

**NDÉH TS'EDÎCHÁ:  
Dehcho Ndéh T'áh Ats'et'î K'eh Eghálats'ênda**

**RESPECT FOR THE LAND:  
The Dehcho Land Use Plan**

**Prepared by:  
The Dehcho Land Use Planning Committee**

**Revised Draft Plan - November 2005**

**DEHCHO LAND USE PLANNING COMMITTEE**  
*One Land One Plan*



*Ndéh Lié - Mek'égé Ats'et'î Lié*  
**Dehcho Ndéhé T'áhagot'z gha Sááhmiogjáh-ké**



# Dedication

## **This Plan is dedicated to...**

The Dehcho Elders who have passed down the principles of  
Respect for the Land upon which this Plan is based;

To the late Phoebe Nahanni and Michel Corbeau Landry for their  
dedication to land use planning, and

To the Youth, who are the leaders of tomorrow.

Denea Adeline of Deh Gah Got'ie First Nation. Photo Credit: DLUPC

## Acknowledgements

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To the present and former **Dehcho First Nations Leadership**, who have guided the process and shared their priorities and Traditional Knowledge with us.

To the **Elders** for their vision, insight and guidance.

To the **Youth**, who are the leaders of tomorrow.

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- Anyone else we may have missed.

The cover photo of the Dehcho (Mackenzie River) looking toward the Camsell Range is shown with permission from Paul Nopper - © Aiva (Aerial Images & Video Adventures) 2001. Thanks Paul!

**Mahsi Cho for your contribution to the Dehcho Land Use Plan. The Plan was improved by your contribution!**

## Executive Summary

The Dehcho Land Use Planning Committee (the “Committee”) has developed the Revised Draft Land Use Plan and Background Report for the Dehcho territory. This document is the Plan.

The purpose of the Plan is to promote the social, cultural and economic well-being of the residents and communities of the Dehcho territory, having regard to the interests of all Canadians. The Plan is intended to form part of an integrated land and resource management regime and outlines what types of activities should occur, generally where they should take place, and provisions and conditions necessary to guide land use proposals and development projects over time. The Plan does not apply within Nahanni National Park Reserve and community boundaries.

The Plan is based on the principles of respect for the land, as understood and explained by the Dehcho Elders, and sustainable development. The Plan balances development opportunities, social and ecological constraints. It reflects community values and priorities while taking into consideration the values of all Canadians.

**Nothing in this Land Use Plan will impact or reduce in any way, the treaty and aboriginal rights and activities of the Dehcho Dene Descendants. Traditional Land Use, Occupancy and Harvesting will continue in all areas at all times.**

The Plan (–Zoning, Conformity Requirements, Actions and Recommendations, and Provisions)<sup>1</sup> does not apply to any rights, dispositions, authorizations or activities existing in the Dehcho territory on the day prior to Plan approval. These existing uses are allowed to continue as non-conforming uses. Renewal of permits, licenses and authorizations for existing uses are allowed.

The Plan only applies to activities for which a permit, license or authorization is required.<sup>2</sup> Minor land uses, such as recreational use<sup>3</sup>, for which no authorization is required, are not subject to the Plan.

<sup>4</sup> Further discussion on the Scope and Application of the Plan are discussed in Chapter 1.

The Plan contains five zone types:

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<sup>1</sup> The use of the word “Terms” or terms is confusing because of (a) the word “terms” is ubiquitous and associated with its plain language meaning; (b) is prescriptively defined to mean three things; and (c) is used in an inconsistent way in the document which invites ambiguity and confusion. (for e.g. ...”there are a few Terms that apply to specific zones only”. – page v; the three “Terms” are referred to as “Specific Terms”. All other Terms are considered “General Terms”. Page 13. We suggest avoiding the use of the word “terms” or “Terms”.

<sup>2</sup> This invites confusion. The Plan does not apply to non-regulated use.

<sup>3</sup> Rationale: To avoid perceived limitations. A broader definition of this term should be included.

<sup>4</sup> Because the Plan would apply to those land use activities requiring authorization in the Dehcho territory, some activities that may be traditional commercial or domestic non-commercial uses could be captured. For instance, all forest harvesting activities for commercial, domestic and traditional uses require authorizations under the Forest Management Act and Regulations. The regulating agency that implements a specific section of the Plan could apply the Plan but be mindful of exceptions that were clearly listed. Appropriate wording would need to be in specific sections of the Plan, such as Plan Exceptions in Chapter 3. This aspect of implementation merits further discussion.

- **Conservation Zones** are designated in areas having significant ecological and cultural values. Conservation Zones are meant to provide flexible protection to lands of important cultural or ecological value. All development except tourism is prohibited in Conservation Zones. Two of the zones prohibit tourism as well. There are 17 Conservation Zones covering 40.7% of the Plan Area.<sup>5</sup>
- The **Protected Area Strategy Zone** is a separate designation for candidate protected areas that have been withdrawn from disposition through the Protected Area Strategy (PAS) process. This zone type represents a transition between an area subject to the Land Use Plan and the approved protected area, which is managed under the legislation and authority of the sponsoring agency and the Park Management Plan. At the moment, only Edehzhie (Zone 4) has this designation, covering 12.0% of the Plan Area.
- **Special Management Zones** are designated in areas where there is significant potential for both conservation and development together. Special Management Zones may be established to promote certain types of development or protect values while allowing some forms of development to proceed. Special Management Zones use a combination of Provisions and land use restrictions to achieve these goals. There are 11 Special Management Zones covering 24.1% of the Plan Area.
- **General Use Zones** permit all land uses, subject to existing regulatory processes, Acts and Regulations, and the Provisions of this Plan. General Use Zones cover 23.2% of the Plan Area. They are not numbered.
- The **Special Infrastructure Corridor** (Zone 30) delineates a study corridor for the Mackenzie Valley Pipeline based on the current routing of the proponent and negotiated corridors through current land withdrawals. This corridor overlaps the other zone types rather than cutting a portion out of them. The current routing crosses Zones 1, 3, 4, 5, 19, 21, 22, 23, and 29. A route is still being negotiated through Zone 1 (Pehdzeh Ki Deh) and the final routing will be reflected in the Plan once negotiations are complete. This zone covers 0.4% of the Plan Area.<sup>6</sup>

There are three types of provisions necessary to implement the Plan:

- **Conformity Requirements (CR)** describe permitted and non-permitted uses within the Zones outlined in Map 1<sup>7</sup> or any permitted uses defined as an exception for a specific Zone.<sup>8</sup>
- **Actions (A)** identify activities (e.g. research, meetings) which are required to achieve the goals of the Plan and are to be undertaken by various governments, regulatory agencies, and organizations.<sup>9</sup>

<sup>5</sup> The GNWT agrees with DIAND that the overall size of land fully withdrawn from development is too large and should be more in line with the amounts of land in the Interim Land Withdrawal as agreed to under the IMA.

<sup>6</sup> The Pehdzeh Ki Deh section should be updated to reflect the outcome of these negotiations.

<sup>7</sup> The plan is to apply in the area mapped in Appendix 1 of the IMA. To avoid cross-referencing the IMA, the same map should be used.

<sup>8</sup> Wording implied the ability to fetter regulatory agencies. Conformity requirements should be about what can be done where.

<sup>9</sup> This reflects that an Action will clearly ask someone to do something and is different from a Conformity Requirement.

- **Recommendations (R)** provide advisory guidance to various governments, regulatory agencies, and organizations on additional activities that will help achieve the goals of the Plan.<sup>10</sup>

When the Plan is complete it will be forwarded to the Dehcho First Nation for approval. Following approval by the Dehcho First Nations, the plan will be forwarded to the GNWT Minister of Environment and Natural Resources for approval and the Minister of Indian and Northern Affairs Canada (DIAND) for consideration. Following consideration of the plan and after consultation with the Mackenzie Valley Land and Water Board, the Minister of DIAND may, under section 109 of the Mackenzie Valley Resource Management Act, provide written policy directions, in relation to the Plan, binding on the Board with respect to the exercise of its functions.<sup>11</sup> By approving the Plan, Governments agree to implement the Provisions within their jurisdiction.<sup>12</sup> The Background Report provides context and rationale to the Plan, but is not part of the Plan; as such, it is not subject to approval.<sup>13</sup>

Upon approval of a Dehcho Final Agreement, the approved Plan will be a land management tool that provides legally binding direction and guidance to Regulatory Agencies<sup>14</sup> and decision-makers in the evaluation of development projects, protected area proposals, and other potential land uses.

The Revised Draft Plan contains three chapters:

**Chapter 1** introduces the Plan and sets the context for planning decisions. It describes the Scope and Application of the Dehcho Land Use Plan and the Format and Content of the Plan.

**Chapter 2** includes the Vision and Goals, Zoning and Provisions of the Plan. The proposed Land Use Zones are shown in Map 1 and described in Table 1 of the Revised Draft Plan. The Land Use Zones focus on five land uses (oil and gas, mining, forestry, agriculture and tourism) and identify in general where each of these uses is permitted<sup>15</sup>. Other land uses are considered in the Plan through Conformity Requirements.

The Provisions<sup>16</sup> consist of Conformity Requirements, Actions and Recommendations and provide further guidance and clarity regarding the future development of the region.<sup>17</sup> Issues are grouped according to Dene Culture, Traditional Use, Sustainable Development and Community Issues. The Provisions apply to the entire Dehcho territory unless otherwise noted (there are a few Provisions that apply to specific zones only).

**Chapter 3**<sup>18</sup> describes Plan approval and implementation, including revisions to Land Withdrawals, Conformity Determinations, and Plan Revisions, Exceptions and Amendments.

<sup>10</sup> Recommendations are advisory in nature and mostly refer to items that should be looked into in an indeterminate future. The GNWT will consider all recommendations that apply to it fully.

<sup>11</sup> Direct quotation from IMA sections 9,10&11 have been included, rather than paraphrasing.

<sup>12</sup> The wording of the IMA allows DIAND discretion in this area through the use of “may provide”.

<sup>13</sup> The GNWT will not review the Background Report as part of its plan approval process since it does not form part of the Plan.

<sup>14</sup> Consistent with the IMA, page 1 of Appendix 2.

<sup>15</sup> The Zones themselves describe permitted land uses; exceptions need to be clearly stated.

<sup>16</sup> Rationale for changing “Term” to “Provisions” is discussed in 2.3. Primarily, the word “Terms”, though used in the IMA, may create confusion with Terms and Conditions used in regulatory instruments, especially since in the interim, regulatory agencies will have a key role in the implementation of the Plan.

<sup>17</sup> This is background and should not be included in the Plan.

<sup>18</sup> This section (the Chapter) merits further discussion by representatives of Parties (Canada, Government of the Northwest Territories, Dehcho First Nation).

**Appendix 1** contains a numbered list of all Conformity Requirements, Actions and Recommendations. The other appendices include documents referenced in the Provisions.

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<sup>19</sup> While there may be a brief reference in the Executive Summary to the fact that there is a background report that contains considerable information, the detail is not necessary as it is not part of the draft Plan.

<sup>20</sup> References to Background Report should not be in the Plan.

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## Acronyms<sup>21</sup>

<b>A</b>	Action
<b>A&amp;D</b>	Alcohol and Drug
<b>AB</b>	Alberta
<b>AEUB</b>	Alberta Energy and Utilities Board
<b>ALCES</b>	A Landscape Cumulative Effects Simulator
<b>ARI</b>	Aurora Research Institute
<b>AVHRR</b>	Advanced Very High Resolution Radiometer
<b>BC</b>	British Columbia
<b>BOE</b>	Barrels of Oil Equivalent
<b>CAFF</b>	Conservation of Arctic Flora and Fauna
<b>CARC</b>	Canadian Arctic Resources Committee
<b>CCME</b>	Canadian Council of Ministers of the Environment
<b>CEAM</b>	Cumulative Effects Assessment and Management
<b>CIRL</b>	Canadian Institute for Resource Law
<b>CLW</b>	Current Land Withdrawals
<b>COGOA</b>	<i>Canada Oil and Gas Operations Act</i>
<b>COSEWIC</b>	Committee on the Status of Endangered Wildlife in Canada
<b>CPRA</b>	<i>Canada Petroleum Resources Act</i>
<b>CR</b>	Conformity Requirement
<b>CWS</b>	Canadian Wildlife Service
<b>CZ</b>	Conservation Zone
<b>DLUPC</b>	Dehcho Land Use Planning Committee
<b>DFN</b>	Dehcho First Nations
<b>DFO</b>	Department of Fisheries and Oceans
<b>DIAND</b>	Department of Indian Affairs and Northern Development
<b>EA</b>	Environmental Assessment
<b>EC</b>	Environment Canada
<b>EDA Model</b>	Economic Development Assessment Model
<b>ENR</b>	Department of Environment and Natural Resources (GNWT)
<b>FFMC</b>	Freshwater Fish Marketing Corporation
<b>GC</b>	Government of Canada
<b>GEWEX</b>	Global Energy and Water Cycle Experiment
<b>GHL</b>	General Hunting License
<b>GIS</b>	Geographic Information System
<b>GNE</b>	Greater Nahanni Ecosystem
<b>GNWT</b>	Government of the Northwest Territories
<b>GPS</b>	Global Positioning System
<b>GSL</b>	Great Slave Lake
<b>GSLAC</b>	Great Slave Lake Advisory Committee
<b>GUZ</b>	General Use Zones
<b>Ha</b>	Hectares
<b>IBP Site</b>	International Biological Programme Site
<b>IMA</b>	Dehcho First Nations Interim Measures Agreement
<b>IRS</b>	Indian Remote Sensing (satellite imagery)
<b>ITI</b>	Department of Industry, Tourism and Investment (GNWT)
<b>JMR</b>	Jean Marie River
<b>km<sup>2</sup></b>	Square Kilometre

<sup>21</sup> Any references to acronyms from the Background Reports don't need to be included in the LUP.

<b>LUZ</b>	Land Use Zone
<b>m<sup>3</sup></b>	Cubic Metre
<b>MACA</b>	Municipal and Community Affairs
<b>MERA</b>	Mineral and Energy Resources Assessment
<b>MMCF</b>	Million Cubic Feet
<b>MMER</b>	<i>Metal Mining Effluent Regulations</i>
<b>MNP</b>	Myers Norris Penny LLP
<b>MRBB</b>	Mackenzie River Basin Board
<b>MVEIRB</b>	Mackenzie Valley Environmental Impact Review Board
<b>MVLUR</b>	<i>Mackenzie Valley Land Use Regulations</i>
<b>MVLWB</b>	Mackenzie Valley Land and Water Board
<b>MVP</b>	Mackenzie Valley Pipeline
<b>MVRMA</b>	<i>Mackenzie Valley Resource Management Act</i>
<b>NBIOME</b>	Northern Biosphere Observation and Modeling Experiment
<b>NEB</b>	National Energy Board
<b>NLUIS</b>	Northern Land Use Information Series
<b>NRA</b>	Non-Renewable Resource Assessments
<b>NRCan</b>	Natural Resources Canada
<b>NWA-NWT</b>	Native Women's Association of the Northwest Territories
<b>NWT</b>	Northwest Territories
<b>PAS</b>	Protected Area Strategy
<b>PC</b>	Parks Canada
<b>PWNHC</b>	Prince of Wales Northern Heritage Centre
<b>R</b>	Recommendation
<b>RAs</b>	Regulatory Authorities
<b>RCMP</b>	Royal Canadian Mounted Police
<b>RRSPs</b>	Registered Retirement Savings Plan
<b>RWED</b>	Resources Wildlife and Economic Development
<b>SARA</b>	<i>Species at Risk Act</i>
<b>SEDEX</b>	Sedimentary Exhalative Sulphides
<b>SIC</b>	Special Infrastructure Corridor
<b>SMART</b>	Sustainable Model for Arctic Regional Tourism
<b>SMZ</b>	Special Management Zone
<b>TCEQ</b>	Texas Commission on Environmental Quality
<b>TFA</b>	Territorial Farmers Association
<b>TK</b>	Traditional Knowledge
<b>TLUO</b>	Traditional Land Use and Occupancy
<b>TOR</b>	Terms of Reference
<b>UNESCO</b>	United Nations Educational, Scientific and Cultural Organization
<b>VEC</b>	Valued Ecosystem Components
<b>WMI</b>	Whitehorse Mining Initiative Leadership Council Accord

## Definitions<sup>22</sup>

**Actions (A)** identify activities (e.g. research, meetings) which are required to achieve the goals of the Plan and are to be undertaken by various governments, regulatory agencies, and organizations. **Agriculture:**<sup>23</sup> Agriculture is defined as cultivation of the soil and the grazing of livestock, not including confined barn livestock production, greenhouses, and game-ranching.

**Communities:** Include for the purposes of this plan only, Fort Simpson, Fort Providence, Fort Liard, Hay River Reserve, Hay River, Wrigley, Jean Marie River, Trout Lake, Nahanni Butte, Kakisa and Enterprise and all aboriginal and non-aboriginal residents thereof<sup>1</sup>.

