

Draft Gwich'in Land Use Plan Revisions, April 2010
Indian & Northern Affairs Canada [INAC] Comments
August 20, 2010

GENERAL COMMENTS:

Overall, the Draft Revised Plan is a constructive document that is easy to read and to follow. Users of the document, namely proponents and regulators, should have no difficulty understanding where proposed projects would be allowable or prohibited, and what general conditions may apply.

The Planning Board's approach to the Zoning is clear and recognizes that any requirement for further detailed conditions would be dealt with through subsequent and integrated environmental assessment and permitting phases. In a few cases however, some conditions could be clarified. Achieving a "substantially unaltered" state for Water Quality and Quantity, for example, may be difficult to apply if it does not provide sufficient guidance to regulators. As part of this review, INAC has attempted to provide the Planning Board with constructive recommendations to further improve the Draft Revised Plan.

SPECIFIC COMMENTS:

Table of Contents:

P 2 - Insert the word 'Chapter' under the 'Acknowledgements' at the top of the page so it is clear that the left-most numbers are the actual Chapter numbers.

P 3 - List of Figures [Tables, Charts, etc] and maps would be helpful.

Chapter 1: Introduction

– no comments

Chapter 2: Information About the Gwich'in Settlement Area and its Resources

P 12 – Include a sentence describing the status of Yukon planning initiatives and a reference, given the importance of aligning adjacent initiatives.

P 12, Section 2.1.2 People - There seems to be a lack of statistics provided on population within the communities. This information, which includes population changes in the past 10 years, and the percentages of aboriginal residents could be helpful. The Board should provide further population data to help track changes within the Gwich'in Settlement Area.

P 12 – Include a description of Gwich'in owned lands in the ISR; note that there is no Gwich'in-owned land in the Yukon.

P 13, Figure 1: Gwich'in Settlement Region - Consider adding a legend and define on the map the primary and secondary community use areas.

P 14, Figure 2: Gwich'in Seasons Calendar - Can't appreciate the seasonal cycle as it is too small. Consider using a larger diagram, otherwise delete it.

P 14, Figure 3: Annual Average Harvest Estimates - Reference is made to the annual average of subsistence forest harvesting and traditional medicine as harvesting activities in the GSA. Why represent these activities in an annual average number, as opposed to a % to be kept consistent with other statistics presented (Figure 4, 5 and 6)?

Pgs 15 & 16 – Label 'y' axes in graphs.

P 16, 1st paragraph - The text indicates that there is a range in the average income in the GSA, but also states that the cost of living in the area is much higher than in other areas in Canada. It would be worthwhile to compare the average personal income of the various communities to other locations in Canada.

P 19, Section 2.3.1, last 2 paragraphs - Are all these rivers mapped in the Plan? If so, please refer to this map. Any geographic feature referenced in the text should be labelled on one or more map(s), e.g., Fig. 1.

P 20, Section 2.3.2 - Should include discussion of Territorial SARA in text – mentioned in Figure 10, but not discussed in text1.

P 20, Section 2.3.2, Figure 10 - In addition to COSEWIC, federal SARA and NWT SARA, suggest adding a column describing the resources/issues considered important by the Gwich'in, particularly for sustainable harvesting. For example, Dalls Sheep, the Porcupine Caribou Herd, Woodland Caribou, Dolly Varden Char, Inconnu, and declining Scaup and Scoter populations, and other resources/species/habitats, are all referenced in the Draft Plan because they are considered important to the Gwich'in.

P 24, Section 2.4.2, paragraph 2 – Are these deposits mapped somewhere in the Plan? If so, provide reference.

P 27, Section 2.6 – Consider noting that the Mackenzie River is part of the Trans-Canada Trail. The Trail is mentioned on P 146, but without reference to the River.

P 27, Section 2.6 Existing Designated Areas, 1st paragraph – Heritage Rivers are not a legislated designation, suggest removing the word ‘legislated’ from the first sentence to reflect this.

P 28, Section 2.6 – The last sentence under *NWT Historic Sites* is the 1st mention of Plan not applying to municipal lands. This should be included earlier in the document.

