

SAHTU SECRETARIAT
INCORPORATED

HEARING SUBMISSION

SAHTU LAND USE PLANNING BOARD
NORMAN WELLS HEARING
MAY 3 TO 5, 2011

April 21, 2011

HEARING SUBMISSION

SAHTU LAND USE PLANNING BOARD

Introduction

This is the Sahtu Secretariat Incorporated's (SSI) Hearing Submission to the Sahtu Land Use Planning Board (the "Board") concerning the 3rd Draft of the Sahtu Land Use Plan (the "Plan") and the SSI response to the March 25, 2011 Hearing Instructions.

Pursuant to the section 25.2.8 of the *Sahtu Dene and Metis Comprehensive Land Claim Agreement* (the "Sahtu Claim") and section 43 of the *Mackenzie Valley Resource Management Act* (the "MVRMA"), SSI is one of the authorities which must approve a final Plan submitted to it by the Board. Thereafter, the governments of the Northwest Territories and Canada must approve the Plan before it takes legal effect. SSI takes its approval function very seriously because in so doing it will act on behalf of participants in the Sahtu Claim, Sahtu communities and District Land Corporations. This Hearing Submission is made to assist the Board and is without prejudice to SSI's right to review the record related to Draft 3 of the Plan and to exercise its complete discretion in making an approval decision on a final plan.

SSI has reviewed the materials on the Board's website and it has teleconferenced with Board staff and counsel to clarify and discuss its March 31, 2011 SSI Submission (the "Plan Submission").¹ It is SSI's expectation that it will continue to work collaboratively with the Board until a final version of the Plan is submitted to SSI for consideration and approval, sometime after the hearing.

This Hearing Submission is intended to reflect the work completed by SSI since its Plan Submission. It highlights matters set out therein that continue to be of concern to SSI and it responds, where appropriate, to some of the questions asked by the Board in its March 25th Hearing Instructions, and to new information available from the Board's website .

SSI has not duplicated the work of the Sahtu communities or the District Land Corporations in its review of the Plan or in the preparation of the Plan and Hearing Submissions. The Board has engaged extensively with these parties and has heard directly from them. They have made submissions to the Board and will be represented separately in the hearing. Moreover, SSI represents, and its board is made of members of these organizations. The positions set out in the SSI submissions are intended to support and reinforce what the communities and District Land Corporations have already told the Board.

Under the Sahtu Claim, ownership and management of settlement lands is the responsibility of the three Sahtu District Land Corporations (Deline, Tulita and K'ahsho Got'ine). The exercise of the District Land Corporations' authority over the land is independent of the SSI. The SSI, therefore, has not

¹ To the extent that this Hearing Submission varies from the Plan Submission, the contents of this submission should be taken to represent SSI's current position.

provided comments on the land use classifications system, the values protected in specific zones, or the overall percentage of lands allocated to various zone categories. SSI believes that the District Land Corporations, as well as communities and individual Sahtu residents, are best suited to speak to those aspects of the Plan and anticipates that these parties will provide comment on those matters in their submissions and at the hearing.

SSI does, however, wish to repeat its support for the zoning changes to Draft 3 of the Plan proposed by the Deline District Land Corporation, the changes also proposed by the Tulita District Land Corporation and the Norman Wells Land Corporation, as well as the efforts of the K'ahsho Got'ine District Land Corporation to secure recognition and protection of the Fort Good Hope – Colville Lake Group Trapping Area in the Plan.

SSI Responsibilities Regarding the Plan

Section 43 of the MVRMA requires that the SSI, in coordination with the federal and territorial governments, approve the Plan before it comes into legal force. Before approving the Plan, the SSI will ensure that it:

- Is legally consistent with the Sahtu Claim and the MVRMA;
- Recognizes and upholds the rights and interests of the participants in the Sahtu Claim;
- Reflects the recent work done on the Plan by Sahtu communities and Land Corporations;
- Offers clear guidance to applicants, land users and regulators; and
- Includes feasible and effective Conformity Requirements and Actions that can be well integrated into the existing land use and regulatory system.

The SSI has focused its Plan Submission and this Hearing Submission on these objectives.

