



Sahtu Land Use Planning Board

Box 235, Fort Good Hope, NT, X0E 0H0
Phone: (867) 598-2055 Fax: (867) 598-2545
Email: slupb@netkaster.ca Website: www.sahtulanduseplan.org

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Requested changes documented in these notes do not mean that the Board will make these changes. Some requests are beyond the Board's mandate or jurisdiction to address. The Board must consider all comments and requests and balance the interests of multiple parties. The Board will revise the Plan as it deems appropriate to achieve the right balance.

Summary Notes on GNWT Follow-up Meeting

April 26, 2011, GNWT Offices, YK, 1pm-5pm

Participants

Heidi Wiebe, Plan Lead, SLUPB
Ida Mak, Communications Coordinator/Planner, SLUPB
Mark Warren, ENR, GNWT
Joel Holder, ENR, GNWT
Kris Johnson, ITI, GNWT

Meeting start: 1:15 pm

Agenda

- 1) Presentation/hard copies
- 2) Update on current thinking on plan content changes
- 3) SLUPB comments on GNWT presentation
- 4) Walk through GNWT presentation
- 5) Tripartite meeting after Hearing

Mark: It has been quite a while since we first submitted our comments in October 2010 and we have since submitted a few more documents to the Board.

Mark asked for an update on any changes that the Board has been discussing until now due to the numerous INAC and SSI submissions that have been received since the release of Draft 3.



Heidi: The Board has not made any changes as of yet. It will wait until after the Hearing to make decisions. The Board has reviewed all input received to date, both oral and written and has begun discussing what changes may be appropriate. I can inform you of some of the Board's considerations, but there is nothing concrete to share to date. We have to wait to see what comes out of the Hearing.

Zoning: There is just one area where the Board has received conflicting direction on zoning. The Norman Wells Land Corporation has recently asked for parcels 105, 106, 107 to become CZs. However the previous direction from the Tulita Elders and the Tulita District was to keep the Draft 3 zoning.

Naats'ihch'oh: We don't define the boundaries – that is done through Parks Canada's process. We will move forward with the Land Withdrawal boundary plus the O'Grady Lake extension as discussed at the Tulita meeting in January.

Ramparts: There are a few parcels that are settlement lands and the Board needs to know what they should be zoned as because they cannot be included within the PAS boundaries. We are also pursuing a default zone designation for any areas left out of the final boundary.

CRs: The Board has discussed the many requests for changes but has not made any decisions as of yet. There have not been any definitive changes but we have discussed some possible revisions. For instance, everyone commented on CR #3. We know there are issues with it and it will have to change. How it changes, we do not have a definitive answer on yet. It's one area we hope to generate some options for at the Hearing. For CR #4, many people have commented that 500 m is too much of a setback for all sites, but it may be appropriate for burial sites. So the Board has been considering a range of setbacks based on the comments it received, with a larger setback restricted to burial sites.

Mark began to go through the GNWT presentation for the Public Hearing.

The GNWT stands strongly behind the need for a plan but it wants a plan that it can support for approval. The submission was not representative of only one department's comments. The land use plan has gone through all levels and departments, right up to the Minister. It has not gone to Cabinet but the GNWT is serious in its submission when it says that it is not willing to approve the Plan as it is now written. This is reflective of the overall position in the GNWT.

The Plan does not operate in isolation. It operates within an integrated system of land management. The SLWB applies land and water authorizations and the SDLC and MVRMA are already there. The Plan should not try to reinvent the wheel, which in some parts, it does. I was involved in the implementation of the SDLC so I can provide some insight into what the clauses were specifically intended to mean.

In some cases the SLUP goes farther than what is included in the SDLC. We find that there are areas where the SLUP paraphrases or takes part of the SDLC only, which removes it from the context of the document as a whole.

In our Hearing presentation, we talk about what we think a land use plan should do. It is a living document that will be amended and adjusted in the future. Hopefully it can be structured so that it can grow and adjust. We also do not think it should be prescriptive. We do not support language like the



“regulators shall ensure...” Instead, we think the plan should state that parties will work together towards a specific purpose. The plan can provide these purposes and goals without directing how they will be reached. This is what the CRs should look like. They should provide specific purposes as opposed to dictating the actions that need to be taken.