**Community Boundaries:** Extent of community lands defined by the GNWT Community Boundaries Policy. –All community boundaries are subject to review and adjustment.<sup>24</sup>

**Conformity Requirements (CR)** describe permitted and non-permitted uses within the the Zones outlined in Map 1<sup>25</sup> or any permitted uses defined as an exception for a specific Zone.<sup>26</sup>

**Corridor Density:** Density of all linear features wider than 1.5 m, including roads, trails, utility corridors, pipeline right-of-ways and seismic lines and all other linear features where natural ground cover has been removed due to human disturbance<sup>2</sup>. It is expressed as km/km<sup>2</sup> and is calculated for each quarter of an oil and gas grid as defined in the *Canada Oil and Gas Land Regulations* (under the *Territorial Lands Act*).

**Dehcho First Nation(s):** Consists of, for the purposes of this plan only, the Dehcho Tribal Council including Áiidli Koe First Nation (Fort Simpson), Deh Gah Got'ie First Nation (Fort Providence), Acho Dene Koe First Nation (Fort Liard), Katlodeeche First Nation (Hay River Reserve), Pehdzeh Ki First Nation (Wrigley), West Point First Nation (Hay River), Tthek'edeli First Nation (Jean Marie River), Sambaa K'e First Nation (Trout Lake), NaÆahdee First Nation (Nahanni Butte), Ka'agee Tu First Nation (Kakisa), Fort Simpson Metis Local 52, Fort Providence Metis Local 57 and Fort Liard Metis Local 67<sup>3</sup>.

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<sup>22</sup> In general, “definitions” are to provide a more legally precise understanding beyond what is the normal use and meaning of a word. Some words defined do not appear to be used in the body of the Plan, and therefore should be removed from this section. In addition, land uses are noted in 2.2 (“Oil and Gas Operations”, “Mining”, “Forestry”, “Tourism”, and “Agriculture”) and need not be included in definitions.

<sup>23</sup> Agriculture: Suggest that this be removed as it is a land use as described in 2.2. As well, in that section, it is suggested that an alternative description could be: “Agriculture is the cultivation of the soil and the raising of livestock, including tillage of the soil, beekeeping, poultry-raising, dairying, woodlot management and fur-farming.” – Canadian Legal Dictionary. There is no NWT statute or regulation defining ‘agriculture’.

<sup>24</sup> The term “Block Land Transfers” refers to the transfer of the administration and control of land from the federal government to the Commissioner. It has no relationship to community boundaries and should therefore be removed from the definition. The additional text is with respect to the need for communities to have “boundaries” reviewed and adjusted routinely. The GNWT establishes community boundaries in accordance with the Communities Boundaries Policy. Many of the community boundaries identified in the draft plan have not been established under GNWT policy and could unduly restrict the future development of the communities.

<sup>25</sup> The plan is to apply in the area mapped in Appendix 1 of the IMA. To avoid cross-referencing the IMA, the same map should be used.

<sup>26</sup> This implies ability to fetter regulatory agencies.

**Developers:** Any entity engaged in a development activity requiring a license, permit or authorization from a federal or territorial government department, agency or institution.

**Development:** Any activity requiring authorization from Regulatory Agencies<sup>28</sup> including any undertaking, or any part of an undertaking, that is carried out on land or water<sup>29</sup> except where the context otherwise indicates and includes measures carried out by a department or agency of government leading to the establishment of a park subject to the *Canada National Parks Act* and an acquisition of lands pursuant to the *Historic Sites and Monuments Act*<sup>4</sup> but does not include Scientific Research including activities undertaken in Conservation Zones.

**Ecosystem:** A biological community of interacting organisms and their physical environment OR a dynamic complex of plants, animals and micro-organisms and their non-living environment interacting as a functional unit. The term ecosystem can describe small scale units such as a drop of water, as well as large scale units such as the biosphere.<sup>30</sup> **Environment:** The components of the Earth and includes (a) air, land and water; (b) all layers of the atmosphere; (c) all organic and inorganic matter and living organisms and (d) the interacting natural systems that include components referred to in paragraphs (a) to (c).<sup>5, 31</sup>

**Existing Rights, Dispositions, Authorizations and Activities:**<sup>32</sup> Any rights, dispositions, authorizations or activities existing in the Dehcho territory on the day prior to Plan approval.

**Forestry:** Any work or undertaking to harvest or manage an area for the production of timber and other forest produce, or to maintain woody vegetation for such indirect benefits as the protection of watersheds, the provision of recreation areas, or the preservation of natural habitat.<sup>6, 33</sup>

**Geophysical Operation:** The measurement or investigation, by indirect methods, of the subsurface of the earth for the purpose of locating oil and gas or of determining the nature of the

<sup>27</sup> “Dehcho territory” is used frequently in the document and should be defined through reference to Map 1.

<sup>28</sup> See footnote regarding the defined term “Regulatory Authorities”.

<sup>29</sup> The exceptions listed here are not clear. Is this necessary or will it be covered in other processes related to the designation of a Park (territorial or national)? The *Territorial Parks Act* provides for the creation of parks classified in six categories and should be referenced here if this section is necessary.

<sup>30</sup> The original definition does not clearly present the notion of components functionally working together. The human element is covered off in all the places where the word “ecosystem” is used without having to include it in the definition. The first suggested definition is from the NWT Biodiversity Action Plan. The second is from the Canadian Biodiversity Strategy.

<sup>31</sup> The definition should reflect that used in the MVRMA; in that, people are not included.

<sup>32</sup> This is an element of the approval process and merits further discussion by representatives of Parties (Canada, Government of the Northwest Territories, Dehcho First Nation).

<sup>33</sup> Forestry: This a description of a “land use” described in 2.2. It is not clear why a definition is required. Should you wish to discuss forest management in the document more fully in relation to what should be done throughout the Dehcho you may wish to promote sustainable forest management: management that maintains and enhances the long-term health of forest ecosystems for the benefit of all living things while providing environmental, economic, social and cultural opportunities for present and future generations. OR forest management – (a) proper care and control of wooded land to maintain health, vigour, product flow, and other values (soil condition, water quality, wildlife preservation, and beauty) in order to accomplish specific objectives. (b) The practical application of scientific, economic, and social principles to forest property. The notion of using timber may be what is addressed here; please see comments in that regard under section 2.2.

seabed and subsurface conditions at a proposed drilling site or of a proposed pipeline route, and includes a seismic survey, resistivity survey, gravimetric survey, magnetic survey, electrical survey and geochemical survey and any work preparatory to that measurement or investigation, such as field tests of energy sources, calibration of instruments and cable ballasting, but does not include a velocity survey or a vertical seismic survey that is not a walkaway vertical seismic survey.

**Governments:** Includes Local Governments, Government of the Northwest Territories (GNWT), Government of Canada (GOC) and all subsidiary departments and agencies of each.

**Human Disturbance:** Any relatively discrete event arising from anthropogenic (human) sources that disrupts an ecosystem, community, or population structure and changes resources, substrate availability, or the physical environment. Sources include agricultural operations, resource extraction, industrial processes, combustion of wood or fossil fuels, earthmoving activities, and entrainment of road dust into the air<sup>7 8</sup>.

**Invasive Plant:** Any invasive alien plant species that has the potential to pose undesirable or detrimental impacts on humans, animals or ecosystems<sup>9 34</sup>.

**Land:** Means the surface of land<sup>10 35</sup>.

**Local Government:** Any local government established under the *Cities, Towns, and Villages Act; Hamlets Act; Charter Communities Act; or Settlements Act* of the Northwest Territories, including a city, town, village, hamlet, charter community, or settlement, whether incorporated or not, and the GNWT acting in place of a local government<sup>11</sup>.

**Low Impact Seismic:** Low impact seismic (LIS) refers to operational procedures that minimize the effects of seismic operations on the environment. The objective of LIS is to create a narrow, continuously meandering line. This method reduces the line of sight, avoids larger trees (avoidance cutting), and leaves the soil and ground cover generally undisturbed.<sup>36</sup> **Mackenzie Valley Pipeline:** As defined in the Application by Imperial Oil Resource Ventures Limited Pursuant to Parts III and IV of the *NEB Act*, submitted to the National Energy Board October 7, 2004. Construction and operation of the Mackenzie Valley Pipeline requires associated infrastructure, including: barge landing sites; construction material stockpile sites; fuel storage sites; camps; access roads; airstrips and helipads; and borrow sites<sup>37 12</sup>.

**Minimal Impact Seismic:** Minimal Impact Seismic involves the creation of lines where cutting of forest growth is restricted to the width necessary to create a walking trail for foot access. There is no cutting of standing trees and little if any cutting of shrubs. Minimal impact lines can include the use of existing lines and thus avoid cutting of new lines<sup>13 38</sup>.

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<sup>34</sup> The definition is not required given the change to the section on Revegetation, see Footnote under that section.

<sup>35</sup> Use the MVRMA Section 51 definition of "land".

<sup>36</sup> This term is not used in the document and therefore need not be included. Regarding the term itself, the GNWT notes that the actual specifications should be left to the regulators. Their definitions may change in time to accommodate improvements in industrial methods, and a fixed definition could limit regulators' ability to incorporate "best practices".

<sup>37</sup> The GNWT cannot limit the description of the MGP to be limited to this definition, as the MGP may end up somewhat different from the October 2004 submission.

<sup>38</sup> Included in "Cumulative Effects". The GNWT is proposing changes to that section that remove the term "Minimal Impact Seismic". Suggest removal.

**Mining:** Any work or undertakings related to the exploration for or development of a mineral resource; the extracting of minerals from a mineral resource, the processing of ore, other than iron ore, from a mineral resource to the prime metal stage or its equivalent, the processing of iron ore from a mineral resource to the pellet stage or its equivalent and the restoration of strip-mined land to a usable condition. Mineral Resources include: (a) a base- or a precious-metal deposit; (b) a coal deposit; (c) a mineral deposit from which the principal extracted substance is diamond or ammonite gemstone, potash, sodium chloride, gypsum or silica (if extracted from sandstone or quartzite); (d) a certified non-bedded deposit from which an industrial mineral is the principal mineral extracted; (e) a bituminous sands or oil shale deposit<sup>14 15 39</sup>.

**Minor Infrastructure:** Includes but is not limited to fuel caches, navigation markers and communication towers. Minor infrastructure is limited to land and water uses requiring a Type B land use permit or water license as per the *Mackenzie Valley Land Use Regulations* or those minor land and water uses not requiring any land use permits or water licenses.

**No Net Loss:** A working principle which strives to balance unavoidable habitat losses with habitat replacement on a project-by-project basis so that further reductions to resources due to habitat loss or damage may be prevented<sup>16 40</sup>.

**Non-Conforming Use:** An allowed land use which is normally restricted in the Land Use Plan through Zoning or Provisions but which existed on the day before Plan approval.

**Non-Exclusive Geophysical Survey:** A geophysical operation that is conducted to acquire data for the purpose of sale, in whole or in part, to the public<sup>17</sup>.

**Oil and Gas Operations:** Oil and Gas operations include exploration (excluding non-exclusive geophysical surveys), drilling, production, conservation, processing and transportation of oil and gas in the Northwest Territories. "Gas" means natural gas that is or can be produced from a well, both before and after it has been subjected to any processing, and includes marketable gas and all fluid components not defined as oil; "Oil" means crude oil and all other hydrocarbons, regardless of gravity, that are or can be produced from a well in liquid form including crude bitumen but excluding condensate<sup>18 19 41</sup>.

**Parties:** Means Dehcho First Nations, Canada and the GNWT<sup>20</sup>.

**Pipeline:** Means a pipeline that is used or is intended to be used for the transmission of oil, gas or any other commodity<sup>21</sup>.

**Pipeline-right-of-way:** A strip of land over and around pipelines where a pipeline company has acquired rights to use the land for the construction, operation and maintenance of its pipelines, however, ownership of the land remains with the landowner. All activities within the right of way are governed by the *NEB Act*, the *NEB Pipeline Crossing Regulations, Parts I and II*, and the *Canadian Oil and Gas Act* and easement agreements negotiated between the landowner and the pipeline company<sup>22 42</sup>.

<sup>39</sup> This is a land use covered under 2.2. See DIAND comments, page 15 of January submission. The GNWT concurs with these.

<sup>40</sup> This term is used in CR15 but does not add to the context intended there. Because it is specific to the Fisheries Act and policy associated with it, it would make sense to not use it in the context of the Plan.

<sup>41</sup> This is a land use covered under 2.2. This definition only applies on Indian Reserve lands. The better definition would be from the COGOA or NEB, if different.

<sup>42</sup> Inclusion of this legislation covers NWT right-of-way situations.

**Precautionary Principle:** Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation<sup>23</sup>.

**Recommendations (R)** provide advisory guidance to various governments, regulatory agencies, and organizations on additional activities that will help achieve the goals of the Plan..

**Regulatory Agencies<sup>43</sup>:** Any government department or agency or institution with the authority to issue licenses, permits or authorizations within the Dehcho and other agencies involved in authoritative decision-making related to the land use at hand. <sup>44</sup>

**Run of the River Hydroelectric Development:** Developments where no or little impoundment takes place and the natural river flow is utilized with no seasonal regulation. Hydro-electric run of river projects typically involve some or all of the following: weirs, water-training structures, fish ladders, lifts, passageways and spillways.” <sup>24</sup> <sup>45</sup>

**Significant Environmental Features:** Sites of important ecological significance, some of which also provide unique wildlife habitat for different species. They include but are not restricted to karst topography, hot and cold springs, waterfalls, ravines, cliffs and other unique geological features.

**Significant Habitat Features:** Areas or features that are critical to the survival or reproduction of the population. They include but are not limited to mineral licks, dens, wallows, nests, calving areas, spawning areas, staging areas, whelping areas, and lambing areas, key migration routes, and early open water areas.

**Sustainable Development:** Development that meets the needs of the present without compromising the ability of future generations to meet their own needs<sup>25</sup>.

**Provisions<sup>46</sup>:** Consist of Conformity Requirements, Actions and Recommendations.

**Tourism:** Any outdoor recreational activity as defined in the *Travel and Tourism Act*, not including Big Game Outfitting<sup>26</sup>. Tourism businesses may or may not include a tourist establishment as defined in the *Travel and Tourism Act*. Tourism services may include but are

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<sup>43</sup> The notion of “Regulatory Authorities” merits further discussion to ensure that it is inclusive of those who are intended to play a role to carry out a designated action or recommendation contained in the Plan. In many cases, it will be necessary to clarify who will do what. These discussions may inform the definition. For instance, there are a number of regulatory agencies that may take on a role to implement the Plan but are not necessarily the regulatory authorities for a specific application. For instance, the GNWT has a role to play in the cumulative effects management as the authority on wildlife management in the government system, but does not issue a lease, licence or permit for land or water use. Further discussion is needed to identify the means to implement certain sections of the Plan.

<sup>44</sup> The language in the Settlement Agreement s6.1 & s6.3 is permissive about providing for a stand alone DRMA and not definitive. Section 6.3 of the Settlement Agreement states: “For greater certainty, the Final Agreement **may** provide for a stand-alone DCRMA harmonized with the MVRMA.

<sup>45</sup> The definition would be more complete if the examples in the World Bank document were included to clarify “run of river”. The following should be added: “hydro-electric run of river projects typically involve some or all of the following: weirs, water-training structures, fish ladders, lifts, passageways and spillways.”

<sup>46</sup> See 2.3. Is it necessary to define “Term” as it is covered elsewhere? Rationale for changing “Term” to “Provisions” is discussed in 2.3.

not limited to fishing, hiking, cultural skills and interpretation, dog-sledding, and canoeing, but do not include big game outfitting.<sup>47</sup>

#### **Toxic Air Pollutants.**<sup>48</sup>

**Traditional Knowledge:** The collective intellectual property of Dehcho First Nations' members Stories, Customs, Experiences, Knowledge, Practices, Beliefs and Spiritual Teaching passed on by their parents from their ancestors<sup>27 49</sup>.

**Traditional Land Use and Occupancy:** Traditional Land Use refers to activities involving the harvest of traditional resources like hunting, trapping, fishing, gathering of medicinal plants and berry picking, and travelling to engage in these kinds of activities. The mapping of traditional land use records the locations where these activities occur. Occupancy refers to the area which a particular group regards as its own by virtue of continuing use, habitation, naming, knowledge, and control. The mapping of occupancy records stories and legends about places, ecological knowledge of places, indigenous place names, and habitation sites like cabins and burial grounds<sup>5028</sup>.

**Viewshed:** Everything visible from specific vantage points identified by affected communities.<sup>51</sup>

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<sup>47</sup> See comment on including land uses under definitions. Further, the GNWT suggests the World Tourism Organization definition used in "Tourism 2010 – A Tourism Plan for the Northwest Territories" -- "Activities of persons travelling to and staying in places outside their usual environment for not more than one consecutive year for leisure, business and other purposes not related to the exercise of an activity remunerated from within the place visited. The definition excludes travel for routine business or medical purposes." The intent apparent in the Plan is to limit "Big Game Outfitting", not more broadly defined tourism activities.