General Comments

1. **Establishing an Enhanced Role for the Planning Board** – The SSI believes that, at least for the first five (5) year planning cycle, the regulators are not the most suitable organizations to determine conformity with the Plan. Instead, their role should be to carry out their powers in accordance with the Plan. The SSI is of the opinion that the Planning Board should assume the principal role in carrying out conformity determinations and plan implementation, and not simply be involved when applications are referred to it. The other “shadow reviewing” role suggested by the Board is not efficient either. Either the Board should determine conformity or the regulators should. SSI submits that the Board should do it. Given a need for sufficient background to understand the plan, and the potential complexity of implementation requirements, the Board is the best-equipped organization to efficiently address conformity determination. The approving governments should address implementation resourcing requirements for the Board as they approve the Plan. Leaving the conformity determinations to the regulators will simply drive their incremental costs up. In the end, the most efficient approach is for the Board to make conformity determinations.

2. **Types of Authorizations Subject to the Plan** - Table 11 on page 290 of the Plan provides the list of authorizations and land disposition instruments² that the Board suggests should be subject to the Plan. SSI has been advised that this is the same list that appears in the approved Gwich'in Land Use Plan. It appears that the Plan's intent is to require the agencies listed in Table 11 to carry out the conformity determination test and implement the Plan's CRs through their own authorization processes. SSI's first point set out above addresses its view about which agency should be responsible for conformity determinations. That leaves the question of whether all of the Plan's list of authorizations and land dispositions (Table 11) must play a role in plan implementation. Expressed another way, do the words in s.25.2.9 of the Sahtu Claim, and in ss.46(1) of the MVRMA, reasonably interpreted, mean that all the agencies issuing the authorizations listed in Table 11 have to play a role in Plan implementation?

The important words from section 25.2.9 are "... authorities with jurisdiction to issue licences, permits, leases or interests **relating to the use of land and water** in the settlement area ...". (emphasis added) The important words from ss.46(1) are "... authority under any federal or territorial law to issue licences, permits or other authorizations **relating to the use of land or waters or the deposit of waste ...**". (emphasis added)

SSI is aware that the words "relating to the use of land or water" can be widely interpreted but suggests that such an interpretation will lead to an unreasonable outcome. The Plan may become difficult to implement. Few activities conducted by humans take place which don't involve at least being on the land somewhere or using water, even if only for drinking. The result of such a wide interpretation, however, is that multiple agencies are going to have to determine how their licences, permits or authorizations – for the same activity must be implemented to ensure conformity with the Plan. SSI questions the actual contribution to Plan implementation which will result from such duplication. What benefit results from subjecting a Scientific Research Licence, an Outfitter Licence, a Tourism Operator Licence or a Scientific Collection Permit (to name just a few of the Table 11 authorizations) to conformity requirements when the related activities may need land use permits or water licences before they can proceed anyway. Further, it is debatable whether a Scientific Research Licence is a licence "related to the use of land or water ...".

Moreover, if all the authorizations listed in Table 11 attract conformity determinations it is entirely possible with multiple agencies and actors involved that different approaches to conformity may be applied and that confusion and even conflicting decisions could result. Consequently SSI recommends a review of Table 11 and the development of a reduced list of authorizations along the lines of that was set out in the SSI Plan Submission and which is reproduced below for discussion.³

² Including dispositions of subsurface rights or interests which could lead to the right to carry out a land-use operation under s.18 of the *Mackenzie Valley Land Use Regulations*, for example, a Significant Discovery Licence or a Mining Claim *et cetera*.

³ Removed from the list are references to authorities dealing with research, archaeology wildlife and vegetation.

“Environmental” Authorization	Land Disposition Instrument
<ul style="list-style-type: none"> • Type A and B land use permit • Type A and B water licence • Habitat Alteration, Disruption, Destruction Authorization • Authorization for deposit of deleterious substances • Certificate of Public Convenience and Necessity 	<ul style="list-style-type: none"> • Type A and B land use permit • Timber cutting permits and licences • Land lease (issued by District Land Corporation) • Quarry permit (issued by District Land Corporation) • Subsurface resource rights/access (issued by District Land Corporation) • Prospecting permit • Mineral claim/lease • Dredging Lease • Coal licence/lease • Quarry permit • Surface lease • Licence of occupation • Easement • Exploration Licence • Significant Discovery Licence • Production Licence

For the types of authorizations listed in the table above, which should remain subject to the Plan, the SSI believes that the conformity determination process can be further simplified. There are two categories of authorizations based on the columns presented in the table. For those authorizations listed in the “Land Disposition Instrument” column above, the only conformity issue that needs to be addressed at the time of application is whether the affiliated activity (e.g., mining, oil and gas exploration) is permitted in the specific zone in question. If the answer is no, that is the end of the analysis. If the answer is yes, then before any material activity can take place on the land or any material water use or waste disposal can take place, an “Environmental Authorization” will be needed. The remaining conformity requirements (i.e., CRs 2 to 20) can be addressed and applied at the time that applications for “Environmental Authorizations”, such as a Land Use Permit or Water Licence, are made.