Heidi: I understood “prescriptive” as identifying for example, the specific distance that proponents need to stay away from burial sites or another use of specific numbers in the CRs. However, I now just understood your explanation as stating that the Plan should not be prescriptive in the sense that it should not impose any obligatory CRs or Actions. That means that the Plan would only make recommendations. Is that correct?

Joel: We also meant that the Plan should not limit the freedom of the regulators like the SLWB to follow specific directions. They should have the ability to choose how they will go about issuing their permits and licences.

Mark: I consider wording like “shall ensure” to be prescriptive. The CRs should be based on a principle that all the parties agree to but it should be up to the regulator to implement the CRs as they see fit. The CRs can be guiding principles that give recommendations to use specific guidelines that all parties agree to.

Joel: CR#2 is very prescriptive in this sense. It is a lot for regulators to “ensure” when they are carrying out the screening.

Heidi: We made a judgment call on how to word Draft 3 CRs. The reason that we do not give direction to land users (proponents) is because from a legal perspective, the MVRMA states that the plan will direct regulators- not proponents. The MVRMA holds regulators as the responsible bodies to carry out the Plan. Does that change your perspective on the CRs?

Mark: I don’t think so. I think a lot of the CRs would be better addressed elsewhere in the regulatory system. The CRs are written ambiguously enough for this.

We have serious concerns with the way the Draft is written. This is not a document, as written, that the GNWT is willing to approve. We agree with the principles of the CRs, but we don’t agree with the CRs as they are right now.

Zoning: We are generally fine with the zoning. The one issue we have is on slide 8 – Dual Designation. We believe that it’s one or the other, not both. The PAS goes through an extensive process to designate an area based on large amounts of information and each one comes with different levels of protection. Alternatively, if there is a CZ, then it should just be CZ. But you don’t need dual designation.

Heidi: This arose from communities hoping for subsurface protection and then not receiving it.

Mark: We have been clear that certain designations do not provide subsurface protection. It should be one or the other, not both.



Mark: CR#2 and CR#3 – We know we have a fiduciary and legal obligation to consult with Aboriginal people on the things that we do. As it is written, this CR makes things more confusing. The GNWT has its own consultation guidelines.

Heidi: This CR is intended to ensure that good and adequate consultation takes place. It is not meant to duplicate legislation that tells proponents to consult.

Mark: The GNWT has consultation guidelines. We have spent a lot of money and time trying to properly define different levels of consultation.

Joel: The CR suggests that the only way to carry out effective consultation is to meet with people, but that does not guarantee adequate consultation.

Mark: We don't oppose having a strong principle statement, which would make more sense than saying that the regulator will ensure something. How does the regulator ensure something that is a legally binding condition of the authorization? You can't ensure that something will happen during the lifetime of the project.

Heidi: INAC and FGH have asked us to look at the Prospecting Permit Protocol on consultation and to use the protocol as the guidelines for consultation.

Mark: CR#3 – we think this is duplication.

CR#4 – archaeological sites: Right now the SLWB requires a 150m buffer. Where did 500m come from?

Heidi: It was submitted as a suggestion in one of the comments on Draft 2. As I mentioned earlier, maybe the 500m setback should be reserved for burial sites. We are also considering removing the word "suspected" and redefining "known" to capture sights that arise from community consultation, not just those that are identified in the Prince of Wales database.

Mark: You know our NWT land use regulation setbacks are 30m?

Mark: CR# 5 – This is in our eyes, a re-write of the SDLC agreement. The SDLC provides participants the right to have waters passing through or adjacent to Sahtu lands remain unaltered in quality, quantity and rate of flow. However, in section 20.1.14 it does allow for the SLWB to grant a license, permit or authorization that interferes with participant's rights under certain circumstances and requires a negotiated agreement with SSI to compensate for the interference. So it is not appropriate to have regulators ensure that water quality, quantity and flow will never be affected. The plan can endorse a number of documents, but the plan cannot say that it can guarantee that water will remain clean and abundant.

Joel: On CR #6 - The maps need to be better or need to be removed because they are not accurate right now and they are much too small to be useful. ENR, Land and Water Division is working with MACA to produce better community catchment maps that should be available for publication in the next version of the plan.



Heidi: I need to flag again the issue about the source catchment for Fort Good Hope, which is inappropriate given that the water comes from the Mackenzie River, and much smaller compared to the other communities. It comes up whenever we are in Fort Good Hope.

