



# Dehcho Land Use Planning Committee

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December 18, 2006

## DLUPC Negotiations Briefing Note

**The Goal: An approved and implemented land use plan that is acceptable to all three Parties to guide sustainable economic development in advance of a Final Dehcho Agreement**

### **The Benefits:**

Planning provides clarity and certainty to industry, communities and governments about what type of development is appropriate and where it should occur. These decisions are based on a comprehensive analysis of regional values, priorities and extensive data collection, research and consultation with a broad range of public and private interests. It integrates local and regional needs into the decision making process up front, allowing land users to more accurately assess the costs and benefits of land use decisions, and design and implement their activities in a manner that promotes the well being of the region. Approved and implemented land use plans provide clear guidance to regulatory authorities by which to assess projects and determine their acceptability, reducing the enormous strain placed on the environmental assessment and regulatory processes. Increased clarity, certainty and efficiency in the regulatory environment promote greater investor confidence in resource development and will lead to increased sustainable development opportunities in the region.

### **The Challenge:**

The federal and territorial governments have raised repeated concerns about the level of conservation in the Plan, and have suggested that the Conformity Requirements do not fit well with the current legislative and policy framework and would not provide for an efficient and clear regulatory regime. Their proposed solution is to abandon the multi-million dollar comprehensive land use planning process in its final stages and replace the Committee with side table negotiations. This is inconsistent with the structure and role of the Committee as established under the IMA, and the established approval process for land use plans in both the Gwich'in and Sahtu Settlement Areas and as provided for under the Yukon Umbrella Agreement and Nunavut Land Claims Agreement. In short the land use planning process is intended to be an open, transparent and public process. When land use plans are submitted for approval it is understood that modifications may be required prior to approval. In keeping with an open, transparent and public process if the approval body requires modifications it is expected to share its views and substantiation for revisions in writing to the planning body. By sharing the substantiation the approval body maintains an atmosphere of good faith and allows the planning body to review and address the concerns.

### **Background:**

The Committee has noted the government concerns regarding the level of conservation and held numerous discussions with communities over the last year in which these concerns and the need for greater economic development opportunities were discussed. In some cases, communities recognized the need for additional development (e.g. opening oil and gas development near Jean Marie River, getting agreement between Fort Liard, Trout Lake and Nahanni Butte on lands for an oil and gas issuance cycle and the need for a pipeline to develop the commercial discoveries in the area). However, last year's disagreement over the issuance of prospecting permits between Canada and the Dehcho First Nations created strong mistrust in the communities of all land and resource management initiatives, leading communities to close many areas previously open to development.

Furthermore, the sequential approval process required the Committee to get buy-in first from Dehcho First Nations. This hindered the Committee's ability to equally consider the needs of other Parties during final revisions, until DFN approval had been received. The Committee was clear that the final revisions made would not be acceptable to the other Parties based on feedback to date and would likely require additional meetings to reach consensus on a final plan. As well in many cases there was no agreement within government departments on how government believed the land should be managed. This infighting within government departments spilled over into the stages of the planning process where individuals would work against each other to advance independent professional agendas. The Committee believed that submission of the plan for approval was the only way to draw out consistent departmental substantiation for the concerns being raised within government.

With respect to Conformity Requirements, the Committee made substantial revisions in the Final Draft to address the key concerns put forward by the governments at that time. If concerns remain with the language of the Conformity Requirements, then these need to be clearly communicated to the Committee, as per our prior requests, so that we may adequately address them. As the Committee has communicated consistently over the past 4 years we need government to share their concerns, solutions and the relevant rationale. Without it the Committee is forced to guess what a particular groups concerns or solutions maybe in any given situation.

The final concern raised was that the Plan does not reflect the land selection model currently being explored by the Parties. The Committee does not view this as problematic. A land use plan directs land use, regardless of ownership, while a land selection model identifies ownership of the land. They can and do work together. As examples, the approved Gwich'in, North Baffin and Keewatin Plans all operate in settlement areas that used land selection and apply equally to Crown and Gwich'in or Inuit Owned Lands. However, given that land would likely be selected for economic development purposes, it suggests that more lands may need to be opened for development to accommodate the economic needs of all land owners following ratification of a final agreement.

#### **The Opportunities:**

The DLUPC is committed to working with all three Parties in a balanced forum to identify appropriate revisions to the zoning and Conformity Requirements. The IMA provides for an ongoing role for the Committee, to monitor conformity of land uses with the Plan and oversee Plan amendments and revisions. While the IMA does not provide detail about the approval process, this is described under the *Mackenzie Valley Resource Management Act*. Under section 43 (5), where a Party to which a land use plan is submitted does not approve the plan, that party **shall** [emphasis added] notify the other parties and the planning board, in writing, of the reasons for not approving the plan. Under 43 (6) the Board is expected to consider the reasons provided and make any modifications it considers desirable, which is why it is imperative that the substantiation be provided so that this information can be compared with the planning bodies existing data.

The Committee possesses considerable expertise on the history, issues, data and considerations integral to the Plan development process. This expertise will be required to facilitate revisions that will be acceptable to all Parties. The Committee can run sensitivity analysis to prioritize lands for conservation and development at different levels to focus negotiations on meaningful options. The Committee can also recommend creative solutions to overcome remaining concerns on Conformity Requirements while maintaining the intent and integrity of the message required for community support.

The Committee has spent four years working with communities, governments, industry and other planning partners and we have developed a reputation of integrity, respect and trust with our planning partners. It is important to sustain these relationships through Plan revisions to facilitate consensus between the Parties. Changing participants and project leads at this junction has the potential to undermine trust between the Parties. Furthermore, the Committee was established to ensure that decisions rested on a solid foundation of scientific information, and extensive research and consultations on the social, cultural, economic and ecological values and priorities of the region, rather than the political aspirations of the day. The Committee's neutrality and representation of all three Parties in a professional, cooperative environment is central to its integrity and success. Moving decisions to the

negotiation table undermines the reason for establishing the Committee in the first place, and the overall results of the process.

It takes years to establish the knowledge and capacity now held by the planning Committee. This knowledge will again be required once the Plan is approved in order to monitor conformity as per existing agreements. To disband the Committee at this time goes against federal and territorial commitments to the IMA, professional land use planning standards and capacity building in the north.

**Next Steps:**

The Committee needs to understand in detail the concerns regarding Conformity Requirements and zoning so that these can be addressed. We also require rationale and direction as to which areas the Parties wish to see opened to development so that this information can be considered and discussed with affected communities. As all zoning was based on extensive consultation, mapping and data collection, all revisions must be held to the same data standards. The Committee therefore requests a detailed outline of the reasons for rejecting the Plan, as per standard planning processes, and direction as to the possible solutions the governments would like to see. Following consideration of this information, the Committee will be in a position to assist the three Parties identify suitable revisions to address these concerns.

Given recent announcements, the Committee requires confirmation as soon as possible regarding its continuing role and the provision of ongoing funding as set out in the IMA. As a registered society under the NWT Societies Act, we have certain legal and financial obligations that must be met. The Committee is initiating research to ensure that it can meet those obligations, pending decisions made at the negotiations table.

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