<sup>48</sup> The definition of "toxic air pollutants" is a regulatory matter and need not be discussed in the Plan. Please see the GNWT's rationale regarding this under Chapter 2.

<sup>49</sup> As per INAC comments, the GNWT would like to see a focus on the content of the knowledge as per Yukon Environmental and Socio-economic Assessment Act. The GNWT concurs with the federal recommendation to delete "intellectual property" and replace it with "accumulated body of knowledge".

<sup>50</sup> This should be reviewed to legal discussions. The GNWT recognizes the DLUPC's source (Moose Guide and work done by Peter Usher) of the term "occupancy" but suggests that such a limited definition of "occupancy" may not be appropriate throughout the Plan. Delgamuukw provides essential insights into the concept of land occupancy at common law and how intensively an area must be used to amount to aboriginal occupancy.

<sup>51</sup> Is the term "viewshed" in the present version of the Plan? (see R10) If not, it should be removed.



# CHAPTER 1: INTRODUCTION

DFN tent at the Kakisa Assembly 2005. Photo Credit: DLUPC

## 1.1 Introduction

The Dehcho Land Use Planning Committee (the DLUPC or Committee) was established in May 2001 through the Dehcho First Nations Interim Measures Agreement (IMA). The Committee is mandated to develop a Land Use Plan for the Dehcho territory for lands outside the existing community boundaries and the Nahanni National Park Reserve.

**The purpose of the Plan is to promote the social, cultural and economic well being of residents and communities in the Dehcho territory, having regard to the interests of all Canadians (IMA, S.3).**

**Taking into consideration the principles of respect for the land, as understood and explained by the Dehcho Elders, and sustainable development, the Plan shall provide for the conservation, development and utilization of the land, waters and other resources in the Dehcho territory (IMA, S.4). As such, Elders play an important role in guiding Plan development.**

<sup>52</sup> Page 1, <sup>53</sup> Appendix II of the IMA states: “The Parties share the objective that **upon approval of a Dehcho Final Agreement**, the approved Dehcho Land Use Plan will be a land management tool that provides legally-binding direction and guidance to regulatory agencies and decision-makers in the evaluation of development projects, protected area proposals and other potential land uses.”

## 1.2 Scope and Application of the Dehcho Land Use Plan

<sup>54</sup> The statements below are meant to provide guidance and clarity as to the appropriate scope and application of the Dehcho Land Use Plan.

1. Location – The Plan applies to the Dehcho territory as outlined in Map 1,<sup>55</sup> outside of Nahanni National Park Reserve and community boundaries.
2. Social Context – The purpose of the Plan is to promote the social, cultural and economic well-being of residents and communities in the Dehcho territory, having regard to the interests of all Canadians<sup>56</sup>.

<sup>52</sup> The Plan states: Once approved, the Land Use Plan will provide legally binding direction to Regulatory Authorities and decision-makers in their assessment of development projects. This statement as written de-emphasizes the important objective, made stronger by its notation that it is a shared objective, in Appendix II of the IMA (please see the above insert from the IMA.) There are two important filters in the latter passage relating to the timing and content of the Dehcho Land Use Plan. First, it is clear that the Land Use Plan will not become a “tool” until the approval of the Dehcho Final Agreement. Second, the Land Use Plan itself must be “approved”, and by this the GNWT interprets the “approval” of all Parties. The GNWT suggests that in the absence of a completed final agreement, the Dehcho Land Use Plan cannot provide legally binding direction to Regulators. The fact that it cannot reveals one important character of its “Interim” status.

<sup>53</sup> This section merits further discussion by representatives of the Parties (Government of Canada, Government of the NWT, Dehcho First Nation.)

<sup>54</sup> Already stated in the Executive Summary.

<sup>55</sup> This removes the reference to the IMA and makes the Plan self-contained.

<sup>56</sup> Purpose clause in the Plan should reflect the purpose clause in the IMA.

3. Legal Context – **The Plan once operational becomes part of an existing regulatory system.** <sup>57</sup> It does not supersede any Acts, Regulations or Agreements but is meant to guide, enhance and add value to the way the land, water and resources are managed in the Dehcho territory. Where the Plan defines a use as “permitted”, this allows the development application to proceed to the existing regulatory system. **It does not imply approval or consent for any project.** All applications are still subject to the existing regulatory system.
4. Land Uses – The Plan focuses on five key land uses for which Zoning is applied: agriculture, forestry, tourism, mining and oil and gas. New applications for these land uses can only be approved if they are a permitted use for the zone in question, as per the Land Use Zone Map of the approved Land Use Plan. The Plan only applies to activities for which a permit, license or authorization is required as described in the Plan. Guidance is provided to Regulatory Agencies on other land uses through Provisions.<sup>58</sup> There are many other uses of the land, water and resources, which are not discussed. If the Plan is silent on a use or issue, then the activity is deferred to the existing regulatory process.
5. Traditional land use and occupancy – **Nothing in this Land Use Plan will impact or reduce in any way, the treaty and aboriginal rights and activities of the Dehcho Dene Descendants. Traditional Land Use, Occupancy and Harvesting will continue in all areas at all times.** The Land Use Plan cannot and will not restrict treaty and aboriginal rights and activities as protected by law. Traditional Land Use, Occupancy and Harvesting is a permitted use throughout the entire Dehcho territory.<sup>59</sup>
6. Existing Rights, Dispositions, Authorizations and Activities – The Plan (both Zoning and Provisions) does not apply to any rights, dispositions, authorizations or activities existing in the Dehcho territory **on the day prior to Plan approval**<sup>60</sup>. These existing uses are allowed to continue as non-conforming uses. Renewal of permits, licenses and authorizations for existing uses are allowed.
7. New Activities – The Plan only applies to new activities which require a permit, license or authorization and which are initiated after the Plan has been approved by DFN and the GNWT and favourably considered by DIAND.
8. Commercial Use – The Plan only applies to non-traditional commercial uses. Traditional and domestic uses such as fur harvesting, minor trade of excess wildlife harvests, use of timber for fuel wood, community building needs, or Christmas trees, are exempt from the Plan, but not applicable legislation.<sup>61</sup>

<sup>57</sup> The first sentence is not one that the GNWT can agree to without substantial revisions and in the face of interpretive differences over key passages of the IMA. The GNWT would prefer to see simpler language for the legal context that emphasizes the fact that the land use plan once operational in the manner and at the time set out in the IMA, becomes part of an already existing regulatory system.

<sup>58</sup> Examples listed are subject to change pending outcome of discussions between the Parties.

<sup>59</sup> Exactly how and to what degree Aboriginal rights may be affected is a topic for the final agreement. The GNWT agrees that a land use plan will not affect Aboriginal rights because it is not designed to do that. The rest of the language anticipates the yet-to-be negotiated final agreement.

<sup>60</sup> “the day prior to Plan approval” is not meaningful given the process for approval spelled out in the IMA. This merits further discussion by the Parties.

<sup>61</sup> This addition is so that there is no confusion that though the Plan may not apply, legislation still may.

9. Emergency Use – Where an emergency threatens life, property or the environment, any person may carry out any land use that is necessary to cope with the emergency. If the activity is not in conformity with the Land Use Zone, a written report describing the emergency and those actions taken to respond to the emergency will be submitted to Regulatory Agencies as soon as possible<sup>62</sup>.
10. Research Permits – The Plan does not apply to scientific research permits.
11. Land Users – The Plan applies equally to all users (aboriginals, non-aboriginals, residents, non-residents, governments, businesses, organizations, etc.)<sup>63</sup>.
- 12.<sup>64</sup>

## 1.3 Plan Format and Content

The Plan identifies a Vision and Goals for the region, determined in consultation with communities and planning partners. The Plan achieves the Goals through a combination of Land Use Zones and Provisions.

### 1.3.1 Land Use Zones

Land use zones define smaller areas with similar features, objectives and values. Zone boundaries are defined by biophysical and cultural factors. The zones focus on five key land uses – oil and gas, mining, forestry, tourism and agriculture. Each zone identifies which of these five land uses are permitted and which are restricted. This is the principle component of the Land Use Plan that guides what types of development are appropriate and where they should take place. Once the Plan is approved, new applications for land use for these five sectors can only be approved if they are shown as permitted uses for that area in the Land Use Zone Map.

### 1.3.2 Provisions<sup>65</sup>

Provisions consist of conformity requirements, actions and recommendations. These Provisions also guide land use proposals and development projects. The Provisions address issues raised through consultations with communities and planning partners that could not be addressed by Zoning.

<sup>62</sup> The Regulatory Agency(ies) here need to be very clearly spelled out.

<sup>63</sup> First sentence adequately addresses who the users are. The rest speaks to the treatment of the various users.

<sup>64</sup> The previous section on 'land users' sufficiently addresses this subject and identifies the audience.

<sup>65</sup> The use of the word "Terms" is confusing because of a) the word 'terms' is ubiquitous and associated with its plain language meaning; b) is prescriptively defined to mean three things (CRs, Actions and Recommendations); and c) is used in an inconsistent way in the document that invites ambiguity and confusion. The GNWT does not see the need for Conformity Requirements, Actions and Recommendations to be grouped collectively in this confusing manner. It seems to undermine the stated and thematic goal of clarity stated several times throughout the document.

## CHAPTER 2: VISION, ZONING AND PROVISIONS

Jim Thomas of West Point First Nation viewing maps. Photo Credit: DLUPC

**NOTE: The maps provided in this Plan are for illustrative purposes only. While the Plan uses the best information available at the time of writing, we make no guarantees of completeness or accuracy. The maps may become outdated after print. Interested persons or organizations requiring up to date information should contact the data source for the most current files.**

## 2.1 Vision and Goals

Every planning region needs a vision to guide decision-making. We asked communities and planning partners to share their vision for the Dehcho with us and many people participated enthusiastically. We have created a comprehensive vision for the Dehcho territory from the responses and identified some overarching goals to achieve that vision.

The loss of Dene culture and language was raised as a major concern in every community. A culture is based on people's relationship with the land.<sup>66</sup>

The protection of traditional land use (hunting, fishing, trapping, gathering and occupancy) is the most common concern raised by Dehcho First Nations members. People want to ensure they always have the opportunity to use the land as they always have. While people know that development must occur to provide jobs and revenues, they want to ensure that it is done respectfully and only in areas where it is appropriate. There is a collective belief that there are places where development should not be allowed, to protect culturally and ecologically significant areas or maintain lands for traditional land use and occupancy only.<sup>67</sup>

### 2.1.1 Vision

"The Dehcho territory is a place rich in spirit, culture and resources. The people are stewards of the land – they protect the land and the land provides for them. The land is protected and the people maintain a strong connection to the land through traditional land use and occupancy. Families are strong and healthy, both physically and spiritually. Youth and Elders are actively engaged in their culture and language to ensure they are passed on to future generations.

The Dehcho people manage their governments, lands and resources to meet the social, cultural, economic and environmental needs of current and future generations in a fair manner. People are healthy, happy and self-sufficient. Education and training are a priority, to ensure that Dehcho people take the lead in activities on their lands. Long-term sustainable development, designed to meet the needs of the region, provides long-term social and economic benefits and opportunities that help to develop individual, community and regional capacity, without compromising the values of the people. The economy is robust and diversified, and supports the goals of the people.<sup>68</sup>

### 2.1.2 Goals

In order to achieve the vision, we must have clear goals. Many of these goals are timeless. They can be used over the short term to determine the success of the Plan, and over the long-term to chart progress as the region moves towards the vision.

<sup>66</sup> Copied from Page 13. This important statement might best be captured in the pre-amble to further emphasize its importance.

<sup>67</sup> Copied from 2.3.2, pg 15. There are elements from this information that could be captured in the pre-amble to further emphasize their importance.

<sup>68</sup> The GNWT believes that the vision statement could be broadened to be clearly inclusive of all Dehcho residents, as reflected in the IMA. Consider adding, or changing to, the vision to focus it on land use planning. This vision considers other strategic priorities that the GNWT suggests would be more appropriate in an economic development strategic plan or a general plan.

1. Air and water quality, and water quantity will remain substantially unaltered or improve from the present condition to sustain life indefinitely.
2. The full complement of indigenous plant and wildlife species will continue to flourish in their natural habitats at viable population sizes, within the range of natural variations for future generations.
3. There will always be traditional lands important to each community, free of industrial and other uses where people can go to harvest healthy animals, foods, medicines, and experience their cultural traditions.<sup>69</sup>

The Plan has been designed to achieve these goals through a combination of Zoning and Provisions.

## 2.2 Land Use Zones

Zoning was developed in consultation with communities and Planning Partners. Some overarching principles were used to guide decisions about how certain lands should be zoned.

- Protect the Water – Dehcho (Mackenzie River) and Liard River, important lakes and smaller rivers important to communities;
- Protect important areas for wildlife and traditional land use and occupancy<sup>70</sup>;
- Conserve resources and use them wisely;<sup>71</sup>
- Support community interests in PAS sites;
- Address community concerns;
- Ensure regional connectivity and access are addressed;
- Provide sustainable development opportunities for jobs and revenues for the Dehcho territory; and
- Protect existing rights, dispositions, authorizations and activities<sup>72</sup>.

The Plan uses five types of zones to achieve its goals:

- **Conservation Zones** are areas having significant ecological and cultural values. They are meant to provide protection to lands of important cultural or ecological value. All development except tourism is prohibited in Conservation Zones. Two of the zones prohibit tourism as well.
- The **Protected Area Strategy Zone** is a separate designation for candidate protected areas that have been withdrawn from disposition through the Protected Area Strategy (PAS) process. This zone type represents a transition between an area subject to the Land Use Plan and the proposed protected area, which would be managed under the legislation and

<sup>69</sup> It should be recognized that for specific areas on the landscape these goals are likely unattainable if sustainable development opportunities are undertaken to provide for present and future Dehcho residents. Goals 4 through 10 are acknowledged by the GNWT; however these are not germane to a regional land use plan.

<sup>70</sup> See comments on Definition of “traditional land use and occupancy”. Could “occupancy” be removed here?

<sup>71</sup> This ties back to what was listed as a principle in Recommendation 6. These principles are what should ground the upcoming Actions and Recommendations.

<sup>72</sup> Some of these principles may be considered as goals.

authority of the sponsoring agency and any pursuant Park Management Plan.<sup>73</sup> At the moment, only Edehzhie (Zone 4) has this designation.

- **Special Management Zones** are areas where there is significant potential for both conservation and development together. Special Management Zones may be established to promote certain types of development or protect certain values while allowing some forms of development to proceed. Special Management Zones use a combination of Provisions and land use restrictions to achieve these goals.
- **General Use Zones** permit all land uses, subject to existing regulatory processes, Acts and Regulations, and the Provisions of this Plan.
- The **Special Infrastructure Corridor** delineates a study corridor for the Mackenzie Valley Pipeline based on the current routing of the proponent and negotiated corridors through current land withdrawals. A route is still being negotiated through Zone 1 (Pehdzeh Ki Deh) and the final routing will be reflected in the Plan once negotiations are complete<sup>74</sup>.

The Land Use Zones focus on five land uses and identify in general where each of these uses is appropriate:

- **Oil and Gas Operations:** (referred to simply as “Oil and Gas” in Table 1). Oil and Gas operations include exploration (excluding non-exclusive geophysical surveys), drilling, production, conservation, processing and transportation of oil and gas in the Northwest Territories. “Gas” means natural gas that is or can be produced from a well, both before and after it has been subjected to any processing, and includes marketable gas and all fluid components not defined as oil; “Oil” means crude oil and all other hydrocarbons, regardless of gravity, that are or can be produced from a well in liquid form including crude bitumen but excluding condensate<sup>29 30</sup>.
- **Mining:** Any work or undertakings related to the exploration for or development of a mineral resource; the extracting of minerals from a mineral resource, the processing of ore, other than iron ore, from a mineral resource to the prime metal stage or its equivalent, the processing of iron ore from a mineral resource to the pellet stage or its equivalent and the restoration of strip-mined land to a usable condition. Mineral Resources include: (a) a base- or a precious-metal deposit; (b) a coal deposit; (c) a mineral deposit from which the principal extracted substance is diamond or ammonite gemstone, potash, sodium chloride, gypsum or silica (if extracted from sandstone or quartzite); (d) a certified non-bedded deposit from which an industrial mineral is the principal mineral extracted; (e) a bituminous sands or oil shale deposit<sup>31 3275</sup>.

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<sup>73</sup> Need to fully understand implications of the Edhezie area in addition to the Conservation Zone. The Parties need to understand the implications of the current proposed PAS Zoning, if for some reason, the Edhezie area does not end up as a ‘protected area’ under the PAS Strategy, what would happen to the zoning status of this area?

<sup>74</sup> The GNWT agrees with DIAND’s January comments (page 20 under the heading “Mackenzie Valley Pipeline” (recommendation to consider widening of corridor to 2-5 kms to allow for flexibility that will minimize impacts).

<sup>75</sup> See DIAND comments, page 15 of January submission, re: including mineral exploration within the usage of the term “mining”, which could cause low impact prospecting to be treated as high impact land use...” The GNWT concurs with these comments.