Pgs 28 to 30, Section 2.6, *NWT Historic Sites* - For historic site overlaps, might be useful to identify the specific zone(s) with which each site overlaps.

P 31, Figure 14: Legislated Protected Areas - The title of the Figure should be changed. If the Board is intending to show all of the “conservation” type of designations, then they should ensure that this is reflected in the Figure, more specifically in the Legend and title.

Chapter 3: Land Ownership, Regulation and Management

P 33, Section 3.1 – Chapter 2 makes more sense after reading Section 3.1 and looking at Fig. 15. Consider moving this material into Chapter 2.

P 35, Section 3.2 *Mackenzie Valley Resource Management Act* – The Department suggests revising this Section, as it is not complete and seems to exclusively focus on the Gwich’in organizations, precluding any other Boards. It should be broader. There are other elements requiring clarification. For example, the *Act* should reference the establishment of a Cumulative Impacts Monitoring Program but instead refers to the need for a responsible authority to analyze data and other pertinent information for the purpose of monitoring the cumulative impacts). Suggest the alternative paragraphs:

“The Mackenzie Valley Resource Management Act established an integrated co-management structure for public and private lands and waters throughout the Mackenzie Valley. The Act was proclaimed December 22, 1998 but Part IV which establishes the Mackenzie Valley Land and Water Board was not proclaimed until March 31, 2000. The Act was amended on March 3rd, 2006 to reflect the completion of the Tlicho Agreement.

The Act established the public Boards such as the Gwich’in Land and Water Board to regulate the use of land and water, the Gwich’in Land Use Planning Board to prepare regional land use plans and the Mackenzie Valley Environmental Impact Review Board to guide development and to carry out environmental assessment and reviews of proposed projects in the Mackenzie Valley. The Act also contains provisions for monitoring cumulative impacts on the environment and for periodic, independent environmental audits.

As institutions of public government, the Boards regulate all uses of land and water while considering the economic, social and cultural well-being of residents and communities in the Mackenzie Valley.”

P 36, Section 3.6 Gwich'in Land and Water Board – The role should be explained in the context of environmental assessment. Pursuant to s. 125 of the MVRMA, a development will be referred to EA after preliminary screening not where there are ‘significant issues’, but rather where in the opinion of the Land and Water Board, the ‘development might have a **significant adverse impact on the environment or might be a cause of public concern.**’ This would have the merit of providing key information to developers, that although a proposal might conform to the Land Use Plan, the proposal might have significant effects that still need to go through the EA process.

P 36, Section 3.6 Mackenzie Valley Land and Water Board - Again, role of the Board should be better explained with respect to the MVRMA’s integrated approach to planning, scening, environmental assessment, permitting and regulation.

P 36, Section 3.6 MVEIRB (should be 3.7). It would be useful to revise this section for further clarity. For example, it could be more comprehensive and better describe land use planning and environmental assessment process. Consider avoiding terms such as “has a fairly comprehensive mandate”, as it brings a subjective element to the mandate. Re the 3rd sentence, in describing whether a proposed development is referred to MVEIRB for environmental assessment, please refer specifically to legislative language. For example, rather than stating that a referral will be made when the proposed development "is of public concern", it should state that it "might be of public concern" (see s. 125 of the MVRMA). Furthermore, the description does not include other matters in which a proposed development might be referred to MVEIRB. These included situations where regardless of the public concern/significant adverse impacts if it is referred to the Board pursuant to s. 126 by government, regulatory authorities by aboriginal governments or on its own motion.

In addition, to describe the complete process, a description of environmental impact review should be provided for those instances where the development is likely to have a significant adverse impact on the environment or likely to be a cause of significant public concern.

P 36, Section 3.6 MVEIRB (should be 3.7). Final sentence needs rewording, as it implies that a department or agency of the federal or territorial government can only refer a project to EA “if the development will have an impact within their boundaries,” which does not make sense. In addition, the self-referral authority of MVEIRB is missing.

