

Proposed Structural Changes to CRs

Introduction

As mentioned previously, the Board retained a professional legal drafter to assist the Board in bringing more clarity to the Plan. In many cases, the proposed revisions look significantly different at first glance because they use a different structure, though the content is substantially the same. In other cases, the content has changed as well to avoid ambiguous words and phrases.

The Board would like to seek input from the parties on some of the proposed revisions for the CRs to determine if they are helpful in bringing more clarity, or if the revisions will create new issues and confusion because it is unfamiliar. Below are a few examples.

The section starting at the bottom of Page 5 outlines an attempt to provide greater clarity on what is meant by “protection” as used in CRs and Zone Descriptions. Adopting the proposal could result in changes throughout the Plan to incorporate the new structure.

We will invite open discussion on the proposed revisions at the end of the workshop. The Board is not looking for a detailed analysis of the proposed revisions, but rather overall impressions and comfort levels. The examples serve as an illustration only.

CR #3 - Project-Specific Monitoring

Workshop 3 Version

1) Any land use activity proposed for a Special Management Zone, Conservation Zone or Proposed Conservation Initiative shall include a site-specific monitoring program that is sufficient to monitor the effectiveness of the activity's proposed mitigation measures in protecting zone values as defined in the zone descriptions and any impacts on such values, and in the Great Bear Lake Watershed, maintaining the GBLW ecosystem.

2) Monitoring reports shall be distributed to District and community land corporations, the band office/community council and renewable resource councils of affected communities, to relevant government departments, agencies and co-management boards and made publicly available. Where reports contain proprietary information or any other information that must reasonably be kept confidential, that information can be excluded from the public versions of the reports.

Proposed Revisions

(1) An activity proposed in a special management zone, conservation zone or proposed conservation initiative zone must include a site-specific monitoring program that is sufficient to monitor

(a) the effectiveness of mitigation measures in protecting, respecting or taking account of the values for which the zone in which the activity occurs was established;

(b) any impacts on the values;

in the Great Bear Lake Watershed, [shown on map X] to ensure the Great Bear Lake ecosystem is maintained.

(2) Monitoring reports must be made publicly available and distributed to

(a) [district and community land corporations,] [the owner of the land on which the activity occurs];

(b) [the band office and community council and renewable resource councils of affected communities,] [the local government and renewable resource councils [affected] by the activity];

(c) [relevant] Federal and territorial government departments, agencies and co-management boards.

(3) If monitoring reports contain proprietary information or any other information that must reasonably be kept confidential, that information may be excluded from the public versions of the reports.

Comments

- The key revisions are structural in this example.
- Items in brackets in the proposed revisions identify either insertions or where alternative wording is proposed and a choice is required. These indicate proposed wording revisions for clarity.

CR #7 - Archaeological Sites, Historic Sites and Burial Sites

Workshop Version

1) A land use activity must not be located within 500 m of known burial sites, or within 150 m of known historical sites or archaeological sites, unless measures are developed in cooperation with the Prince of Wales Northern Heritage Centre, affected communities, or in the case of burial sites, with affected families where possible, to fully mitigate all impacts to the site.

2) In areas where there is a high risk of impact to recorded and/or unrecorded archaeological sites, as determined by the PWNHC, an archaeological impact assessment must be conducted prior to commencement of a development project.

Proposed Revisions

(1) An activity within 500 metres of a known burial site is prohibited unless [measures to protect the site are taken in cooperation] with affected communities and, if possible, with affected families.

(2) An activity is prohibited in an area with known but unidentified locations of burial sites, archaeological sites or historic sites, unless a survey is first carried out to identify the location of the sites.

(3) An activity within 150 metres of a known historic site or archaeological site is prohibited unless measures are developed in cooperation with the Prince of Wales Northern Heritage Centre and [affected communities] to protect the site.

(4) In this section, *known* means identified within the Prince of Wales Northern Heritage Centre's archaeological database or identified by [community members] during public engagement or during [traditional knowledge studies].

Comments

- More substantial revisions for content (e.g. use of "prohibition" to be clear of the intended effect)
- Note that revised wording was provided by the PWNHC on clause 2 of the workshop version after the proposed revisions were submitted so that new wording is not reflected in the proposed revisions.

CR #11 - Species Introductions

Workshop Version

A land use activity shall not result in the intentional introduction of non-native plant and animal species, or of domestic animal species or subspecies, except by special approval by the ENR. All reasonable precautions must be taken to minimize the unintentional introduction of non-native species or sub-species.

Proposed Revisions

(1) An applicant must take reasonable precautions to avoid the unintentional introduction of non-native species or sub-species into the Sahtu Settlement Area.

(2) An applicant must not

- (a) intentionally introduce non-native plant and animal species, or domestic animal species or subspecies, except by special approval by the [ENR];
- (b) engage in any activity that results in the introduction of plant or animal species or subspecies described in clause (a), except by special approval of [ENR].