- **Forestry:** <sup>76</sup>Any work or undertaking to harvest or manage an area for the production of timber and other forest produce, or to maintain woody vegetation for such indirect benefits as the protection of watersheds, the provision of recreation areas, or the preservation of natural habitat<sup>33</sup>.
- **Tourism:** Any outdoor recreational activity as defined in the *Travel and Tourism Act*, not including Big Game Outfitting<sup>34</sup>. Tourism businesses may or may not include a tourist establishment as defined in the *Travel and Tourism Act*. Tourism services may include but are not limited to fishing, hiking, cultural skills and interpretation, dog-sledding, and canoeing, but do not include big game outfitting<sup>77</sup>.
- **Agriculture:** Agriculture is defined as cultivation of the soil and the grazing of livestock, not including confined barn livestock production, greenhouses, and game-ranching<sup>78</sup>.

Some of these land uses include low impact activities that do not require permits, licenses or authorizations. The Zoning does not restrict such uses. The Provisions provide greater clarification and describe some exceptions to these five land uses.<sup>79</sup>

The Dehcho Land Use Zones are shown in Map 1. Table 1 provides an overview of the size of each zone and identifies which land uses are permitted (as shown by a ✓) or restricted (no check mark).

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<sup>76</sup> Forestry – according to Map 1 “forestry” would not be permitted throughout Conservation Zones and in Zone 22. It is unclear from this definition what activity is to be prohibited. Perhaps timber harvesting? If so, is there an understanding of why? “Forestry” merits further discussion with the GNWT to clarify intent and how this intent would be implemented.

<sup>77</sup> Tourism - The land use described as tourism is limited. The GNWT suggests the World Tourism Organization definition used in “Tourism 2010 – A Tourism Plan for the Northwest Territories” -- “Activities of persons travelling to and staying in places outside their usual environment for not more than one consecutive year for leisure, business and other purposes not related to the exercise of an activity remunerated from within the place visited. The definition excludes travel for routine business or medical purposes.” The intent evident in the Plan is to limit “Big Game Outfitting”, not the promotion of the broader definition of tourism.

<sup>78</sup> See Definitions and suggestion of alternate definition: “Agriculture is the cultivation of the soil and the raising of livestock, including tillage of the soil, beekeeping, poultry-raising, dairying, woodlot management and fur-farming.” – Canadian Legal Dictionary. There is no NWT statute or regulation defining ‘agriculture’.

<sup>79</sup> Further clarification is required on ‘low impact activity’. Please provide the GNWT with a definition of low impact activity.

<sup>80</sup> CR #1 not necessary as permitted uses in Zones adequately described in Table 1 and Map 1

**Map 1. Draft Land Use Zones**



**Table 1. Zone Descriptions**

## 2.3 Provisions<sup>81</sup>

Provisions are meant to provide guidance for the future development of the Dehcho territory. They were developed to address planning issues raised during consultations. Provisions cover a broad range of topics including:

- Clarification of additional permitted and non-permitted uses not covered in Zoning;
- Identification of specific exceptions to Zoning;
- Identification of conditions for development; and
- Description of Actions and Recommendations required to achieve the goals of the Plan.

There are three types of Provisions – **Conformity Requirements (CR)**, **Actions<sup>82</sup> (A)**, and **Recommendations (R)**.

**Conformity Requirements (CR)** describe permitted and non-permitted uses within the Zones outlined in Map 1<sup>83</sup> or any permitted uses defined as an exception for a specific Zone or throughout the Dehcho territory.<sup>84</sup> For clarity, Zoning is treated as a Conformity Requirement.<sup>85</sup>

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**Actions (A)** identify activities (e.g. research, meetings) which are required to achieve the goals of the Plan and are to be undertaken by various governments, regulatory agencies, and organizations.<sup>87</sup>

**Recommendations (R)** provide advisory guidance to various governments, regulatory agencies, and organizations on additional activities that will help achieve the goals of the Plan.<sup>88</sup>

Appendix 1 contains a numbered list of all Conformity Requirements, Actions, and Recommendations.

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<sup>81</sup> The use of the word “Terms” is confusing because of a) the word terms is ubiquitous and associated with its plain language meaning; b) is prescriptively defined to mean three things (CRs, Actions and Recommendations); and c) is used in an inconsistent way in the document which invites ambiguity and confusion. The GNWT does not see the need for Conformity Requirements, Actions and Recommendations to be grouped collectively in this confusing manner. It seems to undermine the stated and thematic goal of clarity stated several times throughout the document.

<sup>82</sup> Note: The GNWT has suggested that certain actions within the Plan be referred to the negotiation table when appropriate.

<sup>83</sup> The plan is to apply in the area mapped in Appendix 1 of the IMA. To avoid cross-referencing the IMA, the same map should be used.

<sup>84</sup> Wording implied the ability to fetter regulatory agencies. Conformity requirements should be about what can be done where.

<sup>85</sup> Once the process in implementation is agreed upon by representatives to the Parties, more detail may be added to the Plan. In the interim, this is removed.

<sup>86</sup> This would be a normal course of action and therefore does not need to be in the Plan.

<sup>87</sup> This reflects that an Action will clearly ask someone to do something and is different from a Conformity Requirement.

<sup>88</sup> Recommendations are advisory in nature and mostly refer to items that should be looked into in an indeterminate future. The GNWT will consider all recommendations that apply to it fully.

The Plan groups similar land use objectives together into four categories – Dene Culture, Traditional Land Use and Occupancy, Sustainable Development, and Community. A brief description is provided for each grouping, followed by the proposed Conformity Requirements, Actions and Recommendations.

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The Provisions apply to all zones in the Dehcho territory except:<sup>91</sup>

- Mackenzie Valley Pipeline (CR #12 – Applies specifically to Zone 30 and crosses Zones 1, 3, 4, 5, 19, 21, 22, 23 and 29 – See R #14);
- Fishing Lodges (CR #23 applicable only to Zone 5)
- Cumulative Effects Management (CR #25 applicable to all Special Management Zones and General Use Zones).

These three Provisions are referred to as “Specific Provisions”. All other Provisions are considered “General Provisions”<sup>92</sup>.

### **2.3.1 Dene Culture**

People in the Dehcho want to preserve Dene culture and language. Regular exposure to Dene language and culture is necessary. A culture based on people’s relationship with the land can be enhanced through opportunity to go out on the land. There are also many other ways to build on culture and language development within the home, community and workplace.

The following Recommendations are meant to preserve Dene culture, language and traditional knowledge.<sup>93</sup>

#### **Respect Dene Laws, Values and Principles**

In Dene culture, many approaches to resource development are seen as disrespectful to Mother Earth. They operate on economic principles that are sometimes in direct contravention of Dene Laws and Principles.<sup>94</sup> While many people recognize the need and value of industries and commercial development to the economic well-being of the Dehcho, conflicting values need to be carefully considered.

**R #1:** Everyone operating in the Dehcho should respect Dene Laws, Values and Principles.

Fire Feeding Ceremony:

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<sup>89</sup> This statement is problematic as it provides veto potential to a First Nation.

<sup>90</sup> The timeframe of implementation is an item that merits future discussion by the representative Parties.

<sup>91</sup> There is a need to look at exceptions in light of changes recommended for GNWT approval.

<sup>92</sup> The use of the word “Terms” or terms is confusing because of (a) the word “terms” is ubiquitous and associated with its plain language meaning; (b) is prescriptively defined to mean three things; and (c) is used in an inconsistent way in the document which invites ambiguity and confusion. (for e.g. ...”there are a few Terms that apply to specific zones only”. – page v; the three “Terms” are referred to as “Specific Terms”. All other Terms are considered “General Terms”. Page 13. We suggest avoiding the use of the word “terms” or “Terms”.

<sup>93</sup> It is important to capture these notions in the Plan but it needs to be done in a manner that highlights these values related to land use. Some elements that were noted in the section on Culture and Language have been moved up to the preamble because that section as a whole was not directly related to land use.

<sup>94</sup> These could be included as an Appendix to the Plan.

**R #2:** Developers should show respect for the land before starting a new operation. This can be done by having a Fire Feeding Ceremony prior to breaking ground. Developers should hold a Fire Feeding Ceremony with the local First Nation prior to commencing new operations to show respect for the culture and use of resources.

Show Respect:

**R #3:** Developers should respect the Dehcho First Nations as stewards and first occupants of the land. Developers should talk to First Nations about their operations early in their planning process. Developers should respect First Nations' knowledge, comments and decisions.

Sharing:

**R #4:**<sup>95</sup>

Take Only What You Need:

**R #5:**<sup>96</sup> Developers should develop a strategy to ensure long-term benefits accrue to communities from current and future operations.

Do Not Waste:

**R #6:** Developers should use best practices to achieve:

- operations that are as efficient as possible.
- <sup>97</sup>efficient use of any resources harvested to complete a land use operation (e.g. trees harvested to clear seismic lines).
- the efficient use of natural resources to access and extract the target resource.
- a minimal footprint of operations and a reduction of the amount of natural habitat cleared or disturbed. Concentrating operations, sharing access, and reusing existing cut lines and trails are some of the ways to do this.
- -.
- reduced flaring by pooling gas volumes until sufficient quantities are available to make transport economically feasible where practical.

**optimum responsible recovery of resources while minimizing energy and other resource expenditures (e.g. water). Full economic and environmental costs required for enhanced recovery procedures should be considered.<sup>98</sup>**  
**Use and Recognition of Traditional and Cultural Knowledge**

The value of traditional knowledge needs to be recognized and integrated into decision-making. This integration of traditional and scientific knowledge presents challenges. Cultural awareness and understanding are important to resolve this challenge.<sup>99</sup>

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<sup>95</sup> This is repetitive of the Recommendation that follows.

<sup>96</sup> The first part of this recommendation was moved to a lead in statement on Sustainable Development in Chapter 2 because it is not a recommendation as worded. Alternative wording to keep a recommendation here could be something like: "Developers and resource managers should consider the conservation of resources for future generations." It may be tough to get a wording that is not more like a principle.

<sup>97</sup> Current forest management practices avoids the use of the term "incidental use". The concept is valid.

<sup>98</sup> These recommendations were revised for clarity only.

<sup>99</sup> This section was modified to retain the important concept but be presented in such a way that it reflects an accumulated body of knowledge that is valuable to land and resource management. The GNWT recognizes the importance of integrating traditional and scientific knowledge and will continue to make efforts to do so through its policies and programs.

**CR #2:** <sup>100</sup>Regulatory Agencies will consider both traditional knowledge and scientific information on all applications for new use of the land and water where appropriate. The level of data collection should be appropriate to the scale and nature of the activity and the potential to impact traditional land use and occupancy<sup>101</sup>.

**R #7:** Businesses and governments should recognize traditional and cultural knowledge in all aspects of their business activities and decision-making.<sup>102</sup>

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## **Culture and Language**<sup>104</sup>

Ties to the land and community that sustain Dene language and culture can only be preserved through a concerted effort from everyone. Programs and special initiatives should enhance regular exposure to Dene language and culture provided through family activities on the land.

**R #9:** Communities, non-government organizations, aboriginal organizations and businesses should work cooperatively to create more opportunities for Dene cultural and linguistic experiences on the land.

### **2.3.2 Traditional Land Use and Occupancy**<sup>105</sup>

<sup>106</sup>Dehcho First Nations members value traditional land use (hunting, fishing, trapping, gathering and occupancy). Traditional land use supports a traditional economy that depends on culturally and ecologically significant areas. These areas are protected through zoning and actions taken by developers and land and resource managers. . The following Actions and

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<sup>100</sup> The GNWT sees this as an Action, as opposed to a Conformity Requirement because it asks certain agencies to do specific things. The GNWT concurs with federal comments from the January submission (pgs. 8,9) that supports the notion of traditional knowledge as an accumulated body of knowledge, not the legal concept of property. It can be considered an Action as it is a current expectation. It is not clear, but is presumed that this would be for all land uses as characterized in section 2.2.

<sup>101</sup> The GNWT recognizes the DLUPC's source (Moose Guide and work done by Peter Usher) of the term "occupancy" but we cannot accept such a limited definition of "occupancy". Delgamuukw provides essential insights into the concept of land occupancy at common law and how intensively an area must be used to amount to aboriginal occupancy.

<sup>102</sup> Even though this is a recommendation, it is strongly worded and may not be taken for the spirit in which it was intended.

<sup>103</sup> The GNWT sees the detail in this recommendation as aspects of what might occur in other venues such as the negotiation of impact benefit agreements.

<sup>104</sup> The suggested changes tie the recommendation back to the land, making this more germane to a land use plan. The GNWT does acknowledge the statements made in the original document and encourage opportunities listed in the original recommendation to be pursued through the appropriate venue.

<sup>105</sup> Use of the term "occupancy" merits further legal discussion so that there is common understanding on what is meant. The GNWT recognizes the DLUPC's source (Moose Guide and work done by Peter Usher) of the term "occupancy" but we cannot accept such a limited definition of "occupancy". Delgamuukw provides essential insights into the concept of land occupancy at common law and how intensively an area must be used to amount to aboriginal occupancy.

<sup>106</sup> The changes made to this text highlight traditional land use as a value to be protected and tie in the traditional economy information from below. The other information strays from the value at hand (protection of traditional land use and occupancy).

Recommendations will help to protect traditional land use and **occupancy**, and sites of traditional or cultural significance.

## Protection of Significant Traditional **Land Use and Occupancy Sites**

**CR #3:**<sup>107</sup> **Regulatory agencies will** consider the impact of the proposed activities on known historical, archaeological, traditional **land use and occupancy** sites including burial grounds, sacred sites, cabins, trap lines, and cultural sites as identified by the Prince of Wales Northern Heritage Centre and local Dehcho First Nations.

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## Plant Gathering Areas

**CR #5:** Regulatory agencies should consider traditional plant gathering areas in the regulatory process. Traditional plants are not limited to those plant species listed in Appendix 2<sup>35</sup>. <sup>113</sup> **A #2:**

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<sup>107</sup> It is not clear what is intended here, if anything, different than the status quo. This is current practice through the regulatory system; an assessment is done through the preliminary screening process.

<sup>108</sup> The DFN may desire or wish to work with regulatory agencies to address the level of consultation. The GNWT recognizes the common law duty to consult. Furthermore, additional obligation to consult may be something that could be discussed in the Dehcho process, but is not part of land use planning, as it is not a land usage issue at all.

<sup>109</sup> This is a regulatory matter and would be addressed through the existing legislation (*NWT Archaeological Sites Regulations* under the *Northwest Territories Act*).

<sup>110</sup> The GNWT acknowledges the value of this objective to gather harvesting data; however it is seen as inappropriate for a land use plan and could perhaps be addressed through other means. Current practice is to gather information related to subsistence harvesting through hunter and trapper organizations. Voluntary contribution of information from hunters and harvesters is important. This could be a subject for negotiations in the Dehcho Process. Voluntary contribution of information from hunters and harvesters is important. Based on this rationale, the Action has been removed.

<sup>111</sup> The DFN may desire or wish to work with regulatory agencies to address the level of consultation. The GNWT recognizes the common law duty to consult. Furthermore, additional obligation to consult may be something that could be discussed in the Dehcho process, but is not part of land use planning, as it is not a land usage issue at all.

<sup>112</sup> The GNWT concurs with the federal comments from the January submission that outline, "The requirement for consultation in this CR ignores the common law requirement that the strength of the claim to Section 35 rights needs to be assessed, which is the foundation for the requirement to consult. CR4 requires that all applications for new land and water uses demonstrate full and meaningful consultation without any reference to a claimed section 35 right. ... The Plan only refers to the degree of impact on an asserted right of whatever it is that is being authorized. It is therefore not a correct description of the common law requirement to consult and imposes a higher duty to consult."

<sup>113</sup> The current regulatory mechanisms provide opportunity for First Nations concerns related to plant species. For example, the DFN could participate in the Terms of Reference for any environmental assessment, and request an assessment of plant species in the area. The originally worded CR#5 fetters the regulatory authorities (e.g. demonstrate coordination, will require, etc.). The GNWT concurs with the federal comments recommending removal of CR#5 or that it be changed to a recommendation. This could be part of the Dehcho process but goes beyond what is required in any current land claim.

Dehcho First Nations should develop a list of plants they consider culturally important and in need of protection within 1 year.<sup>114</sup>

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### **2.3.3 Sustainable Development**

The communities want to save resources for future generations. Regulators and developers should promote the use of current best practices to conserve natural resources and promote sustainable development. This can be done through practices such as low or minimal impact seismic.<sup>119</sup>

Many of the Provisions in this Plan enhance the management of development to address specific issues.

### **120 Existing Rights, Dispositions, Authorizations and Activities**

Subject to applicable regulatory requirements, Acts and Regulations, all rights, dispositions, authorizations and activities existing on the day prior to Plan approval in the Dehcho territory are

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<sup>114</sup> While this Action does not belong in a land use plan, it does facilitate responsible land management if it is in some way tied to the landscape, for instance where these plants are located. Consider re-wording or putting this into the Background document. Regulatory Agencies would welcome this additional information.

