

OCT 22 2010

Ms. Judith Wright-Bird
Chairperson, Sahtu Land Use Planning Board
BOX 235
FORT GOOD HOPE, NT X0E 0H0

Dear Ms. Judith Wright-Bird:

Government of the Northwest Territories Review Comments on Draft 3 of the Sahtu Land Use Plan

The Department of Environment and Natural Resources (ENR), on behalf of the Government of the Northwest Territories (GNWT), would like to thank-you for this opportunity to comment on the third draft of the Sahtu Land Use Plan (Draft 3). The GNWT appreciates the hard work of the Sahtu Land Use Planning Board (SLUPB) and staff to get to this point. Regional land use plans are crucial elements to the integrated system of land and water management.

In general, the GNWT wants to see an approved plan in place that upholds the land use planning principle stated in the *Mackenzie Valley Resource Management Act* (MVRMA) to promote and protect the social, cultural and economic well-being of residents and communities in the settlement area, having regard to the interest of all NWT residents.

Draft 3 shows great improvement since Draft 2 and many comments made on Draft 2 have been incorporated; however, fundamental issues pointed out in reviews of earlier drafts remain. For example, allowances for hydro development and exemption from conformity for existing rights. The GNWT suggests strongly that, while detailed comments are provided at this time, face-to-face meetings with staff and board members would ensure the GNWT's comments are addressed which will move the plan toward approval by the GNWT.

In general, two categories of significant GNWT issues still remain.

1. Lack of fit with the integrated system of land and water management provided for in the MVRMA; and
2. Effective and efficient implementation of the plan, including actions and recommendations and existing uses.

On the first issue, the plan needs to fully recognize that an approved land use plan is one of many instruments that address conservation and development within the integrated land and water management system set out in the MVRMA that includes: land use planning, regulatory, environmental impact assessment, and NWT environmental monitoring and audits. A regional land use plan should highlight the values of importance to the people of the region (this has been accomplished in Draft 3) and seek to protect those values. However, Draft 3 includes a number of elements that do not recognize the role of the other instruments identified above, particularly within the conformity requirements and Chapter 4. The GNWT's detailed comments attached include direction on which would need to be removed or reconstructed to correct this problem. Until such time as a draft plan clearly respects the MVRMA system and wording is sufficiently precise, the GNWT would be unable to approve a SLUP.

Secondly, on the matter of effective and efficient implementation of the plan, the GNWT again must take into account the various instruments that address social, cultural and economic well-being, including conservation and development. As you are aware, the negotiated *Sahtu Dene and Metis Comprehensive Land Claim Agreement (SDMCLCA)*, on which the MVRMA was developed, addresses economic, natural resource and environmental management matters, defining roles and how these will be carried out in an Implementation Plan. The GNWT has multiple legislation, policy, programs and services that contribute to conservation and resource development which take into account matters referred to in the SDMCLCA, and GNWT fiscal and legislative responsibilities. Draft 3 has a number of elements (primarily in Chapters 6 and 7), which would need to be removed or adjusted to correct this problem. Particular concerns relate primarily to actions and recommendations section. Until this issue is addressed the GNWT would be unable to approve a SLUP.

The enclosed pages contain detail on all of the matters raised above, in each case highlighting the problem, stating a rationale as to why it is a problem, and offering a suggested solution. During the course of the GNWT review, some staff offered corrective or additional information related to matters in Draft 3, and editorial suggestions. The GNWT can forward these items in a follow-up letter if this would be helpful to the Board.

The GNWT wishes to see an approved Plan in place and is willing to speak with the Board to find an approach to address outstanding issues. In this way, developers, regulators, governments and agencies alike would be able to benefit from a clear and effective approved plan within a reasonable timeframe. Approaches could consider such things as another draft prior to submission for approval, active collaboration, or an interim approved plan.

