLCA directs the SLWB to refuse a permit, licence or authorization that contravenes s.20.1.8 unless certain considerations are met (e.g. no reasonable measures to avoid the interference). Should a proponent require a licence, permit or authorization to substantially alter quality or quantity of waters on or adjacent to Sahtu Lands, the SLWB may direct the applicant and Sahtu Tribal Council (SSI) to negotiate an agreement on compensation.
- v. This right is also subject to legislation in respect of the use of water including the NWTWA and the MVRMA. Pursuant to this legislation, the Land and Water Boards are responsible for regulating water use and the deposit of waste. The Land and Water Boards (LWBs) have the discretion to add terms and conditions to manage and protect water quality and quantity. The SLWB's authority for regulating water use and deposits of waste extends throughout the Sahtu Settlement Area, including over Crown, Sahtu and private lands. During the review process for an application, the LWB is responsible for consulting with affected communities, the SSI, and other government agencies.

- vi. Furthermore, the MVRMA s.77-79 state that agreements for compensation between an applicant and the first nation are to be based on ‘any loss or damage’ resulting from a substantial alteration to quality, quantity or rate of flow. Not all alterations will cause a loss or damage. In s.79(1), it outlines the factors that a LWB would consider in making a determination for compensation should the applicant and first nation not agree - these all relate to the actual effects, nuisance and inconvenience, not solely the fact that a substantial alteration took place.
- vii. While AANDC appreciates the Planning Board’s efforts to define ‘substantially alter’ for conformity determination purposes, this should be left to the communities and LWBs to interpret and define. Canada agrees with the Planning Board that they should not be held to a higher standard in having to define ‘substantially alter’. However, a CR must be clear and interpretable to regulators and proponents – so it is important for the wording to reflect implementable goals and definitions. ‘Significant impacts’ or ‘potential impacts’ would avoid confusion and subjectivity in interpreting the SDMCLCA, and would allow the Planning Board to work with the Land and Water Board, SSI, GNWT, and AANDC subject experts to set technical, measurable guidelines for changes to water quality, quantity, and rate of flow.
- viii. Water is a critical component of cultural, spiritual, economic and social well-being for residents of the NWT, particularly Aboriginal peoples. The Northern Voices, Northern Waters: NWT Water Stewardship Strategy (the Strategy) and NWT Water Stewardship: A Plan for Action (2011-2015) was led by a committee of Aboriginal and government representatives. AANDC is a co-lead on the implementation of the Strategy with the GNWT and is committed to its Vision: “*The waters of the Northwest Territories will remain clean, abundant, and productive for all time.*” Through this initiative and obligations under land claims and associated legislation, AANDC believes that waters in the Sahtu and the NWT can be effectively co-managed, and that all water stewardship decisions respect Aboriginal rights.
- ix. Canada supports and promotes maintaining ecological integrity of aquatic ecosystems as part of the Transboundary Water Negotiation process.

2.12 CR#6 – Drinking Water

SLUPB Proposed Revised Wording:

1) Regulators shall prohibit any land use activity that would result in the contamination of surface or groundwater within community catchments as shown in Map 6.

2) Where there is reasonable potential for any land use activity to affect a downstream drinking water source:

- a. the affected community must be informed and engaged with respect to potential impacts, the design of mitigation measures and monitoring programs;*
- b. baseline water quality data must be collected from the drinking water source prior to the start of any activity; and*
- c. regular water quality testing of the source watershed must be conducted to monitor potential impacts.*

- a. Issue: N/A

- b. Page 49
- c. **Alternative for an Approvable Land Use Plan: N/A**
- d. Reasons for Approach:
 - i. AANDC supports this CR as part of an approvable Plan. Maintaining quality and quantity of drinking water for communities and all residents of the NWT is extremely important, and the Plan is an appropriate method to protect it. AANDC encourages the Planning Board to work with the appropriate bodies (i.e. GNWT) to further refine the drinking water catchment mapping for future versions of the Plan.
 - ii. Correction from AANDC's February 2012 Submission to the Planning Board: AANDC wishes to clarify that the following statement "*GNWT is the lead on drinking water through the NWT Waters Act*", should actually be "*GNWT is the lead on drinking water through the GNWT Public Health Act and Water Supply System Regulations*".

2.13 CR#7 – Wildlife

SLUPB Proposed Revised Wording:

1) Land use activities must be designed using the most current information for identified species of interest and species at risk as obtained from ENR, CWS, DFO, the SRRB and the local Renewable Resource Councils.

2) Impacts to wildlife, their habitat and migration patterns, and important community harvesting areas must be prevented or mitigated to the extent possible.

a) In particular, all reasonable steps must be taken to follow the horizontal setbacks and minimum flight altitudes identified in Table 8 when near habitat sites during sensitive periods described in that table, unless human safety is of concern, and measures are developed with the appropriate organizations and the RRC to mitigate impacts to these species and their habitat.

b) In addition, DFO has established in-water construction timing windows for the protection of fish and fish habitat. These are updated from time to time and are available at <http://www.dfo-mpo.gc.ca/regions/central/habitat/os-eo/provinceterritories-territoires/nt/os-eo21-eng.htm>. During these periods, no in-water or shoreline work is allowed except under site- or project-specific review and with the implementation of protective measures.

c) Barren-ground caribou and boreal woodland caribou are especially important to communities and have been shown to be sensitive to disturbance. Map X shows important rutting and wintering habitat for the Bluenose-East and Bluenose-West barren-ground caribou herds (Oct 8-Mar31). Map Y identifies the range of boreal woodland caribou, which is considered to be critical habitat (year-round). All land use activities occurring in these areas during the specified times are required to address impacts to caribou and their habitat.

- a. Issue: Minimum flight altitudes are not enforceable
- b. Page 56
- c. **Alternative for an Approvable Land Use Plan:**
 - **AANDC supports this CR as part of an approvable Plan, provided that the minimum altitudes suggested in Table 8 are removed.**
- d. Reasons for Approach:
 - i. As per Transport Canada's comments (*10.0 Specific comments from Transport Canada (TC)*), minimum flight altitudes are not enforceable.

- ii. Regulation of air traffic is not captured by s.25.2.9 of the SDMCLCA or s.46 (1) of the MVRMA. As the regulator of air traffic, Transport Canada is not an authority with jurisdiction to grant licences, permits, leases or interests relating to the use of land and water in the settlement area.
- iii. While the Land and Water Board or Renewable Resource Councils may recommend or suggest to proponents minimum flight altitudes near important wildlife or wildlife habitat, there is no way for a regulator to enforce these minimum flight altitudes.
- iv. Wildlife is protected via s.38 of the current *NWT Wildlife Act*. Under this legislation, it is illegal to disturb or harass wildlife. If evidence of a proponent contravening s.38 of this Act came to light, then a proponent would be appropriately fined or charged.
- v. Regardless, Transport Canada regulations stipulate that aircraft may not fly lower than 1000 feet (304 metres) above ground. This meets the minimum altitudes for mammals listed in Table 8.
- vi. Sahtu Renewable Resource Board, Environment and Natural Resources (GNWT), and Environment Canada - Canadian Wildlife Service are on the referral list for Land Use Permits and Water Licences in the Sahtu. At the referral stage, these organizations have the opportunity to recommend mitigation measures (including recommending minimum flight altitudes) for limiting impacts on wildlife and Species at Risk. Even if flight altitudes are recommended however, there is no legal way to enforce them.
- vii. Canada acknowledges that many of the stipulations in this CR are considered during preliminary screening. In the interest of regulatory efficiency, it is appropriate that proponents address these values as part of the application process. However, those values must be enforceable.
- viii. As an alternative to including the flight altitudes as a legally binding component of the Plan, AANDC requests that they be added to another document or on the Planning Board's website (e.g. useful references for preparing applications).

2.14 CR#8 – Species Introductions

SLUPB Proposed Revised Wording:

Regulators will ensure that land use activities do not result in the intentional introduction of non-native plant and animal species, or of domestic animal species or subspecies, except by special approval by the appropriate authority. All reasonable precautions must be taken to prevent the introduction of non-native species or sub-species.

- a. Issue: N/A
- b. Page 58
- c. **Alternative for an Approvable Land Use Plan: N/A**
- d. Reasons for Approach:
 - i. AANDC supports this CR as part of an approvable Plan.

2.15 CR# 9 – Sensitive Species and Features

SLUPB Proposed Revised Wording:

1) Regulators shall ensure that any land use activity requiring a land use permit or water license

must be designed using the most current available information on the location of rare or maybe-at-risk plants, hot and warm springs, mineral licks, karst features, amphibian sightings, and ice patches and carried out in a manner that minimizes impacts to these features.

2) Specifically, land use activities:

a) must not take place within 1000 m of any known mineral lick, unless the activity cannot feasibly meet this requirement, and it can be demonstrated that alternative mitigation measures will protect the lick.

b) that are situated within the boundary of glacial refugia or within 500 m of known hot or warm spring(s), and have the potential to impact rare or may-be-at-risk plants as identified in Table X shall require a plant survey. Any rare or may-be-at-risk plants found in the survey shall be monitored for impacts from the activity.

c) situated within the area of ice patches identified in Map X must contact the PWNHC (archaeology@gov.nt.ca) to determine if any ice patches are in the vicinity of the activity. Activities must not take place within 150 m of the edge of ice patches unless authorized by the PWNHC.

3) The location of any hot or warm spring or mineral lick discovered while carrying out an authorized activity must be reported to nwt_pas@gov.nt.ca, and any amphibian sightings to nwtsoer@gov.nt.ca.

a. Issue: Too detailed, details should be in the Information Requirements and Conformity Criteria

b. Page 60

c. **Alternative for an Approvable Land Use Plan:**

- **AANDC supports this CR as part of an approvable Plan – but in a simplified manner as stipulated below.**
 - **Revised wording: “Land use activities that require a land use permit or water licence at or near sensitive features shall avoid or mitigate negative impacts to those features as specified in the conformity criteria.”**
 - **Add to context: Tables X, Y, and Z (stipulating setback distances, etc.) and Maps A-D (indicating known locations of special features), and reference information or relevant SHP files (on the SLUPB website)**
 - **Add to the ‘Criteria for Conformity Determination’:**
 - i. **Applicant must demonstrate that the land use activity was designed using the most current available information on the location of rare or may-be-at-risk plants, hot and warm springs, mineral licks, karst features, amphibians, and ice patches.**
 - ii. **Applicant must demonstrate that activities will be carried out in a manner that minimizes impacts to these features.**
 - iii. **Land use activities must not take place within 1000m of any known mineral lick, unless the activity cannot feasibly meet this requirement, and it can be demonstrated that alternative mitigation measures will protect the lick**
 - iv. **Land use activities that are situated within the boundary of glacial refugia or within 500 m of known hot or warm spring(s), and have the potential to impact rare or may-be-at-risk plants as identified in Table X shall require a plant survey. Any rare or may-be-at-risk plants found in the survey shall be monitored for impacts from the activity.**

- v. Land use activities situated within the area of ice patches identified in Map X must contact the PWNHC (archaeology@gov.nt.ca) to determine if any ice patches are in the vicinity of the activity. Activities must not take place within 150 m of the edge of ice patches unless authorized by the PWNHC.
 - vi. The location of any hot or warm spring or mineral lick discovered while carrying out an authorized activity must be reported to nwt_pas@gov.nt.ca, and any amphibian sightings to nwtsoer@gov.nt.ca.
- d. Reasons for Approach:
- i. 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 and values are addressed as part of the application process. Communities have indicated strong support for avoiding and mitigating impacts to these features, and the Plan should reflect the values of the community in order to avoid regulatory inefficiencies or unnecessary incomplete applications.
 - ii. In keeping with improving regulatory efficiency in the north, AANDC supports this requirement to avoid unnecessary review and/or EA processes.
 - iii. As stated in AANDC's February 2012 submission to the Planning Board, this CR should be simplified, with the details listed in the conformity and information requirements. While the Board responded that the directions would be too diverse to simplify without losing the protection provided, AANDC's opinion is that the protection would not be lost as conformity would not be met unless the "Information Requirements and Criteria for Conformity Determination" were followed.

2.16 CR#10 – Permafrost

SLUPB Proposed Revised Wording:

Any land use activity requiring a land use permit or water licence must be designed and carried out in a manner that prevents and/or mitigates adverse environmental impacts resulting from the degradation or aggradation of permafrost.

- a. Issue: N/A
- b. Page 33
- c. **Alternative for an Approvable Land Use Plan: N/A**
- d. Reasons for Approach:
 - i. AANDC supports this CR as part of an approvable Plan. Addressing potential issues related to permafrost before land use activities occur is a proactive measure that will not only protect ecological features, but may also save proponents from having to make costly repairs or take emergency mitigation measures to correct permafrost-related issues.

2.17 CR#11 – Project Specific Monitoring

SLUPB Proposed Revised Wording:

1) Regulators shall ensure that any land use activity proposed for includes a site-specific monitoring program, developed in cooperation with affected communities, that is sufficient to monitor the effectiveness of the activity's proposed mitigation measures and any impacts to in protecting zone the

values in the surrounding area, as defined in the Plan's Background Report, zone descriptions and in discussions with communities.

2) In the Great Bear Lake Watershed, the monitoring program will be sufficient to monitor the ecological integrity of the watershed.