The Act requires that a proposed development outside local government boundaries which might have a significant adverse impact on the environment or

might be a cause of public concern be referred to the MVEIRB for environmental assessment. A proposed development wholly within the boundaries of a local government must be referred to MVEIRB for environmental assessment if it is likely to have a significant adverse impact on air, water or renewable resources or might be a cause of public concern. Notwithstanding the outcome of a preliminary screening, the Act also provides for a regulatory authority, a designated regulatory agency, a department or agency of the federal or territorial government, the Gwich'in First Nation (as represented by the GTC), the Sahtu First Nation (as represented by the SSI), or the Tlicho Government to refer a proposed development to MVEIRB for environmental assessment. In addition, the Act provides MVEIRB with the authority to initiate an environmental assessment of a proposed development on its own motion.

P 37, Figure 16 – This presently-blank Figure will be an important component of Chapter 3 and a useful reference during Plan implementation. INAC will review and comment on this Figure once it is provided. Depending on the content of the Figure, it may be better placed in Chapter 5.

Chapter 4: Land Use Plan For the Future, Vision and Land Zoning

General – Please provide a map showing the zoning in relation to land ownership.

The zone maps would be easier to interpret with feature labels added.

P 40, Section 4.2.2, #1 - It would be useful to provide a list of grandfathered activities as an annex; it does not need to be included in the Plan itself.

P 40, Section 4.2.2, #5 – Re Minor Exceptions to the Plan, they should be properly identified in the Land Use Plan.

P 40, Section 4.3, paragraph 2, last sentence – Wording is not clear.

P 41, Figure 17 – In the “No” box, bottom left, Plan should note that if none of these 3 options is workable, then the only remaining option is to not to proceed with the land use.

P 43, Foldout Map – Cannot find the Gwich'in Territorial Park or the Deepwater Lake Watershed (the Territorial Park is easy to find on Figure 15). The “Territorial Border” in the legend does not match the Territorial Border on the map.

P 44, Generalized Best Practices chart – Should be in Chapter 5.

Pgs 45 to 94, Section 4.5 on the SMZs – **General comments:**

(a) For the staff of the North Mackenzie District Office in Inuvik (Operations Directorate), it should be noted that areas of the Plan which focus on aspects other than land and water have been problematic in the past. For these

jurisdictional areas, INAC has found it difficult to address issues with any degree of authority (i.e.: wildlife, fish, air etc.). The Land and Water Boards often do their best to try to deal appropriately with these aspects within their authorizations as well, but at times find themselves in difficult positions of trying to satisfy the Land Use Plan and their own regulatory responsibilities/limitations.

(b) More specifically, the concern is connected to sections of the document where Conditions are recommended to mitigate effects on the wider scope of environmental aspects. Within the Special Management Zones sections, Conditions are designed to mitigate impacts on aspects of the environment that the Department has no mandate to deal with, an example being the Condition focusing on aircraft minimum altitudes. The Board uses the term "Should" and not "Shall", but not everyone involved realizes the difference in the meaning of these different terms. Accordingly, the Department recommends that the Board include in the Plan an overarching statement recognizing the limitations of the MVRMA and its regulations in this regard.

Pgs 45 to 94, Section 4.5 on the SMZs - The following **specific comments** apply to the Conditions that are found in duplicative form for many of the Special Management Zones. The comments apply equally to each reference.

(a) Conditions regarding Water Quality and Quantity: The conditions suggest that proponents be required to post security that should only be refunded where it is demonstrated that water quality and quantity and rate of flow remain substantially unaltered. Regarding the term 'substantially unaltered', does this mean no change at all? Or does it mean that after an initial dilution zone (mixing zone), that there are no changes to water quality? To avoid confusion, the term "substantially unaltered" should be clarified as it is subjective and provides no real measure for regulators. Perhaps this 2nd Condition would be better positioned as an operating principle at the beginning of the Draft Plan. Reclamation security pertains to land and water in general and should not be isolated within Water Quality and Quantity Conditions as it is here.

Security for water related activities is governed by the *NWT Waters Act and Regulations* and specifies clearly for what uses the Minister (of INAC) may use security and also when it should be refunded. The Minister may only use security in two circumstances. First, where the Minister is required to act to account for a danger to persons, property or the environment results or may reasonable be expected to result from the adverse effects because waters are used, waste has been deposited or there has been a failure of a work related to the use or waters of the deposit of waste on contravention of a condition of its licence or the legislation. Second, where the Minister believes on reasonable grounds that a person has closed or abandoned a work related to the use of waters of the deposit of waste and the person has either failed to comply with a condition or a licence of the legislation or there is a danger to persons, property or the environment that may result from past operations of the work or from its closing or abandonment, he is required to take reasonable measures to prevent, counteract, mitigate or remedy any resulting adverse effect on persons, property

or the environment.