<sup>115</sup> Either move to background report or incorporate as an item under Vision and Goals or Land Use section 2.2 as one of the principles, perhaps around “community concerns”. Change the word “Developer” to “Applicant” (per recommended change by federal government in the definitions).

<sup>116</sup> Although we support the idea of DFN participation in development as much as possible, these recommendations do not belong in a land use plan. They could be addressed through impact benefit agreements or other venues that promote local employment, including early dialogue with developers. Recommendation 11 can be addressed through current regulatory mechanisms. (e.g. Information on the development, such as location, is publicly available through the project description in the application. Reporting requirements are under the jurisdiction of the regulator. The hiring of guides or monitors can be addressed in the Dehcho Process, or through any benefit agreements, where applicable.) Recommendation 12 should be given directly to the Dehcho Process negotiation team.

Action 3 does not belong in a land use plan. Put this into the Background document.

<sup>117</sup> This is an activity that could perhaps be dealt with through a harvesting chapter of a final agreement, where restrictions and conditions would be set out on harvesting. It is recommended that this matter be addressed through the Dehcho Process.

<sup>118</sup> This Action does not belong in a land use plan. Put this into the Background document.

<sup>119</sup> This sentence was added to highlight the value of sustainable development and best practices. Should the phrases low impact or minimal impact seismic not be used in the body of the report other than what the GNWT has given you, then the GNWT suggests that they be removed from the Definition section.

<sup>120</sup> Wording for this conformity requirement (and the related definition and in Section 1.2 Scope and Application of the Dehcho Land Use Plan) needs to be discussed fully with the Parties. The text does not constitute a conformity requirement, per se, in that it is not tied to a specific zone on the land.

Exceptions like this “conformity requirement” should be part of implementation discussions by representatives of the Parties and then added in Chapter 1, under Scope of the Plan, or in 3.4 or both.

permitted, including development arising from rights existing on the day prior to Plan approval, even if they do not conform to the Land Use Zones. These existing rights, dispositions, authorizations and activities are allowed to continue as non-conforming uses. These interests are further defined as follows:

- Renewal of permits, licenses and authorizations for existing rights, dispositions, authorizations and activities are allowed.
- There may be instances where it is not possible to construct required infrastructure within the boundaries of existing rights, dispositions, authorizations or activities for physical, environmental or cultural reasons. Where such factors exist, any non-conforming associated infrastructure required for the development of rights, dispositions, authorizations and activities may extend beyond the existing boundary of those rights, dispositions, authorizations or activities to the minimum extent that can be reasonably justified to mitigate physical, environmental or cultural issues.
- Existing rights, dispositions, authorizations and activities are not subject to the Provisions of the Plan.
- If an existing right, disposition, authorization or activity expires or lapses, it ceases to be considered “existing”, and any new activities associated with those prior rights, dispositions, authorizations or activities are considered new activities and would be subject to the full extent of the Plan.
- If an application is made for a permit, license or authorization to alter the existing non-conforming use, then the application is considered a new activity and is subject to the full extent of the Plan.

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## **Contaminated Sites**<sup>122</sup>

**CR #7:** Activities related to clean up and reclamation of contaminated sites are permitted in all zones<sup>123</sup>.

## **Non-Exclusive Geophysical Surveys**

<sup>124</sup>DFN and Canada have identified lands shown in Map 2 where non-exclusive geophysical surveys would be restricted.

**CR #8:** Non-exclusive geophysical surveys will be permitted in areas as shown in Map 2. Where such areas fall into Conservation Zones or Special Management Zones that restrict geophysical operations (i.e. those that restrict oil and gas), these activities will be permitted as non-conforming uses, subject to existing regulatory processes and approvals.

**A #5:** DFN and Canada are directed to renegotiate these areas to harmonize these with the Plan’s Land Use Zones within one year.<sup>125</sup>

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<sup>121</sup> This is already covered in the overall principles in section 2.2.

<sup>122</sup> It is not clear what is referenced here as “contaminated sites”. This needs to be clarified through discussions with appropriate agencies.

<sup>123</sup> The DFN may desire or wish to work with appropriate agencies to address consultation in these regards. Furthermore, additional obligation to consult may be something that could be discussed in the Dehcho process.

<sup>124</sup> The GNWT does not want cross-references with sections of the IMA noted in the body of the Plan.

<sup>125</sup> The GNWT concurs with the importance of the information gained from these surveys and the federal government comments on pages 19 and 20 of the January submission.

## Minor Infrastructure

There is an ongoing need for the development of minor infrastructure to serve the needs of communities, and existing and future development. Minor infrastructure includes developments such as fuel caches, navigation markers, communication towers, and associated buildings (e.g. storage shed). Minor infrastructure is limited to land and water uses requiring a Type B land use permit or water license as per the *Mackenzie Valley Land Use Regulations* or those minor land and water uses not requiring any land use permits or water licenses. Infrastructure not requiring land use permits or water licenses will be permitted throughout the Dehcho territory.

**CR #9:** Type B land use permits and water licenses relating to minor infrastructure as defined in the Plan are permitted within Special Management and General Use Zones.<sup>126</sup> Regulatory Agencies<sup>127</sup> will consider exceptions for any future applications for Type B land use permits or water licenses relating to minor infrastructure in Conservation Zones providing they demonstrate:

- An immediate need for the infrastructure;
- The reasonably foreseeable future infrastructure needs of the region have been considered in the selection of appropriate design and location;
- Environmental, social, economic and cultural values were considered in selecting the site; and
- Appropriate mitigation measures are in place to buffer ecologically and culturally sensitive areas from impacts.

## Granular Resources

Nearby access to granular resources is a key requirement for any development or maintenance project to be economical. While development of new granular deposits is not consistent with the intent of Conservation Zones or some Special Management Zones, restricting access to deposits in these areas may have significant impacts on development expected to occur in other Zones.

**CR #10:**<sup>128</sup> Regulatory Agencies may issue new permits in Conservation Zones under the *Territorial Quarrying Regulations* only:

- For sources of material which had been opened prior to Plan approval;
- For new sources of material required for essential community construction purposes; or
- <sup>129</sup> In cases where, in the opinion of the Minister of DIAND, no alternative source of supply is reasonably available in the surrounding area and after consultation with the Dehcho First Nations.

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<sup>126</sup> This next statement is an Action, not part of the Conformity Requirement. The essence of the Action needs to remain with the regulator. The elements of the action contained in CR#9 need to be redrafted in the context of the existing regulatory framework.

<sup>127</sup> The DLUPC does not have the regulatory authority to approve applications for the construction of infrastructure, minor or otherwise. This authority rests with the MVLB. Ultimate discretion on determination of conformity to zoning will have to remain with regulators, until such time as a land use planning board is established under legislation. The ongoing role of the Committee merits further discussion by the Parties (DFN, GNWT, Canada).

<sup>128</sup> How this could be implemented merits further discussion by the Parties.

<sup>129</sup> Although applicable to interim land withdrawals, pursuant to the IMA, veto power for a single Party in a land use plan is inappropriate.

## Map 2. Non-Exclusive Geophysical Survey Restrictions

## Access<sup>130</sup>

The goal of the Plan is to provide efficient access to the land and resources while preventing a proliferation of unnecessary roads and impacts. There are some areas of significant value that are better protected by restricting access.<sup>131</sup> On the other hand, careful planning needs to occur to avoid isolating development areas without adequate access. The following term will guide access development within the Dehcho territory.

**CR #11:** Regulatory authorities will manage access (including seasonal roads, all weather roads, pipelines, and transmission or utility corridors) in the Dehcho by requiring the following:

- Developers will submit an access planning study with all applications for new access corridors which demonstrates:
  - reasonably foreseeable access needs for the zone have been considered,
  - the most appropriate type and/or level of access for the zone,
  - that meaningful consultation has been held with affected First Nations on the construction, operation and abandonment of the corridor,
  - that meaningful consultation has been held with other potential users of the proposed access corridor;
- Developers will submit a routing study with all applications for new access corridors which considers alternative routings and demonstrates:
  - how the proposed corridor is the least environmentally or culturally damaging option, and
  - how the Developers will minimize the area affected by the project, the intensity of disturbance, and use the best available technology to minimize environmental impacts;
- New access corridors will be routed through General Use Zones or Special Management Zones in order of preference;
- New Access corridors may be permitted through Conservation Zones providing the application demonstrates the following:
  - There is no reasonably feasible alternative to the proposed corridor through the Conservation Zone, and
  - The proposed corridor must be the shortest possible length through the Conservation Zone, while avoiding the most sensitive ecological and cultural areas and ensuring Dehcho First Nation(s) traditional land use and occupancy activities in the area are not disturbed<sup>132</sup>;
- Once an access corridor has been established through a Conservation Zone, all future access through that zone will follow the existing corridor unless the Developer can demonstrate that:
  - The proposed activity cannot proceed without a new access corridor,
  - The proposed activity and new access corridor will benefit the local residents and communities, and

<sup>130</sup> Within the areas highlighted, there are some elements targeted to developers, and others to regulatory agencies. This provision needs to be carefully reviewed by appropriate agencies to determine what is related to a conformity requirement (if anything), an action, or a recommendation, considering how resulting provisions could be implemented.

<sup>131</sup> Move to Background document.

<sup>132</sup> This goes beyond existing legislation and provides too difficult a test for development to proceed. DIAND recommends this requirement be amended to state that the regulators must take into account the disturbance to traditional activities when making their decisions. (Page 20, Jan 17 comments).

- The new corridor meets all the conditions listed above for access through a Conservation Zone.
- New access corridors to communities must be supported by the affected First Nation and local government<sup>133</sup>.

## Mackenzie Valley Pipeline

The Plan recognizes that applications for a proposed Mackenzie Valley Pipeline are in progress. While the pipeline is a transboundary use affecting lands across multiple settlement regions, this Plan can only provide guidance<sup>134</sup> for pipeline construction, operation and reclamation within Dehcho territory<sup>135</sup>. Should the pipeline be approved, the following Provisions will guide development on Dehcho lands.

<sup>136</sup>Subject to regulatory approval and any conditions imposed on them by the appropriate Regulatory Agencies, development of the Mackenzie Valley Pipeline or an alternative pipeline with similar specifications will be permitted within the Special Infrastructure Corridor (Zone 30). The Plan recognizes the need for access and infrastructure outside of this corridor. The pipeline corridor, additional access, gravel resources, camps and minor infrastructure will be managed in accordance with the above Provisions for Access, Granular Resources and Minor Infrastructure.

**CR #12**<sup>137</sup>:Provisions Regulatory Agencies should<sup>138</sup> direct larger infrastructure requirements to be located in General Use Zones and Special Management Zones in order of preference. Pipeline infrastructure will be considered a permitted use in Conservation Zones providing it meets the following conditions:

- There is no reasonably feasible alternative to the proposed location of infrastructure in the Conservation Zone;
- The proposed infrastructure avoids the most sensitive ecological and cultural areas; and
- The proposed infrastructure minimizes the area affected, the intensity of disturbance, and uses the best reasonably available technology to minimize environmental impacts.

<sup>139</sup>

<sup>133</sup> This statement is problematic as it provides veto potential to a First Nation.

<sup>134</sup> Prescriptive language, using the word 'direction'.

<sup>135</sup> This has been changed so that consistent language is used. As noted in definitions, "Dehcho territory" should be defined.

<sup>136</sup> This information belongs in the preamble information with respect to the Mackenzie Valley Pipeline and is extracted from CR 12.

<sup>137</sup> MVP-CR12: the second bullet states that the approval of the pipeline would be conditional on traditional land use being 'undisturbed'. This, in a manner, offers a potential veto to the Dehcho if they can establish that their traditional land use, which presumably includes hunting, trapping, etc, would be 'disturbed'. This goes well beyond the Crown's existing obligation to consult with and accommodate the Dehcho if the pipeline is going to adversely affect the exercise of their treaty or aboriginal rights. There is no doubt that the pipeline, particularly during the construction phase, will affect traditional uses. As an alternative to the current language, the GNWT recommends changing or replacing this with language that sets out the Crown's existing obligation to consult and accommodate where rights will be affected. MVP – CR12: third bullet requires specific mitigation of environmental effects and mandates a high standard for this.

<sup>138</sup> Effectively changes CR#12 to a Recommendation. Cannot prescribe actions of Regulatory Agencies.

<sup>139</sup> Use of the land is not contingent upon consultation obligations unless specified in a land claim agreement or regulatory instrument.

All future expansions or tie-ins and related infrastructure, will be subject to the full extent of the conditions in each of the underlying zones. It is not anticipated that feeder pipelines will extend across any Conservation Zones during the next five years. Any requests to address future expansion of the pipeline and related infrastructure will be addressed during Plan revision.

**R #14:** The Mackenzie Valley Pipeline is expected to cross Zones 1, 3, 4, 5, 19, 21, 22, 23 and 29 and lie within Zone 30 (the Special Infrastructure Corridor). The Developer of the Mackenzie Valley Pipeline, or an alternative pipeline with similar specifications, should recognize the values and intent of these underlying zones and harmonize its activities with the intent of those zones.

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## Water Monitoring / Management

Water is the most important resource to the Dene. Without water, nothing survives. Water features prominently in their culture and legends. The Dehcho takes its name from the Mackenzie River (Deh=River; Cho=Big). It provides them with drinking water, food, and travel routes. The Dehcho Dene fully understand the concept of a watershed. They understand where the water comes from and where it goes and that problems in one spot may affect everything downstream. That is why, when the Dehcho Dene talk about protecting water, they talk about large areas. The following Provisions are aimed at ensuring clean, healthy water for future generations of people and wildlife. Rivers and tributaries in the Dehcho region should remain substantially unaffected in quality, quantity and flow.

**CR #14<sup>144</sup>:** Regulatory Agencies should manage activities / water crossings upstream of and around community water intakes in accordance with the CCME Drinking Water Guidelines<sup>36</sup> wherever possible. Where background conditions or extenuating circumstances make such guidelines inappropriate, Regulatory Agencies should ensure best practices are used to avoid or mitigate impacts to drinking water quality.

**CR #15<sup>145</sup>:** Regulatory Agencies should ensure water users minimize the use/loss of water for industrial processes through best reasonably available technologies. Regulatory Agencies

<sup>140</sup> Designing mitigation measures is the role of the developer. Accordingly, the regulating agency inserts appropriate Terms and Conditions in an authorization. The role of the Committee merits further discussion by the Parties but is inappropriate here. The DFN may raise concerns to the Regulatory Agencies during the regulatory process or any ensuing environmental impact assessment.

<sup>141</sup> This section is not part of a land use plan and may be better served through negotiations of a harvesting chapter at the Dehcho Process.

<sup>142</sup> In addition to the fact this is not appropriate in an LUP, language such as 'with the support of the DFN' provides a veto power to the First Nation, which is something beyond what is envisioned in a land use plan.

<sup>143</sup> This could move to the Background Report.

<sup>144</sup> The CR as written will not achieve the objective of protecting drinking water quality. The Canadian (not CCME) Drinking Water Guidelines only apply to water in public water supply systems. The Drinking Water Guidelines often have higher values for parameters because humans are not affected by the low levels that may affect aquatic life, so the guidelines are set for what is being consumed by humans, i.e. the water coming out of the tap after treatment. Drinking water management is an area where multiple parties have an interest and role, including communities and local governments, H&SS, PW&S, MACA, and ENR, Federal agencies including Health Canada, Environment Canada, INAC, and regulatory agencies, e.g. MVL&WB and NEB. The LUP wording on this provision should be developed by those agencies that address drinking water. CR#14 should be a Recommendation. Cannot prescribe actions of Regulatory Agencies.

should ensure best practices are used to avoid or mitigate impacts to the aquatic environment. Regulatory Agencies should manage water quality and strive towards no <sup>146</sup>loss of wetlands and shorelines

**CR #16**<sup>147</sup>: No hydroelectric development that involves flooding or impoundment of water will be permitted on the Mackenzie and Liard Rivers<sup>148</sup>. <sup>149</sup>Run of the River Hydroelectric Development (defined as developments where no or little impoundment takes place and the natural river flow is utilized with no seasonal regulation) will be permitted on other rivers outside of Conservation Zones, subject to the support<sup>150</sup> of affected First Nations and local governments.<sup>151</sup>

## **Air Monitoring / Management**

Healthy air quality is important to all people and should be maintained. Developments have the potential to impact air quality. Even communities, which use diesel fuel for heating, and have many vehicles driving around produce air pollution which should be reduced as much as possible.<sup>152</sup> With the exception of on Commissioner's Land, there is no clear regulatory vehicle at this time to implement air quality standards throughout the NWT. This has been identified as a critical regulatory gap.<sup>153</sup><sup>154</sup> <sup>155</sup><sup>156</sup>

**R #16**: Developers should conduct their operations in a manner that minimizes emissions and preserves healthy ambient air quality.<sup>157</sup> <sup>158</sup><sup>159</sup>

<sup>145</sup> Effectively changes CR#15 to three Recommendations so that they do not prescribe the actions of Regulatory Agencies. The three recommendations should be separated.

