

MAR 21 2013

Heather Bourassa, Chairperson
Sahtu Land and Water Board
BOX 235
FORT GOOD HOPE NT X0E 0H0

Dear Ms. Bourassa:

**Government of the Northwest Territories Comments on the Review of
February 5th, 2013 Draft Sahtu Land Use Plan**

Thank you for the opportunity to review the February 5th, 2013 Draft Sahtu Land Use Plan (the Plan). The GNWT is a strong supporter of land use planning in the Northwest Territories and we appreciate the work of the Sahtu Land Use Planning Board (The Board) to prepare the February 5th Draft.

The GNWT has made numerous submissions in writing and in person since Draft 3 of the Plan was released in July 2010. The GNWT is pleased with the progress that has been made towards a Plan that is consistent with pertinent legislation, regulations or pre-existing agreements of government. During implementation of the Plan, should inconsistencies arise these would need to be examined and a decision made by the appropriate authority. The GNWT appreciates the Board's willingness to listen to our concerns and to work collaboratively with the GNWT and other approving parties towards a Plan that is likely to be approved.

Staff of the GNWT has completed a review of the current draft plan. At this time there appear to be no outstanding issues that are likely to cause problems in the approval process. As you are aware, the GNWT's Executive Council will make the final decision on GNWT approval once a final plan has been submitted.

Our current review has identified areas in the Plan where additional clarification would be extremely helpful to ensure that Plan users recognize fully how the Plan is a regulatory tool within an integrated system of land and water management. This means that the Plan will alter how proponents, regulators and governments will do their planning and conduct their business, but that the Plan is not intended to burden those who implement the system. Areas where increased clarity would be beneficial are pointed out and suggestions of potential solutions are made in the sections that follow and attached Appendix A.

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Context for the Sahtu Land Use Plan in an Integrated System

The GNWT has consistently expressed an interest in ensuring that the Plan is sufficiently clear about and consistent with the integrated system of land and water management in Mackenzie Valley as set out in the Sahtu Dene and Metis Comprehensive Land Claim Agreement (SDMCLCA) and the *Mackenzie Valley Resource Management Act* (MVRMA).

The Plan must not result in a redistribution of roles established through these instruments. In recognition of this matter, the GNWT remains concerned that without prominent information related to the Plan's relationship to other SDMCLCA and MVRMA instruments in the Introduction section of the SLUP, roles could be misconstrued. Specific suggestions below and the attached Appendix A highlight what sections within the Plan could be altered to better lay out the context of the Plan within the regulatory system.

In the introductory section, it is suggested that the first paragraph of the current 1.1, the first sentence of paragraph 2, and the first sentence of paragraph 3 be moved to an initial section that could perhaps be titled, Land Use Planning in an Integrated System of Land and Water Management. Hence such a section would begin ...

The Sahtu Dene and Métis Comprehensive Land Claim Agreement (SDMCLCA) is a modern treaty between the Sahtu Dene and Métis and the Crown in right of Canada. The treaty rights of the Sahtu Dene and Métis under the SDMCLCA are recognized and affirmed under Canada's Constitution. It is a stated objective of the SDMCLCA "to provide the Sahtu Dene and Métis the right to participate in decision making concerning the use, management and conservation of land, water and resources." In order to do, the SDMCLCA provided for the establishment of institutions of public governments including the Sahtu Renewable Resource Board and Councils, the Sahtu Land and Water Board and the Sahtu Land Use Planning Board (SLUPB or "the Board"). Chapter 25 of the SDMCLCA, Land and Water Regulation, states as its principles that:

- (a) *An integrated system of land and water management should apply to the Mackenzie Valley;*
- (b) *The regulation of land and water in the settlement area and in adjacent areas should be co-ordinated;*
- (c) *Government shall retain the ultimate jurisdiction for the regulation of land and water.*

This integrated system of land and water management, enacted through the Mackenzie Valley Resource Management Act (MVRMA), incorporates land use planning, environmental impact assessment and review, and the regulation of land and water use through associated institutions of public government.

The SDMCLCA (25.1.3 (c)) also calls attention to the need for coordination of the activities of the Planning Board, the Review Board, the Land and Water Board, the Renewable Resources Board and the Surface Rights Board to be provided for in the MVRMA and other legislation.