If no such conditions exist, then when the undertaking is completed, the Minister is obliged to return the security. Therefore, to give effect to this condition, it would need to be written into the licence, otherwise the Minister, who holds the security, would be required to refund it.

(b) Conditions respecting Traditional Fish Harvesting and regarding Fish: This condition states that there must be consultation with the Gwich'in Renewable Resource Council, Designated Gwich'in Organizations, the Gwich'in Renewable Resource Board and DFO. It is not clear who is required to conduct this consultation. Is it the proponent or the Gwich'in Land and Water Board? Further, regardless of who is to conduct the consultation, where will information of who constitutes a designated Gwich'in Organization for the purposes of this plan be provided?

(c) Conditions Regarding Waterfowl: This condition requires that aircraft maintain a minimum altitude. However, several zones apply to areas located next to or include an airfield within their boundaries. Can this be reconciled, or is an exception required to airfields (and emergencies or weather/safety requirements)?

P 77, Section 4.5.11, 3rd, 4th & 5th paragraphs – It seems curious that this is the first instance where the dramatic decline in Scaup and Scoter is mentioned, given that these species are referenced earlier in this report. Suggest including a similar reference in the Wildlife and Fish Section 2.3.2 on pgs 20 & 21. Same general comment for boreal and barren-ground caribou.

P 96, Section 4.6.1 - The revised rewording in the second bullet appears to be consistent with the amended wording in Section 11(1)(f) of the Northwest Territories and Nunavut Mining Regulations.

P 98, Section 4.6, 1st full paragraph - Should provide additional discussion of the proposed extension of the Dempster to Tuktoyaktuk all-weather connection. This project is now in environmental assessment. No part of this proposed extension is within the Gwich'in Settlement Area, so need to explain why this project is being mentioned in the Plan.

P 98, Section 4.6, 2nd full paragraph - Assume that this means that the DOT should try to route highways alongside other existing or proposed linear infrastructure, such as pipelines. As currently written, the meaning is unclear. The wording on P 145 is clearer and could be used here.

Chapter 5: Procedures for Implementing the Land Use Plan

P 124, Section 5.3 – This Section provides a clear and useful explanation of responsibilities.

P 124 – The Generalized Best Practices chart should be located here in Chapter 5 rather than on the back of the foldout page (P 44). There should be some way to include it in the text on two pages rather than on the back of a foldout page. The Department would like to review the now-blank Figure 16 (P 37) completed in order to fully review the Generalized Best Practices chart.

Chapter 6: Land Use Plan for the Future

On page 3 of the Board's separate 3-page document entitled 'Summary of Proposed Changes to the Gwich'in Land Use Plan – April 2010' is the following paragraph: "The Board is still developing the structure of the Regional Plan of Action, so there are many more action items to be entered into the tables. The Board would like some stakeholder feedback on the proposed RPA before adding the larger list of actions into a draft for signatories to review." Given the importance of the RPA to the on-going implementation of the Plan, the Department would like to accept the offer from the staff of the Board to meet in Yellowknife as part of the internal review of the Daft plan Revisions. [The Working Group Conference-Call Meeting scheduled for mid-August was identified in the May 26th WG Schedule for such a get-together.]

Concerning Chapter 6 itself [pgs 128 through 158], some basic questions and comments include the following:

P 131, Section 6.2 Land Use Issues: Vision, Objectives, and Actions – Perhaps the word 'Actions' should be deleted, since these are now addressed in the next sub-section 6.3 Action Plan on pgs 154-156. [The same comment applies to the heading for 6.2 in the outline of the structure on page 128.] In the first paragraph of 6.2, second sentence, and at the top of the list is the term 'topic', a hangover from the 2003 Plan. However, this is an interesting transposition, as both of the terms 'issue' and 'topic' were used interchangeably in the 2003 Plan, although they do in fact have slightly different meanings. In this regard, perhaps the Board should actually consider going back to the previous use of the word topic, so for all of the sub-sections on pgs 132 to 153, the formatting and organization of 'issues within issues' can be avoided [ie, the Issues and Analysis components of the ISSUES].

