

K'ahsho Got'ine Lands Corporation Ltd

October 4, 2010

Sahtu Land Use Planning Board
P.O. Box 235
Fort Good Hope, NT X0E 0H0
Attention: Heidi Wiebe

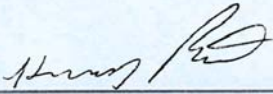
Re: Written Comments on Draft# 3 of the Sahtu Land Use Plan released July 12th, 2010

On September 16th, 2010 the Leadership of the K'ahsho Got'ine Lands Corporation, FGH Dene Band, FGH RRC, Yamoga Land Corporation, Behdzi Ahda First Nation, Ayoni Keh Land Corporation, FGH Metis Local # 54 Land Corporation and their delegates met in Fort Good Hope to discuss Draft # 3 of the Sahtu Land Use Plan released July 12th, 2010. This correspondence provides comments on Draft 3 of the Sahtu Land Use Plan (the "Draft Plan").

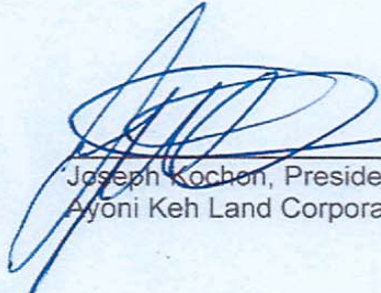
The Planning Board requested comments by October 1, 2010. In acknowledgment of the short timelines, the Planning Board allowed for organizations to provide "**big issue**" items if a full review was not possible by the deadline. Accordingly, these comments are a summary and selection of the larger issues that found in the Draft Plan.

Leadership continues to discuss the manner in which they will participate in the proposed public hearings scheduled for November 23 – 25, 2010 in Norman Wells.

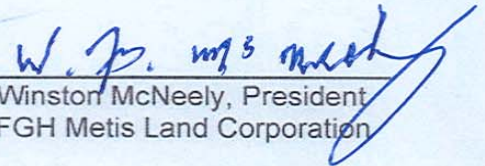
Sincerely,



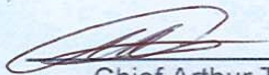
Harvey Pierrot, President
Yamoga Land Corporation



Joseph Kochon, President
Ayoni Keh Land Corporation



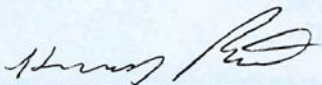
Winston McNeely, President
FGH Metis Land Corporation



Chief Arthur Tobac
FGH Dene Band



Chief Richard Kochon
Behdzi Ahda First Nation



Harvey Pierrot, President
K'ahsho Got'ine Lands Corporation



Rodger Boniface, President
FGH RRC

General Background on the Draft Plan

The Draft Plan contains three categories of articles:

- Conformity requirements (also referred to as “CR”);
- Actions (also referred to as “A”); and
- Recommendations (also referred to as “R”).

Conformity Requirements are the strongest articles in the Draft Plan. These are requirements to be implemented in the regulatory process, and in the granting of leases, interests in land, and consents to use the land. All regulatory bodies must conform to these requirements.

Under the Draft Plan, some conformity requirements are applicable to all land use zones, while others are only applicable to special management zones and conservation zones.

The Action articles contain requirements that are to be implemented outside of the regulatory process, and outside the granting of leases, interests in land, and consents to the use of land.

The Gwich'in Land Use Plan is the only land use plan currently in place in the Sahtu. It contains many articles that are recommended “Action” items. It is our understanding that to date none of these actions have been performed under the Gwich'in Land use Plan. This may also become the case for Actions under the Sahtu Land Use Plan. Accordingly, it is important that we ensure that all items we consider important are contained in Conformity Requirements instead of Actions.

Recommendations are non-binding and for the consideration of land use applicants, regulators and responsible authorities.

III. Selection of Issues with the Draft Plan

Issue #1 Community Engagement

Conformity Requirement #2 is an important requirement that sets out how regulators must engage with communities before authorizing land use activities. This conformity requirement applies to all zones including general use zones. This is particularly important to the K'ahsho Got'ine District, as a large portion of this district is proposed as a general use zone.