- a. Issue: N/A
- b. Page 63
- c. **Alternative for an Approvable Land Use Plan: N/A**
- d. Reasons for Approach:
 - i. AANDC supports this CR as part of an approvable Plan. This CR will lead to standardized monitoring in the Sahtu. It directly reflects the expectations of Sahtu participants. For further clarity, it would be advantageous to add a line in (2): "*...will be sufficient to monitor the ecological integrity of the watershed as described in the zone descriptions for Zones W-Z.*"
 - ii. Updates for the Final Plan based on Draft 3 of the SLUP:
 - a. p. 68 (Draft 3 SLUP) - 2nd paragraph VS p. 271 - First paragraph
 - i. Contradiction exists between the publication dates of the NWT Environmental Audit on both these pages. P. 68 indicates it was "carried out in 2005 and released in 2007" whereas p. 271 notes it was "released in June 2006." The date of publication needs to be confirmed.
 - b. p. 68 (Draft 3 SLUP) - 2nd paragraph
 - i. The following statement is out of date: "Work has begun on the 2010 audit." The 2010 NWT Environmental Audit is now complete and can be accessed here: <http://www.aadnc-aandc.gc.ca/eng/1317755581765#sub1>. This statement should be updated to reflect the publication of the 2010 version of this document.
 - c. p. 68 (Draft 3 SLUP) - 3rd paragraph
 - i. Unclear to AANDC why "all except marine mammals" is included here. Indicators for the Marine Mammal VC do exist for the Cumulative Impact Monitoring Program (CIMP). Consider updating list of CIMP VCs and Indicators included in Appendix 4 (p. 315) to those found on CIMP's website: <http://www.nwtcimp.ca/listVC.html>
 - d. p. 68 (Draft 3 SLUP) - 4th paragraph
 - i. "A preliminary state of knowledge report was updated in 2007..." It would also be important to note that this document was finalized in 2009.

2.18 CR#12 – Financial Security

SLUPB Proposed Revised Wording:

The LWBs shall ensure that financial security is posted and maintained with the Minister of Aboriginal Affairs and Northern Development Canada for all activities requiring a land use permit or water licence under the Mackenzie Valley Resource Management Act that is not carried out by a local government or the territorial or federal government, in an amount sufficient to cover the full cost of reclamation, including shutdown, closure and post-closure activities.

- a. Issue: N/A

- b. Page 71
- c. **Alternative for an Approvable Land Use Plan: N/A**
- d. Reasons for Approach:
 - i. AANDC supports this CR as part of an approvable Plan, recognizing that it does not remove the Land and Water Board’s discretion to set the amount of security to be held by the Minister of AANDC.
 - ii. AANDC requests that the reference to the Minister be changed from the corporate to the legal reference: “*Minister of Indian Affairs and Northern Development*”.
 - iii. As per MVRMA LURs s.32.(1)(a-c) the LWB will base the security amount on the costs of abandonment, restoration, and measures required post-closure. S.32.(2) also allows the LWB to consider prior postings by the applicant, prior performance, and the probability and significance of environmental damages.
 - iv. As per NWTWR s.12.(1) (a-c), the LWB will base the security amount on the costs of abandonment, restoration, and measures required post-closure. Section 12.(2) also allows the LWB to consider prior postings by the applicant and prior performance.

2.19 CR#13 – Closure and Reclamation

SLUPB Proposed Revised Wording:

On termination or abandonment of a land use activity, Regulators shall ensure that any area affected by the land use activity is restored to a viable, self-sustaining ecosystem consistent with the surrounding ecosystem or expected future uses of the area as determined in consultation with residents, communities and responsible authorities. Progressive reclamation is encouraged.

- a. Issue: The current regulatory system meets the intent of this CR
- b. Page 72
- c. **Alternatives for an Approvable Land Use Plan:**
 - **Reclamation is adequately addressed through existing regulatory processes. AANDC encourages all interested parties to participate in the existing processes that lead to setting reclamation goals. AANDC cannot approve a Plan that includes this CR. Alternatively, the Planning Board might consider including this guideline in another section of the Plan as a ‘priority concern’ so that proponents are aware of the scrutiny that closure and reclamation planning will receive in the Sahtu.**
- d. Reasons for Approach:
 - i. It is AANDC’s opinion that the current Land and Water Board and AANDC processes address the need for community input into reclamation at various stages. The Context for this CR provided by the Planning Board is an example of how this CR is duplicative of the existing processes. The Land and Water Boards are also working on finalizing a policy and guidelines on reclamation planning. Although not complete, it will further enhance the reclamation planning and monitoring process in the NWT. Some examples how reclamation planning is adequately addressed in the current regulatory system include:
 - Organizations including SRRB, DLCs, and Band Councils are regularly included on Land and Water Board referral lists which provides for ample opportunity to comment on closure plans and permit/licence issuances. Many proponents also actively seek community input on closure planning.

- MVRMA LURs s.15 requires that “...permittees restore the permit area to substantially the same condition as it was prior to the commencement of the operation.”
- MVRMA LURs s.16 requires that buildings and equipment be removed.
- MVRMA LURs s.26.(1) (o) allows the Land and Water Boards to add conditions on restoration of the land. The Land and Water Boards have a set of conditions that are regularly added to permits based on community and stakeholder input.
- NWTWA s.15.(1) (a-e) allows the Land and Water Boards to add conditions on water use, waste disposal, studies, plans, monitoring programs, and reclamation of licensed undertakings. The Land and Water Boards utilize general and licence specific conditions based on environmental assessment, community, and stakeholder input.
- The posted financial security can only be returned to a proponent after a “letter of clearance” is received by the federal Minister. The letter of clearance from the Board confirms that all terms and conditions in the permit (e.g. those relating to closure and reclamation) have been met.
- ii. It is in Canada’s best interest as the land manager to ensure that all land use activities are adequately reclaimed prior to closure and abandonment so as to ease any potential burden on Canadian taxpayers for future site reclamation.
- iii. AANDC’s Mine Site Reclamation Policy is not meant to be a legislated item. It was written specifically for mine site reclamation, and is not appropriate for application as a sweeping policy for reclaiming all land uses.
- iv. The criteria for meeting this CR requires that “*There is no residual contamination of land or water that would interfere with the overall health of the ecosystem or subsistence use by nearby residents*”, however there does not seem to be any discussion of how residual contamination issues could be managed or acceptable in the long term if those issues cannot be resolved – which can be the case for some types of development.
- v. The current wording for the CR refers to “*restoring*” sites versus “*reclaiming*” sites. Restoring a site implies that affected landscapes would be returned to the exact conditions that existed prior to the disturbance. Reclaiming a site implies an approximation of the pre-disturbance conditions, and is far more achievable. As described on page 72 of the Revision document, the Planning Board is describing reclamation not restoration. Should the Planning Board include this wording in a ‘Priority concerns’ section or elsewhere in the Final Plan, the wording should be revised to ‘*reclaimed/reclamation*’ instead of ‘*restored/restoration*’.
- vi. With regards to timing and sequencing, it remains difficult to determine how ‘conformity’ can be achieved at the application phase, i.e before work has started, and any potential impacts are realized.

2.20 CR#14 – Protection of Special Values

SLUPB Proposed Revised Wording:

Any land use activity proposed within a Special Management Zone, Conservation Zone or Proposed Conservation Initiative must be designed and carried out in a manner that protects, respects or takes into account the values of the zone as directed in the Plan’s Zone Descriptions.

- a. Issue: N/A
- b. Page 73
- c. **Alternative for an Approvable Land Use Plan: N/A**
- d. Reasons for Approach:
 - i. AANDC supports this CR as part of an approvable Plan.

2.21 CR#15 – Ecological Integrity

SLUPB Proposed Revised Wording:

Any land use activity in the Great Bear Lake Watershed must be consistent with the maintenance of the ecological integrity of the watershed, and the present and future well-being of affected residents and communities.

- a. Issue: Duplication of other Conformity Requirements
- b. Page 80
- c. **Alternatives for an Approvable Land Use Plan:**
 - **The remaining CRs will provide for community input and protection of special values in the Great Bear Lake Special Management Zones. Through the CRs and in particular the Plan’s zoning, ecological and cultural integrity will be protected and maintained throughout the Sahtu. AANDC cannot approve a plan that includes duplicative conformity requirements, and so cannot approve a Plan that includes this CR.**
 - **It should be noted that ecological integrity is the first goal listed by the Planning Board (p. 32 of the Draft 3 SLUP). The Plan’s zoning and CRs (other than CR#15), in conjunction with existing legislation and rights identified in the SDMCLCA will help to achieve the goal of ecological and cultural integrity throughout the Sahtu – including the Great Bear Lake Watershed Zones.**
- d. Reasons for Approach:
 - i. While AANDC has been tentatively supportive of this CR in the past, the additional detail provided in the Information Requirements and Conformity Requirements section demonstrates how the Plan as a whole incorporates the intent and details for this CR; including this CR would duplicate the rest of the Plan. The Planning Board have incorporated the key messages and principles from the *Water Heart – Great Bear Lake Watershed Management Plan*, and applied them to the Sahtu Settlement Area. The valuable work and principles captured by *Water Heart* are reflected throughout the goals, vision, and CRs of the Draft Sahtu Land Use Plan.
 - ii. The goal of ecological integrity is collectively met by facets captured in the other CRs and legislation. A summary table of which CRs overlap with the expected conformity determination for this CR is included below in Table 2. Table 2 demonstrates how the other CRs will meet the expectations of maintaining ecological and cultural integrity originally set out in the *Water Heart – Great Bear Lake Watershed Management Plan*.

Table 2 – Comparison of ecological integrity conformity criteria with other CRs and legislation.

CR#15 Implementation Guidance from the SLUPB’s Proposed Revision Document (June 2012)	Other applicable CRs and/or legislation that will achieve the criteria <i>*Assume that CR#14 applies to GBL Zones.</i>
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CR#15 Implementation Guidance from the SLUPB's Proposed Revision Document (June 2012)	Other applicable CRs and/or legislation that will achieve the criteria <i>*Assume that CR#14 applies to GBL Zones.</i>
Reaching the goal of ecological integrity	<ul style="list-style-type: none"> • Goal #1 of the Sahtu Land Use Plan (Draft 3, p. 32) • CR#1 - Zoning • Special Management Zone Descriptions & CR#14 • All other CRs
...structure and function of system are not impaired by human-induced stresses	<ul style="list-style-type: none"> • CR#2 – Community Engagement and TK • CR#14 – Protection of Special Values • <i>MVRMA LURs s.26.(1)(o)</i>
System retains resilience...species are likely to persist	<ul style="list-style-type: none"> • CR#2 – Community Engagement and TK • *CR#14 – Protection of Special Values
System able to recover and return to a state that is 'normal' for that ecosystem type	<ul style="list-style-type: none"> • CR#2 – Community Engagement and TK • *CR#14 – Protection of Special Values
Terrestrial and aquatic ecosystem processes operate within the natural range of variation	<ul style="list-style-type: none"> • *CR#14 – Protection of Special Values • <i>MVRMA LURs s.26.(1)(q)</i>
Vegetation composition and structure are characteristic of the natural region, and function as habitat for a range of native species	<ul style="list-style-type: none"> • *CR#14 – Protection of Special Values
Locally sensitive or valued vegetation communities and terrain features continue to persist	<ul style="list-style-type: none"> • CR#2 – Community Engagement and TK • CR#9 – Sensitive Species and Features • *CR#14 – Protection of Special Values
Invasive or non native species are not introduced or allowed to persist	<ul style="list-style-type: none"> • CR#8 – Species Introductions
Sensitive or valued wildlife is not displaced from habitat essential to regional population sustainability	<ul style="list-style-type: none"> • CR#2 – Community Engagement and TK • CR#7 – Wildlife • CR#9 – Sensitive Species and Features • <i>Proposed NWT Wildlife Act</i> • <i>MVRMA LURs s.26.(1)(h)</i> • <i>Fisheries Act</i> • <i>Migratory Birds Convention Act</i>
Sensitive or valued wildlife is not habituated through human contact and activity	<ul style="list-style-type: none"> • <i>Proposed NWT Wildlife Act</i> • CR#2 – Community Engagement and TK • CR#7 – Wildlife • CR#9 – Sensitive Species and Features
Wildlife mortality does not increase directly or indirectly as a result of human contact and activity	<ul style="list-style-type: none"> • <i>Proposed NWT Wildlife Act</i> • CR#2 – Community Engagement and TK • CR#7 – Wildlife

CR#15 Implementation Guidance from the SLUPB's Proposed Revision Document (June 2012)	Other applicable CRs and/or legislation that will achieve the criteria <i>*Assume that CR#14 applies to GBL Zones.</i>
Species are protected in accordance with SARA	<ul style="list-style-type: none"> • <i>Species at Risk Act</i> • <i>NWT Species at Risk Act</i> • CR#9 – Sensitive Species and Features
...will benefit the affected communities	<ul style="list-style-type: none"> • CR#2 – Community Engagement and TK • CR#3 – Community <i>Well-Being</i> • <i>SDMCLCA & MVRMA s.58</i> • <i>COGOA</i>
...will maintain the ecological integrity of the land, water, and resources communities use and depend on.	<ul style="list-style-type: none"> • CR#1 - Zoning • CR#2 – Community Engagement and TK • CR#7 – Wildlife • CR#8 – Species Introductions • CR#9 – Sensitive Species and Features • *CR#14 – Protection of Special Values • <i>Constitution Act s.35</i>
...will not impact spiritual, cultural, and recreational sites	<ul style="list-style-type: none"> • CR#2 – Community Engagement and TK • CR#3 – Community Benefits • CR#4 – Heritage Resources • <i>MVRMA LURs s.26.(1)(j&k)</i>
...is designed in collaboration with them, through meaningful community engagement	<ul style="list-style-type: none"> • CR#2 – Community Engagement and TK
Include a record of community engagement	<ul style="list-style-type: none"> • CR#2 – Community Engagement and TK
Identify how communities will benefit	<ul style="list-style-type: none"> • CR#2 – Community Engagement and TK • CR#3 – Community Benefits • <i>SDMCLCA & MVRMA s.58</i>
How impacts to cultural, spiritual, and recreational sites will be avoided	<ul style="list-style-type: none"> • CR#2 – Community Engagement and TK • CR#4 – Heritage Resources • CR#11 – Project Specific Monitoring • *CR#14 – Protection of Special Values • <i>For oil and gas activity: NEB Act – Environmental Protection Plans</i> • <i>MVRMA LURs s.26.(1)</i>

- iii. Corrections regarding the CIMP (for the information of the Board only):
 - o Through the multi-party CIMP Working Group and community consultations, CIMP has identified a list of important aspects of the environment (Valued Components) that Northerners believe should be monitored. See CIMP website for detail (<http://www.nwtcimp.ca/listVC.html>).