P 130, Section 6.1.2 Endorsement/Approval – Regarding the annual updates and status reports of the RPA, given that these will vary from year to year, should this Chapter 6 be a companion document to the Plan and not necessarily contained within it?

P 130, Section 6.1.3 Implementation - How will the cooperative process be established - will this be done through specific agreements? The outlined options

are somewhat vague and should be explored in more detail, and could be an agenda item for the mid-August joint Board-Department meeting.

P 136, Section 6.2.4, 3rd bullet – Is this a reference to water quantity? If so, should clarify.

P 137, Section 6.2.4, last paragraph – The Plan should more clearly identify lead roles and responsibilities for water and air quality monitoring, and the Cumulative Impact Monitoring Program. The Plan may not want to presume ongoing funding for monitoring, despite this being a priority for the Gwich'in and a requirement under the claim.

P 137, Section 6.2.4 – The Mackenzie River Basin Board produces a State of the Aquatic Ecosystem Report once every 5 years. The first one was in 2003.

Pgs 147 & 148, Section 6.2.10, under Issues and Analysis, the report has the following statement about PAS: The secretariat for the Northwest Territories Protected Areas Strategy describes a protected areaas, "...a piece of land where a specific law limits the amount and type of human activity allowed." Under the strategy, the purpose of a protected area is to recognise specific natural and cultural values or to preserve areas representative of each ecoregion.

Following is a suggested re-write:

The definition of protected area used by the PAS is that of the International Union for the Conservation of Nature (IUCN): *An area of land or sea especially dedicated to the protection and maintenance of biological diversity, and its associated natural and cultural resources, managed through legal or other effective means.* Under the strategy, the purpose of a protected area is to safeguard specific natural and cultural values and to preserve areas representative of each ecoregion.

P 147, Section 6.2.10, 3rd paragraph - Under Issues and Analysis – “While both may have policy...” – awkward wording, not exactly sure what is meant.

P 148, Section 6.2.10, 1st paragraph - Under Ecoregion Representation – “Representative areas are selected...” Context is missing. Who selects the areas?

P 148, Section 6.2.9, last paragraph – “If they meet the criteria ... then it must be matched” The meaning is unclear; suggest changing “they” to “an area”. In next sentence, it is uncertain whether the CIMP would provide funds for protected area monitoring, given that these areas should have their own monitoring funds. Certainly the CIMP could help coordinate monitoring objectives within the broader landscape context.

Pgs 154 to 156, Section 6.3 – More context is needed for this Section. In Section 6.1, the text (P 129) that traditional knowledge is a an essential element of each

component, so it may be appropriate to include a discussion of whether any actions are recommended in relation to traditional knowledge and any of the framework components. Has the GLUPB looked at the NWT-wide Environmental Stewardship Framework Blueprint? Are there opportunities for collaboration?

P 151, Section 6.2.11 Land Use Issue 11 - Transboundary Planning: The last paragraph states that the Planning Board and other co-management and Gwich'in groups are interested in monitoring activities outside the Gwich'in Settlement Area that may affect the GSA. Note that pursuant to s. 45(2), the Gwich'in Land Use Planning Board may prepare a joint land use plan with a neighbouring settlement area, however, it would be required to submit that land use plan through the same regulatory approval. Not sure if that is what the Gwich'in are suggesting they want to do or simply whether they want to "cooperate" with other land use planning boards. Perhaps this is something that might merit some further clarification or at least something to monitor.

P 154. Regarding the table in section 6.3.1, discussions of mineral potential in the document do not mention uranium. It is recommended that "discussion on uranium mining" as an action in the table be clarified or elaborated upon.

P 154, Section 6.3.4 Environmental Assessment - The Action states that the GLUPB meet with the Review Board to discuss the possibility of EA evaluation of cumulative effects in the absence of thresholds in the Land Use Plan. It would appear that the driver of such of an initiative would be through the CIMP, among other programs, to ensure coordination and consistency of approach within the Valley as a key partner alongside of the Review Board. The CIMP partners have been developing indicators for a number of valued components. The MVEIRB has already developed CEA guidelines.