3. **Rephrasing Conformity Requirements** - The SSI suggests that it should be the responsibility of an applicant proposing a land use activity to demonstrate that the activity conforms to the Plan at the time the application is made. Correspondingly, it should be the duty of the agency making the conformity determination, *preferably the Planning Board*, to evaluate the application and make a determination of its conformity with the Plan. The regulators should not bear the burden of ensuring that the proposed activity is consistent with the Plan, as is required by the current wording in several CRs – the onus must be on the applicant instead.

To assist applicants to ensure their activities are in conformity with the Plan, the SSI suggests that the Board could revise some of the Plan’s conformity requirements. Some CRs (see below) can be made into policy statements or guidelines that would provide clear and definite direction for applicants to consider during the project-planning process and before they make applications which will be judged for conformity to the Plan. In other cases where the CR is clear it may still be useful to develop policies or guidelines to help an applicant to properly address conformity requirements.

Such policy statements and guidelines could be developed in collaboration with affected departments, agencies and communities. This work should take place after Plan approval as part of the implementation process. It is intended to make the requirements for conformity clearer and to result in guidance for all parties involved in Plan implementation thus increasing certainty for communities, District Land corporations, regulators and industry.

The following table summarizes the SSI’s thinking on these matters, including suggestions on some types of direction which might help to better integrate the Plan with the operational reality of the regulatory system.⁴

More detail on some of these suggestions is provided in the Comments on Conformity Requirement section below.

CRs	Should this be a Conformity issue?	Need/Type of policy direction
1. Zoning	<ul style="list-style-type: none"> • Yes 	<ul style="list-style-type: none"> • None required
2. Engagement & Traditional Knowledge	<ul style="list-style-type: none"> • Yes • Jurisdictional issues implementing CR as currently written. CR should be reworded. 	<ul style="list-style-type: none"> • Need policy requiring public engagement and implementation of traditional knowledge by applicant • Policy to be developed in collaboration with communities and others who have an interest in engagement and traditional knowledge
3. Benefits requirements	<ul style="list-style-type: none"> • Yes • Duplicates existing systems and Land Corporation access requirements • Ensuring conformity under wording of CR is subjective. • Key regulators lack authority to impose socio-economic and community benefits 	<ul style="list-style-type: none"> • CR wording should be reconsidered by Planning Board • A mechanism for mandatory implementation is required
4. Archaeology	<ul style="list-style-type: none"> • Yes 	<ul style="list-style-type: none"> • Development of policy statements and protocols should include a range of setbacks that will protect each type of heritage resource
5. Watershed Management	<ul style="list-style-type: none"> • Yes (potentially) 	<ul style="list-style-type: none"> • Rewording of CR needed • Need policy statements, guidelines or water quality objectives that direct applicants in planning activities so they conform to the Plan • Guidance could come from the GNWT Water Stewardship Strategy or CCME Guidelines
6. Drinking Water	<ul style="list-style-type: none"> • Yes (potentially) 	<ul style="list-style-type: none"> • Need to define or remove the word “contamination” • Need policy statements, guidelines or clear objectives that manage activities that might affect community water sources

⁴ This table is revised from the one found in the Plan Submission. The revised Table and Hearing Submission should be read together with the Plan Submission.