In conclusion, the GNWT does see an approved land use plan for the Sahtu as fundamental to advancing the interests of all people of the NWT. We are prepared to work diligently with the Board to make this happen. Should you require clarification on any of the matters contained in the enclosed materials, please use the ENR Lands Manager as your initial contact; Joel Holder at joel_holder@gov.nt.ca or (867) 920-3485.

Sincerely,

A handwritten signature in black ink, appearing to read "G. A. Bohnet", followed by a horizontal line extending to the right.

Gary A. Bohnet
Deputy Minister

Attachment

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GNWT COMMENTS ON DRAFT #3 SLUP

GNWT Objectives and Other Factors (MVRMA s. 40):

The following objectives and other factors are stated to clarify what would be required of a revised Draft Plan that the GNWT could be in a position to approve. That said, GNWT approval is a political process and other factors could perhaps come in to play. The current GNWT review takes into consideration political and legal factors to a limited extent, based upon previous land use planning review practices.

In general, outstanding issues arise from GNWT objectives regarding:

- **Approval and Implementation of Entire Plan:** The GNWT gives full credence to section 46 of the MVRMA that states:

46. (1) the Gwich'in and Sahtu First Nations, departments and agencies of the federal and territorial governments, and 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 applicable in a settlement area.

Therefore, the GNWT is only likely to approve a SLUP that it could play its role to implement fully within its mandate and jurisdiction, including any actions contained therein. GNWT approval will consider the entire plan.

- **Land Use Plan within Integrated System Context:** The GNWT reviews draft regional land use plans in the context of an integrated system of land and water management as provided for in the *Mackenzie Valley Resource Management Act (MVRMA)*. This means that the land use plan must fit well with other components and roles set out in other Parts of the MVRMA; these include: land and water regulation, environmental impact assessment, and environmental monitoring and auditing. Respecting these roles fully facilitates effective and efficient implementation of a regional land use plan and avoids duplication and unnecessary delays if regulatory or other roles, such as checking conformity, result in contradictions that then must be resolved through drawn out process or the courts.
- **Language Used in Land Use Plan:** The GNWT prefers language used in the Plan to be straight forward and precise so that readers do not need to interpret the intent or required action and legal disputes are avoided. As well, complexity and ambiguity in the plan increases the potential need for SLUPB conformity determinations under section 47 of the MVRMA and possible exemption applications (subsection 44 (b)), resulting in increased process time and demands on the Board, governments, regulators, and possibly the courts.

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- **Roles:** The GNWT recognizes the importance of clearly defined roles and that the Board intends to further define implementation through an upcoming workshop. However generally, the GNWT reviews a draft Plan to see that any roles addressed in a regional Land Use Plan are only those defined in Part 2 of the MVRMA and that all roles under the MVRMA are respected fully.

For example,

- On page 289 of the SLUP it states that the Board would conduct its own “internal” conformity determinations on every application (SLUP p.289); this is not contemplated in the MVRMA where the Board is required to conduct a conformity determination only where the activity is referred to the Board (MVRMA 47(1)). Even as a “monitoring” activity with good intent to avoid delays in the regulatory process, routine determinations by the Board may create an undesirable conflict with the conformity determinations of regulators and others. This likelihood is compounded if the Plan contains subjective conformity requirements.

As noted above, section 46(1) of the MVRMA requires that multiple bodies are involved to implement the Plan. Hence, it is important to be sure that Conformity Requirements and definitions, such as “regulators”, are worded accordingly, and clearly identify the authority who is responsible for implementing and making determinations about specific conditions in the Plan.

- Currently Draft #3 appears to use the term “regulators” for a smaller group of those issuing authorizations, and “responsible authorities” for a larger group that includes land owners. However, section 46(1) of the MVRMA does not distinguish between the obligation it places on First Nations, government departments and agencies, and regulators.
- It is noted that the broad spectrum of bodies is not reflected in the “regulators” definition or s 7.2.4. Settlement lands are owned by the District Land Corporations. To the extent that the District Land Corporations authorize uses of land through the sale, lease or other disposition of surface interests in settlement lands, or through negotiated agreements related to access, granular resources or water rights, the SSI and District Land Corporations are responsible under s. 46(1) of the MVRMA to carry out their responsibilities in accordance with the land use plan **in essentially the same way as regulators acting on public lands.** [emphasis added]
- Because Draft #3 appears to distinguish between the parties listed in subsection 46(1), it could be interpreted to suggest that CRs are not equally binding on “the Sahtu First Nations”, who are only made subject to compliance with “Actions”.