P 156, Chapter 6 – Rather than end so abruptly, it is recommended that a conclusion be added to the Draft Plan.

Appendix B

P 165, Stakeholder List – Recommend adding MVEIRB as number 62 and moving the NEB to number 63.

Appendix C

Pgs 169 - Add a general statement that any activity subject to preliminary screening under the MVRMA is also subject to the Land Use Plan. Any licence or permit application to the Land and Water Board will be subject to preliminary screening pursuant to s. 124(1) of the MVRMA. All permits, licences and authorizations must be in conformity with the Land Use Plan (s. 61). All applications must first be deemed in compliance with the Land Use Plan; only then will a preliminary screening be considered.

P 169, Land and Water Boards – the Associated Legislation/regulation column should include a reference to the NWT Waters Act and the NWT Waters Regulations.

P 169, INAC Oil and Gas Directorate – The call for nominations and call for bids are subject to the Land Use Plan. Before the call process starts, the LUP is considered and followed (e.g. CZs are excluded from the call area). Since the call results in exclusive access and not an approval to any specific action (e.g. seismic or drilling), there is no specific LUP approval associated with the call process. Drilling and seismic activities are separate approvals via NEB.

P 169, INAC Land Administration – Add ‘Licence of Occupation’ under the Authorization column of this table, since the issuance of a Licence of Occupation is subject to the Land Use Plan. (ie. If a proponent applies for a Licence of Occupation for a power line, they would first have applied for a Land Use Permit for construction of the power line. Once the power line was constructed, then the application for a Licence of Occupation would be submitted. Although a Licence of Occupation does not give an interest in the land, it still allows for maintenance to whatever is constructed.

P 170, NEB – The GLUPB should ask the NEB to list additional relevant authorizations. For example, NEB authorizations are required to conduct geophysical work, such as seismic programs, and to drill oil and gas wells.

Editorial Comments:

General

Include specific Map numbers on all maps; page numbers where the Map occupies a full page; and North arrows on all Maps.

All Figures should include year of data compilation and the source of the data.

It was difficult to flip to the end of the Chapters to look at the references, particularly in Chapter 4 focusing on the zoning section. A preferable system would be to use footnotes rather than endnotes.

The Board should keep all the headings consistent and numbered, and consider using the same colour codes for Zones being portrayed on maps (red for conservation zones, green for special management zones and violet for heritage conservation zones).

Text uses both “conformity” and “conformance.” Are they the same thing? If so, should pick one and not use the other.

“Board” is singular. Sentences such as: “The Gwich’in Renewable Resource Board is the main group dealing with wildlife, fish and forests in the Gwich’in

Settlement Area. Their role is to conduct research and propose policies...” (P 35) should be edited accordingly.

Specific (not an exhaustive list)

P 22, paragraph 2, sentence 3 – “An example of events...” should be “Examples of events...”

P 46 - Add a Figure number to the SMZ Conditions Summary Table.

P 47, Section 4.5.1, 3rd sentence – Insert ‘all-season’ between ‘northern’ and ‘highway’.

P 51, fourth paragraph, 1st sentence – Refer to ‘Dolly Varden Char’, not ‘char’.

P 93, Section 4.5.16, 2nd Condition re Dall’s sheep – ‘effected’ should read ‘affected’.

P 102, Map #_____, Rat, Husky, Black Mountain Conservation Zone – The southern part of this Conservation Zone should be depicted with the same fill pattern as the northern section.

P 116, Nataiinlaih (Eight Miles), reference to the ‘Inuvialuit’ – In the NWT Historic Sites description on P 29, they are referred to as the ‘Siglit’.

P 125, second last bullet in list - “request” should be “requests”.

P 126, last sentence before 5.6 - Missing the period.

P 127, first full paragraph, 1st sentence – Add “the” before “scope”.

P 130, last sentence of 6.1.2 – Period missing.

P 147, “complimentary” should be “complementary”.

P 148, 1st paragraph under Ecoregion Representation - Second sentence is missing initial capital ‘T’.