- The Final Plan (in any background text) should not refer to indicators as CIMP has not finalized those at this point.
- The NWT CIMP proposes the “Pathway Approach” as a common platform for developing NWT monitoring and research programs, providing guidance and encouraging collaboration between science and traditional knowledge.
- The two reports referenced in the revision document are not used by CIMP and are not endorsed by the CIMP Working Group. As such, these should not be referred to in the Land Use Plan. Emphasis should instead be placed on the priority Valued Components.

2.22 CR#16 – Fish Farming and Aquaculture

SLUPB Proposed Revised Wording:

Fish farming and aquaculture are prohibited within the Great Bear Lake Watershed.

- a. Issue: N/A
- b. Page 87
- c. **Alternative for an Approvable Land Use Plan: N/A**
- d. Reasons for Approach:
 - i. AANDC recognizes the importance of maintaining the subsistence fishery on Great Bear Lake, and supports this CR as part of an approvable Plan as a method of maintaining this fishery.

2.23 CR#17 – Disturbance of Lakebed

SLUPB Proposed Revised Wording:

A land use activity that would disturb the lakebed of Great Bear Lake is prohibited, except:

- a) the installation of environmental monitoring equipment; and*
- b) the installation of public, private or commercial wharves and docks.*

- a. Issue: Requires consideration of community water intakes and associated maintenance
- b. Page 88
- c. **Alternative for an Approvable Land Use Plan:**
 - **AANDC requires that this CR incorporate a third clause to address maintenance of the Community of Deline water intake. For example: “(c) the inspection, maintenance, or replacement of community water intake pipelines below the ordinary high-water mark of Great Bear Lake.”**
- d. Reasons for Approach:
 - i. AANDC recognizes the importance of maintaining water quality in Great Bear Lake, and supports this condition as part of an approvable Plan to meet that goal.
 - ii. The Board must consider how annual and emergency maintenance to community water intakes (e.g. Community of Deline water intake) would be affected by this CR.

2.24 CR#18 – Uses of Du K’ets’Edi (Sentinel Islands)

SLUPB Proposed Revised Wording:

All land use activity is prohibited on Du K'ets'Edi (Sentinel Islands) except for the installation, maintenance and repair of research and monitoring equipment.

- a. Issue: N/A
- b. Page 89
- c. **Alternative for an Approvable Land Use Plan: N/A**
- d. Reasons for Approach:
 - i. AANDC recognizes the cultural importance of the Sentinel Islands to the Sahtugot'ine and supports this CR as part of an approvable Plan.

2.25 CR#19 – Water Withdrawal

SLUPB Proposed Revised Wording:

The withdrawal of water for industrial purposes from Lac Belot, Stewart Lake or Tate Lake is prohibited.

- a. Issue: N/A
- b. Page 89
- c. **Alternative for an Approvable Land Use Plan: N/A**
- d. Reasons for Approach:
 - i. AANDC supports this CR as part of an approvable Plan.

2.26 Actions: Overall Requirements for Plan Approval

General Considerations:

- AANDC supports the notion that Actions in an approved Plan will require 'reasonable efforts'. As such, Canada must evaluate and ensure that the suite of Actions does not pose any unnecessary risk, assuming that the human and financial resources are available to implement them. As a general suggestion, the Planning Board may consider changing all 'shalls' in the Actions to 'will make reasonable efforts to' which accurately reflects the nature of Actions.
- AANDC cannot approve a Plan that includes Actions that Canada cannot honour.

2.27 Action #1 – Sahtu Land Use Working Group

SLUPB Proposed Revised Wording:

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

2) The SLUPB will chair the Working Group, which will consist of equal representation from Sahtu aboriginal organizations, and from government, regulators, industry and environmental organizations.

Other participants may be invited from time to time to participate as resource people. Quorum requirements will be set to ensure adequate involvement of aboriginal organizations and government in all meetings.

3) The SLUPB will hold Working Group meetings as needed, in person or via teleconference, to advance the following issues and identify solutions for consideration in future Plan amendments:

- a. **Plan Implementation Issues:** Any uncertainty regarding interpretation or implementation challenges of the Sahtu Land Use Plan will be addressed as a standard agenda item at meetings of the Sahtu Land Use Working Group.
- b. **Community Engagement Guidelines:** Review existing community engagement guidelines, discuss expectations for when and how engagement should occur, and define a set of best practices for the Sahtu Settlement Area, including guiding principles, processes, and roles and responsibilities of government, industry and community organizations.
- c. **Traditional Knowledge Guidelines:** Develop guidelines for the collection (including purpose and scope), use and management of traditional knowledge within the Sahtu Settlement Area.
- d. **Cumulative Effects and Monitoring Program:** Building on the work of Working through the NWT Cumulative Impact Monitoring Program and previous work carried out by the SLUPB:
 - i. identify research and monitoring priorities for the Sahtu Settlement Area, giving consideration to recommendations identified in the “Great Bear Lake Watershed Research and Monitoring Plan”, and “Rakekée Gok’é Godi: Places We Take Care Of”;
 - ii. assess and fill key knowledge gaps; and
 - iii. develop, test and implement cumulative impact management strategies including landscape targets, through the land use plan.
- e. **Community-Government Monitoring and Enforcement Plan:** Assess current patrol, monitoring, inspection and enforcement activities for opportunities to partner with community organizations to increase both community involvement and the level of occurrence of these activities, and develop a plan to act on these opportunities where reasonable to do so.
- f. **Community Land Use Monitoring Program (NEW):** Develop protocols or standards for the training and accreditation of monitors; their roles responsibilities and authority; and funding, hiring and reporting relationships between RRCs and applicants; and develop a qualified pool of candidates within each community to be monitors.
- g. **Best Practices:** Build on and refine the Plan’s Conformity Requirements into a set of Best Practices for land use for the Sahtu Settlement Area. The results may replace the Plan’s Conformity Requirements through future Plan amendments.

4) The Working Group members will collaboratively set priorities, develop annual work plans, and identify sources of funding as needed to advance this work.

- a. Issue(s): Potential inflexibility of the Action list; Financial responsibility
- b. Page 91
- c. **Alternatives for an Approvable Land Use Plan:**
 - **In order to approve a Land Use Plan that includes this Action, AANDC requires that:**
 - the specific items for the working group to address (a-g) should be listed in the context section;
 - the Board understands that undertaking the creation and management of the Sahtu Working Group is at its discretion, understanding that funding for this specific purpose may not be consistently available, as Canada does not view creating this separate structure as part of the Board's mandate. The Board will need to manage its existing resources received for fulfilling its mandate pursuant to the SDMCLCA and the MVRMA; and

- the Planning Board incorporate wording into the context section on how the Sahtu Working Group should work in collaboration with other organizations to discuss, study and resolve these issues (i.e. Land and Water Boards working on TK Guidelines or SRRB/LWBs for Community Land Use Monitoring Program).
- d. Reasons for Approach:
 - i. The detailed action list (a-g) is not flexible once approved in the Plan. Once established, the Sahtu Working Group should be given the ability to determine priority items for discussion. The specific items should be listed in the context section so as not to be lost from the Plan.
 - ii. There may be inadvertent duplication of efforts between Land and Water Boards under Community Engagement Guidelines and Traditional Knowledge Guidelines. The Planning Board should work with the Land and Water Boards to ensure that NWT-wide guidelines meet Sahtu expectations. There should not be multiple versions of policies or guidelines as this will add confusion and duplication to the regulatory system.
 - iii. This Action must be implemented within core funding allocations.

2.28 Action #2 – Inspection and Enforcement Priorities

SLUPB Proposed Revised Wording:

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.

- a. Issue: Wording should reflect intent of Actions
- b. Page 96
- c. **Alternative for an Approvable Land Use Plan: Change ‘shall’ to ‘will make reasonable efforts to’.**
- d. Reasons for Approach:
 - i. AANDC supports this Action as part of an approvable Plan provided that “shall” is replaced with “will make reasonable efforts to”. AANDC also wishes to reiterate that current practices meet the spirit of this Action.

2.29 Action #3 – Access to Wildlife Information

SLUPB Proposed Revised Wording:

Responsible Authorities (ENR, CWS, SRRB and DFO) shall share, as circumstances require, current available 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. Data will be provided subject to laws of general application regarding privacy and access to information

- a. Issue: N/A
- b. Page 96
- c. **Alternative for an Approvable Land Use Plan: N/A**
- d. Reasons for Approach:

- i. **AANDC supports this Action as part of an approvable Plan.**

2.30 Action #4 – Water Withdrawals

SLUPB Proposed Revised Wording:

DFO and the SLWB shall work with communities as requested to discuss community concerns related to water withdrawal, DFO's winter water withdrawal protocol, and alternative solutions to water withdrawal related to specific projects.

- a. Issue: N/A
- b. Page 97
- c. **Alternative for an Approvable Land Use Plan: N/A**
- d. Reasons for Approach:
 - i. AANDC supports this Action as part of an approvable Plan.
 - ii. Please see suggestions from the Department of Fisheries and Oceans (*3.0 Specific comments from Department of Fisheries and Oceans Canada (DFO)*).

2.31 Action #5 – Air Quality

SLUPB Proposed Revised Wording:

(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.

- a. Issue: N/A
- b. Page 97
- c. **Alternative for an Approvable Land Use Plan: N/A**
- d. Reasons for Approach:
 - i. AANDC supports this Action as part of an approvable Plan.

2.32 Action #6 – Climate Change

SLUPB Proposed Revised Wording:

Regulators and responsible authorities shall build processes to meaningfully address climate change considerations in project reviews, such as greenhouse gas (GHG) emission standards, emission reporting, and monitoring requirements.

- a. Issue: Existing regulatory system addresses the Action - Duplication
- b. Page 97
- c. **Alternative for an Approvable Land Use Plan:**

- **AANDC requires that this Action be removed from the Plan. AANDC prefers that climate change be addressed by the land use plan via zoning or special management conditions (i.e. limiting certain land use activities in flood zones or areas where permafrost is melting).**
- d. Reasons for Approach:
 - i. This wording was not proposed in other drafts or revision documents and is new to the Plan.
 - ii. This wording lacks clarity for determination of “reasonable efforts” to be made by regulators and responsible authorities. There is no practical standard to measure what constitutes reasonable efforts regarding “building processes” to “meaningfully” address climate change considerations. These terms have no agreed-upon measurement standards.
 - iii. Key components of this provision in its original form are preserved in other parts of the Plan (e.g. CR#10 Permafrost, CR#11 Project-Specific Monitoring, A#1 Air Quality).
 - iv. There are processes already in place that address this Action, including the NWT Environmental Audit (MVRMA s. 148), the NWT GHG Strategy (reviewed and updated every five years), and the practice of project-specific multi-party Environmental Agreements.
 - v. The Environmental Assessment process addresses climate change considerations.
 - vi. Large projects - as a matter of public responsibility and ethical practice - often monitor, report, and mitigate GHG emissions without being regulated to do so. R#2 supports this industry practice.

2.33 (Former) Action #7 – Plan Implementation Monitoring

- a. Issue: N/A
- b. Page 98
- c. **Alternative for an Approvable Land Use Plan: N/A**
- d. Reasons for Approach:
 - i. AANDC supports moving this item to the Implementation chapter of the Plan.

2.34 (Former) Action #8 – Emergency Activity Reporting

- a. Issue: N/A
- b. Page 33
- c. **Alternative for an Approvable Land Use Plan: N/A**
- d. Reasons for Approach:
 - i. AANDC supports moving this item to Section 2.3.2 D of the Plan.

2.35 Recommendations: Overall Requirements for Plan Approval

- a. Issue: Canada must be able to consider implementing Recommendations listed in a statutory document; Recommendations should be within the scope of a land use plan
- b. Page 99-107
- c. **Alternatives for an Approvable Land Use Plan:**

- **As per AANDC’s submission to the Planning Board (October 15th, 2010), AANDC completed a risk assessment to ensure that human and financial resources are available to consider and/or implement the Recommendations over the five-year plan implementation period. AANDC also assessed current activities and practices in the NWT and Sahtu pertaining to the Recommendations and whether or not Recommendations were within the scope of a land use plan. As per this assessment, AANDC determined that the following Recommendations should be removed from the Plan and listed in a non-statutory document (suggestions provided in 1-5 below):**
 - **Recommendation 4 – Community Research Liaison**
 - **Recommendation 5 – Communication and Coordination**
 - **Recommendation 6 – Inspection and Enforcement**
 - **Recommendation 8 – Building Capacity**
 - **Recommendation 10 – Granular Resource Allocation Plan**
 - **Recommendation 12 – Mapping of the Underground River**
 - **Recommendation 13 – Contaminated Sites**
 - **Recommendation 14 – Strengthening Culture and Education**

Specific rationale for adding these Recommendations to an alternative document are provided in Appendix 3.

