

# Sahtu Land Use Plan

## Summary of key issues on Draft 3

A Presentation to the Sahtu Land  
Use Planning Board



by

Sahtu Secretariat  
Incorporated

May 3-5, 2011  
Norman Wells, NT

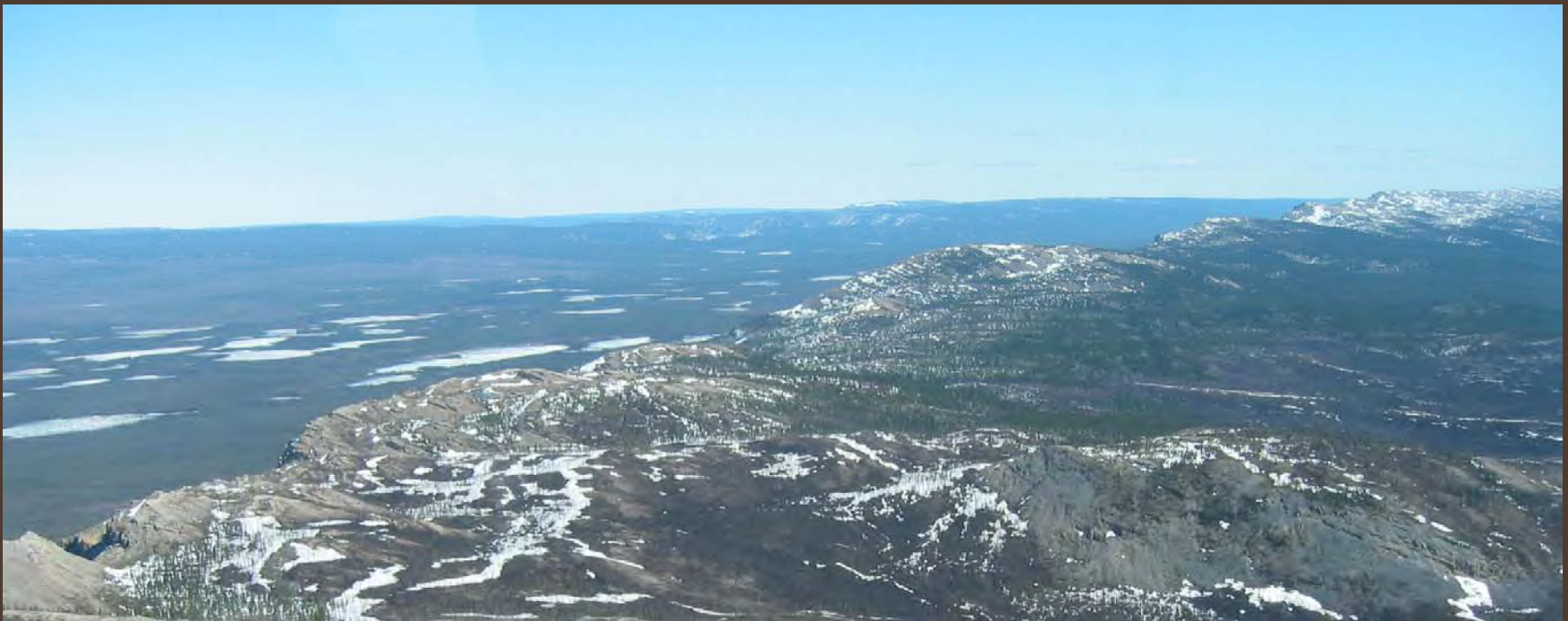
# Presentation Summary

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- Introduction to SSI and its role with the Plan
- Main SSI objectives in review of Draft 3
- Review of key SSI comments on Draft 3
  - General Comments
  - Conformity Requirements
  - Mandatory Actions

# Sahtu Secretariat Incorporated

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# Sahtu Secretariat Incorporated

