



# Sahtu Land Use Planning Board

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## \*Disclaimer

These summary notes were recorded by SLUP staff. They are subject to errors of interpretation or omission. This document presents a summary of key discussion points. It is not intended to serve as transcripts of the meetings.

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 Sahtu Land Use Plan Fall Technical Workshop #1

**Date: October 4-5, 2011**

**Location: 5004 50<sup>th</sup> Ave, Champagne Room, Yellowknife**

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## Day 1 – October 4<sup>th</sup>

### Participants

Heidi Wiebe, Plan Lead, SLUPB  
Dick Spalding, SLUPB Legal Counsel  
Danny Bayha, SLUPB Board Member  
Stephen Kakfwi, SLUPB Board Member (am)  
Jason Charlwood, Ducks Unlimited  
Cyril Jenkins, ConocoPhillips  
Marshall Netherwood, Shell  
Adam Vivian, NWT/NU Chamber of Mines  
Tom Hoefer, NWT/NU Chamber of Mines  
Paul Dixon, SLWB  
Angela Love, SLWB  
Angela Plautz, MVLWB  
George Barnaby, Yamoga Land Corporation  
Lucy Jackson, YLC  
Harry Harris, YLC  
Rodger Boniface, YLC  
Paul T'Seleie, YLC  
Willie McNelly, KGDLC  
Heather Bourassa, KGDLC  
Tom Nesbitt, DLC

Morris Neyelle, DLC  
Peter Menacho, SSI  
John Donihee, SSI (pm)  
Ruari Carthew, DFO (until 3:00)  
Trevor Sinclair, DFO (after 3:00)  
Vicky Johnston, Environment Canada (EC)  
Matt Bender, INAC  
Lindsay Armer, INAC  
Greg Yeoman, INAC  
Joel Holder, GNWT-ENR  
Michelle Swallow, GNWT-ENR  
David Purchase, GNWT Forestry  
Val Gordon, INAC  
JB Gully, Colville Lake Elder  
Joseph Kochon, KGDLC & Ayoni Keh Land Corporation  
Chief Richard Kochon, Behdzi Ahda First Nation  
Ethel Liske, Akaitcho (observing)  
Erica Janes, notes

Meeting start: 9:05 am



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## Introduction and Opening Comments

Stephen welcomed all participants on behalf of the Sahtu Land Use Planning Board (SLUPB). Lucy Jackson said an opening prayer.

Stephen: Welcome to all. This is the first of two technical workshops conducted by the SLUPB this fall. I will chair, along with board member Danny Bayha. Our Plan Lead, Heidi Wiebe, will lead the discussion, and notes will be taken.

The purpose of this workshop is to look at outstanding issues with Draft 3 of the Sahtu Land Use Plan that have been identified, to find common ground, and to look for potential solutions to work toward final draft plan that all will be able to accept and approve. The Plan provides for conservation and use of land and resources. We will be focusing on technical aspects of wording, and ask that all workshop participants remember that the Plan is set up with community interests central.

This first workshop focuses on identifying a clear conformity determining process, the scope of authorizations, and grandfathering existing uses. We hope it will smooth the way for next workshops' discussions on individual conformity requirements (CRs).

Dick pointed out that what ultimately goes into the Plan is the SLUPB's decision. There are some topics that the SLUPB hopes the workshop participants will come to consensus on, and then the Board will consider them.

Participants introduced themselves (see above list of attendees).

Heidi reviewed the day's agenda, and said the Board will run the workshop as informally as possible so that the issues can be thoroughly talked through. No changes were made to the agenda.

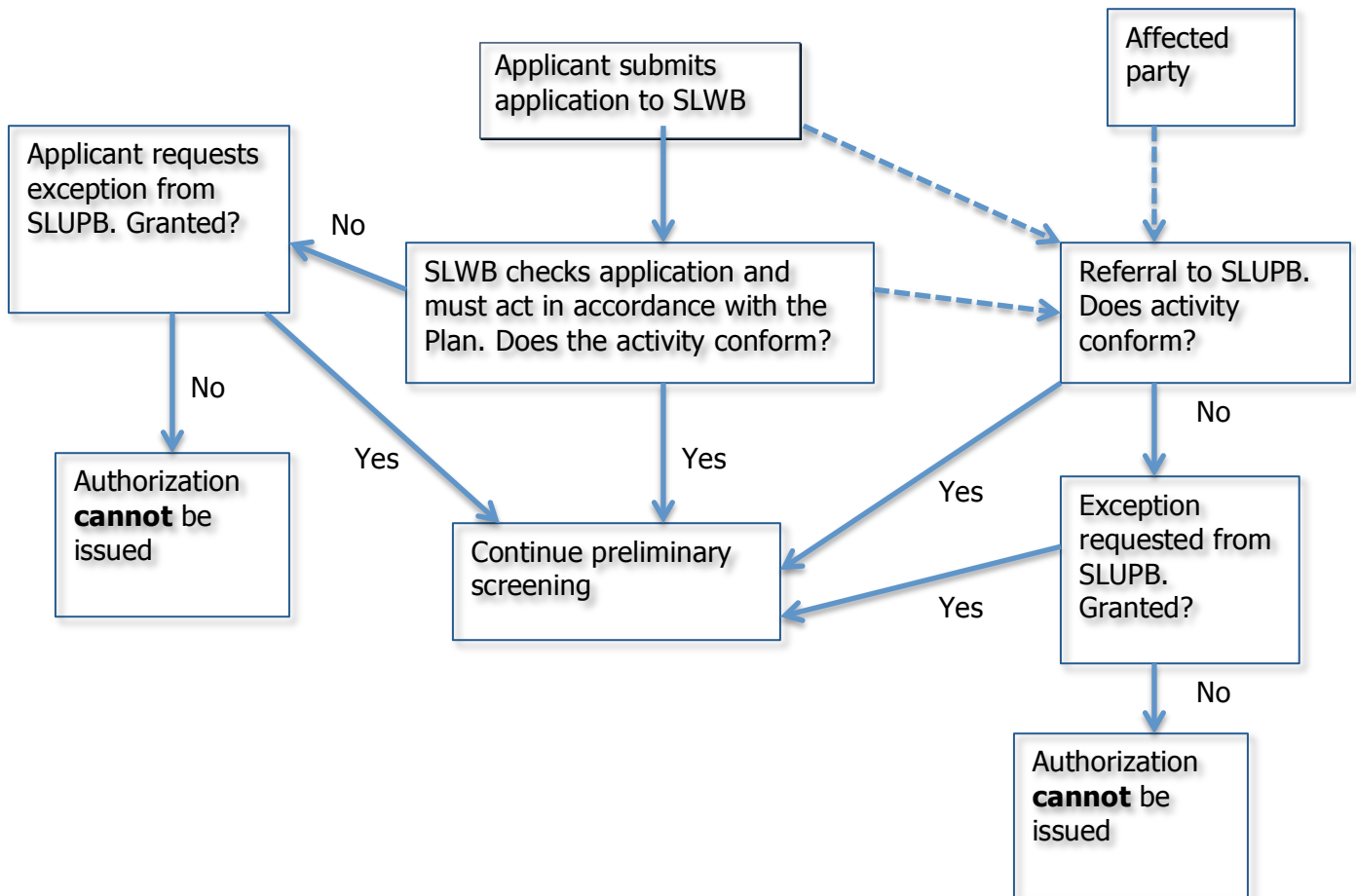
## Conformity Determination Process

### Overview

Heidi reviewed the Draft 3 approach, which follows the MVRMA S. 47(1). It relies on the regulator (preliminary screener) to do the Conformity Determination (CD), but allows for a referral to the SLUPB by anyone involved in the application or affected by the land use activity. The SLUPB's decision is then final and binding. This creates uncertainty as to who will actually do the CD and when it will be carried out. Heidi reviewed the flowchart showing the existing process (see fig 1), and pointed out that the exception process, while built into all flowcharts for completeness, is expected to be rare.



**Figure 1: Existing (MVRMA) Conformity Determination Process**



Comments received on Draft 3 (following MVRMA) were that there are too many ways this can play out. Is there a clearer process that could take the uncertainty out of the system? The first question is, should we let regulators take the first crack at CD (conformity determination), or is it clearer if there's an automatic referral to the Board every time? The second question is, when is the best time to do the conformity determination?

Looking at the options and comments, the Board believes that an automatic referral of activities might be the best option, and is putting that proposal on the table for discussion. This is consistent with the Gwich'in process: for the first two years, the LWB referred applications to the LUPB, and did internal checks at the same time (test drive period of LUP). Once everyone was used to the LUP, the LWB retained the responsibility, and the LUPB now does conformity checks only on smaller activities that don't go through the LWB's process.



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## Discussion

Heidi requested comments on the automatic referral process for all authorizations.

Tom Nesbitt: Maybe we would like in the interim to have the SLUPB do initial CDs. As legal counsel for the DLC, it appears there are limited situations in which the LWB can assume authority, and needs to refer. Legal counsel can discuss this further later. Is it an informal process where the LWB uses discretion to refer? Maybe there could be voluntary agreement to exercise discretion so that everyone's approach is consistent?

Heidi: Yes, that's right, for now it's an informal process. One consideration is flexibility. If a process were put in the Plan, it would be locked in. But a process can be put in the Implementation Guide, and if it needs to be amended, then there's flexibility. The LWB has always sent applications to the Board anyway: that process exists now, so it's one option.

Vicky: It seems like it would be confusing and ambiguous for everyone unless there is a dependable and consistent mechanism/policy for referrals.

Tom Hoefler: Someone would have to judge conformity against the plan? If an activity is below threshold, can the mining recorder just look at the zoning map to approve the activity? It might be helpful to have a simplified process where an activity doesn't come to the SLUPB unless over a threshold.

Heidi: A mineral claim can't be recorded in a Conservation Zone (CZ) once the Plan is approved. If at an early stage such as in recording a claim, maybe two processes have to happen? Maybe they wouldn't have to refer to SLUPB in that situation. We will flag this issue for later as this relates to the idea of a two-step conformity determination process (see page 27).

Vicky: Important to note that a conformity check by the Mining Recorder's office has to look at all CRs, not just check the zoning map.

Heidi: Yes, that will be part of the scope of authorization discussion (see page 27).

Danny: In terms of timing, how would the LWB see this unfolding? Would the CD have to happen within the 42-day period allowed between determining an application's completeness and issuing a permit?