- **While Canada requests that certain Recommendations be struck from the Plan, we appreciate that these Recommendations directly reflect community concerns and aspirations, and in some cases knowledge gaps. These values should not be lost from the public record. As an alternative to listing these Recommendations in the Plan, Canada suggests that the Planning Board consider these approaches:**
 - (1) **List the Recommendations on the Sahtu Land Use Planning Board’s website as guidance for proponents, government, First Nations, and other organizations operating in the Sahtu Settlement Area.**
 - (2) **Identify any knowledge gaps (e.g. Underground River, non-renewable or renewable resource assessments) and list them on the Planning Board website so that prospective researchers or proponents could focus their proposals and potentially partner with willing communities.**
 - (3) **Compile a letter of Recommendations and send to the applicable parties for their consideration.**
 - (4) **Consider the approach taken by the Gwich’in Land Use Planning Board for the Draft Revised Gwich’in Land Use Plan (2012). All Actions and Recommendations are compiled in a Regional Plan of Action that does not require approval by Plan signatories. This approach allows more flexibility for both Actions and Recommendations.**
 - (5) **Consider adding Recommendations to the Background Report.**

d. **Reasons for Approach:**

- i. Canada recognizes that the Recommendations proposed in the Draft Sahtu Land Use Plan are the result of concerns raised through community consultation. Nine of the Recommendations stem from the integration of the *Water Heart: Great Bear Lake Watershed Management Plan* into the Sahtu Land Use Plan.
- ii. The Recommendations fall within certain themes: building capacity and economic well-being of Sahtu Participants, filling knowledge gaps, and improving communication between government, communities, and proponents. These are important proposals that will help Sahtu participants in the future.
- iii. Although the Draft Plan clearly states that Recommendations are not legally binding, Canada's opinion is that even 'non-binding' Recommendations in an approved Land Use Plan would oblige parties to take into consideration the objectives set out in the Recommendations. As such, Canada cannot approve a Plan that includes commitments to which it cannot honour or make efforts to consider. Should any recommendations be included in the Final Draft Plan, Canada requests that some text be added for clarity on the section on Implementing Recommendations (section 7.2.6, p. 292 of the Draft 3 Sahtu Land Use Plan). Specifically: *"Recommendations are not legally binding. In particular, SSI, GNWT and Canada's approval of this plan does not make the plan's recommendations legally binding, and does not signify that any of the governments will adopt them. Rather, such approval indicates that government is prepared to consider the recommendations."*

2.36 Proposal to distinguish between Special Management Zones and General Use Zones

- a. Issue: N/A
- b. Page 108
- c. **Alternative for an Approvable Land Use Plan: N/A**
- d. Reasons for Approach:
 - AANDC prefers that the Planning Board select Option 1, which requires minimal changes to the current format of the Land Use Plan. However, Option 2 could be considered at the 5-year review period. While consistency between regional land use plans is preferable, it is quite late in the Planning Board's process to undertake such a substantial reformat for the Plan.

3.0 Specific comments from Department of Fisheries and Oceans Canada (DFO)

Pending submission from DFO.

4.0 Specific comments from Environment Canada (EC)

EC's comments are limited to key issues that are supported, not supported, or require further discussion.

Issue 1: APPLICATION OF THE PLAN TO PROTECTED AREAS (DUAL DESIGNATION)

If dual designation is a clear community objective, we could support it on a case by case basis, provided that the zoning designation is consistent with the management objectives of the National Wildlife Area.

EC's larger concern is within this statement: *"Recent decisions to withhold subsurface protection from candidate protected areas has highlighted that the community notion of protection is broader and more holistic that provided for in the legislation available under the Protected Areas Strategy (which does not include National Park establishment)"*.

It is not clear where this statement came from. In the context of the Sahtu Land Use Plan and EC activities, EC will specifically address Ts'ude niline Tu'eyeta - a candidate National Wildlife Area in the Sahtu. The current status from EC's perspective is:

- There has been no formal decision yet about subsurface disposition for Ts'ude niline Tu'eyeta. However at community meetings and elsewhere the issue has been discussed thoroughly, and it is likely that mineral rights will be withdrawn from disposition under Ts'ude nilin Tu'eyeta. Oil and gas dispositions will likely remain, but will be subject to the NWA permitting policy.
- EC's Protected Areas Permitting Policy is very clear about what activities can, and cannot, occur in National Wildlife Areas. This Policy is referred to earlier in this document. In order to get a permit to conduct an activity in a National Wildlife Area, a proponent must demonstrate that their activity:
 - 1) will benefit wildlife and their habitat, or
 - 2) is not inconsistent with the purpose for which the protected area was established, and
 - 3) is consistent with the most recent management plan for the protected area.

The Policy sets a very high bar and makes it most unlikely that industrial activities could occur in a NWA. Please note that the intent is to have management committees (who have a significant membership from local communities) direct the development of the management plan. EC wishes to ensure that all land use planning partners understand the current status of the Candidate NWA before land use planning decisions are made.

EC is also seeking clarification on another question related to protected area establishment. After a candidate protected area has gone through the entire PAS process and a proposal to establish a clearly defined area has been submitted to government but in the end for whatever reason the protected area is not established what does the land that was proposed for the protected area revert to? If nothing has changed on the landscape and the community(s) still place a very high conservation value on that land would it not, therefore, qualify as 'conservation zone' status under the land use plan?

Issue 2: EXEMPTION FOR EXISTING USES

EC feels that the Planning Board has made a convincing case for maintaining the requirement for 'grandfathered' land use activities to conform to CRs that do not relate to zoning.

Issue 3: AUTHORIZATIONS THAT IMPLEMENT THE PLAN

EC feels that the SLUPB has made a convincing case for including authorizations related to wildlife and other resources that do not simply occupy a geographic space of land. EC supports this position in principle. However, in the case of National Wildlife Area permits under EC's policy, proposals involving considerable levels of activity/disturbance to the land (wildlife habitat) will need to meet a very high test before being permitted. Therefore, EC expects that only small-scale proposals will be permitted. Since a number of these activities are listed for inclusion in the current list of authorizations, (e.g. tourism operator licence, outfitter licence, archaeologists permit) EC feels it is unnecessary to include National Wildlife Area permits. Furthermore, EC notes and supports the Board's proposal related to excluding wildlife research permits and scientific research licences which would also apply in National Wildlife Areas.

Issue 4: CR#1 - LAND USE ZONING

EC supports retention of clause (2c) in this CR. This clause is required to avoid destruction of habitat resources of exceptionally high value. That is the intent of Conservation Zones.

Issue 5: CR#7 - WILDLIFE

EC notes this comment from the previous workshop: *"Hard to adhere to the setbacks if you don't have information on where these sites are....when heli-staking, you have to go in a straight line; ...you're landing every 300-400m to pick up samples. You wouldn't go up to 650 m between those points- it is not practical..."*

EC understands the practical difficulty presented in this comment. We suggest that proponents do a higher over-flight of the heli-staking line to identify any obvious areas to avoid (e.g. sand eskers; obvious concentrations of wildlife; cliffs) and then adjust operations accordingly. This will not guarantee avoidance of disturbance but it would be a reasonable effort to avoid negative impacts.

Issue 6: IMPLEMENTATION GUIDANCE

EC supports the distinctions that the Planning Board made with respect to Protection of Special Values within CZ and SMZ (protect, respect, and take into account). This is an easily understandable way to describe the different emphases on protection in the two zones.

Issue 7: PROPOSAL TO BETTER DISTINGUISH SPECIAL MANAGEMENT ZONES AND GENERAL USE ZONES

EC supports the Planning Board's suggestion of mirroring the Gwich'in LUP approach to distinguishing between the two types of zones by means of a more directed approach to the CR's and their applicability to just one or both zone types.

5.0 Specific comments from Public Works and Government Services Canada (PWGSC)

Please be advised that PWGSC Policy Branch has responded to us advising that there is no need PWGSC Acquisitions to participate in the review of these CLCA land use plans. The response is based on the following rationale:

(1) These land use plans may have implications related to PWGSC's real property activities, but we would not be in a position to comment on this. However, with respect to PWGSC common services procurement activities, PWGSC does not see how these plans would have much in the way of implications for us, other than that a contracting officer should verify with the client department that they have obtained any necessary CLCA permits or licenses for land access or water usage before the contract is awarded. (It would be too risky to wait until after a contract is awarded to obtain such permits or licenses.) We also understand that sometimes bidders may have to provide a plan regarding land or water usage which the client department would have to provide to the appropriate CLCA organization in order to obtain the permits.

(2) However, all to say, other than practicing due diligence by reminding our clients of their responsibilities to obtain the permits and ensure that they provide us with the necessary clausings to request bidders for their land/water usage plans, the responsibility for this aspect lies with our clients.

Regards,

Marc Poot

Supply Specialist/Spécialiste en approvisionnements

Northern Contaminated Sites Program/Programme de sites contaminé du Nord

Public Works & Government Services Canada/Travaux publics et Services gouvernementaux Canada

Telus Plaza North/Plaza Telus Nord

5th Floor, 10025 Jasper Avenue/10025, avenue Jasper, 5e étage

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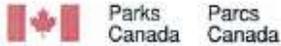
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6.0 Specific comments from Parks Canada (PC)

PC Comments: Please refer to letter inserted below.



Western Arctic Field Unit
P.O. Box 1840
Inuvik, NT X0E 0T0

July 31, 2012

Tom Duncan
Land Use Planning
Environmental & Renewable Resources Directorate
Northern Affairs Organization, AANDC
10 Flr, 15 Eddy Street
Les Terrasses de la Chaudière
Gatineau, Quebec
K1A 0H4

**RE: Comments on Proposed Revisions for Final Draft Sahtu Land Use Plan,
Discussion Document June 2012**

Dear Mr Duncan,

The following comments are provided on behalf of Parks Canada.

Parks Canada submitted letters of comment on Drafts of the Sahtu Land Use Plan in June 2007 (on Draft 1) and October 2010 (on Draft 3). As there has not been a new Draft since 2010 we do not know how the detailed comments in our October 2010 letter will be addressed or incorporated into the Final Plan. However the June 2012 Discussion Document states that the Board will go back and consider all comments received since Draft 3 before finalizing the Plan. We would like to stress that there are many detailed comments in our October 2010 letter that need to be addressed to ensure there is accurate, consistent wording in the Final Plan with respect to national parks and national historic sites.

If the comments in previous letters are adequately incorporated into the Final Plan there is only one outstanding issue. It relates to the language around national historic sites that is still being used in the June 2012 Discussion Document.

As explained in our 2010 letter and acknowledged in Draft 3 in places, Land Use Plans, as per Section 34 of the MVRMA, do not apply in national parks and national historic sites that are administered by Parks Canada. However the Discussion Document, in places, states that the Plan will not apply to national parks and national historic sites, which could be interpreted to refer to all national historic sites. To avoid misinterpretation this wording should be amended to clearly communicate that it is national parks and only those national historic sites for which the lands are acquired and administered by Parks Canada that will not be subject to the Plan. Please refer to the October 2010 letter for more detail on this issue. It appears this is simply a matter of applying consistent wording throughout in the Final Plan.

Thank-you for providing Parks Canada with the opportunity to comment.

Canada



Sincerely,

A handwritten signature in black ink, appearing to read "Diane Wilson".

Diane Wilson
Superintendent, Western Arctic

Addendum (via email):

In addition to our comments provided on July 31, 2012, please also include the following comments in the joint submission to the SLUPB.

CR#4 Heritage Resources

Revised wording, pg 45

Parks Canada has responsibility for heritage resources in national parks and is also the advisory expertise to all other federal departments. PCA has a mandate to provide advice to other federal departments on lands held by them, particularly on archaeology. This jurisdiction in the area of heritage resources and archaeology is recognized in land claims and in Impact and Benefit Agreements. The CR currently only recognizes the Prince of Wales Northern Heritage Centre as having jurisdiction over heritage resources or archaeology.

Suggested wording:

Where there is reference to contacting the Prince of Wales Northern Heritage Centre please also include "...and/or Parks Canada, as appropriate,...."

CR#7 Wildlife

Revised wording, pg 55

The following sections should be addressed.

1) PCA should be listed along with ENR, CWS, DFO and SRRB.

2)c. Protecting the summer habitat of mountain woodland caribou in the Lened area would be very valuable for Nááts'ihch'oh. Currently only barren land caribou and boreal woodland caribou are identified for specific mitigations.

Information Sources, pg 57

Parks Canada should be listed with the other agencies.

CR#9

Implementation Guide, pg 62

Under Data Sources we suggest adding:

"PCA should be contacted as a data source as appropriate, particularly for information regarding areas bordering Nááts'ihch'oh that would be relevant for determining set-backs from mineral licks, karst and hot springs."

CR#12

Revised wording, pg 71

Parks Canada issues land and water permits for the Howard's pass road which will eventually pass through Nááts'ihch'oh. The current wording "*all activities requiring a land use permit or water licence under the Mackenzie Valley Resource Management Act*" may not cover the permits issued by PCA. If it does not, there should be a sentence added recognizing Parks Canada's permitting authority for this road.