CRs	Should this be a Conformity issue?	Need/Type of policy direction
7. Wildlife	<ul style="list-style-type: none"> • Yes 	<ul style="list-style-type: none"> • Development of habitat protection measures
8. General Environmental Impacts	<ul style="list-style-type: none"> • This CR is not required - it duplicates requirements of the existing EIA and regulatory process in the MVRMA 	<ul style="list-style-type: none"> • None required
9. Climate Change	<ul style="list-style-type: none"> • Yes but there is currently no regulatory process related to air quality in the NWT 	<ul style="list-style-type: none"> • CR wording in relation to GHG emissions may not be enforceable • Policy statements or guidelines that assist applicants to plan activities on landscapes sensitive to climate change needed
10. Incidental Harvest	<ul style="list-style-type: none"> • CR wording problematic • Regulators may not be able assess conformity with this CRs, as incidental harvest, and its successful distribution to the community, can only be determined after the harvest has taken place 	<ul style="list-style-type: none"> • The Planning Board may wish to consider guidelines for sharing surplus and incidental harvest with communities when an incidence occurs • Such guidance should not be linked to conformity determination
11. Species Introduction	<ul style="list-style-type: none"> • Yes (with change in wording of CR) 	<ul style="list-style-type: none"> • Consider a risk analysis approach to the policy for highly sensitive or valued areas
12. Ecologically Significant Areas	<ul style="list-style-type: none"> • Yes 	<ul style="list-style-type: none"> • Policy statements that the regulators and applicants can use in project design and evaluation would help
13. Closure and Reclamation	<ul style="list-style-type: none"> • Yes (refer to following section) • CR only works if a land use permit or water licence is required other regulators may not have jurisdiction to order security 	<ul style="list-style-type: none"> • Adoption of security evaluation models will be required
14. Assessment and Mitigation	<ul style="list-style-type: none"> • No • Duplicates existing EIA and regulatory process 	<ul style="list-style-type: none"> • None required – information in the Plan will serve as input for EIA process
15. Monitoring	<ul style="list-style-type: none"> • Yes (subject to changing in wording) 	<ul style="list-style-type: none"> • Revision of CR wording • General guidance that would assist applicants in designing monitoring program for activities
16. Ecological and Cultural Integrity	<ul style="list-style-type: none"> • Yes (subject to changing in wording) 	<ul style="list-style-type: none"> • CR wording and intent needs modifying • Policy statements or guidelines that direct applicants to plan land use activities which are compatible with the values set out in the Great Bear Lake Watershed
17. Fish Farming and Aquaculture	<ul style="list-style-type: none"> • Yes 	<ul style="list-style-type: none"> • None required
18. Disturbance of Lakebed	<ul style="list-style-type: none"> • Yes 	<ul style="list-style-type: none"> • None required
19. Uses of Du K'ets'Edi	<ul style="list-style-type: none"> • Yes 	<ul style="list-style-type: none"> • None required
20. Water Withdrawal	<ul style="list-style-type: none"> • Yes 	<ul style="list-style-type: none"> • None required

- 4. Conformity Determination: Process and Timing Issues** – It is the SSI’s view that the conformity determination process should be based around simple tests that can work in concert with the existing regulatory framework. To be efficient, conformity determination should occur at an early stage of the regulatory process. For example, in the case of Land Use Permit applications, an appropriate time to ensure conformity with the Plan would be during the 10-day period that the Sahtu Land and Water Board (SLWB) applies at the beginning of its review process to determine whether an application is complete. The SSI’s preference is that any regulator receiving an application for an Environmental Authorization would quickly forward the application to the Board for a determination of conformity to the Plan.

In the case of several of the CRs, as the Plan is currently worded, a regulatory authority processing an application would not be able to make a determination on conformity until the point when the authorization is to be approved. For example, CR#14 [Assessment and Mitigation] requires regulators to “*assess the potential impacts from the activity on the values for which the zone [Special Management Zone, Conservation Zone (CZ) or Proposed Conservation Initiative] was established and ensure that appropriate measures are in place to minimize impacts to the zone values.*” In practical terms, the conformity test could only be credibly completed at the conclusion of the Preliminary Screening or an Environmental Assessment process or after the permit or licence is issued (for other examples see CRs 7(2), 10, 11, 13(2)). In SSI’s view, the wording of the CRs should not drive the timing of a conformity determination. The Board should decide when conformity is best reviewed and reconsider the wording of the CRs so that they encourage and facilitate a conformity determination at the appropriate time.

Comments on Conformity Requirements

- **CR#2 Community Engagement and Traditional Knowledge:** The SSI strongly supports the development of an effective approach for the Plan to require applicants to engage with affected communities, obtain and use traditional knowledge in land use activities. The need to engage communities and use traditional knowledge is also affirmed in numerous sections of the MVRMA.⁵ Regulators, particularly the SLWB, have already adopted processes that require engagement with communities before applications are processed.