Paul: After an application is deemed complete, it goes to the LUPB. If there are CRs outside of our scope, then the SLUPB may have to address them, which would add time and may put the 42-day period up for discussion. There are mechanisms that allow us to extend the 42-day timeline if we need more information, but we're always criticized to meet the 42 days as best as possible. If CD is a step before, it might simplify the process and prevent delays.

Matt: The overall intention is to streamline efforts, and minimize work. If the SLWB sends an application that meets their requirements to regulators and SLUPB at once, it may not conform to the LUP, and so time is wasted. The 42 days could be met, but the process is not streamlined. We need to have the LUP filter at the front end – the SLUPB determines conformity, then it is sent out for review.



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Heidi: For each CR we have identified information requirements needed for the SLUPB to determine conformity. We have started talking with SLWB about building the SLUPB information needs into the SLWB list of requirements for completeness to avoid delays.

Paul: It would be simplest if the applicant approached the SLUPB first for CD, and if it is in conformity with the LUP, that information is included in the application from there on in. So, the work is done in advance of SLWB involvement. The only issue is that if CD happens early on, and the project is then referred to EA, its scope may change and it may fall out of conformity. The process needs to account for this.

Tom N: The onus here is on the applicant to conform and figure out the timing of approaching the SLUPB and SLWB. If the Plan and Implementation Guide are clear, then applications should be OK. Also, all authorities need to consistently and efficiently review applications, and agree to refer to the SLUPB for CDs.

George: Looking at procedures, applicants should take completed applications that conform to the LUP to the SLWB. But before that, community approvals are needed. Agree that referrals should all go to SLUPB to make sure everything is in conformity.

Joel: Concerned with amount of work and timelines involved with CD. GNWT is hoping the Plan is clear and not very complicated, and doesn't take lots of work to determine conformity.

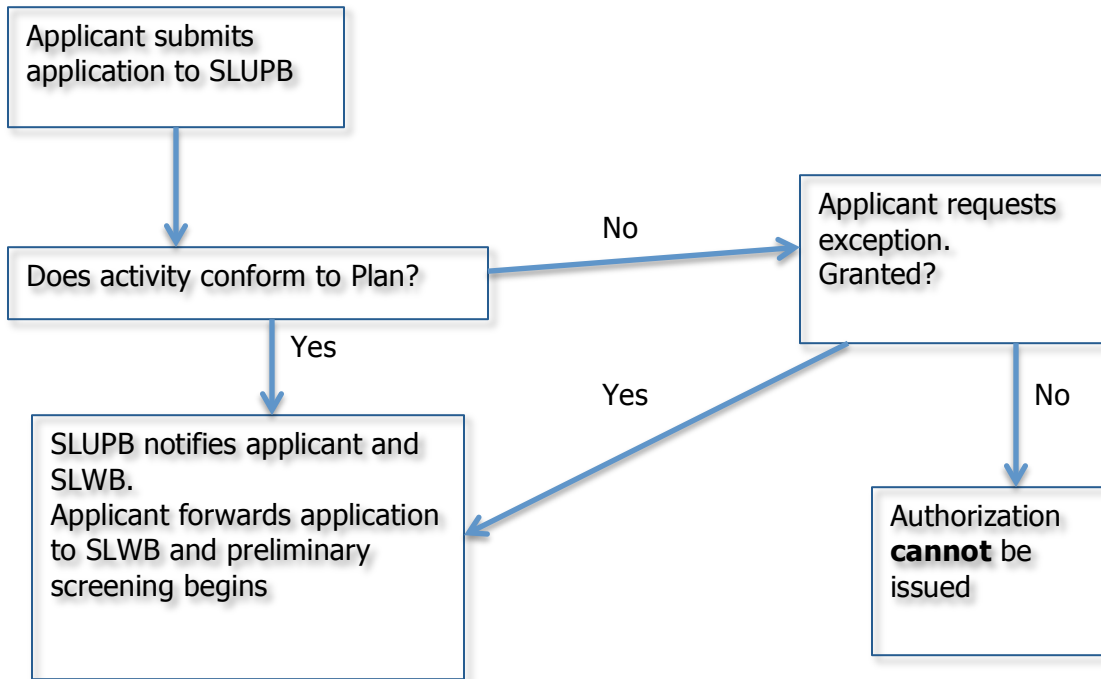
Tom N: Concerned about workloads for communities and land corps. The SLUPB will have staff to do this work. Communities get lots of referrals, requests for meetings about land use applications, they don't have the staff or capacity. Referring to the SLUPB lets them take the administrative burden.

Matt: There are opportunities for efficiencies and better communications. With the SLUPB as the first filter, communities will have opportunities to review applications at the front end, once completed, so people will be more aware.

Heidi reviewed the 3 CD timing options, which all assume a SLUPB referral process (figs 2-4).