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- There is likely not a need to distinguish between “regulators” and “responsible authorities”. In our view, the zones establishing permitted land uses set out in CR#1 should be equally binding on, the Land Corporations when they dispose of an interest in settlement land . It is suggested that the SLUP’s applicability to the district and community land corporations be clarified.
- Please check Draft #3 carefully to ensure the roles given to various bodies under the MVRMA are consistent in all parts of the Plan accordingly (definitions, conformity requirements, actions, implementation sections).
- **Actions and Recommendations:**
 - Many of the matters addressed in Actions and Recommendations would need to be prioritized within fiscal decisions that give due regard to mandate and resources.
 - Some matters currently addressed in recommendations, such as consultation in Recommendation #5, are not be appropriate for a land use plan.
 - While from wording used the GNWT can assume and appreciate the intent for a number of actions and recommendations, these need to be clear to all readers and actions and recommendations need to be accepted by all Parties who would take them on. It is noted that in the Gwich’in Land Use Plan, “recommended actions” commit only the planning board itself.
 - There is great concern about the overlap of initiatives in Chapter 6 and those already negotiated in the SDMCLCA and the MVRMA. And Draft 3 does not appear to take these into account
- **Implementation:**
 - The GNWT would approve a land use plan that ensures process for potential land users is straight forward, efficient and effective. The process to implement conformity requirements outlined in Chapter 7, particularly in regards to exceptions, would increase time and burden on potential land users. Further dialogue is required in these regards.

With the above context in mind, the following pages identify what the GNWT sees as specific outstanding issues related to: area of application; fit within the integrated system of land and water management in the Mackenzie Valley; and effective and efficient implementation. The GNWT is only likely to approve a plan that has the identified issues resolved. To assist in addressing these matters, in most cases, each issue states GWNT perspective on the perceived problem, rationale and proposes a suggested solution.

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Problem:

Based upon the MVRMA and the SDMLCA, in Draft 3 of the Plan, a number of the Conformity Requirements go beyond the scope of what the GNWT accepts as the role of a land use plan.

Rationale:

Each component of the integrated system has a specific purpose or objective stated within the MVRMA. Yet page 1 of the SLUP appears to borrow language from the regulatory role, not the land use planning role, somewhat skewing the intent of the plan:

Under the MVRMA, the Board is established "within an integrated and coordinated system of land and water management in the Mackenzie Valley" "for the purpose" - along with the other boards established - "of regulating all land and water uses, including deposits of waste, in the settlement areas for which they are established..." 8

In the following notes the GNWT uses sections of the MVRMA to describe more fully the "integrated system of land and water management in the Mackenzie Valley" provided for through four primary functions: land use planning, land and water regulation, environmental impact assessment, and environmental monitoring and auditing.

The GNWT recognizes that Draft 3 states that the Plan could be used to facilitate these other functions by providing standard expectations. The GNWT accepts this approach to regional land use planning provided that, where this is the case, conditional language is used (i.e, should) so that the appropriate body is not restricted in the manner in which it can perform its legal or other obligations, and the condition being discussed is broad or general, taking the form of a goal or objective. The GNWT suggests that this approach can be seen in the approved Gwich'in Land Use Plan.

For complete context, the following sections of the MVRMA speak to the purpose or objectives of the four functions in the integrated system. These roles should be respected by a regional land use plan:

Land use planning

Most broadly, principles of land use planning are stated in MVRMA s.35, related to the purpose, ... to protect and promote the social, cultural, and economic well-being of residents and communities in the settlement area, having regard to the interests of all Canadians; and special attention devoted to the rights of the Gwich'in under land claim agreement, to protecting and promoting their social, cultural and economic well-being and to the lands used by them for wildlife harvesting and other resources uses.