While a regional land use plan takes into account the intent for all to work together, ... (note that the following is taken verbatim from page 25 in current draft) for clarity, under the MVRMA a land use plan does not:

- (i) alter the powers of the designated Sahtu organizations, regulators, or government departments and agencies,*
- (ii) make any body responsible to do anything that it lacks the power to do, or*
- (iii) restrict the redistribution of powers between federal, territorial or aboriginal governments or within any level of government.*

Following such a new section that frames the broader regulatory context, the current 1.1 would require some modification to remove elements now captured in the inserted section. For instance the current 1.1 could be altered to include:

As provided for in the SDMCLCA and the MVRMA, the Sahtu Land Use Planning Board was established consisting of equal numbers of Sahtu Secretariat Incorporated and government nominees with the jurisdiction "for developing a land use plan for the settlement area and for reviewing and proposing approvals, exceptions and amendments to the plan".

Part 2 of the MVRMA establishes the SLUPB as an institution of public government and describes in more detail the mandate for land use planning in the Sahtu Settlement Area (SSA).

The GNWT points out that broad references to wildlife and wildlife management objectives (SDMCLA Chapter 13) are confusing since wildlife management is not the matter of the Plan or Planning Board; rather, this authority, responsibility and accountability rests with Government and the Sahtu Renewable Resource Board. Hence in section 1.3 paragraph 2, the purpose of referring to these objectives in the Plan should be carefully considered. If it is intended that these are to be used to interpret the Plan, they should be referenced in their entirety and not selectively. It may be that clarity is improved if only the principles that apply to land and water regulation generally, that is to say 25.1.1, as well as the principles for land use planning stated in 25.2.4 (already in the Plan) are contained in this section.

Conformity Requirement (CR) #2 – Implementation Guidance

It is the GNWT's understanding that the purpose of this CR is to both highlight the importance that Sahtu Communities place on community engagement and the incorporation of Traditional Knowledge (TK) into decision-making, and provide upfront information to proponents about community expectations and any regulatory guidance documents that may be in place (for instance, Mackenzie Valley Land and Water Board Draft Engagement Policy and Draft Engagement Guidelines, and MVLWB Draft Reference Bulletin, Aboriginal Consultation and Accommodation – Updated Guidelines for Federal Officials to Fulfill the Duty to Consult, GNWT Approach to Consultation with Aboriginal Governments and Organizations).

However, it is also the GNWT's understanding that this CR is not intended to alter consultation and engagement requirements or alter the role of regulators to assess if these requirements have been met when they review applications.

Hence, the GNWT has concerns with the statement in the Implementation Guidelines that reads,

"activities will be deemed to conform if the information submitted demonstrates that communities were satisfied with the opportunities provided for engagement and submission of TK. A letter from the District Land Corporation stating their satisfaction with the engagement activities and provision of TK is ideal".

We suggest that both the Interpretation section 2 and the Implementation Guideline for CR #2 explicitly state that this CR is a requirement for a fair process of engagement not a specific outcome and that the conformity requirement it is not intended to give communities a veto over projects.

We also note that the development of Community Engagement Guidelines and TK Guidelines have been identified as items that will be given first consideration under Action #1 - the Sahtu Land Use Working Group. It is our understanding that this work when undertaken would build upon current initiatives as deemed necessary to provide specific guidance to proponents on how guidelines may be applied to projects that are proposed in particular areas of the Sahtu but would not reinvent already existing guidelines such as the MVLWB guidelines.

Editorial changes

Appendix B points out some matters in the current plan that are incorrect as presented. These should be corrected in the final Plan submitted for approval.

The GNWT's comments and suggestions are the result of a substantive interdepartmental review that was intended to provide the Board with considerations to improve clarity to all who may use the final Plan.

Should you have any questions regarding the GNWT's Review of the Final Draft Sahtu Land Use Plan, please do not hesitate to contact Ms. Michelle Swallow, Manager of Lands, at (867) 920-6485 or by email at michelle_swallow@gov.nt.ca.

Sincerely,



Ernie Campbell

Appendix A: Other Areas that Would Benefit from Improved Clarity

Examples in the table below point to areas that would improve clarity regarding:

- (1) the scope of the Plan within the integrated system of land and water management
- (2) roles of bodies named in the Plan to be placed in the appropriate context, for instance the Sahtu Renewable Resource Board.