Unfortunately, it is difficult to see how the second part of this CR could be effectively implemented. Under the current wording, the burden of ensuring that an application conforms to the Plan is assigned to the regulator, which among other things, must ensure that the application been “*designed and carried out in a manner that addresses community concerns*”. The conformity decision will have to be made before the activity permitted and before it is carried out. The regulator cannot achieve this goal. How the regulator can be certain of community concerns is not specified.

The SSI Plan Submission recommended (in General Comment #5) that this wording be revised. It should be the responsibility of the applicant to ensure that its application is drafted in a manner that meets the criteria cited in the CRs. It will be the applicant that has the evidence of community engagement. The regulator, or (preferably) the Planning Board, will not likely have the information

⁵ Such as ss. 60.1, s.64, ss.115.1

required to evaluate an application for conformity with this CR. How the activity will be carried out can only be determined much later.

The SSI has also recommended that that the Plan, or the Implementation Guide, should provide policy statements, protocols or guidance that applicants could follow in order to draft applications that will successfully conform to the Plan. In the case of CR#2, such policies should be developed in collaboration with communities and others who have an interest in the engagement process and in ensuring that traditional knowledge is appropriately collected and used.⁶

The SSI points out that a lot of work related to engagement and traditional knowledge policies and protocols has already been carried out by other organizations in the Mackenzie Valley, including the Land and Water Boards and the Mackenzie Valley Environmental Impact Review Board (MVEIRB). Before duplicating these efforts, the Board should see if this work can be incorporated into the land use planning process. For example, the SLWB, in association with the other land and water boards in the Mackenzie Valley, is in the process of finalizing its public engagement policy and guidelines, tailored to the particular requirements of its process. The MVEIRB has also produced its well-regarded, *Guidelines for Incorporating Traditional Knowledge in Environmental Impact Assessment*.

CR#2 should be reconsidered with a view to ensuring that it can be effectively implemented.

- **CR#3 - Community Benefits:** The SSI strongly supports the intent of this CR but there are problems with the wording which will create implementation problems. It is questionable whether the regulators, or the Board, would have the legal authority to compel the community benefit requirements to be included within regulatory authorizations. Beyond this concern, under the CR's current wording, the nature and evaluation of the community benefits associated with an application would be subjective. This could cause problems during conformity determination. It is also not clear whether "benefits" refers to financial or other benefits and how, in any case, such benefits are to be measured.

The Board may wish to consider other ways to address relationships between communities and developers such as a "public interest" test or a community support test.

Given this concern, SSI recommends a review of implementation mechanisms to enhance the effectiveness of CR#3 in the Plan.

- **CR#5 – Watershed Management:** The CR states that *"Regulators shall consider the effects of the proposed activity...and ensure that it will not substantially alter the water quality, quantity and rate of flow within a SMZ, CZ or PCI."* The SSI is concerned that the CR might result in Regulators with limited expertise in relation to water or the environment making decisions about water quality, quantity and rate of flow (for example those issuing Mining interests or Timber cutting licences or permits). Consistent with SSI's earlier comments, the applicant should be required to provide all necessary evidence that cumulative and these specific effects on water will not occur.

⁶ The Planning Board may want to consider including in the CR's Context and Rationale section some language that draws a distinction between this CR and Crown Consultation – particularly the message that such engagement may assist with meeting the Crown's consultation obligation, but is not intended to replace it.

The terms “substantially alter the water quality, quantity and rate of flow ...” appear to be drawn from the Sahtu Claim.⁷ SSI is concerned, however, that there is no definition of “substantial alteration” provided in the Plan, and that the term is subjective. As things stand now, the interpretation of whether a development would result in substantial alteration of water quality, quantity, etc., could be made not only by the Sahtu Land and Water Board, but by any party making a conformity determination.

Additionally, based on discussion with Board staff, it appears that the CR intends to prohibit substantial alteration of water quality, quantity and rate of flow for water bodies both inside a SMZ, CZ or PCI, and in other zones where a water body is located which flows into or through an SMZ, CZ or PCI. Thus, the geographic application of the CR cannot be determined until an application for land use is received, but it seems clear that it will be significantly larger than the areas zoned as SMZ, CZ and PCI. As worded, this CR will also apply to activities proposed in GUZs that are upstream of such zones. If, for example, the watershed in question is the Mackenzie River, the CR could affect the whole Sahtu Region.

