



Sahtu Land Use Planning Board

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March 23, 2011

Mr. Gary Bohnet, Deputy Minister
Department of Environment and Natural Resources
Government of the Northwest Territories
P.O. Box 1320
Yellowknife, NT X1A 2L9

RE: Response to GNWT Feb 25, 2011 Comments

Dear Mr. Bohnet

Thank you for your February 25, 2011 comments on Draft 3 of the Sahtu Land Use Plan made on behalf of the Government of the Northwest Territories (GNWT). The Board will consider these and the Department's previous written comments in its final Plan Revisions.

The Board has several comments in response. First, this follow-up submission was invited following discussions between GNWT staff and SLUPB representatives in November 2010 to clarify our understanding of the GNWT's October 25th submission. The summary notes of our November discussions identified eight Action Items for which the Board requested further clarification in a follow-up submission. While this submission answers a few of those questions, the GNWT appears to have used this opportunity instead to repeat prior comments and present new comments. The Board appreciates having these concerns brought forward. However, our previous questions are still outstanding and this submission raises several new questions.

Assertion about the roles of land use plans and land use authorizations

Your recent comments include a number of assertions about the role of land use plans under the *Mackenzie Valley Resource Management Act (MVRMA)* that the Board finds unclear. The Board feels compelled to respond to one such assertion, regarding the relative roles of land use plans and land use authorizations in the *MVRMA* system, so that all participants in the planning process understand the Board's perspective on this matter.

Your cover letter asserts that Draft 3 of the Plan does not fit with the integrated land and water management system provided for in the *MVRMA*, because, among other reasons, the Plan does not recognize the role of regulatory processes in the system (cover letter, page 2). The attached comments proceed to say that "the plan fetters the regulator's ability to prescribe conditions on applications by being too prescriptive in the Conformity Requirements" (page 4). In one example, it is noted that the land use activity in question (timber operations) is subject to "applicable federal and territorial legislation," and that the Conformity Requirement "binds [the regulator] in the issuance of ... Licences or ... Permits" (pages 4-5). In several examples, the Sahtu Land and Water Board is cited as a regulator whose discretion to issue an authorization would be fettered. (pages 1,3,5).



The Board's response is as follows:

1. Draft 3 of the Plan was prepared with the understanding that land use plans and land use authorizations under the *MVRMA* have roles that differ in several ways. A land use plan is not project-specific. Conditions in a land use plan are set in advance of an application being received, and they are not specific to a given application; they apply to all applications. This adds clarity and consistency in regulatory decisions by outlining some rules for development at the front end of the regulatory process. On the other hand, a land use authorization is project-specific, and may attach further conditions on the basis of discretion exercised in response to the application.

In the Board's view, comments that point out ways in which a proposed Plan term might be too prescriptive for application to all authorizations in the regulatory process can contribute positively to the planning process. Where this is the case, it assists if the author identifies the negative consequence of uniform application of the plan requirement, and compares it to any potential positive consequence.

2. While plans and authorizations have distinct roles, it must also be recognized that a land use plan relies on authorizations to implement most of its terms. The *MVRMA* does not give a land use plan any effect on land use activities by itself. Under sections 46(1) and 61(1), regulators including the Sahtu Land and Water Board carry a substantial portion of the responsibility to apply plan terms to land use activities. This means that, necessarily
 - i) most land use activities addressed by plan terms will already be subject to legislation;
 - ii) most plan terms will bind land use regulators acting under legislation in the issuance of their authorizations; and
 - iii) many plan terms will fetter, to some extent, the ability of land use regulators to set conditions on land use in their authorizations.

These implications of land use plans are features of the *MVRMA* system; in themselves, they are not a valid basis for objecting to the adoption or approval of a land use plan. Instead, the system calls for judgements about the *extent* to which it is appropriate for the Plan's terms to fetter a regulator's discretion in setting conditions and issuing authorizations. Of course, one valid consideration is the capacity of regulators to implement such direction while carrying out their distinct roles in the system.

Comments regarding the responsibilities of other regulators

The Board must take into consideration the input of all participants in the planning process and balance those interests in the final plan. The Board received a significant volume of comments on Draft 3 from communities, government, regulators, industry, and non-government organizations, some of which provide the Board with opposing recommendations for Plan revisions. In considering how to balance and integrate such diverse input, the Board considers factors such as how the input contributes to the purpose and mandate of the Plan, and the responsibilities of the author in relation to the subject matter of comment. For example, on matters relating to a regulator's ability to implement a Plan requirement, the Board would give close attention to comments submitted by the regulator itself.



Comments regarding prospects of GNWT approval

Thirdly, it is helpful for the Board to understand the GNWT's expected bottom line for approving the Plan, especially where it relates to financial and human resource constraints. However, in the Board's respectful view, a more collaborative approach is necessary if the Board is to successfully complete a Plan that is acceptable to all three approving parties as well as the other participants who have contributed their vision and expertise to Plan development.

The Board has spent considerable time consulting broadly with communities, government, industry and others as you pointed out in your cover letter, which has resulted in the current content of Draft 3. Consultations have been even greater since then and will result in further changes for the Final Draft Plan. We recognize that the GNWT has not had the benefit of hearing all of these other comments in shaping its own perspective. The upcoming Public Hearing therefore presents a fine opportunity for the GNWT's representatives to hear other parties' perspectives, and share the GNWT's views in return. Should you and your staff wish to learn more about other parties' input to the Board prior to the Hearing, please visit the Public Comments section of our website where all correspondence and consultation summary notes are posted (<http://www.sahtulanduseplan.org> – Public Comments tab).

As we approach the Public Hearing and the final stage of Plan completion, the Board needs to ensure the Parties share the same fundamental understanding of the role of the land use plan under the *MVRMA*. **The Board requests that you reply to point 2 above by April 21th.** This point is central to the Sahtu planning process, and the federal government and other regulators participating do not appear to have taken issue with the Board's understanding.

In addition, it is clear that additional discussions will be required to seek responses to our outstanding questions and achieve clarity on the new issues raised in this submission. Please have your staff contact Heidi Wiebe, the Board's lead planner, as soon as possible to determine a path forward.

The Board is confident that these matters can be resolved well before the Plan is adopted, through open, collaborative discussion.

Respectfully,

A handwritten signature in black ink, appearing to read 'Judith Wright-Bird'.

Judith Wright-Bird

Chairperson

Sahtu Land Use Planning Board

CC: The Honourable Floyd K. Roland, Premier, Government of the Northwest Territories
The Honourable Robert R. McLeod, Minister of Industry, Tourism and Investment,
Government of the Northwest Territories
The Honourable Peter Kent, P.C., M.P., Minister of Environment, Government of Canada
Ms. Trish Merrithew-Mercredi, Regional Director General (NWT Region), Indian and
Northern Affairs Canada
Ms. Ethel Blondin-Andrew, Chairperson, Sahtu Secretariat Incorporated