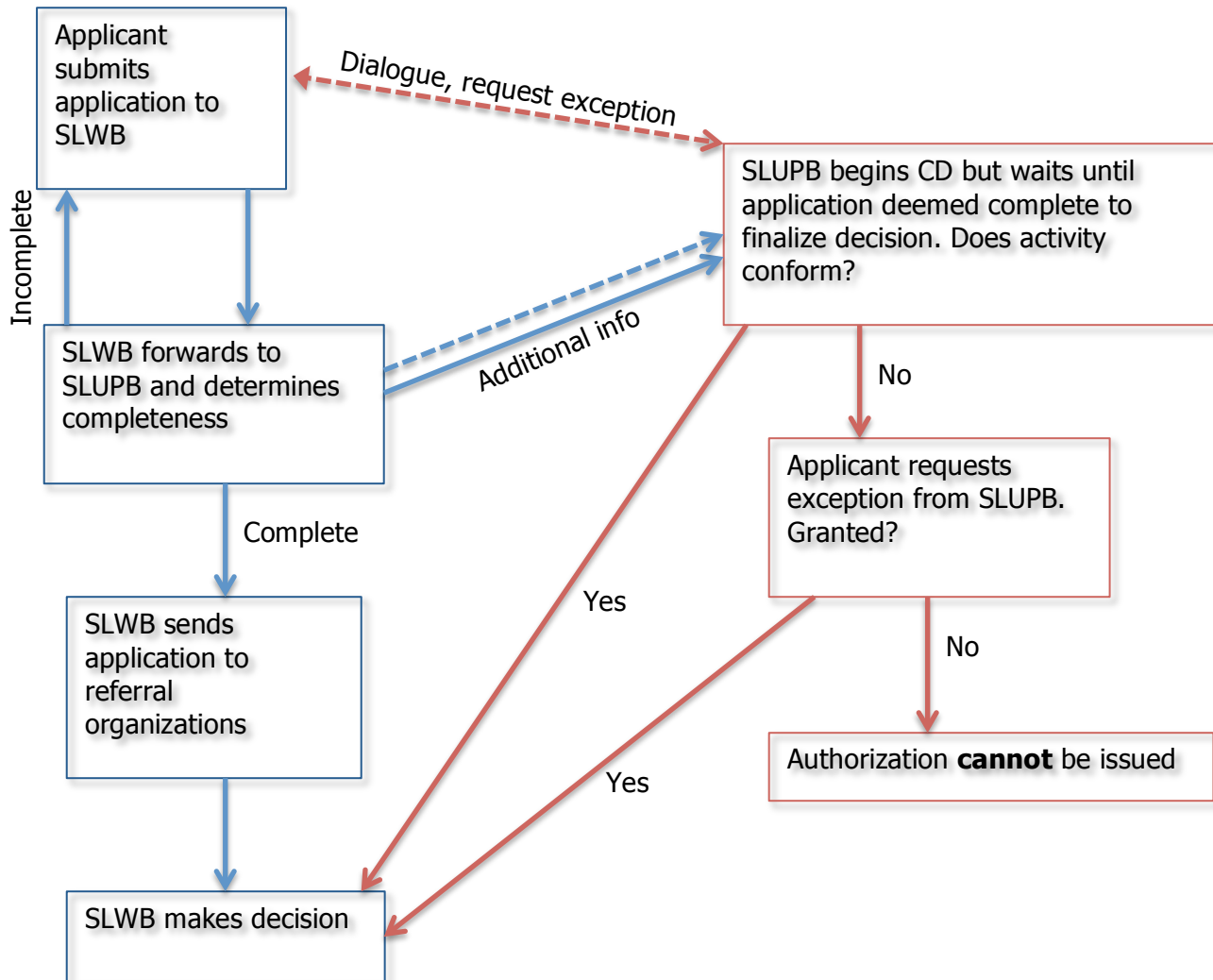
**Figure 2: Option 1: Front-End CD**



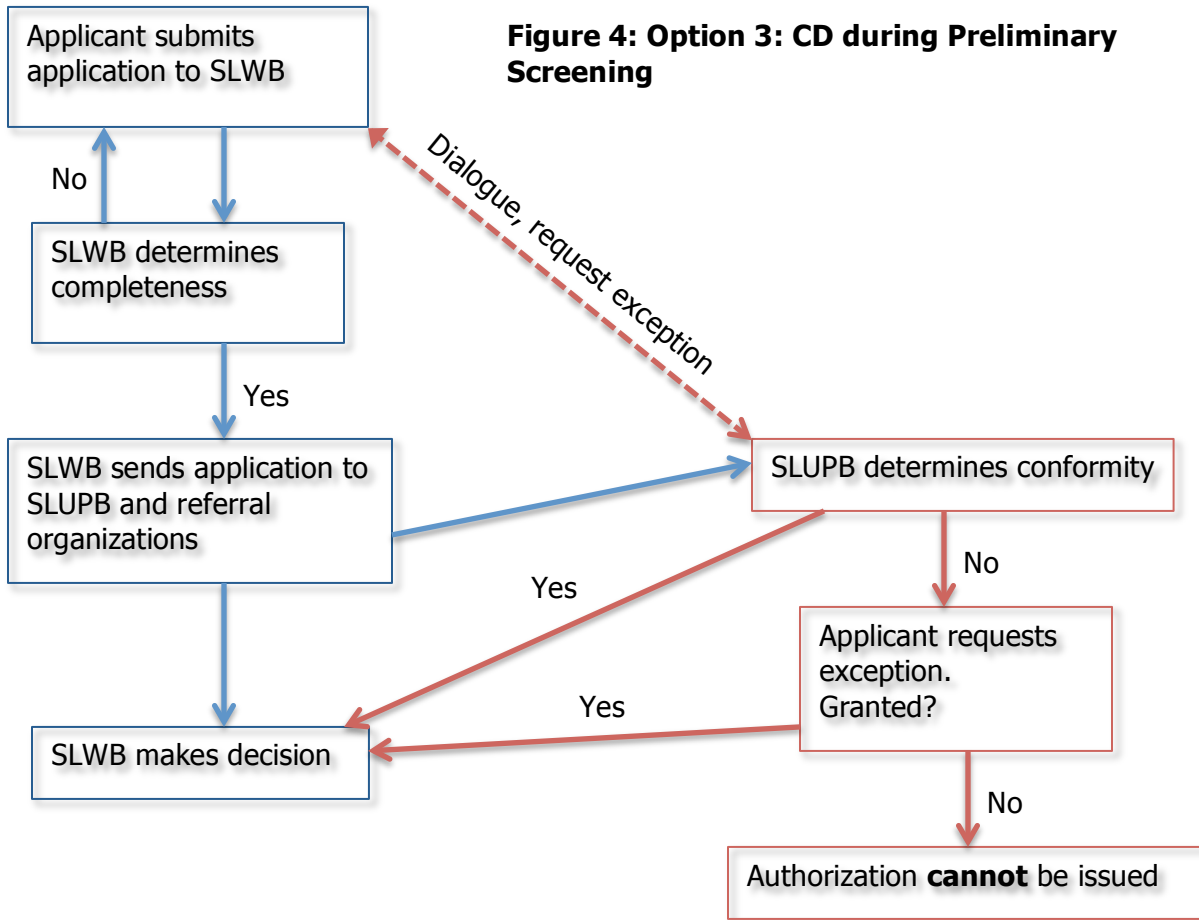
- Applicant consults with the SLUPB in advance of the current regulatory process to determine conformity before an application is submitted to the SLWB or other regulator.
- **Pros:**
  - Avoids delays and uncertainty of preparing and submitting applications that may or may not conform
  - Doesn't add to 42-day process
- **Cons:** Will require a separate application process to be developed – the SLUPB will need sufficient information about the activity for CD, and certainty that the design of the activity is sufficiently developed at this stage that it will not change as the applicant submits the fuller applications required of other regulatory stages. [Heidi stated that there needs to be a regulatory application first to serve as a basis for the referral, so that complicates this option.]



**Figure 3: Option 2: CD during Completeness Check**



- SLWB forwards application to the SLUPB during completeness check (this was the model proposed for the Gwich'in Land Use Plan as a best practice)
- **Pros:**
  - Advances CD to the earliest stage of the existing regulatory process
  - Gives SLUPB a head start on CD process
- **Cons:** What if the application is deemed incomplete by the SLWB? Would potentially require the SLUPB to redo the CD with the completed application.



- SLUPB carries out the CD and provides its response during the existing comment period for applications (current approach)
- **Pros:** No modifications required to existing system.
- **Cons:** Could result in a waste of time and resources by all if the application is deemed not to conform. This could be minimized by the applicant discussing the application with the SLUPB in advance to ensure it is designed properly, but the risk is there.

### Summarized discussion points on Conformity Determination Process

- Paul: Very common for SLWB to receive incomplete applications and need more information to be provided. The SLWB has 10 days between receiving applications and determining completeness. Involving the SLUPB for CD at this point will likely delay the process, so earlier involvement is better, especially if exceptions will be needed.
- Joel: There is nothing stopping applicants from submitting their applications for a CD, the earlier, the better.
- Paul: A different process may be needed if an applicant knows they'll need an exception granted. Communication from the outset will help prepare for extra time needed.
- Heidi: It's important that the SLUPB is involved because any party that considers themselves affected can refer an application to the SLUPB for CD, not just the SLWB.
- Heidi: A consistent referral process will help minimize the risk of late referrals.



- Vicky: Need a policy whereby everyone sends applications to the SLUPB for conformity checks as soon as they are received, and applications are held until the SLUPB gives the OK. May not need a complete application to SLWB for SLUPB to determine conformity to Plan, especially if applicant is directed to explain how it conforms at the outset.
- Tom N: Regulators need to be aware that their obligation to carry out their powers in accordance with the SLUP is ongoing for the life of a given project. It doesn't end with the conformity determination.
- Jason: It's important to learn from other planning processes, like the Gwich'in. If it makes sense for the Board to have the first crack at CD, that sounds good.
- Vicky: EC is after a CD process that's consistent: no confusion, transparent, done efficiently and in the right order.
- Lindsay: Can good communication between communities and Boards be added to process diagram to ensure it happens? Process timelines need to be laid out clearly at outset. Once the process is working and the Plan is approved, might be good to leave it flexible so that once the system up and running, it can be tweaked if necessary.

### **Board / Community Capacity and Efficiencies**

- Heidi: The SLUPB will continue to have 5 members and 2 staff following Plan approval and should be funded appropriately to carry out its implementation responsibilities. But the Board has lost quorum in the past and it can always happen again, same as it can happen to any of the Boards. One reason to keep the process flexible is in the case where the SLUPB loses quorum for a period, regulators should stop referring applications to the SLUPB and just carry out their powers in accordance with the Plan (do their own CDs) until the SLUPB gets quorum again.
- Dick: Currently, the staff report to the Board, but the SLUPB itself is legally required to issue the CD under the MVRMA. Flexible mechanisms in Nunavut allow the Board to delegate decision-making to certain members or officers of Board, while remaining accountable. This doesn't exist in the MVRMA and should maybe be considered in MVRMA amendments to provide greater flexibility here.
- Danny: SLUPB and SLWB are working to share resources to increase efficiencies and better communications.
- Joel: Concerns about building community capacity. If SLUPB does CD for first years, how does capacity get built at the community level? When the Board stops, how do we ensure capacity is strong enough at the community level?

### **Shadow Conformity checks**

- Heidi: SLUPB will do shadow conformity checks if applications are not referred to it as part of its monitoring responsibilities. This is what happens now in the Gwich'in, it's how they monitor what happens on the land. In the Gwich'in, the reverse happened too. When the GLUPB did the conformity check, they encouraged all regulators to do their own shadow checks to get experience with the Plan and compare their results against the formal review to work towards consistent interpretation.
- Angela P: If shadow checks are done, the best time is early in the process to provide certainty, but it would be impossible to do in the 10-day timeframe, staff-wise.
- Heather: Figures that once the plan is approved, the SLUPB and SLWB would work closely together on CDs.



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**Changes in project scope due to Environmental Assessment (EA)**

- Angela P: For larger projects that go to EA, if the SLUPB made a binding decision on conformity beforehand, what happens if the project changed as a result of the EA? Wouldn't want the application to have to go back to SLUPB for CD after EA.
- Danny: Not many EAs have been done where LUPs are in place, so MVEIRB is actually doing de facto land use planning in a sense now. An EA would consider LUPs in decisions because of the information and research there that could contribute to decision making.
- Dick: Nunavut system may have answers for needing a further CD following a project change coming out of EA. Basically, if the project changed sufficiently, a regulator would have to undertake a separate referral process for the elements that changed and the Board would reconsider the changes within the broader context of the application as a whole.
- Options for second CD of post-EA project: Either once the Developer's Assessment Report (DAR) is completed, or through the consolidated project description provided to SLWB after the EA process when it comes back to the LWBs for issuance of permits and licences.

**Community concerns**

- Harry: Everything that happens on the land should benefit the community. Companies try to streamline their programs, end up not gathering TK from communities, not spending enough money in communities for communities' benefit.
- Joseph: Communities need to be more involved. Sometimes in our area other people do stuff we don't know about. People need to go to the community first, tell us about their plans, especially with staking. Everyone needs to get together and talk about what's going on to protect the land.
- Paul T'Seleie: Proper consultation is important. It's too easy for industry to get around regulations, there's no control or monitoring. Government can issue permits without communities knowing, and it makes them vulnerable. We need proper guidelines and regulations in place that are followed.
- Peter: With mining, lots of activity can be done prior to any application. We need to address this. With prospecting, caribou are lost, and there's no compensation. Resources are not there in communities to properly monitor, or review applications. More government funding is needed.
- Harry: This is complicated. Using examples and pictures will help people understand how things work so that communities can provide feedback. Need enough money to get people on the land to really understand what's going on, and to make sure that companies have enough money to finish their project and enhance the community economically, environmentally, socially – doesn't happen in most cases.
- George: The community should be the main point of contact for applicants. Need to make that very clear in terms of requiring applicants to talk with specific people or organizations within the local community.
- Tom N: Land use plan implementation will up the ante for communities, which are the foundation of the planning process. Communities currently don't have the capacity to do the work they'll need to. There will be applications that will require lots of involvement and consultations, plus CDs. Communities already have consultation fatigue, and the Supreme Court obliges communities to do their part in consultation. It's a new system.



We need to ensure community capacity (funding and coordination positions) to prevent conflict down the road.

- Danny: Summarized community concerns. They are not against development, but they want to be involved in what happens on the land. We need to identify the right community organizations to be involved. They would like to speak to the SLUPB and industry as SLUPB does the CD. Consultation is an issue. How much is enough? Who does what?
- Danny: Participant funding is really important for the CD process, as community capacity to participate is limited.
- Matt: It's important that a discussion on intervener funding happens. It should apply to land use planning, not just the EA process.

## Outcomes from CD discussion

1. General interest in discretionary referral to SLUPB and need for flexible process (not locked into the Plan).
2. Obligation of regulators to act in accordance with Plan still exists.
3. General agreement that the onus is on the applicant to demonstrate conformity – will make everyone's job easier.
4. In order for that to work, there needs to be lots of up-front communications between applicants, SLUPB, SLWB and communities.
  - The Implementation Guide is meant to provide guidance to applicants; the SLUPB is open to ideas and suggestions for crafting it.
  - Regulators should work together to streamline information requirements.
5. Preference for a front-end process as much as possible – option 2 seems to be best. The SLUPB will start its review during the completeness check, but will not finish the CD until the application is deemed complete by SLWB and the SLUPB has all the information. This gives the SLUPB a head start on the process, but not completion. The SLWB referral process will start before the SLUPB is done. It's not ideal but seems like the best option. More up-front communication before the process begins will help ensure success.
6. Keep in mind capacity issues both for SLUPB and communities. This is where flexibility of process becomes paramount. If SLUPB capacity is compromised, regulators will always be the backup to check conformity, as per s.47 of MVRMA. This also speaks to the need for the approving parties to adequately fund the Board.