Comments

None

CR #12 - Sensitive Species and Features

Workshop Version

- 1) *An activity requiring a land use permit or water licence:*

 - a) *must be designed using the most current available information on the location of may-be at risk plants, hot and warm springs, mineral licks and amphibian sightings as obtained from ENR, and ice patches as identified by the PWNHC and carried out in a manner that mitigates impacts to these features.*
 - b) *must not damage Karst features.*
 - c) *must not take place within 1000 m of any known mineral lick, unless the activity cannot feasibly meet this requirement, and it can be demonstrated that alternative mitigation measures will protect the lick.*
 - d) *proposed within the boundary of glacial refugia or within 500 m of known hot or warm spring(s), shall require a rare plant survey where the activity has the potential to impact these sites. Any rare or at risk plants found in the survey shall be monitored for impacts from the activity.*
 - e) *proposed within the area of ice patches identified in Map X must contact the PWNHC (archaeology@gov.nt.ca) to determine if any ice patches are in the vicinity of the activity. Activities must not take place within 150 m of the edge of ice patches.*

- 2) *The location of any hot or warm spring or mineral lick discovered while carrying out an authorized activity must be reported to nwt_pas@gov.nt.ca, and any amphibian sightings to nwtsoer@gov.nt.ca.*

Proposed Revisions

- (1) An activity must be designed and carried out based on the most current information available
 - (a) from [ENR] on the location of rare and may-be-at-risk plants identified in subsection (7) [table 9], hot and warm springs, mineral licks, amphibian sightings, and karst features, and
 - (b) from the Prince of Wales Northern Heritage Centre, the location or site of [ice patches].
- (2) An activity is prohibited within 1000 metres of a known mineral lick, unless the activity cannot reasonably meet this requirement and mitigation measures will [protect] the lick .
- (3) An activity is prohibited on karst features unless
 - (a) the activity cannot reasonably avoid the feature, and

- (b) adequate measures are in place to mitigate the impact of the activity on the feature and the feature is not damaged.

(4) An activity is prohibited that

- (a) has the potential to impact a glacial refugia, or
- (b) is within 500 metres of a hot or warm spring [identified by ENR or by the community?],

unless a [rare plant] survey has been completed in the area that will be affected by the activity, and any rare or may-be-at-risk plants known or found during the activity are monitored for impacts as a result of the activity.

(5) An activity proposed within the area of [ice patches identified in Map X] must contact the Prince of Wales Northern Heritage Centre (archaeology@gov.nt.ca) to determine if any ice patches are in the vicinity of the activity, and if they are, activities within 100 m of the edge of ice patches are prohibited.

(6) While carrying out an activity, an applicant must report

- (a) the location of any hot or warm springs or mineral lick discovered to nwt_pas@gov.nt.ca, and
- (b) any amphibian sightings to nwtsoer@gov.nt.ca.

(7)

[Table 9. Rare \(highlighted in pink\) and may-be at risk plant species in ecoregions wholly or partially within the Sahtu Settlement Area](#)

Comments

- The workshop version was changed to only apply to land use permits and water licences after the proposed revisions were received so are not reflected in the proposed revisions.
- Providing a bit more clarity on expectations for some of the sections, e.g. karst

Defining the Level of Protection for Values

The word “protect” is used throughout the Plan, in certain CRs such as CR #2, and in the Zone Descriptions on which CR #2 depends. The following page is an excerpt from a Discussion Document developed to bring more clarity to what “protect” might mean. The Plan’s CRs and Zone Descriptions could be revised to use this terminology. The Board would have to make decisions as to the appropriate level of protection to be associated with different requirements, zones and values.

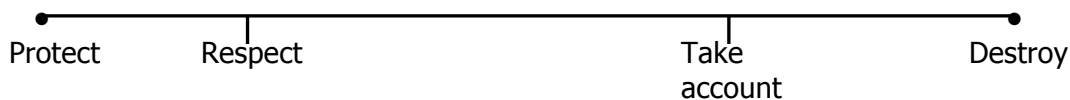
Excerpt

Keeping in mind the kind of *things* that have value – for, example, habitat, harvesting areas, locations of spiritual significance – an activity could destroy the *thing* or a complete level of protection could be provided to the *thing*.

The plan could tell decision-makers how to decide applications for activities by indicating whether the *thing* identified as having a value is to be

- protected
- respected, or
- taken into account.

I use three levels for illustration only. More categories could be created if need be. If activity can either protect or destroy a *thing* of value, it can also respect it or take account of it.



If the plan says a *thing* must be protected, that could mean

- the thing itself must be protected so that it is completely unaffected by the activity, and
- the value attached to the thing is similarly unaffected by the activity.

For the decision-maker, if the activity cannot protect the *thing* of value and the values attached to the thing in the manner described, the activity cannot be permitted.

Moving along the scale, if the plan says a thing must be *respected* then the activity must be designed and carried out so that

- the core element or elements of the *thing* of value are substantially unaffected by the activity, and
- the core values are unaffected.

Respect recognizes that there will inevitably be some impact on the *thing* but that it will fundamentally continue to exist with the same values during the activity and after the activity ends. For a decision-maker, if the activity does not *respect* the *thing* of value and the values attached to it cannot be fully protected in the manner described, the activity cannot be approved. If, perhaps with conditions, the activity can provide the respect described, the activity can be approved.

Moving further along the scale, if the plan says a *thing* must be *taken into account*, then a genuine and reasonable attempt must be made to plan and operate around the thing or incorporate the thing into the activity, and to respect the values attached to them in doing so. But if, in all the circumstances, the thing is jeopardized or the values are compromised by the activity despite the reasonable efforts – this is acceptable.