Page, Section	Examples of Matters that Could be Misconstrued Without Proper/Complete Context
6, Definitions	<ul style="list-style-type: none"> • <i>“zone” means an area in which specified land uses are prohibited and specific Conformity Requirements are applied as per Conformity Requirement #1</i> • Compare with: “Conformity Requirement” means a requirement of this Plan that is to be implemented through the issuance of licences, permits, other authorizations, and dispositions. <p><u>Proposed solution to improve clarity</u></p> <ul style="list-style-type: none"> • <i>“zone” means an area in which specified land uses that require a licence, permit, authorization or disposition are prohibited and specific Conformity Requirements are applied as per Conformity Requirement #1</i>
8, 1.2	<ul style="list-style-type: none"> • <i>The Sahtu Land Use Plan (the Plan) provides broad direction to community organizations, governments, regulators and applicants about how land (including water and other resources) will be conserved, developed and used within the Sahtu Settlement Area (SSA). The Plan outlines what land use activities are appropriate, where, and under what conditions.</i> • where “community organizations” is defined as: “community organizations” means district and community land corporations, the local first nation and/or community council, and the renewable resources council, or any successor organizations to any of these organizations (page 5) • Compare with the definition given for “land use activities” defined as “land use activity” means a physical activity that involves the use of land, water or resources or the deposit of waste • On page 29 in the Interpretation for 3.1 Zoning: “The land use zones include land, water and resources as per the Plan’s definition. For example, Zone 23 includes Great Bear Lake, as well as the land around it and under it.” <p>In the MVRMA s 46 (1), under Compliance with Plans, there is a more restrictive list of land use implied since “... every body having authority under any federal or territorial law to issue licences, permits or other authorizations relating to the use of land or waters or the deposit of waste, shall carry out their powers in accordance with the land use plan”.</p> <p>While the MVRMA clearly states that a land use plan shall provide for the conservation, development and use of land, waters and other resources in a settlement area (MVRMA s 41 (2)), this should not be construed as</p>

directive on these matters, only that the plan can deal with these matters as they relate to land and water use or the deposit of waste. Natural resource use is primarily the matter of other federal and territorial authorities and SDMCLCA bodies, including the Sahtu Renewable Resource Board and the SSI Land Corporations. While guidance can be taken from the Plan with respect to conserve, develop or use land, waters and other resources, a broader range of legal instruments address these matters more fully. The realm of the Plan needs to remain clearly in planning.

It is further noted that the SDMCLCA has Chapters that speak to the management of other resources (Chapter 13 Wildlife Harvesting and Management, Chapter 14 Forestry, Chapter 15 Plants, Chapter 16 National Parks, Chapter 17 Protected Areas, Chapter 22 Subsurface Resources, and Chapter 22 Heritage Resources). With an appropriate introduction to the Plan, the roles of the primary agencies for the planning and management of these resources are less likely to be misconstrued, while still recognizing that these managements are interactive with the matters of Chapter 25 Land and Water Regulation, including Land Use Planning. Further it is noted that in the Plan "resources" is not defined. However in the SDMCLCA "resources" means mines and minerals, whether solid, liquid or gaseous.

Proposed solution for clarity

- Use wording from the SDMCLCA and MVRMA. *The Sahtu Land Use Plan (the Plan)* provides for the conservation, development and use of land, waters and other resources in the Sahtu settlement area by:
 - highlighting to community organizations, governments, regulators and applicants important values in the areas, and
 - setting out what land use activities can take place where and under what conditions.

Appendix B: Factual Matters to be Addressed in the Final Plan

Map #2 Land Use Zones

The Canol Road (designated as Area 39 on Map 2) is not shown clearly as a continuous trail, particularly where it is bounded on either side by Sahtu Settlement Lands. The first 14 km of the Canol Road, from the Yukon border, is still listed in the Public Highways Act, so should reflect that status on the mapping products. Additionally, there are two active mine access roads that should be shown on the map: North of the Canol Road and in the area indicated as 41 (Nááts'ihcho'oh National Reserve) as part of the Selwynn mine.

Appendix 1 – pg. 46

The license or permit authorizing discharge should be removed from the list of Authorizations under GNWT. The EPA does have provisions for permits and licences (Sections 10.1 through 10.7), however regulations requiring permits or licenses do not currently exist. GNWT has future plans to repeal the Pesticide Act and incorporating the Pesticide Regulations into the Environmental Protection Act, at which point these sections may apply.

Appendix 3 - pg. 50.

The *Area Development Act*, the *Norman Wells Development Area Regulations*, and the *Mackenzie Development Area Regulations* should be added to the list of GNWT authorizations that could implement aspects of the Sahtu Land Use Plan.

P. 25 – Effect of Plan

In the first sentence, the reference to section 2.5 should be section 2.4.

Pg. 23- Grandfathering (suggested changes indicated using strikethrough and bold)

3. Subject to 3.1, legacy land uses are exempt from : **A)** the application of CRs 1, 16, and 18. **B)** CR 17 if it would prohibit the issuance of the interest or entitlement (or the exercise of the associated right).