## Outstanding questions

### 1. Who is the applicant?

- Process with/without SLWB
- Below-threshold activities that require authorizations but not from SLWB
- Process for Land/rights dispositions
- Relates to the scope of authorizations discussion

This discussion was saved for Day 2 (see page 27)



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## 2. Changes to project as it progresses from preliminary screening to EA to regulatory phase

- front-end CD with back-end monitoring for project changes?

Dick: A CD is done for activities as outlined for the SLUPB. If there are project changes or additions, then those don't have a CD. There would be an expectation that when project changes are identified, the SLUPB would be notified, and a referral would happen to make sure the entire project conforms. If a second CD is done, the SLUPB would look at new activities in the context of the whole project.

Tom H: Industry needs assurance that areas open for development are not suddenly declared not in conformity once a project progresses.

Heidi: The Plan is clear that the grandfathering exemption for the zoning extends to the progression of rights. In each stage of the regulatory process, all CRs must be considered, not just the zoning. If a mineral claim conforms to the CRs, it can become a mine, but each phase must conform to the rest of the CRs in the plan. Workshop 2 will discuss individual CRs.

## 3. Coordination of multiple authorizations and regulators (with and without SLWB)

Some discussion about the involvement of the NEB in the Sahtu. The SLWB discusses applications with the NEB, as applicants sometimes have to provide NEB authorizations to the SLWB. Matt pointed out that the NEB should be involved in these discussions because the Plan applies to it as a federal regulator.

Heidi: The NEB provided some suggestions on Draft 3. Their big concern was that CRs needed flexibility because some fall outside their scope of authority. DFO and EC have a similar issue in that they have no mandate to fulfill certain CRs. The SLUPB is not trying to expand anyone's mandate; each authorizing body has to carry out a CR only if it's within their mandate to do so. Regulators have to be involved, because there must be an application to be referred to the SLUPB.

Angela P: Would it be possible for the SLUPB to provide a table matching CRs to regulators' mandates?

Heidi: We thought of it, but if the SLUPB misses one, it may give the impression that the regulator is off the hook. That kind of a table would have to come from the regulators themselves to prevent any errors.

Both George and Peter commented on the importance of providing clarity about regulators' jurisdictions, and how communities provide input to each.

Heidi: When the SLWB is involved, it's probably easiest to mimic the coordination in the preliminary screening process. Everyone would be bound by the SLUPB's CD, and then follow through screening process. But if it's a small activity where the SLWB is not involved and the authorization is issued by another regulator, who does the referral?



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Vicky: Many CWS research permits don't require a land use permit or water license. If EC is issuing the only authorization, we'd be happy to refer to the SLUPB via SLWB, but if others are involved, we don't want to duplicate efforts. **Vicky will look into whether regulators coordinate in the absence of SLWB's involvement.**

Ruari: DFO does not usually coordinate with other regulators; authorizations are usually to let an individual contravene the Act. Could refer to SLUPB when authorizations are ready for approval, which would include consultation.

Paul: SLWB and other regulators communicate back and forth on terms and conditions to try and reduce duplication and jurisdictional overlap.

Paul: Most applications that don't require a land use permit or water license would usually need only one other authorization. Research permits may be the only ones needing dual authorization. Small activities like camping trips or initial prospecting would fall below threshold. It's safe to say anything below the SLWB's threshold requiring multiple authorizations would be rare.

Matt: Those small activities that fall below threshold still may have cumulative effects.

Heidi: Cumulative effects have been parked outside the Plan for now.

Dick: In the model, multiple authorizations where a land use permit or water license are required show the SLWB with the lead role in making referrals to the SLUPB. But we need to spell out the implications of this role for other authorizing agencies that are not making the referral: each regulator would have to craft its own terms and conditions for authorizations, as they are responsible for implementing the Plan to the extent of their authority

George: Concerned about below-threshold activities, like prospecting permits. The community still wants to be involved if someone is doing something on the land. The Plan should make sure anyone on the land must talk to the community.

#### 4. Differences for settlement lands vs. Crown lands

Heidi: The SLWB is involved regardless of land ownership; difference is with disposition of rights or land access. Land corporations grant access, and have a responsibility to act in accordance with the Plan, so would have to grant access in coordination with zoning and CRs relevant to any access and benefits (ABA) agreement made.

Dick: The SLWB plays lead role in most cases, then land corps act as other regulators do. There may be timing questions, but referral would go from SLWB to SLUPB for CD. If in conformity, then the SLWB crafts terms and condition, and the land corp figures out how to meet LUP requirements and conformity with their authorization. The land corp and SLWB would have to discuss terms in license or lease. Land corps would have to do their own CD for the Plan with respect to ABAs.



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John: Land corps just have to look at zoning and check it against the proposed activity. If the activity conforms then they would apply the CRs through the terms and conditions, relying on the expertise of the SLUPB or SLWB. Not sure if an ABA is a land tenure instrument or if leases are issued, but if there's a lease, it couldn't then authorize something prevented by the Plan. Once an activity is given the go-ahead, the land corp should send the developer to the SLWB or SLUPB to help move the project through the process.

Tom N: Agreed. ABAs don't deal with all aspects of the LUP, just certain issues, so are complimentary to the CD for the Plan. Thw applicant and all agencies involved should communicate to ensure conformity. It will be new territory for land corps to determine conformity with Plan for ABAs. They should work with the SLUPB. George agreed that land corps will need the help of the SLUPB.

There was some discussion about whether confidential ABAs could be in conflict with the Plan, requiring a proponent to ask for an exception. General consensus was that ABAs should generally complement the Plan, not conflict with it.

Matt: The SLUPB should make clear the assumption that confidential ABAs need to be consistent with the regulatory regime and the Plan.

Dick: Identified two potential processes for land corps to make sure that activities addressed by ABA conform to LUP:

1. Could be an initial referral by the land corp to the SLUPB. SLUPB's CD would happen before LC signed off on ABA.
2. Some ABAs may grant access narrowly, in a way falling outside the scope of MVRMA S. 46(1), making the land corp responsible to act in accordance with Plan only with respect to the access (to land or water) components of the activity, not the full activity itself. ABAs could then be conditionally approved, subject to conformity of the overall activity with Plan. This would allow them to be signed off before anyone refers the actual activity to the SLUPB for conformity as per the current process. The application would go in to LWB knowing there are conditional agreements in place. This would allow proponents and land corps to meet as early as possible in the process. If the activity didn't conform, the ABA wouldn't be implemented.

Tom N: It seems that when a land corp is negotiating an ABA, they should extract elements relating to MVRMA s46.1 (land and water use, deposit of waste). The LC could refer only those aspects (in general terms to not break confidentiality) to SLWB or SLUPB for a CD. The onus to demonstrate conformity still rests with applicant; the land corp is the regulator in this instance.

Heidi: Likely need to have a separate discussion to work out the details of roles and CD responsibilities of land corps, applicants, and SLUPB in the case of ABAs on settlement lands.

Peter: It would be good if the LWB and the SLUPB talked to communities about ABA processes in place. Many don't understand the process, and need to understand it better so that activities on the land can go ahead.

George: Don't forget about communities' rights of consultation on Crown land. ABAs are not the only way; we do give other approvals that should be made clear in Plan.



There was a short discussion about the jurisdiction of the Surface Rights Board in this area. It was generally understood that it only gets involved if an applicant and district need help reaching agreement on an ABA. John added that it is only important if an activity's location is split over both Crown and Sahtu lands, or where a surface rights holder is preventing subsurface rights from being exercised. It's not very common; once access is allowed, the regulatory and land use plan systems apply.

Tom Hoefer: It's good for the onus to be on the applicant, as long as the Plan is clear enough. Still have to deal with cases where applicants are not applicants, like low-level exploration that doesn't have to go to the Board. 'Applicant' needs to be carefully defined. (see page 27)

Peter M: Nobody answered how to define an applicant – this is an important question from industry.

Tom N: There is community concern about below-threshold activities. Deline elders are concerned about helicopters used by small camps. We need to discuss this under scope of authorizations (see pages 15-27), to sort out what's covered by ABAs and what's covered by LUP conformity determinations.

Greg Y: Asked if the CD process for land uses would be the same as for land rights (e.g. an exploration license)? (Also discussed under Scope of Authorizations – see page 27)

## Scope of Authorizations

### Overview

Heidi: Draft 3 states that the Plan applies to any land use activity that requires an authorization under any federal or territorial legislation or that may be authorized by a disposition of an interest in land from government or a District Land Corporation. This is based on the Board's reading of S. 46(1) of the MVRMA, which requires that the "First Nations [District Land Corporations], departments and agencies of the federal and territorial governments, and every body having 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, shall carry out their powers in accordance with the land use plan applicable in a settlement area."

The Board understands this to be constrained by its mandate under S. 41 (2) – i.e. the licences, permits and authorizations must relate to the conservation, development and use of land, waters and other resources in a settlement area. For illustrative purposes, the Board included a list of authorizations taken from the approved Gwich'in Plan to provide some clarity on the authorizations expected to be subject to the Plan.

The SLUPB received many comments on this topic, as listed in the discussion document. Under s46.1 of the MVRMA, the SLUPB doesn't have the authority to exclude authorizations, and doesn't want to undermine community interests by inadvertently exempting any land uses or authorizations that should be subject to the Plan. But if there are authorizations on the list that are administrative, like a business licence, or that are either so minimal or beyond the scope of



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the Board's mandate that they shouldn't be included, then we want to understand and discuss those so the Board can make an informed decision. We propose to have an open discussion of GNWT's and SSI's proposals. We are not looking to achieve consensus through these discussions and the SLUPB is not making a final decision at this workshop. This is a chance to have an open discussion before Board makes its decision.

There was a brief legal discussion around the SLUPB's authority to create an exclusion list. It was discussed that the phrases "exclusion list" or "exemption list" is creating confusion as they generally refer to the Exemption List Regulations which exempt authorizations from Preliminary Screening under Part 3 of the MVRMA. All were agreed that the SLUPB does not have the authority to exempt any authorizations from application of Part 2. Instead, we are trying to identify authorizations that fall outside the Board's mandate as defined in Part 2, and particularly s. 46(1).