Mark: Incidental harvest – we think this is outside the scope of the plan. The Plan should deal with land uses and not the outcome of the land uses. We have recommended rewording to address this.

Joel: There is one license to cut and another to transport. It should be left to the regulator to decide what is best for the incidental harvest items because the cost of transporting the timber may be more harmful or you may want to leave the timber for other reasons, like ecological reasons. It may be more environmentally damaging to remove it.

Heidi: This does not just deal with timber but with all natural resources. This was requested by SSI. It also applies to outfitters for example where they are trophy hunting (heads and antlers) and dispersing the meat to communities.

Mark: We would like you to consider the wording in the Dehcho Plan. We don't agree that it always makes sense that once something is harvested, that it should be made available to the community. You may want to change this to a recommendation. I didn't realize that this went beyond timber. This should be made clear in the plan and elaborated upon. Examples of where it may not make sense is where timber has to be transported a significant distance with substantial impact on the environment, where leaving timber to decompose and feed the forest or where animals harvested need to be autopsied for disease.

Mark: Does the Draft 3 have a provision that says, "where the plan conflicts with existing legislation, existing legislation will prevail"? Because the Dehcho plan currently says this and it would be helpful if the SLUP also said this. We have wording that I could get you from the Dehcho plan if you wanted. If you don't have that then the GNWT will ask that this statement be included in the Plan.

Heidi: I don't believe that we currently have that in the Plan. If we included such a statement then any area where the Board has increased the protective measures would be null and void. There would be no sense in doing the Plan. Parties can agree to use greater protective measures than currently in legislation.

Mark: I think some of the CRs may not be so hard to get agreement on if we know that our legislation prevails over the plan.

Discussion with Kris Johnson about incidental harvest of wildlife as describing a situation where an animal is killed accidentally (e.g. shooting the wrong species).

Action: Heidi to look up incidental harvest in the *Wildlife Act* to ensure the Plan is not inadvertently covering such situations.

Joel: CR#13 – slide 19 – this is too prescriptive but we're not the final word is on this. Please keep us in the loop.



Heidi: INAC told us that they want security collected.

Kris: You might be requiring security on everything like cabins because if you are applying to all authorizations then people would not be allowed to build without posting security.

Heidi: This CR is not intended to apply to residents but to businesses.

Mark: If a Sahtu beneficiary builds a cabin on Sahtu Lands do they need an authorization?

Heidi: They would not need to post security because they don't need an authorization.

Kris: Anybody building a 10X10 cabin with a roof will fall under this CR.

Mark: Our government will not approve legally binding Actions because that would set a precedent that we are not willing to follow. We have action items that we are willing to work towards. We hope that your legal counsel will not further discuss this with our legal counsel as we disagree with the principle and concept of it. A plan with legally binding Actions would be a plan that we would object to. Some areas are not appropriate to be dealt with in land use plans. We are not going to be bound by a land use plan with legally binding Actions. We have a process that includes elected representatives in the legislature. They create legislation. They do not follow the direction of a land use plan.

Mark: We support a land use plan with Actions and Recommendations as long as they are not legally binding. When we were negotiating the land claim we were told to stay away from any "best efforts" language because it means, "leave no rock unturned" which is not realistic, so we don't want to see any "best efforts" language in the Plan either.

There was a discussion about which agency should conduct the conformity determination, the Board or another preliminary screener. It was discussed that according to the MVRMA, the responsibility rests with the preliminary screener first, unless an application was referred to the Board; upon referral the Board's decision is final and binding. Heidi agreed that this was the Board's understanding as well. The Board has been approaching this question from a perspective of what works best. If all involved determine that the Board is best placed to make the decision rather than the preliminary screener, then there can be an automatic referral process established. This practice is already in place with the SLWB.

Mark suggested that Heidi speak to Stephen Traynor about implementation of conformity determinations because the Plan needs to fit into the current regulatory process.

Tripartite Meeting

Mark asked about the Board's proposal for a tripartite meeting between the approving parties to work out the outstanding issues.

Heidi: The Board has not met since we received the GNWT's last submission. We are talking about the need for a tripartite meeting but everything we do now has to be subject to the rules of procedural fairness. A tri-partite meeting shuts other participants out. The Board needs to discuss this further and will get back to you.



