

Summary Report: K'ahsho Go'tine District Lands Corporation
Draft # 3 Sahtu Land Use Plan
October 2010 – March 2011

Prepared By; Edwin Erutse
Consultation with:
Yamoga Land Corporation
FGH Metis Local # 54 Land Corporation
FGH Dene Band Council
FGH RRC
KGLC Board of Directors

Upon further review of the Draft # 3 the focus was primarily on concerns expressed during the January 10th, 2011 meeting held in the community of FGH. Additional concerns have been expressed about the February 18th, 2011 letter updating the stakeholders on the proposed Public Hearing.

The following is a summary of additional concerns expressed during consultation meetings with the above organizations:

Under the *Canadian Wildlife Act*

This means that the conformity requirements that are contained in the plan will apply to this conservation area.

Questions:

1) are there any conflict between the proposed legislation to protect the land and the Conservation Zones requirements?

2) Note that in Table 1, CZ provides both non-renewable and renewable resource protection – under PAS – varying degree of protection depending on the legislation.

3) The description of the Zone – page 92

Issue: Existing Land Use

An existing land use that is exempt from the zoning prohibitions of the Plan is not exempt from the other Conformity Requirements of the Plan (see page 26). Therefore, Conformity Requirement #2 can apply to proposed land use under a grandfathered right created before the Land Use Plan came into effect. KGLC will want to preserve this. However the Board will consider any exceptions with the intention that it will meet or exceed any consideration of vested rights under the Land Claim Agreement.

Issue : Sahtu Working Group

Under the Actions, the Plan proposes a Sahtu Working Group that will include with representation from SSI and other designated Sahtu organizations, the federal and territorial governments, the SRRB, the SLWB, industry (oil and gas, mining, others), and non government organizations as a collaborative forum through which to discuss, study and resolve key regional land use issues and informed decision making. The Sahtu Working Group will work on Actions 3-6 below to develop appropriate measures for consideration and integration into future Plan revisions.

- engagement guidelines
- best practices
- Cumulative Effects Management Plan
- Sahtu Environmental Monitoring Program

Questions about the need for such a broad group to be conducting this work.

Look at each item, is there a need for the group to do this, what about the normal processes that are already in place?

The third last paragraph in that introduction should refer to the requirement to observe the terms of the Land Claim Agreement.

We note that the Deh Cho Land Use Plan, although not approved at this time, contains better language for community engagement:

(1) Before deciding whether to authorize a land use or on what terms, Responsible Authorities will require applicants to demonstrate meaningful community involvement with affected communities and individuals.

[...]

(3) Community involvement

(a) will begin prior to the application and will continue throughout the life of the proposed land use at intervals appropriate to the nature of activities;

(b) will include full and direct reporting of land use activities to the affected communities in plain language; and

(c) will be carried out in English and the local language.

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

a) such activity is necessary in order to carry out a permitted land use outside the zone, and the user will be authorized to conduct the land use outside the zone (for example, subject to other applicable Plan conditions, water may be taken from a Conservation Zone to the extent necessary to carry out authorized oil and gas activities in an adjacent Special Management Zone, and a pipeline may be built in a Conservation Zone in order to transport gas lawfully produced in an adjacent Special Management Zone or to connect authorized pipelines in adjacent zones);

b) no feasible alternative to carrying out the activity in the Conservation Zone or Proposed Conservation Initiative exists;

c) the activity takes place outside known or suspected significant ecological and cultural areas as identified in the Zone Descriptions (Chapter 5), Background Report or by community organizations (First Nation, charter community, renewable resource council or land corporation) ; and

d) its location, project design, construction, operation and maintenance minimize any foreseeable adverse impacts on the ecological and cultural values identified for the zone, including subsistence use, either by avoiding such impacts or mitigating them to the extent possible.

Issue: Closure and Reclamation

The Draft Plan has Conformity Requirements for closure and reclamation activities under CR#13.

1) Financial security shall be posted and maintained with the Minister of Indian and Northern Affairs Canada for any land use activity that is not carried out by a local government or the territorial or federal government, in an amount sufficient to cover the full cost of reclamation and post-closure activities, where the amount calculated exceeds \$50,000.

2) On termination or abandonment of a land use activity, any area affected by the land use activity shall be restored to a viable, self-sustaining ecosystem consistent with the surrounding ecosystem and expected future uses of the area as determined in consultation with residents, communities and responsible authorities, prior to the return of security.