John: SSI met to approve the April 26, 2001 submission, which tried to account for community, SLWB and SLUPB capacity to implement the Plan efficiently and effectively. SSI thought it appropriate to remove authorizations not related to the use of land and water or the deposit of waste. We talked about what removing them would do to land and participant rights. This was motivated by a concern for the number of different agencies and therefore different interpretations of the Plan and the CRs involved and the possibility of them all making different CDs on the same activity. We recommended that the SLUPB do CDs for the first five-year cycle to ensure consistency and efficiency. A flowchart was developed to illustrate categories of approvals: permission from landowner (property rights) vs. public law and regulatory matters (licenses, permits or other authorizations).

The Scope of Authorizations discussion continued on Day 2.  
Meeting ended for the day at 4:25pm.

## **Day 2 – October 5<sup>th</sup>**

### **Participants**

Heidi Wiebe, SLUPB Lead Planner  
Dick Spalding, SLUPB Legal Counsel  
Stephen Kakfwi, SLUPB Board member (am)  
Danny Bayha, SLUPB Board member  
Colin Bayha, SLUPB Board member  
Michelle Swallow, ENR/GNWT  
Joel Holder, ENR/GNWT  
David Purchase, ENR/GNWT  
Kris Johnson, ITI/GNWT (pm)  
Lindsay Armer, INAC  
Greg Yeoman, INAC (am)  
Matt Bender, INAC (am)  
Vicky Johnston, EC/CWS (am)  
Trevor Sinclair, DFO  
Ruari Carthew, DFO

John Donihee, SSI Legal Counsel  
Peter Menacho, SSI  
Morris Neyelle, Deline Land Corp  
Tom Nesbitt, Deline Land Corp Legal Counsel  
Lucy Jackson, Yamoga Land Corp  
Heather Bourassa, KGDLC  
George Barnaby, Yamoga Land Corp  
Marshall Netherwood, Shell  
Cyril Jenkins, Conocophillips  
Paul Dixon, SLWB  
Angela Love, SLWB  
Jason Nelson, CAGC  
Angela Plautz, MVLWB  
Paul T'selie, Yamoga Land Corp  
Joseph Kochon, KGDLC/Ayoni Keh Land Corp



Chief Richard Kochon, Behdzi Ahda FN  
Nation  
Rodger Boniface, Yamoga Land Corp  
Harry Harris, Yamoga Land Corp  
JB Gully, Colville Lake Elder

Val Gordon INAC Minerals (pm)  
Rose Greening, Mining Recorder INAC (pm)  
Gwenda Luxon, Lands Admin INAC (pm)  
Steve Skinner, Lands Admin, INAC (pm)  
Erica Janes, notes

Meeting Start: 8:45 am

Danny welcomed all participants back.

Heidi provided a recap of Day 1 results. There was a general consensus that at least in the first few years, a standard referral to SLUPB makes sense for CDs and that Option 2 seemed to present the best option for timing. The process needs to be flexible, not locked in, so it can change as required. We discussed and resolved some of the detailed questions around the process:

- 1) If the application changes as it moves through the process (e.g. through EA), a second referral would be required to the SLUPB. The SLUPB would consider the changes in light of the overall proposal.
- 2) Coordination of Multiple Regulators: Where the SLWB is involved, there is 1 referral to the SLUPB and all regulators are expected to act in accordance with the SLUPB's CD and implement it through their own authorizations. Where the SLWB is not involved, it would be rare to have more than one regulator involved. CWS and DFO both agreed that they would refer any applications to the SLUPB for a CD.
- 3) Settlement vs Crown Lands: Options for conformity determination processes involving access and benefits agreements on Settlement Lands were discussed but not completed. This was deferred for further legal discussions.
- 4) Topics that depend on the scope of authorizations discussion were deferred till today.

## Scope of Authorizations (continued)

Heidi: We'd like to hear from GNWT and SSI about their proposals for exempting authorizations from the Plan, and discuss each one with the group. That will allow us to close the loop between scope of authorizations and the CD process. There will be a discussion of grandfathering existing uses this afternoon.

Danny: Is it in SLUPB's mandate to have an exemption list? Do we need to establish legal authority before this discussion?

Dick: Good question, we need to be clear. John and I confirmed yesterday that the answer is no. The authorizations we're talking about exempting are for activities that fall outside the mandate of Board, and are the responsibility of other regulators.

Tom N: It's a question of interpretation to say that these authorizations fall outside the SLUPB's mandate. It's important for all of us to understand the GNWT and SSI's proposals so that we all know what doesn't seem to be within the Board's mandate. It's important to take the time to make informed decisions.



John: The language is confusing. Here's what happened: SSI told the SLUPB in May that Table 11 in Draft 3 (which the Gwich'in LUP used) may have more authorizations than necessary. All we're talking about here is carefully looking at what s.46.1 of the MVRMA and s25.2.9 of the Sahtu Land Claim say about what kinds of activities fall outside the SLUPB's mandate. We'd like to then take those out of Table 11, but first we need to carefully review the legislation and regulations that create each permit and figure out why the licensing requirement was created.

George: We have to look at this from the community's perspective. People want to know what's happening on their land, and talk to the people doing things there, no matter how small the project. Communities need to be involved for all land uses.

John: Will review the list of authorizations that SSI removed from table 11 later. There is lots of commonality between our list and GNWT's list. The rationale is the same, which is that they don't authorize someone to actually use land or water or deposit waste, or the license is such that before those rights or permissions happen, the applicant would have to get a land use permit anyway. SSI is not trying give anyone a free ride, or put a system in place that might allow impacts on the land that shouldn't happen, but these are not land use planning issues. For every item in table 11, a CD will have to be done by the SLUPB and/or someone else. The Gwich'in were very thorough, and the time and effort of involving communities in multiple CDs for the same project is too high, so SSI pared down the list to what's necessary. Proposed for exclusion are:

- Scientific Research License
- Timber Cutting Permit
- Timber Transport Permit
- Timber Scaling License
- Mill License
- Forest Research License
- Permit to Burn
- Wildlife Research Permit
- Commercial Wildlife License
- General Wildlife Permit
- Archaeology Permit
- Tourism Operators' License
- Big Game Outfitter's License
- Establishment of territorial parks

## GNWT Proposed Exclusions

Joel: Thanks for the overview, John. GNWT put a number of these forward because they don't give a right to use land or water or deposit waste. For many, there is still a level of consultation that needs to happen even if there aren't rights to access.

Joel, Michelle and David Purchase provided an overview of each of the authorizations. There was some general discussion on the authorizations as they were presented followed by a specific discussion on each authorization.

There was considerable up front discussion on the pesticide licence. The GNWT stated that it is always associated with other authorized uses (e.g. spraying around installations, infrastructure), which require land use permits or water licences. This could be a very small area (e.g. a navigation marker) or very large like a pipeline right of way. It could have implications for water, not just land. Is a pesticide considered a "deposit of waste"? Community members felt it should be subject to the Plan. George said the community doesn't want chemicals used. These



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areas should be slashed by hand instead. There are lots of people with nothing to do; hand slashing creates work and gets the job done. That's what they've required before.

Joseph: It concerns me when people who don't live in the area create rules for your area. We do have concerns on certain things in the community. That should be where you get your answers about what should be included and not included. We get concerned when people are using the land and we don't know about it, like tourists fishing out the lake next door. We don't have a way of monitoring. We bring our concerns to ENR and it doesn't hit anyone's radar, no one is watching and letting us know. Even outfitters, if they are out there, at least let us know. You need to take these questions back to the communities.

Harry Harris: A truck went off the road and caused a lot of damage. There should be times of the year when you can't access the land. We use skidoos instead. Decisions have to enhance the communities. For example, only 3 of 36 wildfires were fought last year. The fires destroyed lichen, which the caribou need; it takes 1000 years to grow back. The Plan's job is to enhance communities' well-being.

Vicki: Doesn't use of land include resources as per 41(2)? I also want to ask about geological low-level flights that affect wildlife? Those require research permits so as long as they are not taken off, then they could be caught by the Plan.

Heidi clarified that the SLUPB reads S. 46(1) of the MVRMA together with s. 41(2) when defining our mandate. Draft 3 was crafted with this understanding. This is a broader definition than what SSI worked with to develop their exclusion list.

John clarified that SSI's proposal was approved by the SSI Board but not brought to communities for discussion. Lucy expressed concern that communities were not consulted about the exclusion list.

### **Big Game Outfitter License**

Authorizes a business to provide guided commercial big game outfitting activities (single or multi-day big game hunts) in a specific geographic area as defined by the geographic coordinates. No rights to land or water or given, but does grant holder exclusive use of that geographic area for big game outfitting. May or may not require other authorizations or access agreements depending on the location and scale of activities. The licensing process requires mandatory consultation with stakeholders, including community and aboriginal governments. Including this authorization under the Plan is a duplication of process and places unnecessary regulatory burden on typically small tourism operators.

### **Discussion Summary**

Michelle and John clarified that the outfitter must get a land use permit if they build a structure; this license just allows the holder to accept money to take someone hunting. To have structures on the land, the MVLURs apply, and if over the threshold, a land use permit would be required. Outfitters almost always have camps, and if of a certain size, they require a land use permit, any expansion of their activities (e.g. building an airstrip) would require a land use permit. These authorizations would have to adhere to the SLUP.



Joel and John clarified that this license is on the list because it's basically a business license; you need a hunting license and a tag for the actually hunting, and of course, first rights for harvesting go to land claim beneficiaries. Outfitters themselves are not hunting, and tags/licenses are allocated according to an ENR hierarchy that depends on where the hunter is from. Harvest quotas and tags are managed by the SRRB.

There was a discussion about community concerns around the impact of trophy hunting. Killing animals with large antlers results in loss of herd leadership, and has a negative impact. Morris Neyelle and Rodger Boniface reiterated the importance of community knowledge, and consulting with affected communities. Morris expressed his dissatisfaction with the lack of translators at the workshop. Tom Nesbitt pointed out that the ecological integrity measures developed for the Great Bear Lake Management Plan and now included in Draft 3 help meet community concerns about big game outfitter issues.

Danny: The SRRB would be valuable in this discussion, as the main instrument of wildlife management in the Sahtu. We need more research and discussion on the wildlife exceptions.

Matt: the challenge is trying to fit real community concerns with the limited tool of regulatory authorizations. We need ongoing dialogue and consultation to address cumulative effects, which the SLUP does have the provision to address and provide a forum for. Tom pointed out that working groups, community engagement, cumulative effects, monitoring and communications are all in the Plan as Actions, they just need to be prioritized.