<sup>146</sup> Rather than use the term "no net loss" which has legal definitions under the DFO, "no loss" conveys the same notion and concept.

<sup>147</sup> The GNWT does not wish to see a full prohibition of hydro development on the Mackenzie, but could live with a restriction on hydro that would seasonally regulate water flow recognizing that regulating water flow in terms of hours or days is inherent even in run of the river projects, as per the full description of run of the river on the World Bank web-site and recommended as a change to the Definition section. Further, the GNWT sees that this would be part of negotiations through the Dehcho Process. This concurs with the Federal Response Jan '06 which states: CR#16 prohibits certain hydroelectric developments and imposes a blanket requirement that "rivers and tributaries in the Dehcho region will remain substantially unaffected in quality, quantity and flow", something that would only be considered in a section 35 agreement in respect of settlement land.

<sup>148</sup> The GNWT cannot accept wording, which suggests that DFN leadership resolutions would be endorsed by government.

<sup>149</sup> This is highlighted to note that a new definition for run-of-the-river is recommended in the Definition section. Please refer to those comments.

<sup>150</sup> This implies veto authority and is inappropriate in a land use plan.

<sup>151</sup> Moved to opening paragraph. This section as this sentence is a goal, not a conformity requirement.

<sup>152</sup> The community causes of air emissions are noted as a fact, and as a principle these should be reduced. Monitoring in every community is beyond the scope of present capacity.

<sup>153</sup> The GNWT has Air Quality Standards under the Environmental Protection Act that are enforced on Commissioner's Land.

<sup>154</sup> The statement "developments will not produce harmful pollutants" cannot be achieved.

<sup>155</sup> This sentence should be removed because it is background information and is not relevant to the Plan.

<sup>156</sup> This sentence should be removed because it is background information and is not relevant to the Plan. See Footnote 144. Cannot prescribe actions of Regulatory Agencies.

<sup>157</sup> This highlights the value and the necessary action.

<sup>158</sup> Wholesale adoption of another jurisdiction's legislation is inappropriate. The Guide makes reference to other legislation only applicable to that jurisdiction. GNWT legislation should be acknowledged.

<sup>159</sup> While some of these standards may be used they are only to be used through the Regulatory Agencies. Including prescriptive language as is in this sentence is inappropriate. Regulatory Agencies

<sup>160</sup>

**A #7:** Responsible government departments and agencies<sup>161</sup> should develop legally enforceable air quality standards and a legal mechanism to require compliance.<sup>162</sup>

## **Mining Reclamation Planning and Security<sup>163</sup>**

Any land use should occur in a manner that minimizes long-term impacts to the environment and human health and maximizes future use of the land.<sup>164</sup>

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## **Revegetation<sup>166</sup>**

**CR#18** Responsible government departments and agencies should develop policies and procedures regarding revegetation.<sup>167 168</sup>

## **Forestry**

The Forests of the Dehcho territory are valued by all residents. First Nations have a strong relationship with the forests that provide food, shelter and medicine.. Today, forestry can also provide jobs. Forest harvesting activities, fires or disease may damage forests. Any forestry activity should occur and be managed in a manner that sustains long-term forest viability. **It is**

will make the decision to use appropriate standards. Air quality standards development would include a consultation process. This is more like a principle; as stated earlier this could be captured in goals.

<sup>160</sup> This is a background statement and also represents a difference of interpretation. This sentence represents the L&WB's interpretation.

<sup>161</sup> Consultation on this matter would occur with DFN as the responsible governments develop the regulations.

<sup>162</sup> This action will now become a recommendation. Regulatory Agencies make the decision on how compliance can be demonstrated.

<sup>163</sup> Note for Mining Reclamation ...: There are no longer any provisions associated with this, so the preamble should be removed as well. GNWT comments Jan'06: The intent is well-founded, however, this item does not fit with a land use plan. There appears to be far too many detailed requirements for this to be practical or feasible. Furthermore, continual review/revisions will likely be required. The GNWT concurs with the DIAND comments Jan'06 which state: "Wording would make it appear that any project large enough to require a land use permit or water license would need approval from the Committee before any permitting would be allowed. Making C&R plans a conformity requirement for permit issuance gives the Committee a de facto regulatory function, which is not within the scope of this process (see page 4 of this document under "Unlawful Sub-delegation or Fettering of Discretion re Conformity Requirements" and page 7 under "The Dehcho Process)". Also ignored in this section are the federal Mine Site Reclamation Guidelines which are currently going through revisions and should be out this year.

<sup>164</sup> This is useful information but it really is background information only.

<sup>165</sup> Closure and Reclamation Plans are typically not part of a land use plan. All the deleted items belong in the Regulatory arena, under current legislation. DFN should address these issues with DIAND.

<sup>166</sup> Effectively changes CR#18 to a Recommendation. Cannot prescribe actions of Regulatory Agencies. Regulators will strive to implement recommendations to fullest extent possible.

<sup>167</sup> This would become a recommendation that spells out what specific people are being asked to do. Instead it is changed to a recommendation for the future. Note that ENR acknowledges the request from the earlier CR but CRs cannot be prescriptive on regulatory authorities.

<sup>168</sup> Cannot prescribe actions of regulatory agencies.

important to avoid -damaging ecologically important areas.<sup>169</sup> Jean Marie River, Nahanni Butte and Fort Providence have established community-based forestry operations. Communities should be able to access quality timber within sustainable levels. Forestry operations should use environmentally sensitive practices.<sup>170</sup>

#### General Silvicultural Practices

**A #8:** Regulatory Agencies, in consultation with affected First Nations will establish appropriate silviculture practices for the Dehcho within four years of approval of the Plan.

#### Community-Based Forest Management

Communities of the Dehcho wish to be involved in forest management decisions affecting the lands in the Dehcho territory.<sup>171</sup><sup>172</sup>

<sup>173</sup>

#### Timber Recovery

**CR #20:** Regulatory agencies will require developers to minimize timber harvesting /clearing for non-forestry land uses by reducing width or reusing existing clearings, right of ways, roads, trails and operational areas, or using non-forested lands where feasible.<sup>174</sup>

Responsible government departments and agencies should develop policies and procedures to minimize the amount of forest resources damaged by land use and recover timber for local use.<sup>175</sup>

#### Prevention Measures and Salvage Logging

Fires and forest disease are a natural part of the ecosystem. While forestry activities are not permitted in some zones, fires, disease and insect infestations may occur anywhere, and may damage viable timber resources that could be used by communities or others for fuel wood, construction or other projects. Communities and governments require flexibility to take standard precautions to prevent fires or outbreaks in areas of high risk, including around communities. Where fires or disease have occurred, it may be possible to salvage timber following such events. The Plan will allow for such opportunities in all zones in consultation with affected First Nations providing they can be done without further damage to the ecosystem and do not hinder natural regeneration processes.

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<sup>169</sup> The changes broaden the value of forest to reflect and include all residents of the Dehcho territory while still highlighting the special relationship that First Nations have with the land. Forest management does require consultation as per the MVRMA schedule that deals with Forest Management. Therefore, the sentence that "...ensures that it is done sustainably and with their full input" does not need to be re-stated. Additionally, language like "their full input" implies veto powers for First Nations and is not land use related.

<sup>170</sup> This preamble information fits better under the initial paragraph and has been moved from below.

<sup>171</sup> This highlights the value of participating in forest management decisions. The information about community participation to date should be moved to the background report; it would not stay current.

<sup>172</sup> Regulatory Agencies consult with First Nations on forest management decision-making. (MVRMA and Forest Management Act).

<sup>173</sup> This cross-reference with the IMA in its entirety is inappropriate because clauses 47, 50, 51, 52, 53, 54, 55, and 56 do not relate to land use. Clauses 48 and 49 of the IMA could be reflected in the Plan verbatim. These refer to specific land areas that are withdrawn and could continue as CRs.

<sup>174</sup> Regulatory agencies are the ones that will need to set conditions for access to have harvesting/clearing minimized. This becomes an action or recommendation. In this particular instance, this is consistent with current practice by the GNWT as the regulator.

<sup>175</sup> This is a more specific action that will result in the intent of the CR and would be done in consultation with multiple parties.

**CR #21:** Forest management activities required for fire and disease prevention (including harvesting and prescribed burns) is permitted in any zone<sup>176</sup>. <sup>177</sup>Salvage logging is permitted in all zones following fires, disease or insect infestations in Dehcho forests<sup>178, 179, 180</sup>.

## Tourism

First Nations and local governments want to develop economic opportunities that will have a minimum impact on the land. Tourism initiatives on traditional lands should be based on cultural traditions and respect for the land. <sup>181</sup>The following Provisions address cultural traditions and respect for the land in tourism development.<sup>182</sup>

### SMART Principles

**R #17:** Regulatory Agencies are encouraged to apply the SMART (Sustainable Model for Arctic Regional Tourism) Principles<sup>37</sup> in approving and regulating tourism operations in the region as listed in Appendix 3.

### Leave No Trace

**R #18:** Regulatory Agencies should encourage individuals and tourism operators visiting the Dehcho territory to follow Leave No Trace<sup>38</sup> guidelines during their stay.

<sup>183</sup>

Regulatory Agencies will consult with affected First Nations on all licence applications for proposed new outfitters, new outpost camps or new lodges.<sup>184</sup>

<sup>185</sup>

### Fishing Lodges

Sambaa K'e First Nation has been developing a sustainable fishing business on Trout Lake. Multiple tourism establishments on the lake might affect the viability of their business and long-term sustainable harvest levels.

**CR #23:** Regulatory Authorities will not issue licences for proposed new lodges in Zone 5.<sup>186</sup>

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<sup>176</sup> This shows a veto power for FN and is inappropriate.

<sup>177</sup> This is a separate conformity requirement.

<sup>178</sup> This shows a veto power for FN and is inappropriate.

<sup>179</sup> "providing that salvage ..." Reflects government decision-making and is inappropriate for the land use plan, but is already covered in intent with respect to statements in the pre-amble on ecosystems.

<sup>180</sup> This is an exception to the areas where zones on the map indicate that forestry is not allowed. This needs to be addressed in Section 3.4 in Chapter 3.

<sup>181</sup> This information is not relevant in a land use plan.

<sup>182</sup> The suggested re-wording places more emphasis on the value that is to be protected and promoted.

<sup>183</sup> The GNWT cannot accept present wording, which suggests that DFN leadership resolutions would be endorsed by government.

<sup>184</sup> "will not issue" restricts any discretion of Regulatory Agencies and severely restricts economic development opportunities in the Dehcho. The GNWT as a Regulator rarely supports new big game outfitting licences without the support of local First Nations. The wording inserted is language used in the IMA. The "will not issue" in the IMA is in relation to only specific lands withdrawn. If the DFN wished to pursue specific restrictions (big game outfitting), this should be negotiated through the Dehcho Process.

<sup>185</sup> This recommendation should be referred to Main Table negotiations, and therefore should not be in this land use plan in the interim.

<sup>186</sup> The wording inserted is language used in the IMA. The "will not issue" in the IMA is in relation to only specific lands withdrawn; in this case Zone 5 is withdrawn. Exclusive fishing rights are subject to negotiations and would work better in an Agreement under the Wildlife/Fish chapters. If the DFN wished to pursue specific restrictions (fishing lodges) into perpetuity, this should be negotiated through the Dehcho Process. The GNWT supports Samba Ke's aspirations to develop a sustainable fishing

### Visitor Quotas<sup>187</sup>

Communities value the integrity of their small communities and the surrounding traditional lands. Small communities can be easily transformed by a regular flow of large numbers of tourists. Communities should have a say in the types of tourism activities and the appropriate group size for such activities.

**R #20:** DFN and communities are encouraged to meet with Regulatory Agencies should there be a need to establish visitor quotas to maintain the wilderness experience and protect the ecological and cultural values of the region. Such discussions could address development and implementation of such a system, including registration, monitoring, management and enforcement.

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### **Agricultural Practices**

There are many benefits of locally produced agricultural products, including freshness, greater consumption of healthy foods, local employment and reduced dependence on southern markets. Outside of community areas, the Plan permits sustainable agricultural development on existing suitable lands, which minimizes impacts on the environment, wildlife, and traditional land use, occupancy and harvesting.

Agricultural activities within community boundaries are not affected by the Land Use Plan.<sup>189 190</sup>

**R #21:** Agricultural development should minimize clearing, draining and the use of chemicals.

**R #22:** Communities, governments and agricultural organizations should work together to address the many obstacles to agricultural development in the north with the goal of increasing local production and use of agricultural products. The development of new policy and regulatory instruments such as a GNWT Procurement Policy as recommended in “Common Ground – NWT Economic Strategy 2000” could provide the necessary incentives to move this goal forward<sup>39</sup>.

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business. The GNWT can work with particular businesses on their business planning. The sustainability of the fish resource is always considered when granting new authorizations to other lodges that would impact the resource. Note that in the background document, Zone 5 is intended as a conservation zone until a PAS is approved; this is another means to protect the resource. Various mechanisms (PAS, ILW, and conservation zones) for land withdrawals are to be discussed further under implementation. The last phrase (without the written support of Samba K'e) was struck because this gives the First Nation a veto power that is not appropriate in a land use plan.

<sup>187</sup> The re-wording emphasizes the value and highlights a way to address the situation. The information regarding the types of tourism is background information; the nature of the visitors is not germane to this recommendation.

<sup>188</sup> These concerns could be highlighted to appropriate Regulatory Agencies (DFO). Multiple means (regulatory or other) could be used to address the problem. This action is outside the scope of a land use plan and should not be addressed in a land use plan.

<sup>189</sup> The re-wording in the preamble is to highlight the value and objective of this recommendation.

<sup>190</sup> This sentence was struck because it is background information and is time sensitive.

## Digital Pre- and Post-Operation Mapping<sup>191</sup>

One of the challenges faced by the Committee, communities and other regulatory authorities is a lack of up-to-date, accurate digital data on resource development with which to make informed decisions. As part of the planning process, the Committee has gathered a database of current disturbance and needs to maintain that in order to assess and monitor new developments with respect to some of the Conformity Requirements. The data collected here will allow the Committee and Regulatory Authorities to monitor the geographical extent of disturbance and perform cumulative effects assessments for the region.

**CR #24:** Regulatory Agencies may require developers to provide digital mapping of their proposed and actual development and to track disturbances on the landscape.<sup>192</sup>

## Cumulative Effects Management and Research<sup>193</sup>

Cumulative effects are a growing concern across Canada. Most governments now have a responsibility to consider cumulative effects before approving developments under their jurisdiction and are in various stages of developing processes to manage them. Developments need to be reviewed in the context of the larger effects on the ecosystem, in provisions of how they contribute to habitat loss, fragmentation and disruption.

Boreal Woodland caribou and mountain grizzly bears are two terrestrial species sensitive to cumulative effects in the Dehcho region.<sup>194</sup> The Dehcho Boreal Caribou Working Group is in the process of being established. This group will develop a range plan, which will consider the concept of thresholds. This work will be done in consultation with governments, industry and other stakeholders and will be available for future land use planning exercises.

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<sup>191</sup> This concept is addressed more specifically under Cumulative Effects, especially with wording changes provided. This recommendation could be moved to “Cumulative Effects Management”.

<sup>192</sup> CR would change to a recommendation and would be undertaken by the Regulatory Agencies. The role of the committee in this recommendation is a matter that merits further discussion by representatives of the Parties.

<sup>193</sup> Similar to INAC comments in their January submission, the GNWT continues to assert that a cumulative effects framework should be worked on by multiple agencies cooperatively. CE is a shared responsibility. The removal of the text that begins in the second paragraph and the rest of this section is because at this point the text addresses how cumulative effects should be managed. This is a shared responsibility by the federal government, the GNWT, and other agencies, including the Dehcho First Nation, and would need to be discussed cooperatively. The GNWT is developing best management practices for resource development activities over the next two years.

<sup>194</sup> The GNWT has removed the specifics contained in the Plan but retained the concepts presented in the text. The information removed would still be used to inform future discussions on thresholds and best management practices. These approaches could be contained in future land use plans to establish operating guidelines for developers.

A database of human disturbance is not yet available. To determine the current level of disturbances that change the landscape, information has to be captured to assess thresholds. Digital information is required after the development is completed to monitor the cumulative disturbances to the landscape. Cumulative effects indicators such as habitat availability, stream crossing density, minimum patch size and corridor or road density could be used to establish thresholds for wildlife species.

The assessment and management of cumulative effects requires a broad understanding of many factors and their relationships. While relationships and general principles can be learned from research in other areas, site specific differences may lead to different results between areas. Nothing can replace the value of site specific research and observations to determine if a predicted result holds true. In conducting preliminary assessments of the Cumulative Effects Term and holding discussions with planning partners, many data gaps have been identified. Filling these gaps in a timely manner will lead to better decisions and adaptive management, so Actions have been described to do so. However, as per the Precautionary Principle, the lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

<sup>195</sup>

<sup>196</sup>

**Action** - The federal government, the GNWT, and other agencies, including the Dehcho First Nation, will work collaboratively to develop a cumulative effects management approach.<sup>197</sup>

**#12:** Responsible governments will continue research on boreal woodland caribou to gather data on the following subjects:

- Define caribou range for the purposes of population management with respect to development
- Determine and monitor boreal woodland caribou population trends
- Identify and assess other factors affecting woodland caribou, including natural mortality and wildlife harvest levels
- Identify and where possible quantify impacts to woodland caribou from various types of development

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<sup>195</sup> This is removed because it is an evaluation of indicators and thresholds that are no longer in the Plan. When indicators and thresholds are developed collaboratively, monitoring and assessment programs will be required as a basis for adaptive management.