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MVRMA s. 41 (2) further states the purpose of a land use plan, “a land use plan shall provide for the conservation, development and use of land, waters and other resources in a settlement area”. This must be read within the context of s. 41 (3) that states possible content, including (c) “descriptions of permitted and prohibited uses of land, waters and resources”.

Regulatory (permits, licences and authorizations) MVRMA s. 58

(land and water boards) – [land and water boards] shall regulate the use of land and waters and the deposit of wastes so as to provide for the conservation, development and utilization of land and water resources in a manner that will provide the optimum benefit to the residents of the MV and to all Canadians.

Environmental impact assessment of projects MVRMA s 114

This section addresses the functions of preliminary screening, environmental assessment and environmental impact reviews in relation to proposals for development; these processes are in place ... (b) to ensure impact on the environment of a proposed development receives careful consideration before actions are taken in connection ... and section 115 ... timely and expeditious manner and shall have regard to (a) the protection of the environment from the significant adverse impacts of proposed developments; and (b) the protection of the social, cultural and economic well-being of resident and communities in the Mackenzie Valley.

NWT environmental monitoring and audit – MVRMA s 146

... [responsible authority] shall, analyze data collected by it, scientific data, TK and other pertinent information for the purpose of monitoring the cumulative impact on the environment of concurrent and sequential uses of land and water and deposits of waste in the MV.

Suggested Solution:

- In Chapter 1 provide full context for the role of land use planning in the integrated system of land and water management in the introduction, making reference to the roles of various boards. The level of detail need not be considerable.
- Use the conditional tense (should) or a promotional verb (such as encourage) to give guidance on matters that are those of another board or authority. In some cases, this may require that the conformity requirement become a recommendation.

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- Consider if it is necessary to use the term “conformity requirement”. Table 6 uses “general conditions” and “special management conditions”. “Applicable Conditions”, under each zone description, uses the phrase “All General and Special Management Terms apply.” These three terminologies all refer to the same thing. If only the word “conditions” were used, the plan would be more straight forward and more in line with the MVRMA s 41 (c) “permitted and prohibited”. That is to say specified land uses are “permitted” in zones conditional upon certain “conditions” being met that take into account the particular ecological and cultural values expressed for the zone; elsewhere they may be “prohibited” regardless of how a project would be done.

DEFINITIONS

Problem:

The Definitions contained in the plan in some cases require adjustment; as well, additional definitions are suggested.

Rationale:

Clear definitions decrease ambiguity within the plan, avoiding differing interpretation.

“commercial forestry” is defined (p. ix); perhaps also include “commercial fishing” and “commercial harvest of wildlife”; and “outfitted hunting and fishing”.

“community boundaries” rewrite to “community boundaries means the boundary that delineates the jurisdiction of a local government”. The latter part of the current definition has been deleted because Block Land Transfer Lands outside of community boundaries have been addressed under “Section 2.1 Area of Application”.

“power development” (p. x) – use the words “such as” and expand the lists several potential ways to generate electricity and list should include nuclear and coal.

“river basin” should be defined since it acts as a criterion.

Suggested Solution:

Revisions to definitions as suggested.

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CHAPTER 2

Problem:

Elements of Chapter 2 set out important concepts to determine how the plan will be applied; yet some are not fully or clearly stated.