Thanks for the opportunity to comment.

Nelson

Nelson Perry

Ecosystem Scientist II | Scientifique des écosystèmes II
Environmental Assessment Coordinator | Coordonnateur des évaluations
environnementales

Western Arctic Field Unit | Unité de Gestion de l'Arctique de l'Ouest
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7.0 Specific comments from the National Energy Board (NEB)

The Planning Board should refer to comments provided by NEB on Draft 3 of the Plan (2010). The Planning Board should also be aware that post-devolution onshore oil and gas rights will primarily be managed by the GNWT.

8.0 Specific comments from Department of National Defense (DND) and Canadian Forces (CF)

National Defence Headquarters
ADM (Infrastructure and Environment)
Ottawa, Ontario
K1A 0K2
[Via email]

COMMENTS - SAHTU LAND USE PLAN

- References :
- A. Email from AANDC Sahtu Land Use Plan- Revision Document Comments, dated 25 July 2012;
 - B. Federal Review of the Proposed Revisions for the Final Draft Sahtu Land Use Plan, dated 24 July 2012;
 - C. Key Approval Issues document, dated July 2012;
 - D. Proposed Revisions for Final Draft Sahtu Land Use Plan – Discussion Document, dated June 2012;
 - E. Sahtu Land Use Plan- Draft 3, dated July 2010; and
 - F. Public Works and Government Services Canada Translation Bureau, dated 25 April 2012.

Thank you for the opportunity to review and comment on the Sahtu Land Use Plan Final Draft documents. Although we did not participate in the Sahtu Land Use Planning Board Workshops, the Department of National Defence (DND) and the Canadian Forces (CF) staff have reviewed all the documents listed in the references and we offer the following comments. Overall we find the Draft Plan (Ref E) very comprehensive and user-friendly.

The overall DND/CF mission is to defend Canada and Canadian interests and values while contributing to international peace and security. In particular, DND/CF contributes to the exercise of sovereignty and to safety, security and defence operations in Canada's North under the auspices of Canada's Northern Strategy and the *Canada First* Defence Strategy. To address the challenges related to increased activity in this vast region, the Government is making significant investments in Canadian Forces' capabilities for the Arctic. Joint Task Force (North) (JTFN), located in Yellowknife, NT with detachments in Iqaluit, NU and Whitehorse, YT, continues to plan and conduct routine and contingency operations in Canada's North as well as numerous training exercises, including three major annual operations such as Operation Nanook. Our Canadian Rangers conduct regular patrols and other military activities on land within the Northwest Territories.

DND/CF has no infrastructure located within the Sahtu Settlement Area. However, we conduct numerous operations, exercises, training, patrols and other activities on a regular basis, some of which take place in the Sahtu Settlement Area. DND/CF continues to ensure that we comply with the land requirements under the Sahtu Land Claim Agreement prior to conducting any military activities by:

- a. sending written correspondence to the Sahtu prior to accessing Sahtu Land Claims area;
- b. consulting and engaging with the Sahtu to promote cooperation and maintain positive community relations, and;
- c. obtaining consent or agreement from the Sahtu to access lands and waters in the Sahtu Land Claims area.

More specifically, we would like to offer the following suggestions to the draft plan:

1. Acronyms (section viii). We suggest the following to be inserted in this section:

- a. DND – Department of National Defence
- b. CF – Canadian Forces

2. Definitions (section ix): The term **project** with regards to future proposed development has not been defined in the section. In addition, the term ‘**operation**’ such as a military operation requires clarification. Although land use activity has been defined, we are not convinced that our military operations are included in the definition.

Recommendation: We recommend the following terms ‘project’ and ‘operation’ be defined in the document. The following are examples of definitions:

- a. **Project:** 1. A set of activities required to produce certain defined outputs, or to accomplish specific goals or objectives, within a defined schedule and resource budget. A project exists only for the duration of time required to complete its stated objectives. 2. A limited specific volume of construction or maintenance work described by an estimate of costs and when appropriate, by drawings and specifications. (*Source: Accrual Accounting Definitions, Canadian Forces Construction and Engineering Manual*)
- b. **Operation.** Military action or the carrying out of a strategic, operational, tactical, service, training or administrative military mission. (*Source: Public Works and Government Services Canada Translation Bureau, 2012*).

3. CF Exemption to the LUP. DND/CF conducts regular sovereignty operations within the Sahtu Land Claim area. On page 27 of Ref D, the Board proposes to do automatic referral for conformity determination for at least the first few years. We are requesting an exemption to this process as this could present delays in our regular exercise and operations process. DND operations and exercises are considered low impact activity which would be compatible in all proposed land use zones.

Recommendation: We are proposing the following section to be included in the LUP:

“Conformity determination will not be required for members of the Department of National Defence during the exercise of their duties as part of sovereignty operations located within the Sahtu Land Claims area”.

Should the Sahtu Land Use Planning Board require clarification or any additional information on DND/CF operations or exercises in the Sahtu Land Claim Area, please do not hesitate to contact me at (613) 995-3113 or at nadine.tischhauser@forces.gc.ca.

Sincerely,
Nadine Tischhauser, MCIP, RPP
Major

9.0 Specific comments from Natural Resources Canada (NRCAN)

Boundary files have been updated as per communication between NRCAN and the Planning Board. No further issues were identified.

10.0 Specific comments from Transport Canada (TC)

10.1 Transport Canada Unit: Civil Aviation – Aerodrome Safety – Flight Operations

The Discussion Document: Proposed Revisions for a Final Sahtu Land Use Plan contains several references to minimum flight altitudes. The wording used in most locations is acceptable:

- Page 52 CR#7 – Wildlife, Item 4) *“In addition, all land use activities must follow the horizontal setbacks and minimum flight altitudes identified in Table 8 when occurring near the habitat sites and during sensitive periods listed in that table, unless the activity cannot feasibly meet these requirements ...”*
- Page 55 Revised Wording, Item 2)a. *“In particular, all reasonable steps must be taken to follow the horizontal setbacks and minimum flight altitudes identified in Table 8 ... unless human safety is of concern ...”*
- Page 57 Information Requirements, Item 4. *“... complied with wherever reasonably feasible, except where human safety is a concern. ...”*

Transport Canada (TC) has provided guidance for pilots about flights near bird and wildlife sensitive areas in the Aeronautical Information Manual (as noted) and voluntary compliance is encouraged. **There is no regulatory instrument with which TC can enforce compliance with the suggested distances and altitudes.** References to minimum flight altitudes in other locations need similar revision:

Page 24 CR#7 Added Value *“... implements wildlife setbacks and minimum flight elevations as a standard condition ...”*

10.2 Transport Canada Unit: Safety Systems - Transportation of Dangerous Goods

Pages 23-26 of the document identify the overview of the conformity requirements. Conformity Requirement 2, for example, identifies the ‘Intent/Goal’ as ensuring that communities have a strong voice in shaping all activities affecting them with the ‘Scope of Application’ including ‘All licences, permits, authorizations, consents/rights issuance’. As the TDG Directorate does perform a regulatory role, it is on occasion necessary during an emergency (e.g. dangerous goods incident) to issue directions

or temporary certificates in order to effectively deal with the emergency. From a public safety perspective, we would be concerned of any possible consultation requirements at the time of an emergency as any delays could put public safety at risk. Additionally, it is also on occasion necessary to issue directions, temporary certificates or equivalency certificates as part of our day to day operations. As such, **it is important that the conformity requirements in the land use plan do not restrict or supersede the emergency requirements under the *Transportation of Dangerous Goods Act, 1992*.**

10.3 Transport Canada Unit: Rail Safety

For the Planning Board's consideration:

Rail Safety

Transport Canada is responsible for developing and implementing policies, regulations and services, as well as the overall administration of the *Railway Safety Act* and also overseeing operating rules that are developed and applied by the railway industry. Transport Canada advances the safety of the Canadian rail transportation system through regulation, outreach and oversight towards a national rail transportation system that Canadians recognize as safe and efficient.

Railway Safety Act & the Regulatory Framework

The regulatory framework for railway safety encompasses the legislation, regulations, rules, and engineering standards that provide the structure in which railway companies can operate safely. Several federal statutes play a role in the regulation of railways, the most important of which is the RSA, together with the regulations and rules made pursuant to it. Other federal legislation affecting railway safety includes: the *Canada Transportation Act*, the *Transportation of Dangerous Goods Act*, the *Canadian Transportation Accident Investigation and Safety Board Act* and the *Canada Labour Code*.

Transport Canada Programs

Transport Canada's Rail Safety program includes monitoring and enforcement activities. Transport Canada monitors for overall compliance so as to determine if railway companies are complying with the regulatory requirements of the RSA. Activities include audits, inspections and complaint handling.

The RSA includes provision for a number of compliance and safety instruments based on the severity of the safety issue, and the timeliness and appropriateness of the response from the railway company. Transport Canada uses these instruments when responding to non-compliance or threats/immediate threats to safety.

Railway Safety Management System

Under Transport Canada's *Railway Safety Management System Regulations*, in force since 2001, all federally regulated railway companies must develop and implement a SMS. While railways may create a SMS that best suits their organization, needs and operations, it *must* include certain documented systems and procedures, which give both Transport Canada and the railways a consistent basis for monitoring safety performance. Railways must also report to Transport Canada on their safety performance, safety targets, and new safety initiatives - every year. A railway company must submit its SMS to the Minister of Transport (the Minister) at least 60 days before it begins operations.

Notice and Approval of Railway Works

Pursuant to Section 8 of the RSA and the *Notice of Railway Works Regulations*, if a proposed railway work is of a prescribed kind, the proponent shall not undertake the work unless it has first given notice in accordance with the regulations. Should notice be required, it must be given to the persons prescribed by the regulation. A person to whom a notice is given may file with the proponent an objection to the proposed work if that person considers that the proposed railway work would prejudice their safety or the safety of their property.

Should a proponent wish to undertake a proposed railway work for which there is an outstanding objection under the *Notice of Railway Works Regulations*, or where the proposed railway work departs from any applicable engineering standard in effect, the proponent must first request the approval of the Minister and, if approval is received, must subsequently undertake the work in accordance with the terms of that approval.

Rules and Engineering Standards

In order to apply to a railway company, rules and engineering standards must be filed by the railway company with the Minister for approval. The RSA allows railway companies to create rules and engineering standards that are adapted to their operational needs. Alternatively, they can choose to become signatory to existing rules or engineering standards, which have already been approved for other federal railway companies, however they must be submitted for approval independently under the RSA.

More specifically, subsection 20(1) of the RSA provides railway companies with the ability to propose to formulate or revise rules on any matter referred to in subsection 18(1) or (2.1) of the RSA on their own initiative. Where a railway company does not submit rules under subsection 20(1) to address a safety issue of concern to Transport Canada, the Minister may, by order under subsection 19(1) of the RSA, require a railway company to formulate or revise rules respecting any matter referred to in subsection 18(1) or (2.1) of the RSA.

Subsection 7(2.1) of the RSA provides railway companies with the ability to propose to formulate or revise engineering standards on any matter referred to in subsection 7(1) on their own initiative. Under subsection 7(2) of the RSA, the Minister may, by order, require a railway company to formulate or revise and file with the Minister for consideration and possible approval engineering standards (both physical specifications and performance standards) governing the construction or alteration of railway works.

Railway Operating Certificate - Bill S-4, An Act to Amend the *Railway Safety Act (RSA)*, received Royal Assent on May 17, 2012. Subsection 17.9(1) of the amendments will give the authority to the Governor in Council to make regulations

- (a) respecting conditions to be met for the issuance of a railway operating certificate;
- (b) respecting the form and content of applications for railway operating certificates and the process for obtaining a certificate or the variation of one; and
- (c) exempting any class of persons from the application of section 17.1.

The changes to the Act will come into force January 1, 2013. The prescribed criteria are currently being formulated for the requirements of a Railway Operating Certificate.

10.4 Transport Canada Unit: Marine – Navigable Waters Protection

1. CR Authorizations Table – TC should have a check mark under “Fish Farming & Aquaculture” and also “Water Withdrawal”. Possibly “Disturbance of Lakebed”.*
2. CR Authorizations Table & Appendix 2 – The word “Authorizations” should be replaced with “Approval”.*
3. Appendix 2 – The term “s.5” should be removed, because this is not the only section of the Act that could be used.*

**AANDC incorporated these revisions into this document.*

11.0 Specific comments from Heritage Canada (HC)

No comment.

12.0 Specific comments from Industry Canada (IC)

- a. Issue: Additional wording suggested
- b. Definitions (Page xi) & Page 46 of Draft 3 Sahtu Land Use Plan
- c. **Alternatives for an Approvable Plan: The description of transportation corridor and infrastructure should include a reference to towers.**
- d. Reasons for Approach:
 - i. While it may be implied in this section, towers should be included in this section for added clarity. For example (from Page 46): “*Transportation corridor and infrastructure development means the construction, maintenance and operation of roads, railways, pipelines, electrical transmission lines, communications cables **and towers**, navigational aids, barge landings, airstrips, fuel caches, storage buildings and other similar works or structures.*”

13.0 Specific comments from Department of Foreign Affairs and International Trade (DFAIT)

No comment.

APPENDIX 1: Detailed criteria for review & approval

1. Legal and Policy consistency and accuracy

A plan must be in compliance with land claims agreements and legislation, and be consistent with applicable Government of Canada policy.