CR#2 provides:

- 1) Before any land use activity is authorized, 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 to:
 - a) discuss the proposed activities,
 - b) identify specific locations and issues of concern, and
 - c) provide traditional knowledge that is relevant to the location, scope and nature of the proposed activities.
- 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.

We make the following recommendations for this section to strengthen the community engagement requirements:

1. CR#2 only provides communities with an opportunity to meet the applicant about the proposed project. An opportunity to meet does not guarantee meaningful engagement. The language should be amended to promote more meaningful participation at every stage in the decision making process.

Before a meeting can take place, the process should:

- a. include notification of the application to all relevant parties within a reasonable period of time;
 - b. involve the provision by the applicant of all the information required to allow KGLC to make a proper assessment of any potential concerns; and
 - c. include language accommodations. If necessary, all communications need to be translated to Slavey.
2. Before a meeting is to take place reasonable time should be allocated to arrange the meeting. This should accommodate the constraints of the weather, demands on small pools of leadership in each community from their members, from other levels of government and industry and the need for the leadership to have an opportunity to get out on the land and to have time with their families and the community.
 3. The level of community engagement should be proportional to the size of the proposed project. This concept is noted on page 35 of the Plan. However, it should be included in under CR #2. Bearing in mind the need for proportionality, there should be an acknowledgement that some projects are of sufficient size to require more than one meeting with the community, whereas smaller land use activities may simply require information exchanges.
 4. Once community concerns are identified, Regulators must be willing to alter or prevent the land use activity to address these concerns. CR#2, Section 2 provides assurance that a land use activity will be designed and implemented in a manner that addresses community concerns. Additional language should be added to ensure that:
 - a. Regulators give full and fair consideration to any views presented to them; and
 - b. it covers the possibility that community concerns may be serious enough to warrant a Regulator to prohibit the activity. This will be especially important in Special Management Zones or under applications for exceptions to land use prohibitions in Conservation Zones.
 5. It may be prudent to add a clause that makes it clear that the requirements of community engagement do not cover the Crown's constitutional duty to consult.

For greater certainty, this requirement is distinct from any consultations carried out by government, or from any duty to consult held by government.

We acknowledge that there is a recommendation for all bodies to follow INAC's interim guidelines for consultation, however, as a recommendation, it is non-binding.

Issue # 2 Conservation Zones

Conservation Zones and Protected Area Initiatives are areas with the most restrictions on land use activities. Under CR #1, these lands cannot be used for:

- mineral exploration and development,
- oil and gas exploration and development,
- quarrying,
- power development, and
- commercial forestry.

We note that the restrictions do not include prohibitions on waste disposal or tourism activities in these conservation areas. Does the KGLC wish to include restrictions on these activities? If so, the Draft Plan should be amended accordingly.

The Plan provides exceptions to the above prohibitions for quarrying, transportation infrastructure development and water use (other than bulk-water) under certain circumstances. These are the only exceptions in the Draft Plan for land use prohibitions. Under these exceptions, there could be pipeline development and transportation corridors through a conservation zone. KGLC should be sure that they are comfortable with these exceptions within the areas they would like conserved.

The exceptions also raise certain issues. For example, how do these exceptions apply to areas outside the Sahtu Settlement Area? Will it be possible for a permitted activity outside the settlement area to fall under these exceptions?

We have the following recommendations for the exceptions to land use activity in Conservation Zones and Protected Area Initiatives:

- There should be a requirement to use the best available technology to minimize environmental impacts.
- CR#2 respecting community engagement would apply to any decision-making regarding these exceptions to land use activity in conservation areas. The Draft Plan should be amended to expressly state that the impacted community should be involved in determining whether the factors set out from 2(a) – (d) of CR#1 have been met before allowing the exception.

Issue #3 Self-Government

The Draft Plan should recognize any future Sahtu Dene and Métis First Nation Government (“SDM Governments”) created as a result of self-government negotiations under the Land Claim Agreement.