Suggested Solution:

Some clarification is required on matters identified below:

- **2.1 Area of Application p. 19** – Additional wording, “Community boundaries are shown on Map 1. For communities where Block Land Transfer Area land extends outside of the community boundaries (Norman Wells, Deline and Tulita), those portions of the Block Land Transfer Area outside the community boundary are subject to the provisions of the Plan. There should be clarity that all land outside of local government boundaries is subject to the provisions of the plan, including land in the Block Land Transfer Areas.
- Chapter 2 should indicate and clarify that some Sahtu lands are situated in the Dehcho region and that the SLUP Board does not have jurisdiction in the Dehcho, and therefore these lands would not be covered by the SLUP.
- **2.2 Land Ownership** – as per MVRMA S 34, the plan does not apply to Commissioner’s Land within the boundaries of local governments (within community boundaries).
- **2.3 (Tourism)** - Plan applies to any application that requires an authorization under any federal or territorial legislation. This would include tourism.
- **2.3.2 Exempt Uses – Existing Rights**

Problem:

As written, the intent of the exemption section is to allow the development to continue so long as it can meet all other conformity requirements should the developer request an extension or renewal.

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Rational:

This requirement will significantly change the operating environment under which a developer has agreed to work and may make a project unfeasible. Requiring a developer to alter their program to the extent outlined in the Plan conformity requirements essentially forces them to work under a new set of rules which diminishes the intent of exemptions.

Suggested Solution:

Reword so exemptions under the plan extend to all conformity requirements and that it is new or significantly changed projects that would not be exempt under the plan.

- **2.3.2 Exempt Uses-Community Infrastructure**

Problem:

The following section clearly exempts “community infrastructure”, generally synonymous with municipal infrastructure, in zones that otherwise prohibit development; yet there is no stated exemption for territorial infrastructure that is being constructed for community use/service, and the removal of quarry material to build same.

Rationale:

The GNWT’s must not compromise its ability to continue to deliver programs and services in communities, including related infrastructure. Accordingly, it is suggested that this exemption for *Community Infrastructure that Would be Prohibited by Zoning Requirements* should specifically mention territorial infrastructure that is being constructed for community use/service, and the removal of quarry material to build same. The term “community infrastructure” is generally synonymous with municipal infrastructure.

Suggested Solution:

Inclusion of a definition of community infrastructure which includes territorial infrastructure for community use/service would be appropriate.

- **2.3.3 D. Exempt Uses – Emergency Activities**

Problem:

Threats to the environment must be handled in a timely fashion and should be exempt as well as to life and property under the *Emergency Activities* exemption.

Rationale:

Threats to the environment must be handled expediently.

Suggested Solution:

Add to the noted Exempt Uses section.

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CHAPTER 4

Problem:

The GNWT observed that a number of CRs (see below) are not directed to a specified body or conformity could not be assessed readily.

Suggested Generic Solution:

Direct CRs to specific bodies and use conditional verb tense; for example, regulators should require developers to ... (follow by a goal-based or objective-based condition). In some cases, this could require that the CR become a recommended action.

CR#1 Zoning

Problem:

It is uncertain how the potential for hydro development has been or could be taken into account in developing Draft #3. Flexibility may be required and should be considered in the context of the timeframe for the approval of the Plan, bearing in mind the review process.

Rationale:

NT Hydro is working with Sahtu communities, Land Corporations and other key stakeholders to discuss hydro and renewable energy technologies and development. This work also includes identifying potential sites for collection of baseline environmental, hydrological and traditional knowledge information to characterize the hydro and renewable energy potential of the region. At this point, this information is not being collected in relation to development of a specific project but will be used to identify sites that have potential for future hydro and renewable energy development.

Current zoning could prohibit hydro development in the Mackenzie River Islands (23), Mountain River (39), or the Keele River (Shúhtagot'ine Néné Protected Area).

If hydro projects are constructed in the Sahtu region and depending on the type of hydro development (e.g. dam/impoundment, run of river) it is possible that changes to water quantity and rates of flows may occur. This requirement may limit the potential to develop hydro in the region and may specifically impact any future development of the Great Bear River.

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Suggested Solution:

Further dialogue to ensure flexibility is required. Additional information could be provided.

(Effective and Efficient Implementation)

CR #2 Community Engagement and Traditional Knowledge

(1) p. 47 – “Regulators shall ensure that relevant community organizations (land corporation(s), first nation and/or community council, renewable resources council) and potentially affected community members have had the opportunity to meet with the applicant in person”.

