

Heidi Wiebe

Subject: INAC General comments on integration of GBLWMP with the draft SLUP
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From: Marc Lange [mailto:Marc.Lange@inac-ainc.gc.ca]
Sent: Tuesday, November 24, 2009 11:02 AM
To: Heidi Wiebe
Cc: Matt Bender; 'Edward Reeves'; 'Joel Holder'; 'Russell Kenny'; Arthur Boutilier; Greg Yeoman; 'Danny Bayha'; bovervold@ssimicro.com; 'Tom Nesbitt'
Subject: INAC General comments on integration of GBLWMP with the draft SLUP

Hi All,

I understand that December 1 & 2 no longer works for the community meeting in Deline to discuss integration of the Great Bear Lake Watershed Management Plan with the Sahtu Land Use Plan. I will be attending the meeting for INAC, and I remain available the week of December 14 - 18; hopefully that week can still work for everyone.

Pushing it back to January is certainly possible, however, do note that the Joint Review Panel report on the Mackenzie Gas Project is expected December 31; my schedule will begin filling up quickly.

In preparation for the meeting I have attached general comments that contain the results of the departmental review of key sections of the Great Bear Lake Watershed Management Plan; our detailed review continues. Arthur Boutilier is working to complete a contribution agreement with the Deline Renewable Resources Council to prepare for the meeting.

Hope to see everyone soon,

Marc Lange

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Indian and Northern Affairs Canada

General Comments on the 2005 Great Bear Lake Watershed Management Plan for Integration with the Sahtu Land Use Plan

For Submission to the Sahtu Land Use Planning Board, Deline and the Government of the Northwest Territories, November 24th, 2009

1.0 Background:

This roll-up of Departmental comments is in support of the Regional Director General's letter of October 21st, 2009 to the Sahtu Land Use Planning Board [Board] regarding the provision of general comments on the Great Bear Lake Watershed Management Plan [Management Plan]. These comments are meant to help inform discussion at the upcoming meeting in Deline to discuss integration of the Management Plan with the Sahtu Land Use Plan [Plan].

As stated previously, the Department is committed to working collaboratively with the Board, Deline and the GNWT on the completion and implementation of a Plan acceptable to all Parties. Accordingly, staff of the Department have reviewed key sections of the Management Plan and trust these comments will be of assistance.

2.0 Introduction:

As a preliminary comment, it should be emphasized that the Sahtu Dene and Métis Comprehensive Land Claim Agreement [SDMCLCA] contemplates a single land use plan for the whole of the Sahtu Settlement Area [SSA]. As a result, all land use planning in the SSA, including within the Great Bear Lake Watershed, must be integrated into a single plan with consistent language and approach used throughout.

As stated previously in October, the Board is responsible for leading the work of integrating the Management Plan with the Plan. While government will certainly review and comment on the work of the Board to help ensure that it can be implemented pursuant to s. 46 of the MVRMA, it is the Board which must take the lead with this initiative in order to give full effect to an integrated Plan as a whole.

Although the Department has not reworded any of the provisions of the Management Plan, it has made some specific redrafting and restructuring recommendations with respect to integrating key sections of the Management Plan into the Land Use Plan. These recommendations, and related positions, are noted in bold in the sections which follow, organized in sequence to parallel the sections and Parts of the Management Plan itself.

3.0 “Executive Summary”: While necessary for a report as detailed and lengthy as the Management Plan as a stand-alone product, **it should not be necessary to include this Executive Summary in the Plan.**

4.0 “Definitions and Abbreviations”:

As a general rule, all of the definitions and abbreviations used in the Management Plan should be consistent with those used in the Plan. Further, where provisions of the Management Plan relate to specific federal or territorial statutes, policies or programs [e.g., *Species at Risk Act*, *Wildlife Act*, *Mackenzie Valley Resource Management Act*, Protected Areas Strategy] or to the SDMCLCA, **the Department recommends that definitions used in the Plan be consistent with the definitions used in those statutes, policies, programs, and in the SDMCLCA.**

5.0 “Part 3: Management Relationships and Responsibilities”:

Part 3 contains significant background material which may not be needed in the Plan. While these sections may provide relevant background information and context, the Board will have to determine if they are necessary or not. Further, much of the material under this Part 3 deals with goals and policies focussed on the best efforts of government and other agencies to work together. **While these are important objectives, the challenge will be in developing Conformity Requirements, Actions and Recommendations that can effectively be implemented by governments, First Nations, and regulatory agencies and authorities in the context of the approved Plan.**

6.0 “Part 4: Land Use: The Special Management Zone”:

In the front-end sections of Part 4 [and in Part 5], there is considerable background information, history, and exposition that may not be necessary for inclusion in the Plan. Nonetheless, **the Department recommends that the definitions and terms used in this section be consistent with those used in the Plan [i.e., “Special Management Zone”, “Conservation Zones”, “Heritage Zones”, “Ecological Integrity”, and “Cultural Integrity”].** While there does not appear to be any inconsistency between the way these terms are defined and applied in the Management Plan and the Plan, the Board should review them to ensure consistency.

In addition, the policies, conditions and prohibitions in Parts 4 and 5, which form the heart of the Management Plan, should be updated and reworded so as to be consistent with the approach used in the Plan. **At minimum, the Department recommends that these policies, conditions and prohibitions be redrafted as “Conformity Requirements” [CRs], Actions and Recommendations to make**

them consistent with the terms and provisions used throughout the Plan. Although this may be a matter of form rather than substance, another way to put it is for the Board to extend the use of “CRs”, Actions and Recommendations to the integration of the Management Plan.