The Planning Board has taken the position that self-government is outside the mandate of the Land Use Plan, especially since there are no SDM Governments currently in existence. However it has taken 16 years to get this close to the Land Use Plan and once there is a Plan the incentive to amend it will be less than the incentive to make it in the first place. It will likely take even longer to make any amendments to the Plan. Accordingly, there should be a definition of “community organizations” in the Plan, which includes the SDM Governments, as well as their predecessors, such as KG of Fort Good Hope and Colville Lake.

In particular, we recommend inclusions for SDM Governments and KGLC in the following areas of the Draft Plan:

1. Under CR #2, SDM Governments and KGLC should be specifically included in the community organizations that are to be given the opportunity to meet with applicants seeking approval of land use activity in their jurisdiction;
2. SDM Governments and KGLC should also be specifically included in the community organizations referred to in CR #1 2) c);
3. CR #1 2) permits activities in Conservation Zones and areas of Proposed Conservation Initiatives under certain conditions. The condition set out in CR #1 2) c) is that the activity takes place outside known or suspected significant ecological and cultural areas as identified by community organizations. SDM Governments and KGLC should be included in these organizations;
4. In addition, SDM Governments and KGLC should be specifically included in the community organizations referred to in CR #15 2), who are supposed to get monitoring reports;
5. SDM Governments and KGLC should also be included in the Sahtu Working Group under Action #2 and consequently in implementing Actions #3 to 6.
6. SDM Governments and KGLC should be included in Action #9 for the development of guidelines for the use of traditional knowledge within the Sahtu Settlement Area.

Issue #4 Use of the term “First Nation”

There are a number of references to “First Nation” as used in the Mackenzie Valley Resource Management Act (“MVRMA”). The definition in the MVRMA provides that SSI is the Sahtu “First Nation”. This term “First Nation” does not accord with the reality of land ownership and division of powers in the Sahtu.

The references in the Land Use Plan to “First Nation” need to be reviewed for errors of substance. We note the following problems:

- On the bottom of page 22 there is a reference to the ownership of land by a “First Nation”. SSI does not own any land;
- At ii) J. near the top of page 24, there is a reference to an interest in land granted by a First Nation. None of the First Nations in the Sahtu own any significant land, if they own any at all;
- Footnote 30 on page 26 equates “First Nations” to designated Sahtu organizations as land owners, which is incorrect;
- The reference to First Nations at the bottom of page 30 should include the District Land Corporations; and
- The role given to SSI in Table 11 on page 290 is wrong because it assumes that SSI owns the land and it does not.

Issue #5 Environmental Monitors

Adequate monitoring programs and the use of local environmental monitors are important for economic benefits, mitigation and monitoring of cumulative impacts on the land. Currently, the Draft Plan's strategy for monitoring is contained under CR#15, A#8, R # 2 and 7. CR#15 only applies to Special Management Zones, Conservation Zones and Protected Area Initiatives. This CR requires that a site-specific monitoring program be implemented by the applicant. It does not discuss community involvement in monitoring. There should be reference to the training of monitors from the community and the opportunity for community organizations (including SDM Governments and KGLC) to nominate their community members who have become qualified to these monitoring positions.

Action #8 in the Draft Plan states:

Within 4 years, responsible authorities with enforcement responsibilities shall collaborate with appropriate community organizations (land corporations, renewable resources councils, First Nations, community councils) to develop and begin implementing a Sahtu community - government strategy to partner in patrols, monitoring, inspection and enforcement responsibilities. The strategy should emphasize training initially with a long term goal to maximize community involvement in these areas of responsibility.

However the Land Use Plan should provide a conformity requirement for monitoring to make it more than just an action plan over the next four years. Where the relevant community organizations are able to put forward qualified Sahtu Dene or Métis candidates to act as monitors, the party appointing the monitors should be required to give reasonable consideration to those candidates.

Similarly, when patrol, inspection and enforcement responsibilities arise in the jurisdiction of a Sahtu organization or SDM Government, that organization should be entitled to nominate qualified Sahtu Dene or Métis candidates for employment in these activities and those candidates should be given reasonable consideration.

