



YUKON LAND USE PLANNING COUNCIL

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October 5, 2017

Chief Simon Mervyn
First Nation of Na-cho Nyak Dun
P.O. Box 220
Mayo, Yukon
Y0B 1M0

The Honourable Ranj Pillai,
Minister of Energy, Mines and Resources
Yukon Government,
Box 2703,
Whitehorse,
Y1A 2C6

Dear Minister and Chief:

Re: Sub-regional Planning Letters of August 8, 2017 and August 28, 2017

The Council is pleased that the topic of Sub-regional and District Planning has been raised through Nacho Nyak Dun's request for a plan in the Stewart Watershed. This will focus attention on the need to define in greater detail the nature of sub-regional plans and the process by which they are created. This will have implications on the interpretation of all the UFA based land claim agreements in the Yukon.

The Council has, on a number of occasions, sought clarity on the intentions of the agreements and details about their implementation. With respect to Sub regional and District Planning (11.8), the Council made a recommendation to the Implementation Review Group (10 Year Review) in 2004, but no decision or further direction resulted from our recommendation. However, the points in our submission are still worth considering and are attached to this letter.

It would appear from your letters that you are considering to jointly undertake a sub-regional plan and utilize Clause 11.8.4 of the Nacho Nyak Dun Final Agreement. This clause indicates that if the Parties agree to develop a sub-regional plan jointly, the plan shall be developed in accordance with the provisions of Chapter 11. We believe the details of the sub regional planning process can be built in this spirit. A process framework is required that ultimately would appear in the Commission's Terms of Reference. The Council is currently working on a discussion paper for your consideration and utilization in creating a terms of reference. We will work with your staff in the preparation of this formative document. There are clauses in the Kwanlin Dun Agreement that provide some details on this topic, which may be applicable to this proposal. The area proposed is certainly not a local area plan based upon the definition under the Area Development Act and that are exempt from the planning done under Chapter 11.

With respect to the proposed sub-regional planning area, the Council notes that there is no formal agreement by the Parties regarding the general planning regions in the Yukon. However, we have

recommended the creation of the Northern Tutchone Region and this has appeared on YLUPC maps since 2000. These have never been ratified by the Parties. If the Parties do agree with this as a region, then the Stewart Watershed would occupy over 50% of the Northern Tutchone Planning Region which includes the traditional territories of Selkirk First Nation, Tr'ondek Hwechin, Ross River Dena Council and potentially other First Nations with transboundary interests. This appears to be a very large sub-region, although without any legislation, a Yukon-wide land use strategy or updated Implementation Plans, there is no clear point of reference for assessing if an area is a region or a sub-region.

Finally, the Council has been seeking a means of bringing a common understanding to the interpretation of Chapter 11, including the need for a detailed process to create Sub-regional plans. The Council believes that there is considerable merit in the development of a *Yukon Land Use Planning Strategy* that would build on the terms of the First Nation Final Agreements and represent a common interpretation of the agreements and associated implementation work. The *Yukon Land Use Planning Strategy* would incorporate the concepts associated with the Supreme Court of Canada's ruling regarding the Peel court case and the lesson's learned from earlier regional planning exercises (North Yukon, Peel, Dawson, Teslin).

We look forward to working with your governments on this topic.

Sincerely,

A handwritten signature in blue ink, appearing to read "Pearl Callaghan", enclosed in a light blue circular stamp.

Pearl Callaghan,
Chair

Cc'd Trondek Hwechin, Selkirk First Nation

Attachment: YLUPC Submission to the Implementation Review Group, 2004

YLUPC Submission to 10 Year Review, 2004

2.2 Sub-Regional and District Planning

The land claim agreements create three means by which sub regional and district planning can occur:

1. By First Nations on their settlement lands.(11.8.3). First Nations pay 100% of the cost.
2. by Government on public lands (11.8.3); YTG pays 100% of the cost.
3. Government and the First Nation agree to do the planning together; Canada pays 100% of the cost.

Since 11.1.1.2 states that an objective of Chapter 11 is to minimize actual or potential land use conflicts both within Settlement Land and Non-Settlement Land and between Settlement Land and Non-Settlement Land, it can be expected that First Nations and Government are very likely to agree to conduct sub regional and district planning through the provisions of Chapter 11 (11.8.4). The Agreement states that the provisions of the whole Chapter apply when done in this manner. Unlike the other means of sub-regional and district planning, Canada pays the cost of collaborative planning. The implementation plans are completely void of references to sub-regional and district plans and this activity has been completely omitted from any considerations with respect to funding. The original commitment of funds for Chapter 11 was explicitly for regional planning. There now needs to be new category of funding specifically for sub-regional and district planning.

It is very difficult to estimate the number of sub-regional and district plans that are likely to be agreed upon in the next 10 year period. Sub-regional and district planning can occur at any time, however, the decision point for the creation of a sub-regional or district plan is most likely during the approval stage or implementation planning stage for a regional land use plan. As it is expected that at least 8 regional plans will be completed in the next 10 years, there is considerable likelihood that sub-regional and district plans will occur. Therefore, it is important

that in the next 10 year period of implementation of Chapter 11 a financial system be established that allows for the funding of sub-regional and district planning via Commissions, that supplements funds for regional planning bodies.

In the event that the Parties agree to conduct sub-regional and district planning concurrently with regional planning via Commissions, significant cost savings could be found in the regional planning exercise. Typically, issues arise which are better addressed at a district or sub-regional level and can be so deferred. Having the opportunity to benefit from sub-regional and district plans will also make for better regional plans.

Implementation Review Groups Report, 2007

- UFA 11.8.4 provides that if Government and a YFN agree to develop a joint sub-regional or district land use plan, it shall be developed in accordance with the provisions of Chapter 11. In the Final Agreements whose implementation is currently under review, it is not clear whether this planning would require commission involvement. However, the matter is specifically addressed in the Kwanlin Dun Final Agreement that came into effect recently, in which s. 11.8.4.10 states that a “joint sub-regional or district land use plan shall be developed by a Regional Land Use Planning Commission established pursuant to 11.4.0, or a body similar in composition...”.