- A. Are provisions in the draft plan compliant with legal requirements in the applicable land claims agreement?
- B. Are provisions in the draft plan compliant with relevant legislation?
- C. Are provisions consistent with, and supportive of related policy (e.g., Northwest Territories and Nunavut Mining Regulations or The Minerals and Metals Policy of the Government of Canada)?
- D. Where a provision incorporates policy direction from another source, is it accurate?

2. Effective, Efficient, and Credible Planning Process

Planning processes must be based on effective, efficient, and inclusive planning practices, and be consistent with land claims legislation.

- A. Was the draft plan developed in a way that is consistent with procedural requirements in the applicable land claims agreement and with legal principles and legislation?
- B. Is this process transparent, credible, and based on accepted professional practice?
- C. Does the Draft Plan adequately reflect the federal input and input provided?
- D. In addition to federal interests, does the draft plan consider and respect interest and perspective of non-federal parties, including territorial governments, Aboriginal governments and organizations, communities within planning regions, other northern residents, key stakeholders, and the planning bodies?

3. Clarity

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

- A. Are the provisions - land use zones and conformity requirements in the plan sufficiently clear so that they can be implemented?
- B. Is there significant uncertainty or a risk of misinterpretation?
- C. As written, would the implementation of these provisions meet the objectives identified for a given zone?
- D. Is the terminology in the Draft Plan (including acronyms) in the plan clear and internally consistent?
- E. If factual information is not expected to remain accurate in the future, is this eventuality explicitly stated in the plan and will it affect the plan's interpretation and implementation?
- F. Should statements that may become inaccurate be removed and, if necessary, included another in document that can more easily be updated?

4. Governance & Implementation

A plan must reflect the authority, roles, and responsibilities of its implementing bodies.

- A. Are provisions requiring regulatory conformity directed to the appropriate body?
- B. Does the body that is expected or directed to implement the provision have the legal authority and the mandate to take that action?
- C. Are there issues of capacity and financial resources that need to be considered? (i.e., Will plan approval and implementation create new capacity requirements from Government?)
- D. Are these capacity requirements well understood?

- E. 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?
- F. 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

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

APPENDIX 2: Rationale for ability of legislation to implement CRs in the SLUP

Land Use Permit (Type A or B)

MVRMA/Mackenzie Valley Land Use Regulations

- The Sahtu Land and Water Board has the authority to implement the conformity requirements under the following legislation and regulations:
 - CR # 1 – MVLURs s. 26 (1) (a)
 - CR # 2 – MVRMA s. 60.1 (b), SDMCLCA s. 25.4.5 (a) (v)
 - CR # 3 – MVRMA s. 58, SDMCLCA s. 25.4.2 (a)
 - CR # 4 – MVLURs s. 26 (1) (j)
 - CR # 5 – MVRMA s. 75-77, MVLURs s. 26 (1) (f), SDMCLCA s. 20.1.8 (a) & s. 20.1.14 (Sahtu lands only)
 - CR # 6 – MVLURs s. 26 (1) (q)
 - CR # 7 – MVLURs s. 26 (1) (h)
 - CR # 8 – MVLURs s. 26 (1) (h)
 - CR # 9 – MVLURs s. 26 (1) (h) (k) (q)
 - CR # 10 – MVLURs s. 26 (1) (k) (q)
 - CR # 11 – MVRMA s. 146, MVLURs s. 26 (1) (h) (k) (q)
 - CR # 12 – MVRMA s. 71 (1), MVLURs s. 26 (1) (l), s. 32 (1) (a-c)
 - CR # 13 – MVLURs s. 15, 26 (1) (o)
 - CR # 14 – MVLURs s. 26 (1) (a) (k) (q)
 - CR # 15 – MVLURs s. 26 (1) (a) (k)
 - CR # 16 – n/a
 - CR # 17 – MVLURs s. 26 (1) (a) (k) (q)
 - CR # 18 – MVLURs s. 26 (1) (a)
 - CR # 19 – n/a

Water Licence (Type A or B)

MVRMA/NWT Waters Act/NWT Water Regulations

- The Sahtu Land and Water Board has authority to implement various conformity requirements as conditions of a licence under NWTWA s. 15. (1), which reads:

“15. (1) Subject to this Act and the regulations, the Board may include in a licence any conditions that it considers appropriate, including, without limiting the generality of the foregoing,

 - (a) conditions relating to the manner of use of waters permitted to be used under the licence; [CR # 5, 6, 7, 8, 9, 10, 14, 15, 17, 19]
 - (b) conditions relating to the quantity, concentration and types of waste that may be deposited in any waters by the licensee; [CR # 5, 6, 7, 9, 10, 14, 15, 17⁴]
 - (c) conditions under which any such waste may be so deposited; [CR # 4⁵, 5, 6, 7, 9, 10, 14, 15, 17]
 - (d) conditions relating to studies to be undertaken, works to be constructed, plans to be submitted, and monitoring programs to be undertaken; [CR # 11] and
 - (e) conditions relating to any future closing or abandonment of the appurtenant undertaking.” [CR # 13]

⁴ This CR (Disturbance of Lakebed) is included according to the definition of “use” in the NWTWA s. 2 which includes, “(c) any alteration of the bed or banks of a river, stream, lake or other body of water, whether or not the body of water is seasonal.”

⁵ This CR (Heritage Resources) is included according to the definition of “land use activities” in the Draft Sahtu Land Use Plan, which includes the deposit of waste.

- Other conformity requirements are implemented by specific provisions of legislation and regulations, as well as policies and guidelines of the SLWB, which are given authority under the MVRMA s. 65:
 - o CR # 1 – MVRMA s. 60 (1) (a-b), NWTWRs s. 4
 - o CR # 2 – MVRMA s. 60.1 (b), s. 64 (1) (2), SDMCLCA s. 25.4.5 (a) (v), NWTWA s. 21⁶
 - o CR # 3 – MVRMA s. 58, SDMCLCA s. 25.4.2. (a)
 - o CR # 12 – NWTWA s. 17 (1), NWTWRs s. 12 (1)

- The following conformity requirements do not apply:
 - o CR # 16 – Fish farming and aquaculture apply only to commercial fishing licences and associated authorizations
 - o CR # 18 – Prohibited land use activities on the Sentinel Islands do not involve authorizations in a water licence. If a proponent is issued a water licence to use waters or deposit waste in waters around the Sentinel Islands, this does not qualify as a use of the islands themselves.

Exploration Licence

Canada Petroleum Resources Act

- AANDC has authority to issue exploration rights under the *Canada Petroleum Resources Act* (CPRA) s. 13, as they are defined in s. 22 of that Act. Because an exploration licence (EL) is a rights issuance, it does not in itself constitute a land use and most conformity requirements will not apply. AANDC has authority to implement specific conformity requirements under the following legislation and regulations:
 - o CR # 1 – CPRA s. 24 (1)
 - o CR # 2 - SDMCLCA s. 22.1.2
 - o CR # 3 does not apply. As a rights issuance, an Exploration Licence is not a land use activity and therefore outside the scope of this CR.
 - o CR # 14 does not apply. As a rights issuance, an Exploration Licence is not considered a “proposed land use activity” and therefore outside the scope of this CR.

Authorization for a Geological/Geophysical Program

COGOA/CPRA

- The National Energy Board (NEB) is empowered to grant authorizations for a geological or geophysical program under the *Canada Oil and Gas Operations Act* (COGOA) s. 5 (1) (a-b), according to requirements outlined in section 5 (4) (a-c) of that Act. The NEB has authority to implement conformity requirements under the following legislation:
 - o CR # 1 – COGOA s. 4
 - o CR # 2 – SDMCLCA s. 22.1.3
 - o CR # 3 – COGOA s. 5.2, CPRA s. 21

Significant Discovery Licence

Canada Petroleum Resources Act

- AANDC has the authority to issue a significant discovery licence (SDL) under CPRA s. 13 and 30 (1).

⁶ In this section, the NWTWA dictates that the Board must hold public hearings for the issuance, renewal, amendment, and cancellation of Type A licences. For Type B licences, the SLWB may hold a public hearing at its own discretion.

- A SDL provides indefinite tenure to a petroleum discovery, as it relates to the exploration licence. The rights issued under a SDL are identical to those of an EL, except that the proponent now has the right to apply for a production licence.
- Because a SDL does not confer any additional rights to act on the land that would not have already been issued under previous authorization, no additional CRs would apply.

Production Licence

Canada Petroleum Resources Act

- AANDC has the authority to issue a production licence (PL) under CPRA s. 13 and 38 (1). Under CPRA s. 38 (3), AANDC has the authority to include terms and conditions in a PL which implement conformity requirements. However, a PL is a rights issuance and does not in itself constitute a land use. Therefore most conformity requirements will not apply.
- CR # 1 applies in consistency with the terms of the EL and SDL.
- CR # 2 does not apply. Under SDMCLCA section 22.1.3, consultations shall be held before the exercise of a developer's rights to develop or produce. A production licence is a granting of rights, but not yet an exercise of those rights.

Authorization for Drilling and Production-Related Work

Canada Oil and Gas Operations Act

- The NEB is empowered to grant authorizations for drilling and production work under the COGOA s. 5 (1) (a-b), according to requirements outlined in section 5 (4) (a-c) of that Act. The NEB has authority to implement conformity requirements under the following legislation:
 - o CR # 1 – COGOA s. 4
 - o CR # 2 – SDMCLCA s. 22.1.3
 - o CR # 3 – COGOA s. 5.2, CPRA s. 21
 - o CR # 11 – COGOA s. 5.1
- CR # 12 (Financial Security) does not apply here (only to land use permits and water licences), but National Energy Board authorizations may include requirements and deposits relating to liability for loss, damage, cost or expenses in their approval under section 5. (4) (a) of COGOA.
- CR # 13 (Closure and Reclamation) does not apply. Closure and reclamation plans are required for a drilling project, but it is the responsibility of other regulators to enforce under accompanying authorization (i.e., land use permits, surface tenure), not the National Energy Board. Section 22.1.3 (f) of the SDMCLCA requires consultation with the Sahtu Tribal Council regarding expansion or termination of activities, which is upheld here under CR # 2.

Certificate of Public Convenience and Necessity

National Energy Board Act

- The NEB must issue a Certificate of Public Convenience and Necessity (CPCN) as part of the regulatory approval process for pipelines longer than 40km. Section 52 of the *National Energy Board Act* (NEB Act) requires these projects to undergo a NEB hearing and Governor-in-Council approval. A CPCN does not in itself constitute a land use, therefore only the conformity requirement for zoning will apply:
 - o CR # 1 – NEB Act s. 52 (a-e), 53, & 54

Prospecting Permit

Northwest Territories & Nunavut Mining Regulations

- A prospecting permit grants exclusive rights to prospect for minerals in a given area and the right to have a mineral claim recorded. It may require a land use permit, but prospecting could occur below the threshold of a Type B permit. Under the *Northwest Territories and Nunavut Mining Regulations* (NT/NUMRs), the conformity requirement for zoning applies:
 - o CR # 1 – NT/NUMRs s. 11 (1) (f) “No person shall prospect for minerals or stake a claim on lands ... that are subject to a prohibition for prospecting or staking a claim under a land use plan that has been approved under federal legislation or a land claim agreement”
- Note: SDMCLCA s. 21.4.6 (b) requires notice to be given to the designated Sahtu organization if the permit area includes Sahtu lands.
- CR # 12 (Financial Security) does not apply here but the NT/NUMRs requires a deposit to be made under section 30 (1) of the regulations.

Mineral Claim

Northwest Territories & Nunavut Mining Regulations

- A mineral claim grants exclusive rights to explore and develop minerals in a given area. Exploration and representation work conducted under a mineral claim may require a land use permit. A mineral claim does not confer any surface rights.
 - o CR # 1 – NT/NUMRs s. 11 (1) (f) “No person shall prospect for minerals or stake a claim on lands ... that are subject to a prohibition for prospecting or staking a claim under a land use plan that has been approved under federal legislation or a land claim agreement”
 - o CR # 1 – SDMCLCA s. 21.4.6 (a) “...any person having a right to explore, develop or produce minerals under or on Sahtu lands has a right of access to Sahtu lands and waters overlying such lands for the purposes of exploring, developing, producing or transporting minerals with the agreement of the designated Sahtu organization or, failing such agreement, an order of the Surface Rights Board.”
- CR # 2 does not apply. Section 22.1.4 of the SDMCLCA requires the Sahtu Tribal Council to be consulted if mineral exploration activity requires a land use permit or water licence. A mineral claim grants the right to explore, but the section 22.1.4 requirement would be activated upon application for the land use permit or water licence.
- CR # 12 (Financial Security) does not apply here but the NT/NUMRs may require a deposit to be made under section 44 (8) (b) of the regulations.

Subsurface Lease (Mineral Lease)

Northwest Territories & Nunavut Mining Regulations

- A mineral lease grants the right to enter full commercial production in a given area, outlined previously in a mineral claim.
 - o CR # 1 – NT/NUMRs s. 11 (1) (f) “No person shall prospect for minerals or stake a claim on lands ... that are subject to a prohibition for prospecting or staking a claim under a land use plan that has been approved under federal legislation or a land claim agreement”
 - o CR # 1 – SDMCLCA s. 21.4.6 (a) “...any person having a right to explore, develop or produce minerals under or on Sahtu lands has a right of access to Sahtu lands and waters overlying such lands for the purposes of exploring, developing, producing or transporting minerals with the

agreement of the designated Sahtu organization or, failing such agreement, an order of the Surface Rights Board.”