Problem:

The intent is unclear and redundant to other processes in the integrated system of land and water management.

Rationale:

In accordance with 25.2 of the SDMCLCA, communities and DSOs shall be directly involved in the land use planning process. There is no requirement for their involvement in the review, approval or monitoring of each and every land use activity proposed once the plan is approved and implemented.

In each case it would be subjective to determine the “relevant” organizations; the bracketed list appears to be examples. “Ensure” could be construed to mean that the regulator is obliged to set up meetings or the intent could be for the regulator to monitor whether the applicant has done so. If it does imply that the regulator is the one that must set up opportunity for industry to meet, this goes beyond legislation and takes a developer responsibility promoted currently by boards away. Proponents undertake consultation and engagement activities with communities in a manner they deem appropriate according to factors such as project size, scale and location. Conformity assessment would be difficult.

Suggested Solution:

Removal or re-constructed wording.

CR#2 (2) – “Regulators shall ensure that a land use activity is designed and carried out in a manner that addresses community concerns and incorporates relevant traditional knowledge”.

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Problem:

The intent is unclear and redundant to other processes in the integrated system of land and water management.

Rationale:

This could be read as a veto on the proposed activity. Words such as "takes into account" or "considers" are more appropriate here. The word "relevant" calls for subjective assessment by the regulator. Guidelines on consultation and use of traditional knowledge have been developed by some of the Boards and could be referenced in the Plan. How would "conformity" be assessed for this CR, given that multiple community concerns and traditional knowledge are often presented at public hearings.

Suggested Solution:

Removal or re-constructed wording.

CR #3 – "Regulators shall ensure that communities will benefit from proposed land use".

Problem:

The intent is unclear and redundant to other processes in the integrated system of land and water management.

Rationale:

Community "benefit" is ambiguous and subjective. What is the community? How does a regulator measure whether a community benefits? What should (or can) a regulator do if it concludes a community will not benefit?

Sub-section 35 (a) of the MVRMA states as a principle that a land use plan promote the social, cultural and economic well-being of residents; thus this CR is redundant and speaks to the nature of a land use plan itself to a certain degree. Such matters as discernible "benefits" are typically addressed legislation such as COGOA or adjunct agreements stemming from the environmental assessment process. It would be extremely difficult to assess conformity with this condition.

Suggested Solution:

Removal.

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CR #4 – Archaeological Sites, Historical Sites and Burial Sites

Problem:

As worded this is a regulatory matter, inappropriate for a land use plan.

Rationale:

At present, the Sahtu Land and Water Board requires a 150 m buffer to facilitate the protection of archaeological sites and burial sites. The GNWT considers this buffer adequate for the protection of known or suspected archaeological and burial sites during land use activities, and thus recommends a 150 m buffer requirement for CR #4, if one is to be applied.

Further, the GNWT suggests that CR #4 should incorporate a statement like “Unless expressly authorized by a permit or in writing by an inspector”, as is found in Section 6 of the *Mackenzie Valley Land Use Regulations*:

6. Unless expressly authorized by a permit or in writing by an inspector, no permittee shall
 - (a) conduct a land use operation within 30m of a known monument
or a known or suspected historical, archaeological site or burial ground;

This statement provides the flexibility to consider alternate approaches to archaeological site management in specific cases, i.e. a land use activity may be able to proceed nearer than 150 m to an archaeological site if appropriate mitigation measures are used.

It is acknowledged that there may be an intent to have an interim requirement until a site is surveyed and delineated. If so, this should be more clearly described in the CR.

Suggested Solution:

Revise wording to goal-based statement noting that all of these sites must be preserved; or an objective-based statement noting that land use activities must not encroach upon archaeological sites and burial sites and refer to regulations.

CR #6 Drinking Water

Problem:

CR#6 (2) introduces ambiguity and does not add effectiveness.