Another potential concern with this CR, given the information provided in the “Context and Rationale” section for the CR, is the water quality policy it appears to be endorsing. It seems that the Plan intends to apply the Canadian Council of Ministers of the Environment’s (CCME) non-degradation policy approach to the watersheds affected by the CR. The CCME’s own guidance on this policy states:

“Using the non-degradation approach, discharge limits are established based on the natural background levels of substances of concern at the site. Implementation of this approach ensures that environmental receptors are not exposed to elevated levels of environmental contaminants and, hence, have no incremental risk of adverse effects due to discharges from point sources. However, technological limitations and costs are likely to preclude the implementation of this option under most circumstances.”⁸

The SSI’s interpretation of this non-degradation policy is that land use activities may not discharge waste into water where it might exceed natural background values in the applicable watersheds and result in adverse effects. Conceptually, if standards protective of water resources are higher than background quality, the non-degradation policy says that natural quality should be protected. There should be no “pollute up to” approach allowed so as to allow degradation of natural background quality.

This CR potentially creates a prohibition on all the types of land use activities that might discharge waste into water at levels above background limits, ranging from fishing camps to oil and gas installations. The policy it endorses also appears to be inconsistent with the current water licensing regime set out in the MVRMA and the *Northwest Territories Waters Act*. The SSI’s concern about the vagueness of this CR is further compounded by that fact that no “substances of concern” have been identified in the Plan.

⁷ This test is for example the basis for the regime compensation set out Chapter 20 of the Sahtu Claim.

⁸ CCME(2003). Guidance on the Site-Specific Application of Water Quality Guidelines in Canada: Procedures for Deriving Numerical Water Quality Objectives. Located at:

The large amount of land potentially implicated by this CR in combination with the application of the CCME non-degradation policy approach, has the potential to affect land use activity in the Sahtu Settlement Area where any discharge of waste into water is proposed. Subjective terms such as “substantial alteration” and “adverse effects” will not provide clarity for applicants for land use approvals or for those required to make conformity determinations.

To harmonize the intent of the CR with the existing water management system, the SSI recommends that the Planning Board consider a policy framework focussed on source control and management of waste deposited into water rather than non-degradation. Another approach would be to adopt specific water quality objectives such as CCME Guidelines for the Protection of Aquatic Life rather than leaving the level of protection provided to Sahtu watersheds in the subjective discretion of those making conformity determinations.

- **CR#6 – Drinking Water:** The SSI’s concerns about placing the burden on Regulators also apply to part (1) of this CR.

SSI’s principal concern with this CR relates to the use of the subjective “contamination” in part (2). Contamination is not defined in the Plan, nor does the Plan reference any scientifically-sourced guidance or legislation to help define “contamination.” In the absence of guidance from the Board, determining what “contamination” is could be the cause of unnecessary debate and varying interpretations during conformity determination. The term is subjective and unhelpful. The Board should consider adopting the CCME Guidelines for Canadian Drinking Water Standards as the objectives which must be met before any land use which may affect water upstream of a community catchment area is deemed to conform to the Plan.

The SSI is also of the opinion that the CR limits the authority of the SLWB to establish scientifically-defensible criteria for the lawful deposit of waste into water. The SSI therefore recommends that Item 2 of CR#6 be reconsidered. To assist applicants in designing land use activities that conform to the Plan, particularly with respect to protecting community water sources, the SSI believes that it would be beneficial for the Plan, or the Implementation Guide, to provide clear guidelines or water quality objectives which applicants can address when preparing their applications.

- **CR#10 - Incidental Harvest:** The SSI supports the intent of this CR, but there are questions about whether conformity with the Plan can be determined at the time of permit or licence issuance based on the current wording. The key factor is timing; as it is currently worded, regulators (or preferably the Board) would not be able assess conformity on this CR until after the incidental harvest has taken place and distribution of the fruits of that harvest takes place. This wording results in a time frame for conformity determination which would be incompatible with the SSI proposal to complete it early in the regulatory process before licences, permits or authorizations are granted.