Issue #6 Application of the Land Use Plan to Settlement Lands and District Land Corporations

Where a land use is prohibited on settlement land, the land owner will not be permitted to transfer any right to use that land, it is associated with a right that existed on the day the Plan was approved (Draft Plan, pg 37). This is like losing the ownership of that land. KGLC needs to be aware of this and possibly see if they can exchange such settlement land for other land outside the relevant zone.

The Draft Plan currently will require District Land Corporations to meet Conformity Requirements when authorizing land use activities on their lands. The Draft Plan bases this authority on section 46 of the MVRMA. This section refers to First Nations, which in the case of the Sahtu means SSI, having the responsibility to carry out their powers in accordance with the Plan. The Plan identifies the First Nations as one of the "Responsible Authorities" required to carry out the Actions in the Plan (see page 286).

In addition, the MVRMA provides that every body having authority under any federal law to issue authorizations relating to the use of land is required to implement the Plan. On this basis, the Draft Plan makes District Land Corporations responsible for following the conformity requirements when they grant access to their lands. This will have implications on the capacity of District Land Corporations to fulfill the conformity requirements and may impact the confidentiality of access and benefits agreements.

We question the land use plan's authority to apply in this circumstance. This is an issue that will be raised by SSI in their submissions on the Draft Plan and will likely be an issue of concern for other District Land Corporations.

Issue #7 Group Trapping Area

The Group Trapping Area is not acknowledged in the Draft Plan. The only mention of the Group Trapping Area in the Planning Board's materials is on page 70 of the Background Report, which states:

S. 19.9.4 (c) of the SDMLCA re-affirms the existence of the Fort Good Hope-Colville Lake Group Trapping Area. It further states that the area may not be reduced in size without the consent of the designated Sahtu organizations in Fort Good Hope and Colville Lake. The Group Trapping Area was established in previous negotiations with the Government of Canada. It was intended to protect local Dene and Métis trappers by ensuring that the resources that they relied on were not overharvested by non-participants. The Fort Good Hope-Colville Lake Group Trapping Area is included in the plan to affirm its continued existence. See Map 19. Special Harvesting Areas & FGH/Colville Lake Group Trapping Area.

The existence of the Group Trapping Area should be mentioned within the body of the Draft Plan.

The Group Trapping Area should be included under CR#7 subsection 2. The section should be amended to include impacts to the wildlife in the Group Trapping Area in addition to special harvesting areas.

Issue #8 Wildlife and Wildlife Management plans

The protection of wildlife and wildlife habitat is an important component of a land use plan. Conformity Requirement #7 provides the Draft Plan's substantive protection for wildlife and wildlife habitat. This CR requires land use activities to prevent and/or mitigate long-term adverse impacts to wildlife. We provide the following comments on these provisions in the Draft Plan:

- Subsection 2) of CR#7 limits the prevention and/or mitigation of long term impacts to the "wildlife groups listed above" in subsection 1) (pg. 54). The list contained in subsection 1) is not meant to be an exhaustive list of species that may be of concern. Subsection 2) should be expanded to all wildlife in the Sahtu Settlement Area.
- The Draft Plan correctly acknowledges that only the most current information on wildlife should be used given yearly fluctuations on location and threats. On page 56, the Draft Plan directs applicants to contact "wildlife managers" in order to obtain current wildlife information. It is important to clarify in the Draft Plan that these wildlife managers are local RRCs and the SRRB.
- Although there is an acknowledgement of fluctuations in the status of wildlife, there are certain items that are fixed in the plan. Table 8 "Wildlife Setbacks, Minimum Altitude and Sensitive Periods" provides set limits on activities for different species at different time periods. Given the likelihood of difficulties in amending a final plan, KGLC should confirm that Table 8 is adequate.

- The Draft Plan does not mention the inclusion of any wildlife management plans that may be developed by the SRRB. The land use plan should have a mechanism for the Planning Board to review and, if necessary, incorporate final wildlife management plans in the final land use plan.
- Applicants should also be asked to refer to final wildlife management plans when fulfilling their obligations under CR#7.