### **Pesticide Licence**

Authorizes a business to apply pesticide in a specific geographic area as defined by geographic coordinates. No rights to the land or water are invested with the licence. A pesticide application permit and pesticide business permit are required. New or altered permits are already required to do a pre-screening with about 30 different interested organizations. Additional consultation would be a duplication of process.

### **Discussion Summary**

Joel explained that this license is used for companies to spray along railways, roadsides, around oil and gas installations. Community consultation is required for every new permit, and ENR works with LWBs before the license is issued. In the Sahtu, pesticides are mostly used around tanks. Companies would apply for the licence annually. If it's a renewal, no consultation is required. A total of 2-3 licenses are issued in the NWT annually. In the Sahtu, the only licence is for Imperial Oil to spray around their tanks.

Concerns were raised about pesticide use for mosquito spraying (done in 1980's but not since), and around navigation markers along the Mackenzie River. Both examples would be covered under this Act. George reiterated the importance of consulting with affected communities, and of considering alternatives to applying herbicides (e.g. hand-slashing around the navigation markers). Stephen asked how communities would have access to information about the chemicals used. **Michelle said she would follow up later on how reporting to communities is done.**



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It was determined that this Act would apply to spraying herbicides along a pipeline or highway corridor, which potentially covers a huge area and may cross CZs and SMZs with significant impacts. Matt pointed out that EAs may cover larger pesticide activities that the SLUPB may not catch, but Tom preferred that any application of pesticides where there are potential impacts be caught in a CD by the SLUPB.

Joel said that given the possibilities of use, the GNWT would have another look at taking the Pesticide License off their list of exclusions.

Richard Kochon (summarized in English by Stephen): We Dene people would feel more comfortable if interpreters were here. This should be arranged for the next workshop. Community people have a strong interest in being here, to raise concerns and bring our perspectives; we're the ones who live here. Communities have rights to benefits like everyone else; it's paramount that we understand what's going on. We're concerned about what goes in the ground and in the water; we want to know. We're concerned about wildlife and the land; our lives our short compared to the existence of wildlife, so when we see outfitters, hunters, we're concerned. If I go and shoot a cow on someone's farm, they'll be concerned: same thing with outfitting on the land. We see it as a waste; we don't understand it or see the value in hanging trophies. We want to be able to speak in our language, be comfortable.

### **General Wildlife Permit**

Allows for the baiting or harassment of wildlife (bear baiting for outfitted hunting). There is already pre-screening associated with the RRCs and SRRB prior to this permit being issued. Additional consultation requirements would be duplication.

### **Discussion Summary**

The only discussion was to clarify that harassment means deterrence in this context and that this is only used for bear baiting and is hardly ever done anymore. Only one permit has been issued and it was not in the Sahtu. No other comments or discussion.

### **Wildlife Research Permit**

This is a permit to conduct research on wildlife. It includes a variety of land uses from large game surveys, to wildlife health surveys, etc. There is already pre-screening associated with the RRCs and RRBs prior to this permit being issued. Additional consultation requirements would be duplication. The permit is issued for wildlife research and not for land use activities.

### **Discussion Summary**

Participants discussed low-level aerial surveys that may negatively affect wildlife. Tom pointed out that Deline elders are very concerned about the use of helicopters around wildlife, and want the Plan to address this with the goal of maintaining ecological integrity.

Vicky: These kinds of studies are good and need to be done, but they could benefit from going through the LUP process. This might be the way to deal with low-level aerial biological or geological surveys that don't require a land use permit or water license, but are known to cause disturbance if extensive. Will the basic consultation process be enough to ensure activities would conform to requirements for SMZs if it is not included in the Plan?



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Heidi said that low-level flights are part of the cumulative effects discussion, but cumulative effects management won't be in this draft of the Plan. If this authorization falls outside the scope of the Plan, there would be nothing for the SLUPB to catch.

John: Just because some wildlife research isn't covered by the Plan, don't assume the community won't hear about it. Every wildlife research permit application goes to the SRRB and the RRCs, and may need other regulatory approvals requiring preliminary screening. The Land Claim provides important rights and is a remarkable instrument in terms of control and opportunities for participants. There are two competing visions for the Plan in the room. Is the land use plan supposed to do everything or what is its scope? What is effective and reasonable? There are some limits on what the Board should be doing.

### **Tourism Operator License**

The licence authorizes a business to provide guided commercial tourism activities (day tours, or multi-day tours for nature viewing, canoe or raft tripping, cultural experiences) in a specific geographic area as defined by geographic coordinates. Multiple licence holders may conduct activities in the same area. Applicants for new or amended licences are required to demonstrate that they have land use permits or permission to cross private lands under land claims settlements if their use triggers such a requirement; however, in most instances the nature of the activity licenced under a TOL does not trigger such requirements, and the TOL is issued after mandatory consultation with local community governments and Aboriginal organizations who may have an interest in the area. TOLs licence activities that provide services to the travel consumer; the licencing process requires mandatory consultation with stakeholders who may be potentially affected. Including TOL holders in an authorization scheme under the plan is a duplication of process and places unnecessary regulatory burden on tourism operators who are typically small businesses who are already overburdened by regulation.

### **Discussion Summary**

Michelle and John explained this is basically a business license (to accept money) that ensures things like liability insurance standards, similar to the Big Game Outfitter License. If the operator had a certain size of camp and occupied it for a certain number of person-days each year, then it would require a land use permit, though many are so small that they do not. Lodges need a lease (from INAC is the Crown or landowner). The legislation is about setting standards for guides. There was a question about whether this would include the use of helicopters to take people out sight-seeing. **Michelle said she would confirm if this license applies to helicopter sight-seeing.**

George and Peter expressed concern about the impact of these kinds of activities on the land, such as paddlers on the Mountain River and outfitting on Great Bear Lake and in the Mackenzie Mountains. George suggested these kinds of activities should be subject to the Plan, in case we need it. Tom wondered whether the potential impact of below-threshold camps would be worth the administrative costs for the SLUPB to monitor these activities.

Paul pointed out the difference between an activity's effects on the land vs. the way the activity is conducted. For example, fishing itself may have little impact, but the way a lodge is run could be the issue. How can the SLUPB monitor that and address community concerns?



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### Free timber cutting permit

This is a non-commercial permit to allow an individual to cut and transport wood to build a home or to heat a home in the winter - 60 m<sup>3</sup> or 16 cords, issued only on non-settlement lands. The permit allows the GNWT to meet national requirement for reportings how much timber is used each year. No other authorizations are required for this use. It is a personal use authorization only - if commercial, they would have to get a timber cutting licence.

#### Discussion Summary

David explained that these permits are usually given for areas near communities, and usually in a burn. Renewable Resource officers issue permits after talking with local organizations to find out where the community would like permits issued. In land claim areas, communities can identify no-go areas. Information on how many permits are issued and how much timber was cut is reported annually to RRBs.

George and Lucy spoke about a case in Fort Good Hope where a permit was given that the community didn't approve of, and it had a negative impact on the community. The individual cut everything down in one area rather than selective cutting like other community members do. They felt that this should be in the Plan. George also expressed concerns about not having enough control over lands within the community. Heidi replied that the land claim sets out that regional land use plans don't apply within community boundaries, but that the community has the ability to do a community Plan with MACA for within their boundaries.

Peter: KGDLC raised the issue at the hearing about the GNWT widening the winter road without proper consultation. The GNWT said they would get back to the people.

### Timber Transport Permit

Allows an individual to transport timber off of private and onto public access – e.g. Road or highway. It's used to track the movement of timber obtained legally, for commercial or individual purposes. For the individual, the SRRB issues a load permit. No rights to the land or water are invested with the permit. There is no requirement for any other authorization. It's only an issue when moving timber on public access.

#### Discussion Summary

David clarified that seismic operations do not have the right to the timber they cut; it stays with the GNWT. In some cases, the GNWT tells the company to bring the wood to the community for use. Technically anyone needs this permit to move wood, but it's not enforced in most communities. The free timber cutting permit also includes a transport permit. If wood is harvested on private lands, no permit is required to harvest it, so the transport permit would be used to track that timber. The GNWT can designate how timber is transported with conditions on the permit, including the transportation route, and can deny the permit if there are concerns about public safety or the environment.

### Permit to Burn

Permit to burn during closed fire season (May 01 to Sept 30), under 10 m<sup>2</sup> (if larger falls under the MVMRA). Allows Forest Management to know what a fire is about if they get a call from someone who has seen smoke. Used by fishing lodges, if an aircraft sees smoke. No rights to



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the land or water are invested with the permit. For small sized fires for a short time - 24hr period, max 72hr.

**Discussion Summary**

David stated that these permits are for fires less than 10 m<sup>2</sup>, are strictly monitored and given out only weather and wind-permitting. The proponent must have fire control present, and has to re-apply after the 3-day window for use. Permit is to burn combustible, woody material only (not garbage, non-toxic).

Tom raised a point of concern on behalf of Morris about the impacts of fires on caribou habitat in light of the new boreal caribou recovery strategy. It was pointed out that this permit covers only very small fires (a big bonfire).

No further concerns were raised.

**Forest Research License**

Permit to conduct research in a forest. No rights to the land or water are invested with the permit. This licence is used by anyone conducting research on timber in the NWT. It is currently a duplication of the Aurora Research Permit; the Aurora Research Permit satisfies the needs of the Forest Research Licence but the Forest Research Licence does not satisfy the needs of the Aurora Research Institute. Forest Management may be removing this licence from regulations in the future.

**Discussion Summary**

This covers research activities such as coring, boring, measuring, and similar non-destructive type activities (no tree harvesting). David stated that this license is given often to university researchers studying the health of trees. The GNWT asks that research results are presented back to communities. Any aircraft involved would be high-altitude (5000 ft), fixed-wing surveys. Helicopters may be used to move researchers around, but not for constant flight or surveying.

No further comments or discussion.

**Timber Scaling License**

This is a professional certification – not a land use licence. It authorizes a forester to measure trees. No rights to the land or water are invested with the permit.

**Discussion Summary**

No comments or discussion

**Archaeological Permit**

Permits archaeologists to access known archaeological sites to conduct research. No rights or interests in land are associated with the authorization. CR #7 would make it difficult for archaeologists to access known archaeological sites. Archaeological permits already go through a consultative process with affected communities (pursuant to the land claim).