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- Designated Sahtu Organization - only regional Aboriginal organization in the Sahtu Settlement Area
- Governed by a Board of Directors - voting members are the seven Sahtu corporations established under the *Sahtu Dene and Metis Comprehensive Land Claim Agreement*
- Intervenes in forums related to the environmental or economic interests of its members
- Decision-maker on the Plan for the Sahtu Region (s.43 MVRMA)

# Main SSI Objectives in Review of Draft 3

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# SSI Objectives

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- SSI's review of Draft 3 was guided by the following objectives to ensure:
  1. Legal consistency with the Sahtu Claim and the MVRMA
  2. The Plan recognizes and upholds the rights and interests of Sahtu Claim beneficiaries
  3. The Plan reflects and supports the contributions made by Sahtu communities and Land Corporations
  4. The Plan offers clear guidance to applicants, land users and regulators
  5. The Plan includes feasible and effective Conformity Requirements and Actions that can be well integrated into the existing regulatory system

# Review of Key SSI Comments on Draft 3

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# Review Limitations

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- The SSI's review and submission to the Board do not address matters that are District responsibilities
  - Districts have made their own submissions to the Planning Board
- SSI has not commented on:
  - Land use classifications system
  - Values protected in specific zones
  - Overall percentage of lands allocated to various zone categories

# Support of District Initiatives

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- SSI supports the zoning changes to Draft 3 of the Plan proposed by:
  - Deline District Land Corporation
  - Tulita District Land Corporation and the Norman Wells Land Corporation
- SSI also supports the efforts of K'asho Got'ine District Land Corporation to secure recognition and protection of the Fort Good Hope – Colville Lake Group Trapping Area in the Plan

# General Comments and Recommendations

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## 1. Establishing an Enhanced Role for the Planning Board

- Planning Board should assume the main role of conducting conformity determinations and implementing the Plan
- First five-year cycle is an appropriate timeline for the Planning Board to carry out this responsibility

# General Comments and Recommendations

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## 2. Types of Authorizations Subject to the Plan

- SSI questions whether all of the Plan's list of authorizations and land dispositions (in Table 11) should play a role in plan implementation
- Suggest a reasonable interpretation of s.25.2.9 of the Sahtu Claim and ss.46(1) of the MVRMA
- Suggest removing certain types of authorization not strictly "*relating to the use of land or water*"
- Land Disposition Instruments could be separated from Environmental Authorizations to simplify plan implementation

### **“Environmental” Authorization**

- Type A and B land use permit
- Type A and B water licence
- Habitat Alteration, Disruption, Destruction Authorization
- Authorization for deposit of deleterious substances
- Certificate of Public Convenience and Necessity

### **Land Disposition Instrument**

- Type A and B land use permit
- Land lease (issued by District Land Corporation)
- Quarry permit (issued by District Land Corporation)
- Subsurface resource rights/access (issued by District Land Corporation)
- Prospecting permit
- Mineral claim/lease
- Dredging Lease
- Coal licence/lease
- Quarry permit
- Surface lease
- Licence of occupation
- Easement
- Exploration Licence
- Significant Discovery Licence
- Production Licence

# General Comments and Recommendations

## 3. Rephrasing Conformity Requirements

- The burden of ensuring a proposed activity is consistent with the Plan is the applicant's responsibility, not the regulator's
- SSI recommends that the Plan, or Implementation Guide provide direction for applicants to ensure their conformity with the Plan
  - Policy statements, protocols or guidance
- Such guidance could be developed in collaboration with affected departments, agencies and communities
  - This work can take place after Plan approval as part of the implementation process

# General Comments and Recommendations

## 4. Conformity Determination: Process and Timing Issues

- Conformity determination should be based around simple tests that work with the existing regulatory framework
  - Best to occur early in regulatory process
- For certain CRs [ex. 7(2), 10, 11, 13(2)) & 14] the conformity test must wait until conclusion of the Preliminary Screening or Environmental Assessment process, or after issuance of authorization
- The Planning Board should decide when conformity is best reviewed
  - Planning Board should reconsider CR wording to encourage and facilitate conformity determination at the appropriate time