Mark: We're at the point where we can't approve the plan as it is drafted, but we now have a better understanding of our concerns and the Board's concerns. We can get much closer to finding resolution to our issues. So how do we get to the point where we can address the issues of concern to the GNWT without having to ask the Board to rewrite the entire plan?

The plan is now at about 10% completion. We need to see a lot of changes before we are ready to approve the Plan. We are comfortable with the zoning, but we are not comfortable with many of the CRs, As and Rs. In order for us to be comfortable, we will need to see a new draft. We have a long way to go yet and if there is not a new draft, based on where we are at now, I am not confident that a final Plan will meet the interests of the GNWT to the point where it could be recommended for approval.

We had a meeting with our Deputy Ministers. They gave me strong direction to let the planning board know that we are not far enough down the road to believe that revisions to Draft 3 will give us a plan close enough to what we are ready to approve.

Heidi: How do you propose that we get the three parties together?

Mark: When we looked at SSI and INAC's comments, we were in agreement with most of their comments and we did not feel that we are that far apart on what amendments were required to the Plan.

Joel: The three parties can get together without the planning board if we did not want the discussions on the record. We could have some discussions and work through some of the larger issues.

The Plan Applying to Renewed Permits, Licences and Authorizations

Mark: You can't change the operating conditions on proponents by applying the Plan's CRs to renewals in all cases.

Kris: This creates a level of uncertainty for developers that includes a certain degree of financial risk.

Mark: What if a mine was built within 500 m of a burial site? Compliance with CR #4 would require the proponent to move the mine when they renew their authorization. That's not fair or practical. In another example, where there is a substance that was previously not known to be harmful but is now known to be dangerous, of course we would want this to be retroactively applied. However this can, and has always in the past, been dealt with appropriately in legislation, and companies are required to comply with legislation as updated during renewals. It's impractical to require compliance with Plan conditions upon renewal.

Heidi: First, we can deal with the situation on CR #4 by granting an exception. The Plan does state that it will not block the exercise of rights and that exceptions can be granted to address specific circumstances. Second, the CRs are quite broad. What would be the issue with requiring proponents to comply with CR 2 for example upon renewal – it requires community consultation and use of TK?



Mark: We don't believe that CR 2 should be in the plan. It's covered by the land claim. Some are fine like CR #5, 6, 7. Maybe the way you deal with this is you say, "shall be dealt with in legislation".

Heidi: You don't think the plan should say anything about consultation or TK?

Mark: It shouldn't be a "thou shall". The Plan can say any number of things on TK and consultation referring to the parties working together to develop guidelines but the plan should not direct how this should be done. I would have to go through the CRs individually but there might only be a few that are problematic.

Kris: I don't think that certain CRs belong in the land use plan like minimizing GHGs. The Plan should be cut and dry so that everyone can check off whether or not the CRs have been met. When the regulator is signing off on a permit, they should just be able to check off a list. I agree with you that there are lots of problems out there, but the Plan is not the right place to solve all of them.

I got a request from Ida to update the Background Document. We're looking at updating Tourism numbers. If this is not the final sign off version, then we should wait until we are closer to being done before we get those numbers to you.

Heidi mentioned that September might be a time for the tripartite meeting.

Joel and Mark stated that they liked the idea of break-out groups during the Hearing and thought that those discussions should be off the record. As long as the discussions are not transcribed, they allow people to speak more freely and openly without having to worry about someone holding them to the record. This prevents one staff person's position from being interpreted as the GNWT's position.

Mark: CR#5 amends the SDLC because the claim recognizes that if the government or a proponent wanted to change the water quality, quantity or rate of flow, then they could do it, but the Sahtu would be entitled to compensation pursuant to the SDLC and as determined by the SLWB. The Plan, as written takes the wording out of context and states that no development can occur that would alter the quality, quantity or rate of flow. I do not believe this is consistent with the spirit and intent of the SDLC.

Heidi: How do we keep the intent of CR#5 and work with what we have?

Mark: Pointed to the NWT Water Stewardship Strategy where there is a goal to keep waters that flow into or through the NWT substantially unaltered in quality, quantity or rate of flow. Alternative, if it is to be a CR, then duplicate rather than paraphrase the land claim and/or existing regulations.

Meeting ended: 4:30pm