Issue #9 Caribou Migration Corridor

The protection of caribou along their migration routes is an important issue in the Sahtu. This is particularly important in the Kahsho Got'ine District as the caribou migration route is largely zoned under a general use zone.

The Draft Plan's only sections that deal directly with caribou are CR#7 and CR#12. CR#7 (3) provides:

In particular, the area shown in Map 7 is known to be important rutting and winter habitat for the bluenose west barren-ground caribou herd. It is also considered to be Boreal woodland caribou habitat. Regulators shall ensure that appropriate measures are in place to prevent and/or mitigate long-term adverse impacts from the land use activity to barren-ground and boreal woodland caribou and their habitat, within the area shown in Map 7 from October 8th to March 31st.

CR #12 provides that no activity can occur within 1000m of a mineral lick.

KGLC should ensure that Map 7 covers all significant areas for the caribou, keeping in mind that a fixed map will not account for changes in migration patterns.

With respect to the caribou, the Draft Plan does not:

- protect against immediate impacts to the caribou from land use activities. Regulators are only required to prevent and/or mitigate long term adverse impacts from land use activity;
- provide minimum aircraft altitude requirements for caribou under Table 8 or subsection (3);
- provide specifically for caribou monitoring to address yearly changes in migration patterns; or
- provide cumulative impact provisions for the caribou in the settlement area.

The Draft Plan should be amended to include these protections for the caribou.

Issue# 10 Community Benefits

The provisions for Community Benefits are relatively strong compared to other land use plans we have reviewed. The Draft Plan contains a conformity requirement that before a land use activity is authorized, regulators must ensure that the communities will benefit from the proposed land use (CR#3). Under the Context and Rationale for this conformity requirement, the Draft Plan states that the Sahtu Land and Water Board will review land use proposals for these benefits.

We suggest several additions to the Context and Rationale for this conformity requirement:

- the benefits should be for the communities most directly impacted, and

- there should be reference to the Government's obligations for economic measures under the Land Claim Agreement.

Issue #11 Traditional Knowledge

Under Conformity Requirement #2, Community organizations have an opportunity to meet with the applicant in person to provide traditional knowledge that is relevant to the location, scope and nature of the proposed activities.

As a result, relevant traditional knowledge will be acquired by the person using the land. There are no express protections for confidentiality and ownership of the traditional knowledge. All applicants should be required to keep traditional knowledge confidential. They should also be required to acknowledge that traditional knowledge of the Sahtu is always owned by the Sahtu Dene and Métis.

Action #9 requires the development of traditional knowledge guidelines after the land use plan is in place. In the absence of these guidelines, the Draft Plan should expressly provide protections on how traditional knowledge is used.

Issue #12 Proposed Conservation Initiatives

The plan has a fourth category of land use zone entitled Proposed Conservation Initiatives. This category includes those areas that are in the process of becoming Protected Areas under the Protected Area Strategy.

Section 2.1.1 (pg. 19) sets out the Draft Plan's application to Protected Areas. In accordance with this section, the establishment of Ts'ude niline Tu'eyeta and the management of its land use will be subject to the final land use plan.

Ts'ude niline Tu'eyeta will be given the same protection as a conservation zone under the plan. This means that no mineral, exploration or oil and gas activity can occur in the area. Under the Draft Plan, a conservation zone is protected from surface and subsurface activities. However, the amount of subsurface and surface protection under a Protected Area depends on the governing legislation (see Table 1, pg. 13).

The Draft Plan does provide that the land use plan must be amended and reviewed to accommodate the specific requirements of the protected area (pg. 19). The K'ahsho Got'ine must be aware of how the Plan will apply to Ts'ude niline Tu'eyeta and ensure that it will not prohibit any desired future use of the land.

Issue #13 Trans-boundary Issues

The K'ahsho District is surrounded by other settlement regions with different land use planning objectives. These differences may result in trans-boundary issues that will impact upon land in the Sahtu. For example, the Ts'ude niline Tu'eyeta is surrounded by a general use zone in the Gwich'in Region. Under the rules of the Gwich'in land Use Plan, general use zones do not contain any requirements for land use activities other than what already exists in the regulatory framework.