# Comments and Recommendation on Conformity Requirements

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- CR#2 Community Engagement and Traditional Knowledge:
  - SSI supports an approach where the Plan requires applicants to engage with affected communities and apply TK in land use activities
  - CR wording makes it difficult to implement this CR
    - Timing issues
    - Lack of ability to judge if and when the CR has been satisfied
  - CR wording should be reconsidered to emphasize applicant's duties
  - Planning Board should collaborate with others on developing guidance for satisfactory community engagement and implementation of traditional knowledge

# Comments and Recommendation on Conformity Requirements

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- CR#3 Community Benefits:
  - SSI supports the CR's intent
  - There may be problems implementing CR#3
    - Evaluation of community benefits is subjective
    - Many key regulators lack the legal authority to impose terms and conditions in their authorizations concerning socio-economic benefits
  - The Planning Board should consider other ways to address relationships between communities and developers
    - Consider a “public interest” test or a community support test
  - SSI recommends a review of implementation mechanisms to enhance the effectiveness of this CR

# Comments and Recommendation on Conformity Requirements

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- CR#5 – Watershed Management:
  - The CR appears to apply to areas upstream of SMZ, CZ and PCI zones
    - This could result in a considerable increase in the CR's geographic scope
  - Using CCME non-degradation policy approach may significantly affect land use activities where any discharge of waste into water is proposed
  - The CR might also require regulators with no expertise in water management making decisions about water quality, quantity and rate of flow
  - SSI recommends the Planning Board consider a policy framework focussed on source control and management of waste deposited into water rather than non-degradation

# Comments and Recommendation on Conformity Requirements

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## ○ CR#6 – Drinking Water:

- Subjective use of “contamination” might cause problem for CR implementation
- CR might fetter the authority of the SLWB to establish scientifically-defensible guidance for the lawful deposit of waste into water
- SSI suggests development of guidance to assist applicant in planning activities, particularly in cases where a community water source might be affected

# Comments and Recommendation on Conformity Requirements

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## ○ CR#10 – Incidental Harvest

- SSI supports CR's intent
- Timing may be a problem during implementation
  - Regulators would not be able assess conformity until after the incidental harvest and distribution of the fruits of that harvest has taken place
- Planning Board should consider revising CR into a policy statement or protocol to guide applicants to share surplus resources or incidental harvest with nearby communities
- CR wording could be rephrased to encourage securing of commitments from applicants to share surplus or incidental harvests

# Comments and Recommendation on Conformity Requirements

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## ○ CR#13 – Reclamation

- The CR appears to fetter discretion of the regulator, principally the SLWB, to establish and implement its own policy regarding reclamation security
  - SSI expresses reservation about the need for Item 1 as it is currently written
- SSI supports the intent of Item 2 of the CR, but has concerns about wording
  - Timing concerns about when conformity determination can take place
  - Phrase, “*prior to the return of security*” should be removed from the CR

# Comments and Recommendation on Conformity Requirements

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- CR#14 – Assessment and Mitigation
  - The SSI questions whether this CR is necessary
  - The CR appears to duplicate the existing environmental impact assessment process
    - May result in agencies without the environmental expertise of land and water board and the MVEIRB making poor decisions about assessment and mitigation
  - Timing of conformity determination is also a concern

# Comments and Recommendation on Conformity Requirements

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## ○ CR#15 – Monitoring

- CR language should be revised to state that applicants proposing land use activities in SMZ CZ and PCI zones should provide site-specific monitoring plan with their applications
- To assist applicants, the Plan or Implementation Guide should provide direction on designing monitoring plans

# Comments on Mandatory Actions

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- SSI is concerned that real commitments to Plan implementation be made by all parties, especially by approving governments
- If Actions cannot be mandatory, then the Planning Board and other parties, including governments, should work in good faith to develop a voluntary mechanism that commits the parties to implementation
- An Implementation Plan could be developed in contractual form along the lines of the implementation contracts which accompany land claims
- The SSI is open to other suggestions that help ensure the Plan is fully implemented

# Thank you