**Discussion Summary**



Heidi pointed out that there is a CR for archaeological sites in the Plan, so this permit probably needs to stay so that the CR can be implemented. There was some discussion about permissions needed to find sites vs. working around known sites. John confirmed that CRs apply for known sites; the Plan says if one is found, a proponent must allow a buffer. Larger projects would have to do site assessments and identify archaeological sites up-front; the need for a land use permit would cause a referral to the SLUPB.

Joel agreed this permit should not be excluded; the GNWT will remove it from their list.

### General Discussion on Excluding Authorizations

There was a discussion of the need for community consultation and monitoring even if some of these authorizations are exempted from the Plan. Heidi pointed out that the Plan speaks to more than just consultation. If we're thinking about removing something from Plan, we have to look at how it relates to all of the CRs, not just consultation.

Joel pointed out that many of these permits and licenses would continue to have consultation requirements (with the GNWT and community or SRRB/RRCs) even if excluded from the Plan. Michelle said that the GNWT wildlife surveys must be signed off by the SRRB and RRCs before work is done. **Michelle said she would get information on the consultation process for permits granted through the Aurora Research Institute and provide that to the SLUPB later.** Vicky explained that when she has applied for a wildlife research permit, the application is sent to local organizations for review, but ENR can still issue the permit despite that input if they don't think community concerns are reasonable.

Danny wondered if exclusion from the Plan eliminates monitoring in all cases. Danny also stated that if some items on the exclusion list create issues, there will be an opportunity to revisit them after the Plan is approved, at the 5 year review.

Tom reiterated that consultation and monitoring are important, but very small parts of the Plan: there are processes already in place for both. The Plan is meant to address land and resource use more broadly.

### SSI Proposed Exclusions

(Those not already covered under the GNWT list.)

#### Scientific Research Permit

John and Joel explained that this captures other kinds of research that doesn't already require another authorization. It doesn't provide authority to use land or water or deposit waste, so seemed insignificant. If a student were to undertake a telephone interview, they would have to get one of these. Do you want that subject to the Plan?

General discussion about the process: Vicki asked about low-level helicopter magnetometer surveys done by the Geological Survey, which may not require another authorization? ARI permits run the gamut of project size. Land use permits are rarely required but the LWBs are on the distribution list for applications. Community organizations are on the distribution list and are consulted on all ARI applications. Research involving handling or harvesting of wildlife requires



a wildlife research permit. Ruari added that a permit is required from DFO to handle or kill fish. **Ruari will find out the level of consultation required for these permits to be authorized.**

Heidi said that the GLUPB still do conformity checks on ARI authorizations because they fall outside LWB Process.

Tom stated that community concerns for consultation on issuing licenses are addressed through the Plan. Communities are involved in setting the basic rules of the Plan (CRs), which are then made more specific by the LWB. Vicky pointed out the great need for coordination of consultation to avoid over-consultation and exhaustion for everybody in communities. Heather asked how much weight is given to the community feedback provided on applications.

Heidi stated that ARI has the final say on whether to let research be permitted. Ruari said that DFO can charge a researcher if they go ahead with research (impacting fish) without permission. Tom felt that this authorization could be outside the Plan as there is already a process in place. Tom warned that having it under the Plan could discourage beneficial research.

The main issue still seemed to be low-level flights. Research that didn't include these didn't seem to present much concern, but those that include low-level flights are of concern. Ruari suggested asking ARI to amend their process to specifically request whether applicants will be conducting low-level flights so that communities would know. Could set a threshold similar to the thresholds used by the SLWB.

### **Mill License**

David explained that this license is required to saw timber into lumber or produce fuel wood, turning the resource into a product. Amounts below 300m<sup>2</sup> doesn't need a mill license. Above 300m<sup>2</sup>, applications require consultations in the area before the license is granted. License terms and conditions can include things like waste disposal, types of equipment permitted, area of the mill, when clean-up occurs, types of fire equipment required on-site, chemical inventory, and restoration of the area once production stops.

A land use permit may be required depending on the size and footprint of the operation. Paul stated that all mills operated currently in the Sahtu are portable and for personal use, so fall below the land use permit threshold. A permanent mill requires a lease.

There were no further comments or discussion.

### **Commercial Wildlife License and Commercial Fishing License**

John: These licenses give permission to harvest or kill only; all other things needed for these activities require other authorizations (e.g. processing plant would need different authorizations). Currently in the NWT, the only commercial harvesting happens on Banks Island for muskox.

**Ruari said he would look into the process for Commercial Fishing Licenses.** Tom stated that because the GBLWMP has a commercial fishing prohibition that is now included in the CRs, this license has to be part of the Plan.



Danny wondered if the Commercial Wildlife License would cover domestic animals. Michelle thought domestic animals are covered by federal regulations, but committed to checking with ITI.

## Who is the Applicant?

Heidi thanked participants for their input and reminded them that the SLUPB wouldn't make decisions today, but will discuss the workshop's outcomes, and may bring some topics back for discussion with the 3 approving parties after all 3 workshops are complete.

Heidi: After discussing which authorizations should or shouldn't be included in the Plan, we can now return to discuss who the applicants are for the purposes of the Plan, and complete the CD Process discussion. Tom Hoefer asked yesterday if prospectors are applicants. To answer this, we must discuss how to deal with below-threshold activities that don't require land use permits or water licenses. We agreed that applicants have the responsibility to demonstrate compliance with the Plan, and each regulatory authority has the responsibility to implement CRs to the extent of their authority.

Dick stated that this is a referral issue. If the SLWB has a permit requirement for an activity, other agencies will wait and see while the SLWB makes a referral to SLUPB. Then, once the CD is out, if the determination is positive, the land use permit or water license will incorporate whatever CRs fit within their authority. But, if the SLWB is not involved, it's the responsibility of the other regulators to make the referral (in this case the mining recorder).

## Discussion about Conformity Determination for Land/Rights Dispositions

The above discussion transitioned into a discussion about the need for a different conformity determination process for the disposition of land and resource rights vs. other environmental authorizations. SSI proposed different pathways for each in their flowchart.

John explained that the purpose of separating them was to say that when looking at the CD, some dispositions are going to automatically conflict with the zoning CR. For example, a permitted quarry cannot operate without having a land use permit. Other than zoning, most of the CRs deal with surface uses, so aren't applicable to subsurface dispositions. So application of the Plan could be simplified because subsurface resources only have to comply with the zoning CR.

Heidi countered that any proposed activity is subject to ALL CRs, not just zoning. If the land use permit is one of multiple authorizations required, then other CRs may be covered off and the land use permit can address the zoning CR alone, but this won't always be the case.

John pointed out that multiple authorizations for a single activity would each be subject to a CD. If a project applies for further permitting, the proposed activities would be then subject to all CRs; there's no need to tie up subsurface dispositions with a lengthy CD process.

Dick stated that the SSI proposal is a departure from the Plan's approach. The SLUPB may have to go back and look at earlier premises. SSI's chart does add clarity; it points out that the CD



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must follow a set process if the SLWB isn't involved. But who makes the referral to SLUPB for CD? If the activity is allowed, what happens with the results of the CD? Who applies the Plan? There should be one CD, made by the SLUPB upon referral, and two questions must be asked. First, is it allowed (zoning)? If yes, then second, under what conditions is it allowed? If land disposition have a separate CD process, it could put pressure on the conformity determiner when applying the other CRs to have a positive CD, and exceptions may be requested because Ministerial approval may already be in place for the disposition.

John said that resource projects will have lots of stages where regulation happens subject to the Plan, so many CDs will end up happening. SSI was simply attempting to make a messy process more simple in the first planning cycle.

It was decided that because of the depth and complexity of this discussion, it will be referred to a side discussion between legal counsel.

## **Closing Comments on CDs and Scope of Authorizations**

Lindsay: For the scope of authorizations, aim to reduce overlap; keep it as simple as possible.

Morris pointed out that issues will keep being raised because of a lack of understanding from not having translators at workshops. Heidi apologized for the oversight and committed to having translators at the next two workshops.

Tom N.: It has been a good discussion; all points of view are valid, and now the SLUPB will have to find the balance.

Lucy spoke about the opportunity the land use planning process provides for communities to speak to many injustices in the past and present. It's important to understand what's happening on our land so that we can benefit and stay in control; our resources have to sustain us forever.

Heather: Appreciate going through the exemption list to better understand the processes of permits and licensing through the GNWT.

Paul: For regulators, the Plan should clarify roles and responsibilities of involved parties. People have raised fair points about the Plan signatories not living in the Sahtu; it's difficult to make connections between community views and addressing things like authorizations in tables. This makes the SLUPB's role difficult. It has to take different viewpoints and synthesize them into a Plan that makes everyone happy and adds value to a system that isn't quite finished.

## **Exemption of Existing Uses and Rights**

### **Overview**

Heidi: the Plan's goal is not to block the exercise of rights, but to bring uses into conformity over time, as much as possible. If an applicant can demonstrate that applying CRs in addition to the zoning would be a problem, the Board will consider granting exemption. There are lots of existing rights in the Sahtu, and if given carte blanche, until those rights expire, the Plan would basically have zero effect in implementation. If there are options the SLUPB hasn't considered



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that would allow exemptions, the Board is open to discussion. We would like to have a full discussion on this to gather different ideas on how to proceed in implementing the Plan as fully and meaningfully as possible.

## Discussion Summary

Joel: The GNWT's position is that we have concerns with in-place authorizations. They were established with certain understandings, in synchronizations with existing approvals and authorizations. It's unfair that existing rights holders be bound by the Plan, because there may be examples where the Plan could drastically impact a proponent's ability to continue operating. We would like to see this section removed and the Plan applied at renewal of the land tenure or existing right, not for renewal of an authorization.

Tom: Deline is in agreement with the Draft 3 approach, the wording just needs to be clearer. Applicants should know the Plan is coming and what is proposed for certain areas.

Paul: Has anyone looked at operations that would actually be impacted?

Joel: We don't have a number, but from what Heidi said, there are so many existing authorizations that it would make the Plan not apply at all.

Paul: Grandfathering under CR1 would happen for activities with surface leases. Right now the SLUPB says that activities under other CRs would not be grandfathered. When the Plan is up for renewal, it will be an opportunity to re-examine this, to get land uses to conform to the Plan as much as possible.

Heidi: The Plan isn't drastic; it couldn't have a drastic impact on existing operations. We would like to see example of a CR being a real problem for an existing land use so that we can build flexibility into the Plan to deal with specific issues.