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Rationale:

The term "contamination" is not defined. In regulating water quality matters, a comparison to background is often made. However there may be background levels that in and of themselves can be considered contaminants. As well, levels may change over time.

Suggested Solution:

If CR#6 (2) were removed, the intent would still be captured through CR6(1).

CR#7 Wildlife (4)

In addition, Regulators shall ensure that no land use activity takes place around known habitat sites during sensitive periods except in accordance with the horizontal setbacks and minimum flight altitudes identified in Table 8.

Problem:

The term "known habitat sites" is undefined and potentially unclear.

Rationale:

"known habitat sites" could refer equally to large areas of habitat like ecozones, regardless of whether it is inhabited by wildlife, or specific denning, nesting, or other sites that are habitually occupied by wildlife. The CR references Table 8, which relates to certain listed habitually occupied sites.

Suggested Solution:

The CR should be redrafted to clarify that it refers only to the listed sites, instead of creating a blanket prohibition with listed exceptions.

CR #8 General Environmental Impacts

Any adverse environmental impact from a land use activity shall be minimized to the extent possible. This includes but is not limited to minimizing the footprint of a land use activity, and in particular, using an existing road, seismic lines or other disturbed area wherever possible.

Problem:

The words "to the extent possible" are ambiguous; conformity could not be assessed.

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Rationale:

What is “possible” may or may not include consideration of whether the minimization is feasible or practicable. Further, the section appears to require each regulator to make a determination of whether an environmental impact is adverse or not, and to minimize it regardless of whether it is significant. Arguably, it creates a further impact assessment process for matters that might not otherwise meet the preliminary screening thresholds in the MVRMA.

Suggested Solution:

Reword to set goal for regulator, such as ... regulators should require developers to limit the disturbance of land.

CR #9 — Climate Change

The design and operation of a land use activity shall take into account climate change factors, including but not limited to, preventing and/or mitigating adverse environmental impacts resulting from the degradation or aggradation of permafrost, and minimizing greenhouse gas emissions.

Problem:

The words “including but not limited to” make it difficult for a regulator to determine if it has met the CR.

Suggested Solution:

End the CR after the “factors”.

CR#10 Incidental Harvest

Where a proposed land use activity involves the incidental harvest or removal of resources that will not be fully used by the applicant, the remaining usable resources shall be distributed to local communities wherever reasonably feasible.

Problem:

In GNWT's view this CR does not speak to a land use, but to the disposition of natural resources associated with land use.

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Rationale:

This CR potentially infringes on the GNWT's regulatory authority with respect to the forest resource. In particular, it is noted that the GNWT is currently preparing to regulate incidental harvest of trees through a permit under the regulations to the *NWT Forest Management Act*. The requirement that "remaining usable resources shall be distributed to local communities wherever reasonably feasible" may not be consistent with this regulation, or with the permitted content of a land use plan set out in section 41 of the MVRMA.

Suggested Solution:

Remove or reconstruct wording to an objective-based condition, such as, regulators should require developers to avoid waste of usable resources.

CR #11 –Species Introductions

A land use activity shall not result in the introduction of non-native plant and animal species, or of domestic animal species or subspecies, except by special approval by the ENR.

Problem:

While intent is clear, control of this problem in regards to non-native plant and animal species is not easily managed and therefore would be very difficult to determine or assess conformity. It is not clearly stated that this is intended as released into the wild.

Rationale:

This matter is recognized and it is anticipated that it will be addressed in a new *Wildlife Act* currently under development.

Suggested Solution:

Remove or reconstruct wording to an objective-based condition, such as, regulators should require developers to mitigate transport of non-native plant or animal species into the Sahtu.

CR#12 - Ecologically Significant Areas

CR12 (2) –A land use activity shall not take place on Karst topography, or if unavoidable, shall mitigate impacts to karst topography.

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Problem:

The words "...shall mitigate impacts to karst topography" creates an absolute requirement, that may not be manageable.

Suggested Solution:

Add the words "to the extent practicable".