- CR # 2 does not apply. Under SDMCLCA section 22.1.5, consultations shall be held before the exercise of a developer’s rights to develop or produce minerals other than oil and gas. A mineral lease grants subsurface rights, but is not yet an exercise of those rights.
- Note: Issuance of subsurface rights does not denote the issuance of surface rights. The proponent would have to acquire either a land use permit or surface lease (depending on the scale) and a water licence. These authorizations have additional conformity requirements which apply. The proponent may reach an agreement with the holder of surface rights regarding compensation for loss or damage to their property as a result of mining activity. See sections 70 and 71 of the *Northwest Territories and Nunavut Mining Regulations*.

Coal Exploration Licence/Coal Lease *Territorial Lands Act/Territorial Coal Regulations/Territorial Lands Regulations*

- The AANDC Mining Recorder’s Office has authority to issue a coal exploration licence or lease under the *Territorial Coal Regulations* (TCRs) s. 14 (1). A lessee is entitled to rights outlined in section 18 (1) of the TCRs, but the lease on its own does not constitute a land use. Therefore, only the conformity requirement for zoning will apply:
 - o CR # 1 – Territorial Lands Act (TLA) s. 8, Territorial Lands Regulations (TLRs) s. 12
 - o Note: This is only applicable to territorial lands under the control, management, and administration of the AANDC Minister. Sahtu lands that are surface-only are managed under TCRs s. 6 (1), which requires landowner consent and proof of security.
- CR # 12 (Financial Security) does not apply but the TCRs s. 6 (1) b) requires posting of security to the Mining Recorder’s Office where the surface rights of the land are owned and lawfully occupied by another (includes Sahtu lands).

Coal Permit *Territorial Lands Act/Territorial Coal Regulations/Territorial Lands Regulations*

- A coal permit is issued to a proponent for personal use. The permit holder may require a land use permit if they exceed the minimum threshold of a Type B permit.
 - o CR # 1 – TLA s. 8, TLRs s. 12
 - o Note: This is only applicable to territorial lands under the control, management, and administration of the AANDC Minister. Sahtu lands that are surface-only are managed under TCRs s. 6 (1), which requires landowner consent and proof of security.
- CR # 12 (Financial Security) does not apply but the TCRs s. 6 (1) b) requires posting of security to the Mining Recorder’s Office where the surface rights of the land are owned and lawfully occupied by another (includes Sahtu lands).

Dredging Lease *Territorial Lands Act/Territorial Dredging Regulations/Territorial Lands Regulations*

- A dredging lease grants the exclusive right to dredge for minerals in the submerged bed of a river in the Northwest Territories. AANDC has authority to grant a dredging lease under the *Territorial Dredging*

Regulations (TDRs) s. 3. A dredging lease on its own does not constitute a land use. Therefore only the conformity requirement for zoning will apply:

- CR # 1 – TLA s. 8, TLRs s. 12, TDRs s. 3
- Other CRs do not apply. A dredging lease grants exclusive rights, but additional authorizations are required (such as a land use permit, water licence, fisheries authorization, and NWPA permit) which will implement other conformity requirements.

Surface Lease

Territorial Lands Act/Territorial Lands Regulations

- A surface lease grants the exclusive right to a given area of land. AANDC has the authority to issue a surface lease under the *Territorial Lands Act* s. 8. A surface lease on its own does not inherently constitute a land use. Therefore only the conformity requirement for zoning will apply:
 - CR # 1 – TLA s. 8, TLRs s. 12
- CR # 14 does not apply, but may be indirectly implemented as part of the terms and conditions included in a lease agreement as the Minister may deem necessary (TLRs s. 12)
- CR # 12 (Financial Security) does not apply, but the *Territorial Lands Regulations* s. 11 (1) (3) outline the annual rent regime that applies for the lease of territorial lands.

Easement and Licence of Occupation

Federal Real Property and Federal Immovables Act

- AANDC has authority to issue these authorizations under the *Federal Real Property and Federal Immovables Act* (FRPFIA) s. 16. An easement or licence of occupation on its own is not a land use. A proponent holding an easement or licence of occupation does not have the right to general use or occupation of the land, nor can they claim any form of ownership over the land. Therefore only the conformity requirement for zoning will apply:
 - CR # 1 – FRPFIA s. 16, Federal Real Property Regulations s. 4 (1)
- Note: Projects that require these types of authorization usually proceed automatically to the Environmental Assessment process.

Quarry Permit

Territorial Lands Act/Territorial Quarrying Regulations

- AANDC has the authority to issue a quarry permit under the *Territorial Quarrying Regulations* (TQRs) s. 12. Because a quarry permit gives the holder the right to access the material - but not to begin work or take the material - only the conformity requirement for zoning will apply:
 - CR # 1 – TLA s. 8, TQRs s. 12
 - Note: The *Territorial Quarrying Regulations* apply only to territorial lands under the control, management and administration of the Minister. Sahtu lands are managed separately and include rights to specified substances in the land claim that may be relevant to a quarrying permit applicant.

Scientific Permit

Migratory Birds Convention Act/ Migratory Bird Regulations

- A scientific permit is required for the authorization to kill, capture, or band a migratory bird, or take its nest or eggs, under section 19 of the *Migratory Birds Regulations* (MBRs). The Canada Wildlife Service has

authority to issue these permits the MBRs s. 4 and the *Migratory Birds Convention Act* (MBCA) s. 11.1 and s. 12 (1) (d-f). CWS has authority to implement conformity requirements under the following legislation:

- CR # 1 – MBRs s. 4 & 19, MBCA s. 12 (1)
- CR # 7 – MBRs s. 4 (1) (a-c), MBCA s. 12 (1)
- CR # 11 – MBRs s. 19 (3) (a-c), MBCA s. 12 (1)
- CR # 14 – MBRs s. 4 (1) (a-c), MBCA s. 12 (1)

Scientific Collection Permit

Fisheries Act/ Fishery (General) Regulations

- DFO has authority to implement conformity requirements under the following legislation:
 - CR # 1 – Fishery (General) Regulations s. 51 & 52
 - CR # 7 – Fisheries Act s. 35 (1) (2)
 - CR # 11 – Fishery (General) Regulations s. 22 (1) (k) (l) (p)
 - CR # 14 – Fishery (General) Regulations s. 22 (1) (a-z.1)

Approval for “Works”

Navigable Waters Protection Act

- Approvals for works are required under the *Navigable Waters Protection Act* (NWPA) for building in, on, over, under, through, or across navigable waters. Applicants must demonstrate that the work will not substantially interfere with navigation; or, the Transport Minister may impose terms and conditions on the authorization if there is potential for interference. Transport Canada has the authority to issue this authorization under NWPA. Only the conformity requirement for zoning will apply; other conformity requirements are outside the scope of Transport Canada’s authority to implement.
- Note: TC’s current practice is not to issue an authorization unless the proponent can demonstrate that they have the appropriate Land Use Permit and Water Licence in hand.
 - CR # 1 – NWPA

Commercial Fishing Licence

Fisheries Act/Northwest Territories Fishery Regulations

- DFO has authority to implement conformity requirements under the following legislation
 - CR # 1 – Fisheries Act s. 7, NTFRs s. 5 (1), s. 17 (1) (2)
 - CR # 7 – Fisheries Act s. 35 (1) (2), Fishery (General) Regulations s. 22 (1) (a-z.1)
 - CR # 16 – NTFRs s. 17 (1), s. 38 (4); prohibits commercial fishing in Great Bear Lake
 - CR # 17 – NTFRs s. 17 (1), s. 38 (4); prohibits commercial fishing in Great Bear Lake

Fisheries Authorization

Fisheries Act/ Fishery (General) Regulations

- Section 35 of the *Fisheries Act* stipulates that no one may carry on work that result in the harmful alteration, disruption, or destruction (HADD) of fish habitat without authorization from DFO. DFO has authority to implement conformity requirements under the following legislation:
 - CR # 1 – Fisheries Act s. 35 (1) (2), Fishery (General) Regulations s. 58 (1) (2)
 - CR # 5 – Fisheries Act s. 35 (1) (2), Fishery (General) Regulations s. 58 (1) (2)
 - CR # 7 – Fisheries Act s. 35 (1) (2), Fishery (General) Regulations s. 58 (1) (2)
 - CR # 14 – Fisheries Act s. 35 (1) (2), Fishery (General) Regulations s. 58 (1) (2)

- Other authorizations on this table may require an accompanying fisheries authorization before conducting a given activity.

APPENDIX 3: Analysis of Recommendations

Recommendation #1 – Air Quality

SLUPB Proposed Revised Wording:

The SLWB should recommend to those applying for permits, licences or other authorizations that they conduct all activities in the SSA in conformity with the standards set out in the GNWT's Guidelines for Ambient Air Quality Standards, and other applicable federal or territorial regulations, guidelines or standards as they are developed.

- **Canada supports terms and conditions to maintain air quality standards in the Sahtu.**

Recommendation #2 – Climate Change

SLUPB Proposed Revised Wording:

1) Applicants and regulators are encouraged to assess how climate change may impact proposed land use activities and integrate those factors into the design and operation of the activities.

2) Applicants and regulators are encouraged to assess, report and monitor how proposed activities contribute to climate change and take steps to minimize impacts, such as GHG emissions.

- a. Issue: New wording
- b. Page 97
- c. **Alternative for an Approvable Land Use Plan:**
 - **Canada proposes two options for this Recommendation:**
 - **Canada would support inclusion of this Recommendation in the land use plan if the Planning Board removes the reference to “regulators” from both part 1 and 2, or**
 - **Canada cannot approve a land use plan that includes this Recommendation. In order that the suggestion is not lost, Canada recommends including it in a non-statutory document instead.**
- d. Reasons for Approach:
 - i. While the new wording does provide more direction as to how climate change should be addressed in the Sahtu, it now specifies a regulator’s role. As a regulator, Canada must assess whether or not reasonable efforts could be made to achieve the specified outcome

Recommendation #3 – Community Land Use Monitors

SLUPB Proposed Revised Wording:

Where deemed necessary by the community, Applicants are encouraged to fund the local Renewable Resources Council (RRC) to hire an independent, qualified community land use monitor, and support the monitor. In the case of small-scale activities where little to no environmental impact is expected, applicants are encouraged to employ a community research assistant instead.

- **Canada supports this recommendation as a non-binding requirement in an approved Sahtu Land Use Plan, recognizing that many proponents currently hire either Environmental or Wildlife Monitors.**

Recommendation #4 – Community Research Liaison

SLUPB Proposed Revised Wording:

Individuals or organizations interested in carrying out research in the Sahtu Settlement Area are encouraged to establish and maintain a working contact with the appropriate organization(s) in affected communities (renewable resources council, Land Corporation, or first nation), and prepare a plain language summary of the research upon completion.

- a. Issue: Appropriateness for the land use plan
- b. Page 103
- c. **Alternative for an Approvable Land Use Plan:**
 - **Since this Recommendation does not adequately fit the scope of a land use plan, Canada requires that this Recommendation be removed from the Sahtu Land Use Plan and compiled with other suggestions in a non-statutory document.**
- d. Reasons for Approach:
 - i. This Recommendation requests that all organizations operating in the SSA establish and maintain working contact with appropriate organizations and prepare a plain language summary upon completion of the project/research.
 - ii. In principle, this is an excellent concept and is meant to address community concerns that organizations do not share information with communities after a project ends. However, most authorizations (whether research or industrial in nature) already complete some form of plain language reporting back to community organizations. For example: Wildlife Research Permits require a summary report to be sent to the applicable communities; Land Use Permits and Water Licenses have monitoring reports added to the public registry; many proponents either in good faith or through signed benefit agreements report back to communities on a regular basis; any type of traditional knowledge work also requires reporting back.
 - iii. It is unclear how this Recommendation fits into the scope of a land use plan.
 - iv. The Recommendation does not implicate community organizations sharing back to the community, which might be a source of this discontent.
 - v. Canada has identified that many authorizations and processes (e.g. benefit agreements) already require this level of communication. Based on feedback from communities, it is clear that not all community members feel that information is adequately shared. In order to ensure that these lines of communication are opened, we suggest adding the following wording for this Recommendation in a non-statutory document: *“Organizations in affected communities (e.g., Renewable Resource Boards, District Land Corporations, or other community organizations) are encouraged to report on or share plain language reports throughout their community (e.g., posted on websites, through regular outreach activities like community meetings or newsletters).”*

Recommendation #5 – Communications and Coordination

SLUPB Proposed Revised Wording:

Every department, agency and organization operating in the Sahtu Settlement Area, including community organizations, is encouraged to have a staff position responsible for establishing and maintaining effective communications (using both oral and written means), and coordinating with communities and other organizations, and increasing community involvement in decision-making.

- a. Issue: Appropriateness for the land use plan
- b. Page 103
- c. **Alternative for an Approvable Land Use Plan:**
 - **While this is a valid suggestion to solve a problem, directing or encouraging all agencies or proponents to have a staff position coordinating all communication is not a collaborative approach to solving the communication issues raised during community consultation. Canada requests that this Recommendation be removed from the Sahtu Land Use Plan and compiled with other suggestions in a non-statutory document.**
- d. Reasons for Approach:

- i. This item encourages all organizations to have a dedicated position for communications in the Sahtu and originated in the Water Heart: Great Bear Lake Watershed Management Plan (Pg 39, section 3.2.3).
- ii. This Recommendation (Communications) does not fall within the scope of a land use plan. It is not the purpose of a Plan to solve communications issues. However the principle of open communication is important for responsible resource development, and to avoid miscommunication surrounding projects or authorizations. Government and proponents are cognizant that in order to do 'good business' and avoid complications in any region, parties must inform and communicate with affected communities. Community expectations are clearly high for communication.
- iii. This Recommendation refers to all community organizations as well (e.g. DLCs). Designated Sahtu Organizations must operate within the bounds of annual allocations based on the SDMCLCA Implementation Plan.