The SSI suggests that the Board consider revising this CR into a policy statement or protocol that could guide and encourage applicants to share surplus resources or incidental harvest with nearby communities. The Board should reconsider the wording of CR#10 to see if commitments can be secured to share surplus or incidental harvests before regulatory decisions are made.

- **CR#13 – Closure and Reclamation:** Item 1 of the CR duplicates and appears to eliminate the discretion of the SLWB, to make its own decisions regarding the requirement for reclamation

security. Moreover, the CR will constrain current efforts being undertaken among the land and water boards of the Mackenzie Valley to establish a single framework for determining reclamation security. It should also be noted that CR#13 can only be implemented by regulators with the legal authority to impose security requirements. If other regulators have such power then the reference to the Minister of Indian and Northern Affairs Canada should be removed from the wording. Given these concerns, the SSI expresses its reservation about the need for Item 1 as it is currently written.

The SSI supports the intent of Item 2 of the CR, but has some recommendations concerning the wording. The SSI believes that at the time when the conformity determination should occur, the regulator (or the Board) will not be in a position to know whether *“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...”* The SSI suggests that the Board consider revising the wording of the CR to state something to the effect of, *“the applicant shall provide in its application a description of how it intends to restore any area affected by the land use activity to a viable, self-sustaining ecosystem consistent with the surrounding ecosystem and expected future uses of the area.”* The SSI further suggests that the phrase, *“prior to the return of security”* be removed from the CR as the SSI believes that even relatively minor projects, which do not require security to be posted, should be considered for reclamation purposes. Moreover, decisions on whether to return security or not currently are made through collaboration among regulators and enforcement staff at the end of a land use operation. Those decisions should not be fettered by the plan. The decision to return security should not require additional consultation. Community consultation should take place when the closure and reclamation proposal is developed as part of the regulatory process.

CR#14 – Assessment and Mitigation: The Plan provides useful information regarding the values present in SMZs, CZs, and PCI areas, which is information that the Preliminary Screeners and the Mackenzie Valley Environmental Impact Review Board will likely find extremely helpful when carrying out their responsibilities. However, the SSI believes that this CR appears to duplicate the existing environmental impact assessment process and that it may result in agencies without the environmental expertise of land and water board and the MVEIRB making poor decisions about assessment and mitigation. As such, the SSI questions whether this CR is necessary or useful.

- **CR#15 – Monitoring:** The SSI suggests that the language in this CR be revised to state that applicants proposing land use activities in SMZs (CZs and PCI) should provide, as part of their application, a site-specific monitoring plan. To assist applicants in designing monitoring plans, the SSI recommends that the Plan, or the Implementation Guide, provide guidance about designing monitoring plans.

Comments on Mandatory Actions

The SSI is aware of the legal positions taken by the other approving authorities on the Plan’s proposed mandatory actions. SSI anticipates learning more about these positions during the hearing. SSI has not approached the question of implementation and the nature of the Plan’s authority to require prescribed actions on a jurisdictional basis. SSI is concerned that real commitments to implementation of the Plan be made by all parties, including approving governments. We note that few if any of the proposed actions set out in the Gwich’in Land Use Plan were accomplished in the first five year planning cycle.

The proposed Plan is complex and will require an ongoing collaboration to implement effectively. If actions cannot be mandatory, then the SSI suggests that the Board and parties, including governments work in good faith to develop a voluntary mechanism which commits the parties to implementation. An implementation plan could be developed in contractual form along the lines of the implementation contracts which accompany land claims. Other options may also be possible.

The Board should encourage a wide open discussion of this issue and potential options for ensuring implementation at the hearing.

Conclusion

The SSI would like to acknowledge the effort made by the Board and staff to advance the Plan to its current form. There has been broad involvement and considerable effort made by all parties participating in the planning process. The SSI is anticipating completion and acceptance of the Plan in the near future and the achievement of yet another milestone in the implementation of the *Sahtu Dene and Metis Comprehensive Land Claim Agreement*.

SSI is prepared to participate in the hearing and workshops and to answer questions in order to move the process forward to the next stage.

ALL OF WHICH IS RESPECTFULLY SUBMITTED ON BEHALF OF:

THE SAHTU SECRETARIAT INCORPORATED

ORIGINAL SIGNED BY :

Ethel Blondin-Andrew
Chairperson
Sahtu Secretariat Incorporated

APRIL, 26TH .2011

Dated