<sup>196</sup> Ibid.

<sup>197</sup> This recommendation has become an Action to develop the overall plan for cumulative effects management. Actions that follow are specific commitments. The recommendations that follow are taken as advisory guidance.

- Quantify level of habitat use and avoidance around human disturbance features<sup>198</sup>

**A #13:** Responsible governments, in consultation with Dehcho First Nation, industry and other stakeholders will assess appropriate indicators (biophysical and social), species and thresholds for future use in the Dehcho Land Use Plan.<sup>199</sup>

**A #14:** Responsible governments, in consultation with the Dehcho First Nation, industry and other stakeholders should identify appropriate revegetation standards for human disturbance areas based on wildlife habitat needs and conduct an assessment of historic human disturbances to determine which areas have naturally regenerated or reclaimed.

**A #15:** Responsible governments, in consultation with the Dehcho First Nation, industry and other stakeholders should identify appropriate access control measures that if used, would effectively mitigate linear disturbance impacts on wildlife.

**A #16:** Responsible governments, in consultation with the Dehcho First Nation, industry and other stakeholders should assess the influence of natural disturbances (e.g. fire) and other factors such as resident and traditional hunting on the current cumulative effects indicators and thresholds and recommend revisions to address these factors as appropriate.<sup>200</sup>

**R #23:**

## Significant Environmental and Habitat Features

Many wildlife species have specific habitat needs during different seasons critical to their life cycle (e.g. breeding, spawning areas, dens, calving grounds, migration routes, etc.) Animals are often extra sensitive during these periods. Some species also show site fidelity – that is, they return to the same site every year. It is important to ensure such sites are not physically disturbed or damaged at any time, so that the animal may return to it the following year. Implementing seasonal restrictions and ensuring significant features are left intact year round protects wildlife while allowing development activities to proceed around these sensitive areas and periods.

**CR #26:** Regulatory Agencies will consider effects, including those from aircraft, on Significant Environmental Features and Significant Habitat Features, as per definitions, as well as Critical Life Cycle Periods as identified in Table 3.<sup>201</sup>

**R #24:** Aircraft should maintain a minimum altitude of 650 metres<sup>40</sup> whenever safe and practical when flying over Significant Habitat Features listed in Table 2 relating to waterfowl or migratory birds during critical periods, other than for licensed wildlife research and monitoring purposes. The Developer will consult with the Dehcho First Nations and Regulatory Authorities to determine the location of significant features.<sup>202</sup>

## Table 2. Critical Life Cycle Periods

<sup>198</sup> The GNWT is conducting this research.

<sup>199</sup> The GNWT has a commitment to undertake this work with respect to wildlife over the next two years as part of the work on best management practices.

<sup>200</sup> Actions 14 through 16 are accepted as Recommendations by the GNWT.

<sup>201</sup> CR 26 and the concept of R24 are combined as an action for the GNWT.

<sup>202</sup> This is retained given the federal jurisdiction. For purposes of other wildlife, CR26 and R24 were combined.

<b>Species</b>	<b>Breeding Season</b> (rutting, spawning, mating areas)	<b>Birthing Season</b> (calving, lambing, denning and nesting areas)	<b>Migration</b> (Migratory Bird Sites, staging sites, water bodies)
Bison	Mid-July to Late September (Peak early August)	April to July (Peak May)	NA
Woodland Caribou (Boreal & Mountain eco-type)	Early October to early November	Mid-May to Mid-June	NA
Grizzly Bears	Late June to early July	Mid-Jan to mid-March	NA
Marten	July to August	Late-March to April	NA
Moose	Mid-September to Late-November	Late-May to early-June	NA
Sheep	Mid-November to Mid-December	Early May to late June	NA
Wolverine	Late April to Early September	Late March to Mid April	NA
Goats	November	Late-May to Mid-June	NA
Fish	To be determined through consultation with DFN, and Regulatory Authorities		
Migratory Birds, Waterfowl	May to June	June to July	March to May; August to October
Whooping Crane	Late April – May	May – September	Late April to Mid-May; Late September to October

## Economic Development Strategy<sup>203</sup>

## Secondary Industry<sup>204</sup>

<sup>203</sup> Economic development opportunities for DFN will have to be addressed in a final agreement. Land use planning provides for allowed land uses in specific land areas. This section discusses who will develop the land. The land use plan is not the venue to determine this. Sections 11 and 12 of Appendix 2 in the IMA charge the DLUPC with doing assessments on “job creation and training needs”, “economic development”. These assessments were to be completed and distributed to the Parties, and interested stakeholders. These assessments were to be used as background information to develop the plan. Economic Development Strategies are not part of the land use plan. Generally, economic development strategies are done at the community or territorial level. The information presented is acknowledged by the GNWT and can be used further in other venues.

<sup>204</sup> A land use plan is not an appropriate venue to address the development of secondary industries. The GNWT supports the objectives in this section, and is willing to work with all parties to achieve these objectives. The information could be moved to the background document.

## **Dehcho Business Development<sup>205</sup>**

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<sup>205</sup> A land use plan is not an appropriate venue to address “Dehcho Business Development”. The GNWT supports the objectives in this section, and is willing to work with all parties to achieve these objectives. The information could be moved to the background document.

### **2.3.4 Community Issues<sup>206</sup>**

The Plan does not apply within community boundaries. It has the potential to affect communities in a variety of ways. The Plan is integrated with community-based planning and allows for the natural growth, relocation (e.g. West Point First Nation's plans to relocate to Six Mile Creek) or expansion of community boundaries. Development occurring outside communities can create tremendous benefits and impacts for communities relating to economic, social and infrastructure issues. The Plan addresses some of these issues through Zoning, where it identifies where lands should be developed or protected to best address community needs while providing economic development opportunities. In addition, communities, businesses and governments are encouraged to implement the following Recommendations wherever possible. While Recommendations are not legal requirements, consideration and implementation of these may provide benefits to all that far outweigh their costs<sup>207</sup>.

### **Community Infrastructure and Expansion<sup>208</sup>**

**CR #27:** All existing community infrastructure outside of current community boundaries will continue as an existing use for as long as it is required.

Conformity Determination:

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<sup>206</sup> Similar to INAC comments, this is outside the scope of a land use plan. Some wording may be acceptable at a very high level.

<sup>207</sup> The statement on recommendations is applicable to all recommendations and could be moved to the front end of Chapter 2 under "Recommendations".

<sup>208</sup> The DLUPC does not have the authority to approve applications for the construction of community infrastructure outside community boundaries or the expansion of community boundaries. The MVLWB is the regulatory authority for applications for the development of community infrastructure outside community boundaries; the GNWT is responsible for the establishment of community boundaries. Further, the GNWT is not confident that the existing community boundaries satisfy the long-term needs of the communities. The GNWT establishes community boundaries in accordance with the Community Boundaries Policy. Many of the community boundaries identified in the draft plan have not been established under GNWT policy and are likely to restrict the future development of the communities. A process needs to be initiated for each community in the Dehcho region to ensure the requirements of the policy have been met and where they have not been met, the community boundaries are formally reviewed and amended. MACA commits to approaching the Financial Management Board for funding to review the community boundaries of the communities in the Dehcho region. The "Town of Hay River" and "Commissioner's Land" are matters of the IMA and are beyond the scope of the plan. As well, environmental impact assessment processes are appropriate to address the last two bullets under conformity determinations.

<sup>209</sup> This is beyond the scope of a land use plan, and specifically the DLUP as described in the IMA. The GNWT acknowledges the intent of the objectives; this information should be captured in the background document. These sorts of concerns could be addressed in environmental impact assessments such as what is currently occurring for the Mackenzie Gas Project through the Joint Review Panel.

<sup>210</sup> This is beyond the scope of a land use plan, and specifically the DLUP as described in the IMA. This recommendation is not suitable for the stated intended target audience of regulatory agencies and prospective developers. The GNWT acknowledges the intent of the objectives; this information should be captured in the background document. MACA, through its School of Community Government, coordinates a number of training and development courses, tools and resources for community governments and their staff in an effort to build community capacity. Training is available in community finances.

## **Camps and Communities<sup>211</sup>**

## **Flexible Shift and Holiday Options<sup>212</sup>**

## **Capacity Building<sup>213</sup>**

## **Development Awareness**

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<sup>211</sup>Environmental impact assessment processes could be appropriate to address these concerns. Some of this information could be considered as background information.

<sup>212</sup>Environmental impact assessment processes could be appropriate to address these concerns. This information should be considered as background information.

<sup>213</sup> Environmental impact assessment processes could be appropriate to address these concerns. This information should be considered as background information. Training is available in community finances, community management, community administration, community governance, emergency preparedness/fire protection, information and communication technology, land administration, political development and leadership, public safety, recreational facility operations, search and rescue, and works management.

<sup>214</sup> This is not a land use plan related item. There are a number of venues to address the concerns raised here. This information could be moved to the background report and used to further develop government programs and services. There are programs already in place to address a number of these concerns, for example, the MACA School of Community Government, and the federal Aboriginal Workforce Participation Initiative (AWPI). Some of these concerns, such as consultation, could be directed to the Dehcho Process.



## CHAPTER 3: PLAN APPROVAL AND IMPLEMENTATION

Sambaa Deh Falls. Photo Credit: DLUPC

**NOTE: The maps provided in this Plan are for illustrative purposes only. While the Plan uses the best information available at the time of writing, we make no guarantees of completeness or accuracy. The maps may become outdated after print. Interested persons or organizations requiring up to date information should contact the data source for the most current files.**

## 3.1 Plan Approval<sup>215</sup>

## 3.2 Plan Implementation<sup>216</sup>

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### 3.2.1 *Implementation Vehicles*<sup>217</sup>

The Plan must be integrated with the current regulatory system in order to be fully implementable. Current legislation exists to allow all Conformity Requirements and Actions to be implemented by the appropriate Regulatory Authorities. Table 3 describes how the Zoning and Provisions are aligned with current practices, policy and legislation. Those Conformity Requirements or Actions requiring amendments to existing agreements or legislation will not come into force until such time as the amendments have been ratified.

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<sup>215</sup> The Terms of Reference as per Section 7 of the IMA were to address plan approvals and implementation, and land withdrawals. These dialogues need to occur amongst the Parties (Canada, GNWT, DFN). This information can be used to inform discussions. Following agreement on these items, outcomes would be inserted in this section.

<sup>216</sup> The Terms of Reference as per Section 7 of the IMA were to address plan approvals and implementation, and land withdrawals. These dialogues need to occur amongst the Parties (Canada, GNWT, DFN). Following agreement on these items, outcomes would be inserted in this section. The interim nature of the plan needs to be carefully considered in these discussions.

<sup>217</sup> Implementation vehicles described here are useful information to further the discussion of implementation by the Parties. Outcomes from implementation discussions would be inserted in this section.

**Table 3. Implementation Vehicles for Zoning and Key Terms**

<b>Terms</b>	<b>Regulatory Authority</b>	<b>Implementation Vehicle</b>
<b>Land Use Zoning</b>	MVLWB	S. 109 of the <i>MVRMA</i> - Binding Policy Direction from the Minister
	DIAND	Revised Land Withdrawals through S. 23 of the <i>Territorial Lands Act</i> <sup>41</sup> or S. 11 (f) of the <i>Canada Mining Regulations</i> <sup>42</sup> .
<b>General Terms</b>	MVLWB	S. 109 of the <i>MVRMA</i> - Binding Policy Direction from the Minister S. 61, 118, and 130 of the <i>MVRMA</i> - MVLWB will include EA recommended measures
		S. 26 of the <i>MVRMA</i> and S. 15 of the <i>NWT Waters Act</i> <sup>43</sup> allow the MVLWB to impose any conditions necessary
<b>Consultation</b>	MVLWB, DIAND	The Federal Government, its departments and agencies have an obligation to meet consultation standards as established under current case law, which go beyond the definitions set out in the IMA and the <i>MVRMA</i> . Current processes require the Developer to demonstrate consultation with affected First Nations in their applications.
<b>Traditional Land Use and Occupancy</b>	PWNHC	Removal of heritage resources currently does not require consent of the First Nation under <i>Archaeological Sites Regulations</i> <sup>44</sup> . However the regulations do require that conditions for obtaining a permit as set out in any land claims agreement be met. This requirement is likely to be in the Dehcho Final Agreement.
<b>Water Monitoring / Management</b>	MVLWB	The MVLWB currently requires Developers to adhere to CCME water quality standards <sup>45</sup> and regularly imposes these as conditions on water licenses. In addition, a recent Auditor General's report has prompted efforts to set firm water standards for the NWT.
<b>Mining Reclamation</b>	MVLWB / DIAND	Currently, the Minister of DIAND sets the form of security while the MVLWB sets the amount, payment schedule and associated terms into the permits and licenses.
<b>Digital Pre-and Post-Operation Mapping</b>	MVLWB	MVLWB currently requires Developers to submit digital files with land use permit applications. This is consistent with that.
<b>Cumulative Effects Management</b>	MVLWB, DLUPC, DIAND, GNWT	S. 146 of the <i>MVRMA</i> requires the MVLWB to consider cumulative effects. Participation in the CEAM Steering Committee, federal and territorial policies and commitments also provide direction to implement CEAM Terms.
<b>Seasonal Restrictions</b>	MVLWB	The MVLWB can attach these as terms and conditions on licenses and permits.
	GNWT	<i>The Wildlife Act</i> <sup>46</sup> provides the vehicle for certain types of activities related to wildlife management, though access and use of an area for purposes other than hunting is not covered.
<b>Revegetation</b>	MVLWB	The MVLWB can impose revegetation requirements as conditions on permits and licenses.
	GNWT	This is consistent with current forestry policy.

Terms	Regulatory Authority	Implementation Vehicle
Forestry Terms	GNWT	Consistent with the Dehcho First Nations IMA and current practices.
		S. 16 of the <i>Forest Management Act</i> <sup>47</sup> allows the Supervisor to set any terms or conditions into permits necessary for the proper management of the forests.
		S. 53 of the <i>Forest Management Act</i> allows the GNWT to adopt a "code of rules or standards" developed by any association. This could provide a means for a community to set harvesting standards for the surrounding zone.
Big Game Outfitting	GNWT	Hunting restrictions can be implemented through various sections of the <i>Wildlife Act</i> .
Fishing Lodge (Trout Lake) / Visitor Quotas	GNWT	Tourism restrictions can be implemented through the <i>Travel and Tourism Act</i> <sup>48</sup> and <i>Tourism Establishment Regulations</i> <sup>49</sup> .
Sport Fishing	DFO, GNWT	The main issues pertain to the level of enforcement which is an existing regulatory process. More is needed.
Commercial Fishing	DFO	It is DFO's current practice to accept the community's decision on whether or not commercial fishing is allowed on community lakes. The Action reinforces this.

### 3.2.2 - Land Withdrawals<sup>218</sup>

Primarily the Plan is implemented through land withdrawals. Land<sup>219</sup> withdrawals prohibit the disposition of new rights<sup>220</sup> on withdrawn lands. Withdrawals can relate to either surface rights (surface lease or land sale) or subsurface rights (exploration license, significant discovery license, production license, mineral claim, mineral lease, or prospecting permit). The Plan will modify the existing land withdrawals outside of community boundaries. The existing subsurface land withdrawals within community boundaries will remain unchanged. The current land withdrawals consist of:

- Subsurface only withdrawals (no oil and gas or mining), and
- Surface and subsurface withdrawals (no agriculture, forestry, tourism, mining or oil & gas).

Map 3 shows the comparison of Land Use Zones with the Current Land Withdrawals. The Conservation Zones, where only tourism is permitted, follow the existing land withdrawals fairly closely, with minor revisions in places. These revisions to the Current Land Withdrawals reflect the new data used in the planning process, and in some cases, changing priorities of the communities.<sup>221</sup>

<sup>218</sup> Land withdrawals are referenced in Section 12 through 24 of the IMA and Section 23 of Appendix II. Section 7 states that the Terms of Reference will address (f) identification of potential lands for surface/sub-surface withdrawals and sub-surface only withdrawals. This merits further discussion by the Parties. Following agreement in these regards, outcomes would be inserted in this section. We have highlighted this section in yellow as an indication that more discussion is required.

<sup>219</sup> "land" is defined in Part 3 of MVRMA (Land and Water Regulation) as "surface of the land".

<sup>220</sup> Section 19 of the IMA states that: "Land withdrawn from disposal under this Agreement shall be subject to the continuing exercise of existing rights, titles, interests, entitlements, licences, permits, authorizations, reservations, reservations by notation, benefits, and privileges." The issue of rights needs to be more fully discussed amongst the Parties. Following agreement in these regards, outcomes would be inserted in this section.