Rose and Danny clarified that prospecting permits are valid for 3-5 years and allow claims to be staked, even in a proposed CZ if the permit is in place before the Plan is approved. That claim would then be grandfathered, and the progression and sale of rights (all the way to a mine) would also be grandfathered. If the permit just expires, the area goes back to its CZ designation.

Paul: If there is a prospecting permit on Crown land that later becomes a National Park or a CZ, INAC can buy out those rights. If every land use gets grandfathered, there are potentially serious impacts on that Park or CZ. Has Canada thought about this?

Lindsay: Not sure, but would interpret it that if rights are in a CZ and then grandfathered, CR1 wouldn't apply. Any subsequent permits would be subject to CRs. INAC supports the current grandfathering approach of the Plan.

Paul raised the issue that if grandfathering is not allowed and a license comes up for renewal, it would be unfair for a claimant to have invested all that money. It's Canada's responsibility to let people know. Val responded that Canada does tell proponents where the proposed CZs are; any money they invest is at their own risk.



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Heidi: INAC informed us that they did an internal assessment six months ago and saw no issues with grandfathering with respect to existing projects coming through the region.

Tom: The onus is on proponents to understand their operating environment, which includes the Sahtu Land Claim and the provisions for land use planning. The SLUPB has struck a good balance between allowing rights to exist and develop, but activating the Plan requirements upon permit renewals. The GNWT has to approve this thing, but the balance must be held.

Danny: A mine would also need EA, so that level of examination will happen. Can SSI restate its position for better understanding?

John: SSI is also seeking balance between legal rights and community identification of values, but we don't want to see the whole thing fall apart in a bunch of lawsuits. SSI is concerned that early stages of exploration may survive a conformity determination for all CRs except zoning, but full-scale development may hit roadblocks later in the process. If so, we're assuming the developer would ask the SLUPB for an exception, and it would pass legal scrutiny. A recent similar case in BC found that increased controls in a new provincial park amounted to expropriation (Tener case). We don't want to go there. Maybe if rights were relinquished if nothing is found, then activities in the zone will be more like what communities expected.

Dick: SLUPB also intends to strike a balance to make the risk of lawsuits minimal, and is erring on the side of caution with respect to grandfathering existing interests. We don't want to generate compensation claims related to expropriation, or require government buyouts of existing interests like has been proposed in the Yukon Peel Watershed Plan and in Northern Alberta. For that reason, the Plan has language for assurance to parties that the SLUPB will consider granting exceptions for CRs that could be restrictive.

George: Agreed that rights shouldn't be taken away, just do things in a better way. The Plan should have language that recognizes our aboriginal rights and past ways of doing things. It should speak specifically about our 3 districts.

John clarified that existing uses that are grandfathered may be subject to EA if license renewals or new licenses are applied for. Industry representatives present explained that they wouldn't be directly affected by grandfathering issues. Jason's work involves subcontracting with oil and gas companies who have existing permits and licenses, so his interest lies in understanding operating conditions to be clear on the scope of work that is bid on. Marshall said that Shell is new to the Sahtu, so isn't impacted by grandfathering issues; CAPP's position supports continuance of existing authorizations.

Rose explained that mineral leases (subsurface) last for 21 years, with the possibility of renewal for another 21 years. The authorization is given with an exemption from CR1, but if any further authorizations are required upon renewal, they would be subject to additional CRs. Heidi and Angela Love further clarified that the SLWB would help to define how significant an amendment to a project is at renewal. Any change in scope would be caught in preliminary screening, and would then be sent to the SLUPB for CD.

Joel said that the GNWT still considers this as a substantial issue; this position may change with a new cabinet. He suggested grandfathering existing uses be discussed at the Tripartite



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Meeting, following this series of workshops. Heidi agreed this would be a good time to address this issue with GNWT.

Peter made the point that it's important for all planning partners to remain committed to the planning process until the Plan is complete. Time has become an issue for SSI; it has taken too long, and we need to get this done. Tom suggested that it would be helpful to have the GNWT define its underlying issues on grandfathering existing uses, in the effort to seek common ground in the Plan. Joel agreed that GNWT is looking for a Plan that all parties can approve and be happy with.

## Closing Comments

Heidi said that the SLUPB will review the technical discussion of this workshop, but won't make any decisions until after the third workshop, because many elements are interrelated. Once the three workshops are completed, the SLUPB can look at the whole picture, and examine proposed revisions with all three signatory parties, and then determine outstanding issues and next steps. The SLUPB may not advertise decisions about the list of exempted authorizations before the Final Draft is released. Michelle and Joel pointed out that it would be helpful to have this information in advance to have better communications throughout the planning process. Danny stated it would also be very helpful to have continuity in representation from all organizations involved, and that translators will be provided at the next workshops. Legal counsel from SSI, GNWT and INAC, as well as Tom Nesbitt, will discuss the CD process for land vs. rights dispositions separately.

## Anticipated Timeline

- **November 1 & 2**
  - Workshop 2 in Norman Wells
  - Full agenda: individual CRs, plus Actions and Recommendations
- **November 29 & 30:** Workshop 3 location tbd at completion of Workshop 2
- **Early December:** Tripartite Meeting
- **End of March 2012:** Final Draft Plan submitted for approval
- **August 2012:** Seek approval from SSI at their Annual Assembly
- **Date?** Seek approval from GNWT and then INAC (ideally simultaneously).

Heidi added that the SLUPB is hiring a professional legal drafter, David Elliot, to assist in bringing clear wording to the final Plan revisions. He will be at Workshop 2.

George requested clarity on representation, specifically with respect to SSI. KGLC is concerned about control at the community level.

Tom requested ITI's presence at the next workshop; Joel said he'd do his best to get them there. Danny added that participation of industry representatives should be encouraged.

John asked that the summary notes summarize areas of consensus and outstanding areas of discussion so participants know what they need to focus on.



George said a closing prayer.

Meeting ended at 4:14 pm.

## Summary of Results

### 1) Conformity Determination Process

- a. Consensus on a standard referral of applications by the SLWB to the SLUPB to do the conformity determination. The SLUPB will start the CD during the completeness check but will wait until it has all the information and the application is deemed complete before completing it.
- b. For minor activities that do not involve applications to the SLWB, it is expected that generally only one regulator will be involved. Both DFO and CWS have agreed to refer any applications they get to the SLUPB for conformity determination.
- c. **CD process for settlement lands – Outstanding** – Further discussions needed with Districts to work out the implementation process
- d. **CD process for land/rights dispositions – Outstanding** – Referred to legal counsel to work out details

### 2) Scope of Authorizations

- a. The Board has heard sufficiently from all parties. It will consider the information provided and will make its decision. The Board will not make final decisions until after all of the workshops are complete but will communicate working assumptions to participants at future workshops to enable discussions to move forward (i.e. assume for the purpose of discussion that the Board has decided "X").

### 3) Grandfathering Existing Rights

- a. All participants were in agreement with the Board's approach except for the GNWT – **Outstanding** – Referred to meeting with approving parties to resolve

## Summary of Commitments

- 1) Vicky will look into whether regulators coordinate in the absence of SLWB's involvement (see page 13).
- 2) Michelle said she would follow up later on how reporting to communities [regarding pesticide use in association with a pesticide licence] is done (see page 20).
- 3) Joel said that given the possibilities of use, the GNWT would have another look at taking the Pesticide License off their list of exclusions (See page 21).
- 4) Michelle said she would confirm if this license [tourism operator licence] applies to helicopter sight-seeing (see page 22).
- 5) Michelle said she would get information on the consultation process for permits granted through the Aurora Research Institute and provide that to the SLUPB later (see page 25).
- 6) Ruari will find out the level of consultation required for these permits [to handle or kill fish] to be authorized (see page 26). **COMPLETED** (see response below)
- 7) Ruari said he would look into the process for Commercial Fishing Licenses. (see page 26). **COMPLETED** (see response below)



- 8) Michelle thought domestic animals are covered by federal regulations [in reference to commercial wildlife licence], but committed to checking with ITI (see page 27).

**Response from Ruari Carthew - DFO on commitments #6 and 7 (emailed Oct 6<sup>th</sup>)**

1. What is the process for DFO handing out research licences (related to the issue of authorizations/permits outside the purview of the Land and Water Board)?

For a scientific research licence, DFO requires proponents to complete two forms: one describing the project and estimating the number of fish that will be impacted. This will also state whether the fish will be live sampled or killed for study purposes (e.g. mercury testing). The second form is an animal care protocol. The purpose of this form is to ensure the researchers handle the fish in the least damaging and disturbing way possible and that handling is conducted in a humane manner.

DFO and the Aurora Research Institute (ARI) have separate licencing requirements. A DFO research licence is not enough to do the project. Our forms inform prospective researchers of the need to get a licence through ARI.

Regarding DFOs internal process of acquiring a research licence, we must also apply and adhere to our own guidelines and permitting conditions. As an organization with a legal mandate to fulfill and enforce, we do not need to apply for a licence from ARI when the research being conducted furthers our ability to manage fish and fish resources (i.e. expands our knowledge of fish #s, health, populations, ecosystem dynamics, etc.). Community support for the research is a component of the licencing condition. As this is also a component of the ARI licence, DFO only requests it internally. This is to avoid duplication and reduce the load on local human resources (e.g. no need to consult twice in the communities for the same project). On a side note, here's a link to ARI's summary of the Science Act for the NWT. Section 7 lists the possibility for a fine or imprisonment. <http://www.nwtresearch.com/licensing/nwt-scientists-act>

2. What is the process for receiving a commercial fisheries licence? My impression was that this question became moot following the reminder that the plan explicitly banned Great Bear Lake from commercial fishing operations. Regardless, I thought I'd provide some insight into how the process unfolds.

For new applicants, they need an entry level application to sell fish. These licences are fairly straightforward and easy to obtain, but only provide the applicant with the ability to sell fish. The screening process comes into play for individuals seeking to catch fish using a motorized/registered vehicle. Vessel Certificates must be applied for. These get reviewed by the Great Slave Advisory Committee against a set list of criteria.

At a larger scale, commercial fishing is regulated by two aspects. First, there is a set number of vessel certificates that are issued (to catch fish commercially). In other words, there can only be so many boats on the water. Second, there is a quota for total fish harvesting numbers for Great Slave. If fish stocks are being depleted in one area, that area will be closed off for a duration to allow stocks to rebound.



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The above is a generalization of the research and commercial fishing licencing processes. If you or Danny would like the official terminology, please let me know. Likewise should any other questions or concerns arise, please don't hesitate to contact me.