Under the Draft Plan, the only article dealing with trans-boundary issues is Recommendation #18:

The Dél'ne Land Corporation and Renewable Resources Council are encouraged to assist their elders in meeting with elders in adjacent jurisdictions, to discuss cooperative principles and processes by which the larger watershed of Great Bear Lake may be kept clean and bountiful for all time.

The Draft Plan needs stronger mechanisms to deal with trans-boundary issues, including the following provisions that are contained in the Gwich'in Land Use Plan:

- The Planning Board will initiate discussions to establish cooperative planning processes. The Board will work with neighboring groups on trans-boundary land use planning; and
- The Planning Board recommends that resource management groups in the Settlement Area work together and develop a strategy for dealing with the effects of outside activities on resources in the Settlement Area.

Issue#14 Drinking Water

CR#6 is aimed at protecting against the contamination of drinking water. It provides:

- 1) Before a land use activity is authorized, Regulators shall assess the potential impacts of the proposed activity to downstream drinking water sources.
- 2) Regulators may not authorize a land use activity that would result in the contamination of water within community catchments as shown in Map 6.

Fort Good Hope should examine Map 6 and the community catchment provided. As it stands, the Plan notes that the community gets its water from the Mackenzie River, but identifying the entire river as a community catchment would have "unintended implications for other regions". As a result, the community catchment around Fort Good Hope is relatively small.

A community catchment area identified in Map 6 will contain the strongest protections for drinking water. Fort Good Hope should ensure that the community catchment is sufficient for the community's needs. The Planning Board should provide an explanation as to why an area upstream of the Mackenzie River cannot be included in this catchment.

Issue #15 Cumulative Impacts

Currently, there are no conformity requirements for regulators to look at cumulative impacts before permitting a land use activity. The Draft Plan currently deals with this under Action #5 and Action #6. The Draft Plan acknowledges that the "NWT Cumulative Impact Monitoring Program (CIMP) is the overarching monitoring program for the NWT though it is not fully functional due to a lack of funding." This provides little immediate comfort that the current regime is effective in monitoring cumulative impacts in the region.

Actions #5 and #6 require the development of a "Sahtu Cumulative Effects Management Plan" and a "Sahtu Environmental Monitoring Program" to help monitor and control cumulative impacts within four years. Once complete, the Draft Plan indicates that this plan and program will be incorporated into future amendments of the plan (pg. 267-68). This will not provide any immediate protection against cumulative impacts, nor is there any assurance that the plan and subsequent amendments will be complete within the timeframe allotted.

The Draft Plan should be amended to require the Regulators to consider cumulative impacts before land use activities are permitted.

IV. Subjects that are not covered in the Draft Plan

For your information, we note that the following subjects were not discussed in any Conformity requirement, Action or Recommendation in the Draft Plan. These subject areas were included in other plans we have cross referenced and reviewed.

1. Mackenzie Valley Pipeline
2. Agricultural Practices
3. Tourism
4. Forest Management Plans
5. Fire Management
6. Alternative Sources of Energy
7. Waste Sites
8. Campsites
9. Long-Range Pollutants

V. Conclusions and Further Steps

Additional information on the above comments is available on request

As you know, John Donihee, is acting on behalf of SSI for this matter He informed us that SSI and Canada notified the Planning Board that they will be providing their full comments by mid to late October. If requested, we can provide you with more detailed comments on the Draft Plan later in October.

The Planning Board has scheduled a hearing for November 23 – 25. The Fort Good Hope and Colville Lake community presentations are currently scheduled for the morning of November 23. Discussions continue to take place on whether the K'ahsho Got'ine District would like to provide submissions on behalf of the KG of FGH and the KG of Colville Lake, or have KGLC present on behalf of the whole District or allow John Donihee, for SSI, to make submissions on behalf of the K'ahsho Got'ine in the SSA.