(3) A land use activity shall not take place within 1000 m of any mineral lick.

Problem:

Mineral licks are not always obvious on the landscape.

Suggested Solution:

Add 'known' in front of mineral lick.

CR#13 Closure and Reclamation –

(1) Posting of Financial Securities

Problem:

Securities are matters addressed through other elements in the integrated system of land and water management, hence should not be addressed in the land use plan.

Rationale:

Various statutes, including the MVRMA, set out requirements for deposit of financial security in association with land uses. In particular, section 71 of the MVRMA provides discretion to a land and water board on the collection of security. The proposed CR would eliminate that discretion above a certain threshold (\$50,000), a matter left to the discretion of the Land and Water boards.

Suggested Solution:

Remove.

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(2)Remediation End-Goal

Problem:

Regulatory matter as well as subjective therefore difficult to assess conformity.

Rationale:

The test for return of security is highly subjective and creates a virtually unknowable standard: "...shall be restored to a viable, self-sustaining ecosystem ...as determined in consultation with residents, communities and responsible authorities". This will create considerable uncertainty, and we question how a 'self-sustaining ecosystem' is measured.

Suggested Solution:

Remove

CR#14 - Assessment and Mitigation

Before any land use activity is authorized within a Special Management Zone, Conservation Zone or Proposed Conservation Initiative, Regulators shall assess the potential impacts from the activity on the values for which the zone was established and ensure that appropriate measures are in place to minimize impacts to the zone values.

Problem:

Regulatory matter and subjective, therefore it is difficult to assess conformity.

Rationale:

This CR contains a number of subjective elements: "appropriate measures", "minimize impacts", and duplicates the statutory environmental assessment process, going beyond what is required in a Preliminary Screening under the MVRMA. Through the SLUP, values to be protected in a certain zone have been identified so that developers and regulators can use the information to carry out their roles in an integrated system of land and water management.

Suggested Solution:

Reconstruct wording to emphasize the values of interest that should be addressed in all regulatory processes; for example, Regulators should use the values identified in each SMZ, CZ or PCI to inform actions taken in regards to proposed development.

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CR#16 - Ecological and Cultural Integrity

Before any land use activity is authorized in the Great Bear Lake Watershed (GBLW), Regulators shall ensure that the activity is consistent with the maintenance of the ecological and cultural integrity of the GBLW.

Problem:

Difficult to determine achievement.

Rationale:

“ecological and cultural integrity” are broad concepts that are not amenable to the creation of a legal requirement; rather they are principles for outcomes. As well, cultural integrity has not been defined.

Suggested Solution:

Perhaps it is possible to reword to create a goal-type clause.

Chapter 7- Plan Approval & Implementation

Problem:

Burdensome process in the case of exceptions. No process is identified for exemptions. Some items on process are incomplete, such as for Type A water licences.

Rationale:

Figure 4 outlines the process for implementing the conformity requirements. This may burden potential land users, for instance in the case of exceptions to the Plan. Efficiency could be increased if potential land users could go directly to the LWB, noting an exception is requested; the LWB could then forward the request to the land use planning board. This would alleviate the need for a two pronged application process.

In addition, the process outlined does not outline how exemptions are applied for under the plan. This needs to be added to ensure consistency and clarity.

Figure 4, (pg. 288) needs to be revised to reflect that it is not always the regulator who gives the final authorization (i.e.: Type A Water Licences are signed by the Minister).

October 18, 2010

Table 11. There are several authorizations listed in the table that do not trigger preliminary screening under the MVRMA. As such a conformity determination would not be undertaken. All authorizations that do not trigger a preliminary screening could be removed from this list.

Suggested Solutions:

The planned implementation workshop is a good step to ensure those who will implement aspects of the Plan have opportunity to discuss implementation and re-work Chapter 7. However, the GNWT notes that all implementation aspects, something that it will consider important in reviewing a Plan submitted for approval, will require considerable dialogue with those that will agree to implement so that roles are clear, fit well together, and are not redundant.