Recommendation #6 – Inspection and Enforcement Funding

SLUPB Proposed Revised Wording:

AANDC is encouraged to seek additional funding for its inspectors to enable them to patrol priority areas identified in discussion with communities, and increase inspection levels to achieve their target inspection rate within the Sahtu Settlement Area.

- a. Issue: Planning Board directing Canada's discretion in funding decisions
- b. Page 104
- c. **Alternative for an Approvable Land Use Plan:**
 - **We thank the Board for this proposed Recommendation, but we must consider it as a general suggestion only which cannot interfere with the exercise of Departmental discretion for funding allocation. Please remove this Recommendation from the Sahtu Land Use Plan and compile with other Recommendations in a non-statutory document.**
- d. Reasons for Approach:
 - i. In a submission to the Planning Board in October 2010, AANDC stated that the Recommendation should be removed from the Plan and would be better suited for a Recommendation in a cover letter to the Minister. The Planning Board stated that they wish to leave this Recommendation in the Plan since "...the Board feels it is important not only to identify issues but to seek ways to address them. This Recommendation supports those efforts." AANDC considered the Board's response, however, still requires that this recommendation be removed from the Plan.
 - ii. AANDC continually completes 100% of inspections at high risk sites in the NWT.

Recommendation #7 – Economic Development Strategy

SLUPB Proposed Revised Wording:

District land corporations and relevant community organizations (land corporations, community councils, First Nations, and RRCs) are encouraged to work with ITI to develop an economic development strategy and action plan to identify economic needs and opportunities, including opportunities arising from establishment of Conservation Zones and new Protected Areas, and capitalize on the opportunities within each district.

- **Alternative for an Approvable Land Use Plan:**
 - **Canada recognizes the importance of strategic economic development planning. The land use plan itself will help DLCs meet this goal. Canada would like the Planning Board to confirm that DLCs are aware of the commitment implied by the Recommendation to make reasonable efforts to consider the Recommendation. SSI and the DLCs should ensure that all anticipated costs for this undertaking are**

taken into consideration and that they are capable of implementing the recommendation using existing resources.

Recommendation #8 – Building Capacity

SLUPB Proposed Revised Wording:

The territorial and federal governments are encouraged to work with Sahtu businesses to build their capacity (e.g. training, financial assistance, splitting contracts where feasible) to be more successful in procuring contracts and maximize Sahtu business and contracting opportunities for qualified businesses for work carried out within the Sahtu Settlement Area.

- a. Issue: Appropriateness for the land use plan & inconsistent with Government of Canada policy
- b. Page 104
- c. **Alternative for an Approvable Land Use Plan:**
 - **Upon further reflection, Canada requires that this Recommendation be removed and compiled in a non-statutory document. Capacity building is already contemplated in the Economic Measures chapter of the SDMCLCA. As such, Canada will not overlay additional commitments to those already set out in the Claim. Further, due to NAFTA and Government of Canada policy, the Department cannot make reasonable efforts to offer preferential contracting processes to Sahtu businesses. With regard to building capacity through training and financial assistance, federal programs already exist and are available to Sahtu businesses and Designated Sahtu Organizations should they wish to access them. These include: CanNor, SINED, or opportunities available through partnerships or Memorandums Of Understanding with industry-specific organizations like the Association of Mackenzie Mountain Outfitters, Canadian Association of Petroleum Producers, or the NU/NT Chamber of Mines. The plan cannot be approved containing this recommendation.**
- d. Reasons for Approach:
 - i. This recommendation encourages GNWT and AANDC to work with Sahtu businesses to build their capacity. It specifically lists maximizing Sahtu business and contracting opportunities within the SSA.
 - ii. Government of Canada operates under standard operating and contracting procedures established through government policy and NAFTA. Government of Canada also has an Aboriginal Procurement Strategy, but this is also bound by restrictions under NAFTA. The Government of Canada cannot split contracts or preferentially procure services from Sahtu businesses.
 - iii. This Recommendation is outside the scope of a Mackenzie Valley Land Use Plan. It does not pertain to the use of lands and resources.

Recommendation #9 – Incidental Harvest

SLUPB Proposed Revised Wording:

Applicants are encouraged to avoid waste of usable resources and share any incidental harvest with nearby communities.

- **Canada supports this Recommendation as part of an approvable Plan.**

Recommendation #10 – Granular Resource Allocation Plan

SLUPB Proposed Revised Wording:

The Sahtu Secretariat Incorporated and the Sahtu District Land Corporations are encouraged to work with Sahtu municipal governments, the Government of the Northwest Territories, and Indian and Northern Affairs to develop a Sahtu Granular Resource Allocation Plan for resources outside of community boundaries.

- a. Issue: Current resource practices meet components of the recommendation, slightly beyond the scope of a land use plan
- b. Page 105
- c. **Alternative for an Approvable Land Use Plan:**
 - **Canada supports proactive management of pits and granular resources through current practices. AANDC Canada views this Recommendation as an item for a non-statutory document.**
- d. Reasons for Approach:
 - i. As stated in submissions to the SLUPB, AANDC believes that commitments made via the JRP response will address parts of this Recommendation:
 - The role of the land use planning board in granular resource management is to delineate areas where this activity is acceptable, unacceptable, or acceptable if certain requirements are met. While the recommendation is a good idea, the land use plan is not the appropriate place to make the recommendation.
 - AANDC, as the Minister responsible for the Territorial Quarrying Regulations, require the submission of a Pit or Quarry Development Plan before issuing permits under the Territorial Quarrying Regulations on Crown Land. The current regulatory process also encourages the participation of affected Aboriginal groups and stakeholders (e.g. the Prince of Wales Northern Heritage Center and the SSI).
 - As per AANDC's response to the Joint Review Panel for the Mackenzie Gas Project on Recommendation 13-1, AANDC agreed with the intent to develop a Granular Management Plan and will continue to work towards development and implementation of a plan for Crown lands in the Mackenzie Gas Project area.
 - SSI might consider contacting the Gwich'in Tribal Council (Lands Department) as that department developed a set of criteria and policies for granular resource management for settlement lands, and it may provide insight or guidance for developing a similar plan or processes on Sahtu Settlement Lands.
 - When describing this item in the non-statutory document, AANDC Canada encourages the Planning Board to refer to the Northern Land Use Guidelines for Pits and Quarries (Vol. 07, <http://www.aadncaandc.gc.ca/eng/1100100023585>), which is a valuable guide for proponents and regulators.
 - The SSI must work with existing resources to implement this recommendation.

Recommendation #11 – Fish and Fish Habitat

SLUPB Proposed Revised Wording:

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

Pending submission from DFO.

Recommendation #12 – Mapping the Underground River

SLUPB Proposed Revised Wording:

The community of Colville Lake is encouraged to work with Karst specialists and other partners to study the site and delineate the route of the Underground River.

- a. Issue: Appropriateness for the land use plan
- b. Page 106
- c. **Alternative for an Approvable Land Use Plan:**
 - **A better understanding of the features and location of the underground river could provide better information for revising the land use plan in the future. In the interim, the values in the Underground**

River area (Neyádalín) will be appropriately managed through the zoning designation (Special Management Zone). Canada encourages Colville Lake to pursue this Recommendation, but does not agree that an approved land use plan is the appropriate document to address this knowledge gap. The Planning Board likely has a list of similar information gaps that this item could be added to. Canada requests that the Planning Board list this Recommendation in a non-statutory document.

- d. Reasons for Approach:
- i. SMZ #9 (Neyádalín) provides for protection of special values (which includes the underground river) to be taken when proponents work in the zone.
 - ii. This Recommendation is outside of the scope of a land use plan since it pertains to information collection, not a land use.

Recommendation #13 – Contaminated Sites

SLUPB Proposed Revised Wording:

INAC is encouraged to work cooperatively with communities to inventory, prioritize, research, monitor and remediate contaminated and waste sites in the SSA.

- a. Issue: Canada is meeting this Recommendation
- b. Page 105
- c. **Alternative for an Approvable Land Use Plan:**
 - **Accordingly, we thank the Board for the recommendation outlined, but as Canada’s obligations in this regard are already set out in the SDMCLCA, we will not overlay additional commitments to those set out in the Agreement. Canada will consider it as a general suggestion only which cannot interfere with the exercise of a Department’s discretion in assessing contaminated sites throughout NWT. Since it is clear that community concern is strong on this issue and those concerns should not be lost, Canada requires that the Recommendation be removed from the Plan and compiled in a non-statutory document.**
- d. Reasons for Approach:
 - i. Remediation of Contaminated Sites is contemplated in section 19.3.4 of the SDMCLCA. Further, AANDC adheres to the Contaminated Sites Management Policy to guide contaminated site remediation and prevention efforts. The implementation of this policy contributes to a safer, healthier, sustainable environment for First Nations, Inuit, and Northerners by striving to preserve and enhance the ecological integrity of the Northern environment. The guiding principles for this policy include promoting First Nation, Inuit and northerner participation and partnership in the identification, assessment, decision-making and remediation/risk management processes relating to contaminated sites. In determining the priorities for site remediation, AANDC assesses these criteria: human health and safety; legal and claims obligations; significant impacts on the environment; and concerns of First Nations, Inuit, northerners and other stakeholders.

Recommendation #14 – Strengthening Culture and Education

SLUPB Proposed Revised Wording:

The appropriate government authorities should make every reasonable effort to support initiatives on the part of the Sahtu Dene and Métis to maintain and strengthen the land-based culture and its transmission from the elders to the younger generations.

Culture and education priorities are as follows:

1. *Facilitate land-based activities for community members, particularly where the elders can pass on their culture to the younger generations.*
2. *Assist elders and local/regional educators in defining clear teaching roles for the elders in the schools, and in the developing and incorporating culturally-appropriate teaching materials in the school curriculum. Support the*

inclusion of materials on the Sahtu region in the curriculum, incorporating both Dene and Métis traditional knowledge and scientific knowledge about the watershed in the curriculum.

3. Support the community's efforts to develop its capacity in the fields of ecological and cultural research, monitoring and management.

4. Support community efforts to promote and communicate Dene and Métis culture, to develop greater mutual respect between Dene and Métis and people of other cultures.

- a. Issue: Appropriateness for the land use plan
- b. Page 106
- c. **Alternative for an Approvable Land Use Plan:**
 - **Canada requires that the Planning Board remove this recommendation from the plan and place it in a non-statutory document. Canada believes that the Planning Board will continue to meet Goal 2 (e) and (f) through zoning and conformity requirements, and that by doing so, they will create opportunities for residents to spend time on the land, and transfer land-based knowledge across generations.**
- d. Reasons for Approach:
 - i. Maintaining the land for cultural values is a key priority (Goal #3) of the land use plan. By protecting important lands for culture, the LUP will leave lands open for cultural experiences to continue within the Sahtu Settlement Area. From this perspective, the Planning Board have exceeded in protecting the land for future cultural experiences.
 - ii. Canada encourages all organizations including Designated Sahtu Organizations to foster knowledge transfer between generations. However, the link between this Recommendation and the scope of a land use plan is not clear. The Recommendation sets out a goal and suggests actions by 'appropriate government authorities' to meet it. The word 'support' implies either human or financial resources would be required to meet the actions listed. Canada financially supports implementation of the SDMCLCA. However there are no funds available beyond the core funding allocations set out in the Implementation Plan. If Canada were to approve this as a recommendation, it would unrealistically raise community expectations that additional funds would be available for the suggested programming.

Recommendation #15 – Fisheries Management

SLUPB Proposed Revised Wording:

The management of fisheries within the Great Bear Lake Watershed should be proactive in nature and precautionary in approach. The managers of GBLW fisheries should ensure that:

- i. All stocks fished for recreational or commercial purposes are maintained at sustainable levels consistent with identified fishery quality objectives. Licensed operators and harvesters should be responsible for providing harvest statistics and biological information specified in their authorizations to the appropriate authorities;*
- ii. Lake trout populations on GBL should not fall below levels that ensure that the catch of large trophy lake trout (fish in excess of 9kg) by any lodge remains stable at baseline levels. Baseline levels should be established for various stocks as determined by harvest studies in areas used by fishing lodges;*
- iii. Arctic grayling populations should be maintained at levels that ensure the high quality of trophy fisheries. Baseline levels should be established for various stocks as determined by harvest studies in areas used by fishing lodges; and*
- iv. As a general rule, fish stocks should be managed conservatively in order to minimize the risk of degrading the quality of GBLW fisheries.*

Pending submission from DFO.

Recommendation #16 – Transboundary Cooperation

SLUPB Proposed Revised Wording:

The Déline Land Corporation and Renewable Resources Council are encouraged to assist their elders in meeting with elders in adjacent jurisdictions, to discuss cooperative principles and processes by which the larger watershed of Great Bear Lake may be kept clean and bountiful for all time.

- **Canada agrees with the spirit of this Recommendation, but wishes to reiterate that funding requests for this initiative must be sourced through existing funds.**
- **The Planning Board could consider Transboundary discussions with other jurisdictions as well (beyond the GBL watershed).**