Do you want to propose any specific conformity requirements for closure and reclamation activities? For example, another land use plan contains provisions on the content of Reclamation Plans including:

b) the reclamation goal and closure criteria will be defined in advance of mine development in cooperation with affected communities and will be consistent with the intent and objectives of the surrounding Land Use Zone as described in the Land Use Plan;

d) affected communities and First Nations must be fully informed of any mine component that will remain after mine closure which has the potential to impact their health or wellbeing, and be involved in identifying appropriate mine closure criteria;

g) progressive reclamation (phased reclamation) will be provided for wherever possible;

Concerns Regarding the Hearing up date Letter Dated February 18th, 2011

We note in Judith's letter that the Board is proposing that SSI and the District Land Corporations will have the responsibility and authority to implement the Land Use Plan?

Judith bases this on section 46 of the MVRMA which says that the Sahtu First Nation and every body having authority under any federal or territorial law to issue licenses, 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 Sahtu Land Use Plan. "Sahtu First Nation" is defined in the MVRMA as the Sahtu Dene and Metis as represented by SSI or any successor to SSI.

On this basis Judith's letter proposes to give SSI the responsibility to implement the Sahtu Land Use Plan, whether implementing a Conformity Requirement or carrying out an Action within its powers. We are not clear what powers SSI has to do anything related to a Conformity Requirement or an Action since it owns no land and controls no access to or use of land. KGLC might want to clarify this with the Planning Board yet again.

Judith's letter goes on to say that the District Land Corporations will be responsible under the MVRMA to implement Conformity Requirements when consenting to the use of Sahtu lands owned by them, or when granting interests in those lands, such as leases, that include rights of land use. Therefore, before any access agreement or lease is entered into by KGLC, she is saying that KGLC will have the legal responsibility to review it in light of the Land Use Plan and ensure that nothing in it is contrary to the Plan. We will have to wait to see the actual wording proposed by the Planning Board on this before we will know if they will propose that KGLC may also have a legal liability to monitor what is in fact being done under an access agreement to be sure that it is not contrary to the Plan.

There is no mention of funding for these enforcement activities.

In order to impose these legal liabilities on KGLC under section 46, the Planning Board must be viewing KGLC as a body having authority under a federal or territorial law to issue licenses, permits or other authorizations relating to the use of land or waters or the deposit of waste in the settlement area. This is a dubious legal conclusion. It must be based on the proposition that an owner of land granting the right to use the land has the authority to "issue" "other authorizations" relating to the use of the land. When an access agreement is entered into by KGLC it would not normally be spoken of as KGLC "issuing" an authorization relating to the use of land. Government usually "issues" authorizations. Legally, the words "permits" and "licenses" describe the nature of the "authorizations" referred to in section 46. It would not normally extend to the agreement by a private landowner that somebody else is entitled to use their land.

The Land Use Plan is part of a complete regulatory structure designed for the Sahtu. When the use of land reaches a defined threshold, a land use permit is required. The Sahtu Land and Water Board then will have the responsibility to decide if the proposed use conforms to the Land Use Plan and, once it decides to issue a permit subject to the conditions in the Land Use Plan, to oversee compliance with that decision through inspections or otherwise and to enforce or secure compliance with its decision by the suspension or cancellation of the permit.

In this regulatory structure it is not appropriate to try to impose on KGLC the responsibility to enforce compliance with the Land Use Plan with respect to the land that it owns. That responsibility already rests with the Sahtu Land and Water Board. It will also rest with INAC when it issues exploration rights on KGLC's land.

KGLC might consider whether it wants to have the additional authority that the Planning Board is trying to impose on it. However, with a weak legal base for KGLC to have the authority and with no funding for exercising it, KGLC might conclude that isn't worth it..

We are not sure what is meant by "any successor" to SSI in the definition of "Sahtu First Nation". Clearly if SSI was dissolved and all its assets and liabilities taken over by another corporation, that other corporation would be a "successor". However, what would happen if SSI formally passed any authority over the Land Use Plan to the Districts and then SSI and the Districts amended their constitutions so that SSI was unable to act with respect to the Land Use Plan and the Districts were given the authority to do so? It could then be argued that the Districts were the "successors" of SSI with respect to the Land Use Plan. It would be interesting to find out what Canada and the GNWT would think of this.

As per the term of our contract dated September 28th, 2010.
The above comments are a summary of concerns expressed by K'ahsho Go'tine Lands Corporation and their respective organizations. Additionally this summary includes comments regarding inconsistencies in the draft plan itself. Generally speaking the K'ahsho organization are of the view that the draft land use plan designates them as 3rd party managers of the lands rather than direct participants in proposed control or administration.

Respectfully submitted:



Edwin Erutse