<sup>221</sup> This information needs to be updated.

Edehzhie is shown on this map in a different colour as it has already been withdrawn through the PAS process (not the DFN Land Withdrawals). It is currently undergoing a number of assessments, including the ecological and non-renewable resource values, renewable resource and socio-economic assessments, and cultural values studies.

The Land Use Plan has identified where each land use (oil and gas, mining, forestry, tourism and agriculture) will be permitted or prohibited independently. Therefore, there must be a mechanism to independently permit or restrict each of the uses according to the Zoning.

### **Map 3. Comparison of Draft Land Use Zones with Current Land Withdrawals**

## Map 4. Draft Plan Land Withdrawals

Oil and Gas and Mining restrictions can be achieved through a combination of subsurface withdrawal mechanisms as shown in Map 4.

- Where both oil and gas and mining are restricted within a zone, a subsurface land withdrawal will be required under S. 23 of the *Territorial Lands Act* (47.7% of the Dehcho territory);
- Where only mining is restricted, but oil and gas is permitted (Zone 22), mining rights can be withdrawn from disposition under S. 11 of the *Canada Mining Regulations* (0.6% of the Dehcho territory);

Surface withdrawals do not provide sufficient flexibility to restrict one surface use while allowing another, as is required for many of the zones. Therefore, surface land uses (forestry, tourism and agriculture) will be implemented through policy direction from the Minister of DIAND to the MVLWB under S. 109 of the *MVRMA* to manage surface uses according to the Zoning described in Map 1 and Table 1.

The Land Use Comparisons section (Chapter 6 of the Background Report) looks at each land use independently and shows where it is permitted or restricted.

### **3.2.3 Conformity Determinations<sup>222</sup>**

Regulatory Agencies are responsible for determining whether or not a new development application meets the Conformity Requirements described in the Plan. -

Where the Committee is involved in determining conformity, standard, objective criteria will be applied. These will include:

- Is the use permitted within the area described?
- Does the application meet all the Conformity Requirements for the described area?
- Does the proposed development fall below the Cumulative Effects Thresholds set for the described area based on available data?

It is recommended that regulatory authorities develop standard criteria and processes for determining conformity on all Conformity Requirements which pertain to them before the Plan is approved to facilitate timely implementation of the Provisions.

The Plan includes Provisions to add value to the way resources are being managed and address issues raised during consultations. New Provisions means new ways of doing things. At the very least, Regulatory Authorities will need to add a new step to their current processes to check the Land Use Plan before granting approval for new activities to determine whether or not they conform with the Plan. This section outlines the changes that may be required to fully implement the Plan.

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<sup>222</sup> The Terms of Reference as per Section 7 of the IMA were to address plan approvals and implementation, and land withdrawals. These dialogues need to occur amongst the Parties (Canada, GNWT, DFN). Following agreement on these items, outcomes would be inserted in this section. All areas highlighted in this section would be used to inform the Parties in discussing how conformity determinations might be handled in the future. Figures 1 and 2 dealing with conformity determination process for applications can also be useful to inform discussions.

The MVLWB is the key Regulatory Authority as most developments require either a land use permit or water license. Figure 1 illustrates how the roles of the DLUPC, Developer, MVEIRB, MVLWB, and other Regulatory Authorities can be coordinated to ensure that all new developments requiring land use permits or water licenses conform to the Plan.

The MVLWB will review new applications for completeness within 10 days as per the current system. Once complete, the MVLWB will check the application for conformity with all relevant Conformity Requirements within its mandate. Where the MVLWB requires the Committee or other Regulatory Authorities to check conformity on other Conformity Requirements (e.g. cumulative effects assessment), the MVLWB will send the application out for a 30 day review period as per existing processes. The DLUPC will issue either a Letter of Conformity or Non-Conformity to the MVLWB and Developer on all conformity checks it completes. Letters of non-conformity will outline the reasons for the decision.

Some activities require licenses, permits or authorizations from other Regulatory Authorities but not from the MVLWB (e.g. small scale forestry and tourism activities). A separate implementation process is required for Conformity Requirements not involving the MVLWB, as shown in Figure 2 that provides for:

- Conformity checks,
- Attachment of provisions and conditions to the permits, licenses and authorizations required to ensure conformity, and
- Monitoring and Enforcement of conformity.

For new applications submitted to other Regulatory Authorities but not the MVLWB, the Regulatory Authorities will determine conformity with all relevant Conformity Requirements within their jurisdiction. Where necessary, Regulatory Authorities will send the application to the DLUPC to determine conformity with other Conformity Requirements within the existing 30 day review period. The DLUPC will provide a Letter of Conformity or Non-Conformity back to the Regulatory Authority and Developer once complete.

For clarity, conformity determinations will be done within existing regulatory review timeframes. Plan implementation as proposed does not add any additional time to the existing regulatory system.

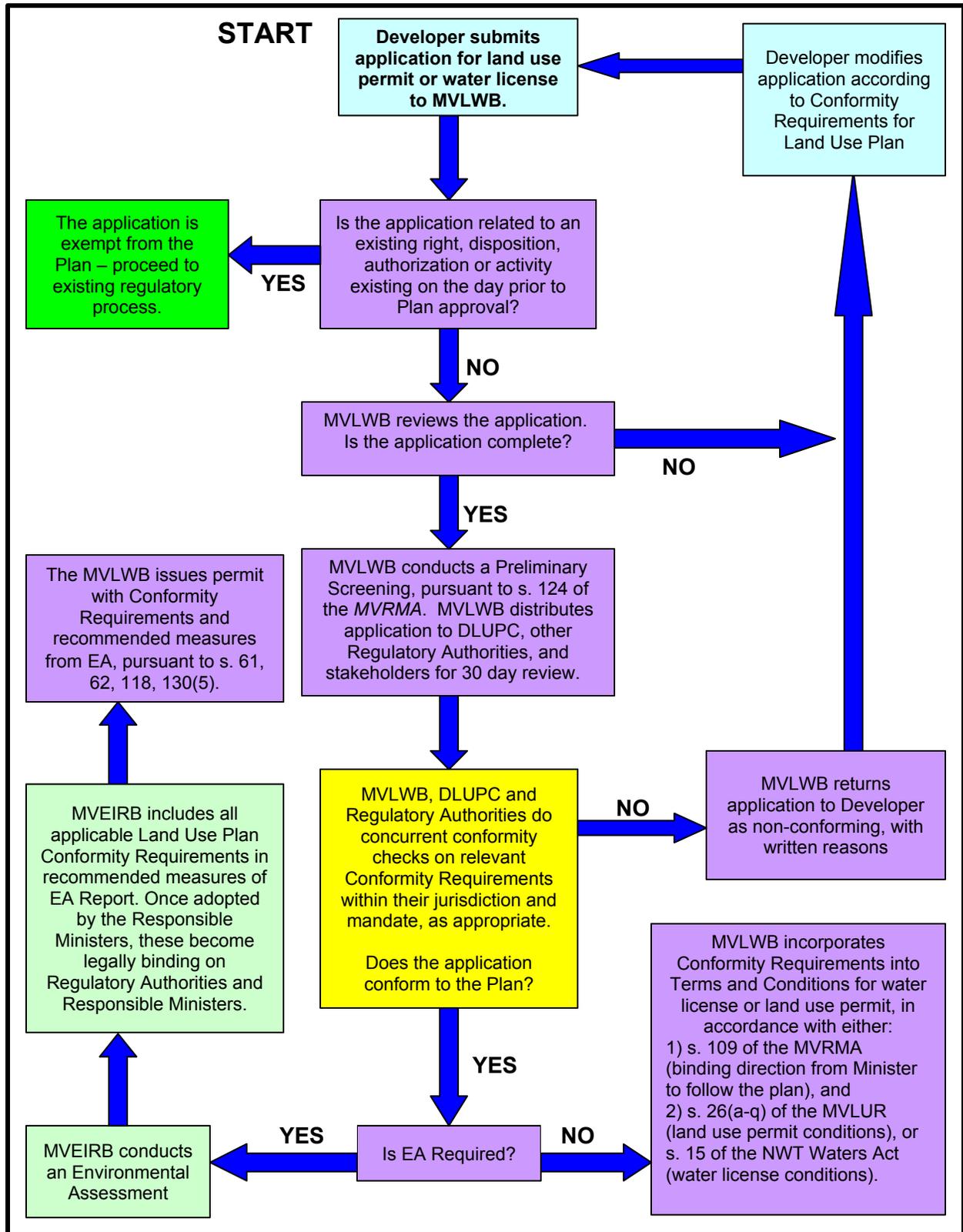
Within the scope of their jurisdiction, the MVLWB and other Regulatory Authorities will reject all applications not meeting conformity with the Plan's Conformity Requirements, relevant to that application. The Developer may choose to amend the application to be in conformity and resubmit but this will be considered a new application requiring a new conformity check.

### 3.2.<sup>223</sup>

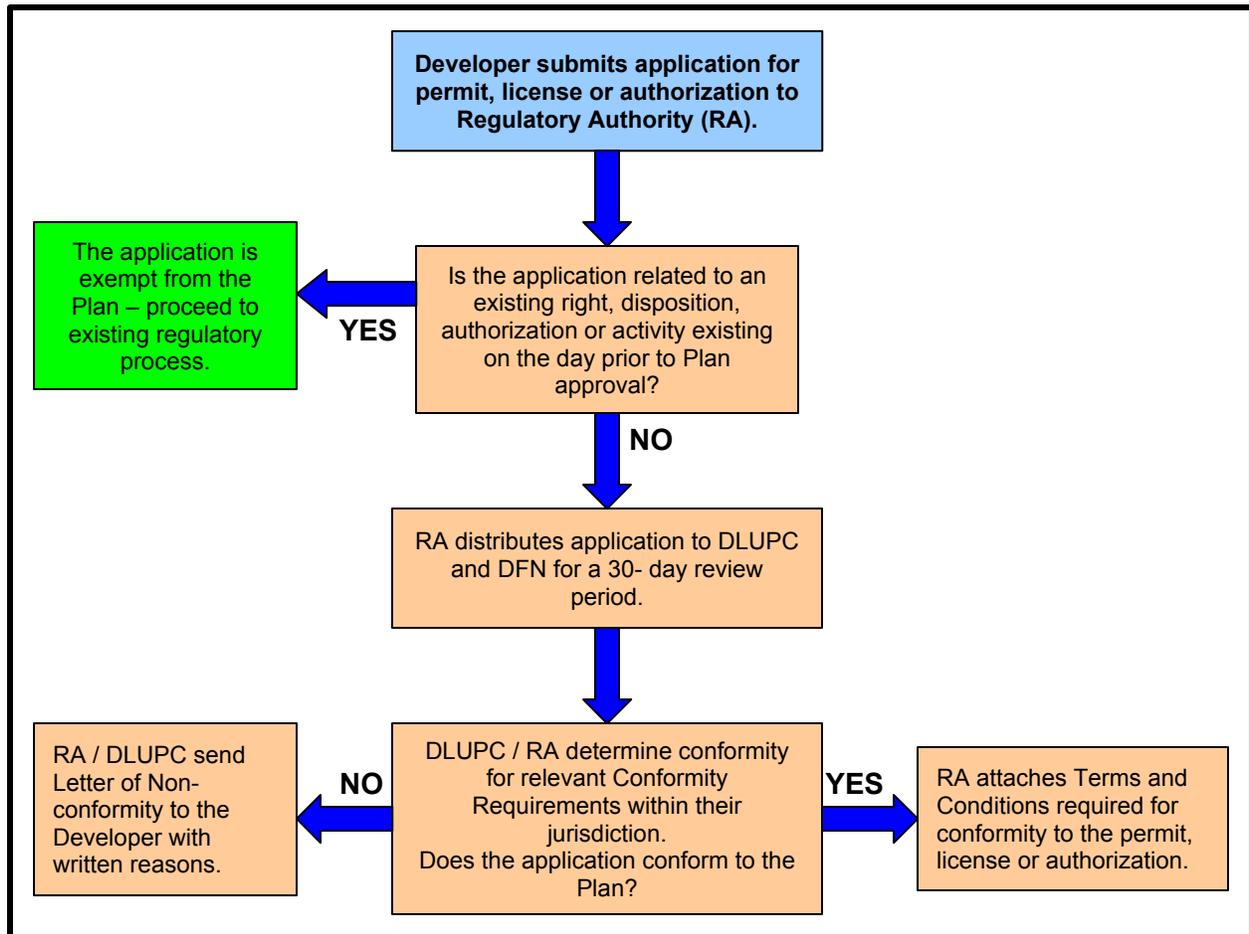
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<sup>223</sup> This section is not relevant to the land use plan. As per Section 19 of the IMA, the plan itself will direct regulatory authorities with respect to setting terms and conditions in rights, titles, interests, entitlements, licences, permits, authorizations, reservations, reservations by notation, benefits and privileges. Compliance to these mechanisms is done by the regulatory agencies. Conformity determinations deal with compliance to the plan.

**Figure 1. Conformity Determination Process for Applications Requiring MVLWB Involvement**



**Figure 2. Conformity Determination Process for Applications to Other Regulatory Authorities (no MVLWB)**



### 3.3 Plan Revisions<sup>224</sup>

As per the IMA, the first revision of the Plan will occur with ratification of the Dehcho Final Agreement to bring the Plan into alignment with the provisions of the Final Agreement. Following that, the Committee will review the Plan every five years to determine if revisions are required. Factors to be considered during Plan review are:

- Do the vision and goals still reflect the values of the region?
- Has the Plan achieved the goals set out for the region and individual zones?
- Have there been any exceptions or amendments requested that might signal a required change?
- Are there new data available that need to be considered in land use decisions?

<sup>224</sup> The cycle and process of plan revisions needs to be discussed by the Parties as part of the plan implementation discussions. The highlighted sections are useful to inform these discussions. The IMA states “Following the signing of the Dehcho Final Agreement the land use plan will be revised and updated to reflect the provisions of the Final Agreement.” Scheduling of plan revisions remains to be determined.

- Does the Plan allow for sufficient economic opportunities to meet Dehcho needs following resolution of a Dehcho Final Agreement?
- Have there been any changes in other land use initiatives (community plans, PAS, Nahanni Park Expansion, etc.) that need to be reflected in the Plan?
- Have there been any large projects or changes that need to be addressed?
- Are there new land uses or technological advancements that need to be considered by the Land Use Plan?

The Plan Review process will be similar to the process of initial Plan development. The Committee will gather new information and data as it becomes available. This will facilitate decision-making during Plan Review but also allow for accurate conformity determinations based on the best available information. As Plan review approaches, the Committee will undertake consultations with communities and planning partners to determine the need for changes. Proposed changes will be assessed by the Committee's Economic Development Assessment model to determine the implications of these decisions. If affected, a Cumulative Effects Assessment will also be run to determine the impact of revised Zoning on current indices. The Committee will consult with communities, DFN, governments and other planning partners on all revisions. Plan revisions will be subject to the same approval process by all three Parties as the original Plan.

If changes to the Plan are required between Plan reviews, there are two processes to address that – exceptions and amendments.

### 3.4 Plan Exceptions<sup>225</sup>

An exception<sup>226</sup> will be used to allow minor variances to the Plan where specific circumstances warrant a more flexible approach. Exceptions will not be used to reverse the intent of the Plan. Developers must request exceptions from the Plan in writing, outlining the unique circumstances that require consideration in the land use decision. The Committee will review the exception requests and consult with affected First Nations, government departments and other planning partners. The Committee will consider the following in making its decision:

- Is the exception minor in nature?
- Will the exception benefit the residents and communities of the Dehcho territory?
- Is the exception supported by DFN, Canada and the GNWT?
- What are the environmental, social, cultural and economic effects of the activity?
- What implications will it have for other activities occurring or likely to occur in the region?

The Committee will issue its decision in writing.

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<sup>225</sup> Plan exceptions are part of the implementation process; as noted this needs to be further discussed by the Parties. All exceptions noted previously should be captured under this heading. Everything highlighted in yellow will inform the discussions.

<sup>226</sup> An ongoing exception would need to be “the expansion of community boundaries”. This will impact on any zones that surround communities, and potentially the land withdrawal process through Orders in Council.

### 3.5 Plan Amendments<sup>227</sup>

Amendments will be used to deal with new, potentially recurring situations not addressed by the Plan (e.g. a new land use) or with requests for major changes to the Plan. An amendment may be initiated by an outside request or by the Committee itself. An amendment will require ratification by the three Parties – it is essentially an early Plan revision process. The Committee would research the issue, outline the proposed changes under the amendment and undertake consultations with communities, DFN, governments and other planning partners to request feedback on the proposed change before submitting the amendment to the three Parties for approval.

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<sup>227</sup> Plan amendments are part of the implementation process; as noted this needs to be further discussed by the Parties. Roles defined will need to be within the existing policy and legislation framework or as agreed upon by the Parties following discussions on implementation. Everything highlighted in yellow will inform the discussions.

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