Additionally, **it is vitally important in translating these Parts of the Management Plan for the Board to clearly define what is expected of governments, First Nations, regulatory agencies and authorities where they state that something is prohibited or avoided [especially, e.g., “Caribou Protection Measures” in Part 4.7 and “Below Threshold” work in Part 4.9].**

Therefore, **the Department recommends that when the policies, conditions and prohibitions in these two Parts [4.7 and 4.9], Parts 4.5 and 4.6, and Parts 5.5 and 5.6 are being redrafted as “CRs”, Actions and Recommendations, that they be further reviewed to ensure that they are within the jurisdiction of the Board and able to be complied with pursuant to section 46(1) of the MVRMA.**

7.0 “Part 5: Land Use: “Conservation Zones and Protected Areas”:

The same comments above with respect to Part 4 also apply to Part 5, especially regarding the use of terms and definitions from the Plan - redrafting conditions and prohibitions as CRs, Actions and Recommendations and reviewing the enforceability of goals, policies, and statements of intent. **The Department recommends in particular that the Board clarify the wording of section 5.5.1 a. [applicable to both Part 5.5 and 5.6] in which “policies, conditions and prohibitions” are defined as mandatory.**

In carefully reviewing the policies, conditions and prohibitions in both Parts 4 and 5, the Department notes that the wording in corresponding sub-sections is almost identical, with a few exceptions:

- re 4.5.2 and 5.5.2 on Policies, the wording is very similar [not quite identical];
- re 4.5.3 and 5.5.3 on Conditions, the respective statements do appear to be identical, with the exception being that sub-section f. i, ii, iii and iv in 4.5.3 is not duplicated in 5.5.3;
- and re 4.5.4 and 5.5.4 on Prohibitions, the sub-section h. in 4.5.4 is not included in 5.5.4, and conversely, the sub-sections b. and c. in 5.5.4 are not contained in 4.5.4.

There is therefore considerable duplication and redundancy between Parts 4 and 5. **The Department recommends that the Board eliminate this overlap by focussing on those statements which apply to both Parts 4 and 5 during the conversion-to-CR, Actions and Recommendations redrafting process recommended above.**

The Department further recommends that the Board concurrently extract the sections and information pertinent to the Conservation Zones and Protected Areas from Part 5, if not already done so for Draft 2, when updating the list of such sites for inclusion in the Draft 3 Plan.

The Department's comments on grandfathering existing rights in the Plan, as spelled out in the July 31st roll-up submission to the Board, also apply to this Management Plan - specifically section 5.3.3 [and s. 4.3.3 in the previous Part]. **The Department recommends that the Board provide greater detail and clarification with respect to how and to what extent existing third-party interests will be protected in the Plan, and how further activities and development associated with those interests will be subject to the Plan, if at all. Additionally, the Department recommends that the Board better define "interests", "existing uses" and "activities", and distinguish between them.**

As a general rule, any provisions in the Plan which deal with existing rights must be consistent with the applicable provisions of the SDMCLCA [e.g., s. 19.5.2(a) regarding administration of interests on Sahtu lands and s. 21.4 dealing with commercial access for existing interests]. Obviously, any future development activity allowed under regulatory authorizations can be made subject to the provisions of the approved Plan [MVRMA 46. (1)].

8.0 "Part 6: Culture and Education"; "Part 7: Research and Monitoring"; "Part 8: GBLW Patrols and Enforcement"; "Part 9: Contaminated and Waste Site Remediation":

Consistent with some of the recommendations above, these Parts of the Management Plan contain important goals & objectives and policies, but which are likely not mandatory for government, First Nations, regulatory agencies and authorities. **It does not appear to the Department that there are any prohibitions or conditions in these Parts of the Management Plan which could be redrafted as CRs.**

With respect to Part 9, it must be remembered that neither the SDMCLCA nor the Plan can compel government to clean up or otherwise remediate any contaminated sites. However, section 19.3.4 of the SDMCLCA deals with hazardous waste sites on Crown lands in the settlement area, and provides that:

"Where government undertakes any program respecting the clean up of hazardous waste sites on Crown lands in the settlement area, such program shall apply to hazardous waste sites on Sahtu lands existing at the date of settlement legislation, whether or not identified at that time, and government shall be responsible for the costs associated with such clean up on Sahtu lands. This provision shall not prevent government from

recovering any such costs from a person made liable for these costs pursuant to legislation.”

Note that this section does not obligate government to clean up hazardous waste sites in the settlement area, or any specific site - only that any government program respecting the clean up of such sites applies to such sites on Sahtu lands existing at the date of settlement legislation.

9.0 “Part 10: Trans-Boundary Issues”:

The Recommendations in section 10.1 of the Management Plan are laudable goals, and indeed the Board may wish to work out trans-boundary or overlap agreements with adjoining jurisdictions in order to more effectively manage the entire Great Bear Lake Watershed than at present. **The Department recommends that the Board consider negotiating specific process or protocols for trans-boundary management issues for the GBLW [and possibly for other critical regions and zones within the SSA] via s. 25.2.10 of the SDMCLCA.**

10.0 “Part 11: Plan Review and Amendment”:

This Part is lacking in detail with respect to the process by which a party may apply for and obtain an amendment to the Management Plan. While sections 48 and 49 of the MVRMA provide some guidance in this regard, it may be preferable for the Board to spell out in greater detail in the Land Use Plan how the amendment process will work in general. **While s. 50 of the MVRMA provides for regular five-year reviews of the Plan, the Department recommends that the Board spell out how they see these reviews proceeding, what kinds of evidence and information they will take into account during the review, and what the outcome of these reviews will be - i.e., will the Plan be amended as a result, and how that would be accomplished?**

11.0 Conclusion:

The Department would like to thank the Board for the opportunity of providing comments on this priority file, and is looking forward to the meeting in Deline to discuss these proposals, other options and ideas, and related next steps in an atmosphere of cooperation and collaboration.