

YUKON FIRST NATION
FINAL AND SELF-GOVERNMENT AGREEMENT
IMPLEMENTATION REVIEWS

October 3, 2007

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October 3, 2007

Honourable Chuck Strahl
Minister of Indian Affairs and Northern Development, Government of Canada

Honourable Dennis Fentie
Premier, Government of Yukon

Andy Carvill
Grand Chief, Council of Yukon First Nations

Diane Strand
Chief, Champagne and Aishihik First Nations

Simon Mervyn Sr.
Chief, First Nation of Nacho Nyak Dun

Eddie Skookum
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Eric Morris
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Darren Taylor
Chief, Tr'ondëk Hwëch'in

Joe Linklater
Chief, Vuntut Gwitchin First Nation

Cc Chief Ruth Massie
 Chief Mike Smith
 Chief Wilfred Sheldon
 Khà Shàde Héni Mark Wedge

Dear Minister, Premier, Grand Chief and Chiefs,

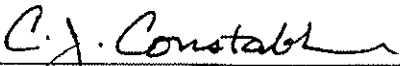
The implementation representatives of the Parties have now completed reviews required by:

- the Umbrella Final Agreement Implementation Plan;
- the Final Agreement Implementation Plans;
- the Self-Government Agreement Implementation Plans; and
- section 6.6 of the Self-Government Agreements;

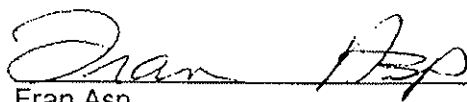
with the exception of the review of Self-Government Agreement implementation funding adequacy, on which work is continuing.


The attached report contains our findings and recommendations which we respectfully submit for your consideration.

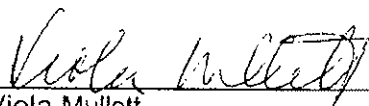

Kimberly Thompson
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Catherine Constable
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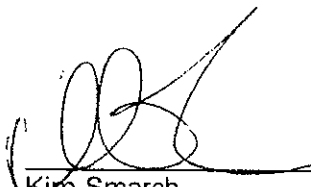

Gail Barnaby
Council of Yukon First Nations

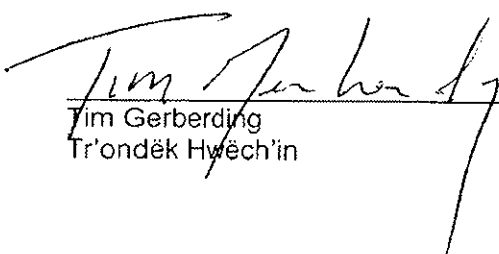

Fran Asp
Champagne and Aishihik First Nations


Sharon Peter
First Nation of Nacho Nyak Dun


Viola Mullett
Little Salmon/Carmacks First Nation


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Selkirk First Nation


Kim Smarch
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Tim Gerberding
Tr'ondëk Hwëch'in


Greg Charlie
Vuntut Gwitchin First Nation

9.0 REVIEW OF THE IMPLEMENTATION OF CHAPTER 11, LAND USE PLANNING

9.1 APPROACH TO REVIEW OF CHAPTER 11, LAND USE PLANNING

The IRG's review of the implementation of Chapter 11, Land Use Planning, began with presentations by, and exchanges with, the Yukon Land Use Planning Council and the two commissions in existence at the time, the North Yukon Planning Commission and the Teslin Regional Planning Commission. Comments were also received from all three orders of government. The IRG also conducted a series of internal discussions on the subject. Eventually, a sub-group was established to consider the issues in depth, which produced a report that was subsequently endorsed by the IRG. Because of the detailed discussion and recommendations, that report is reproduced here in its entirety. A summary table of the recommendations is attached as Appendix G of this report, "Chapter 11 Summary Table of Recommendations".

9.2 CHAPTER 11 PURPOSE AND OBJECTIVES

Regional land use planning is viewed by the Parties as an important tool to enable integrated land and natural resource management with full public involvement, including the incorporation of traditional knowledge and perspectives of Yukon First Nations (YFNs) people in relation to Settlement and Non-Settlement Land. Chapter 11 sets out the manner in which regional land use planning will occur throughout Yukon, involving both Settlement and Non-Settlement Lands (excepting existing national parks or historic sites, local area planning or subdivision areas, and lands inside community boundaries). The objectives of Chapter 11 (UFA 11.1.1) are to:

- encourage the development of a common Yukon land use planning process outside community boundaries;
- minimize land use conflicts within and between Settlement and Non-Settlement Lands;
- recognize and promote First Nation cultural values, utilize their knowledge and experience, and recognize First Nation responsibilities pursuant to the Agreements for the use and management of Settlement Land; and
- ensure that social, cultural, economic and environmental policies are applied to integrated land and resource management, so as to ensure Sustainable Development.

Any regional land use planning process in Yukon is to (UFA 11.2.1):

- be linked to all other land and water planning and management processes and minimize overlap and redundancy between itself and those other processes;
- provide for monitoring of compliance with approved regional land use plans;
- provide for periodic review of plans and procedures to amend them;
- provide for non-conforming uses and variance from plans;
- establish time limits for carrying out each stage of the process;

- provide for public participation in development of plans;
- allow for development of sub-regional and district plans; and
- provide for planning regions that conform to the boundaries of YFN Traditional Territories, to the extent practicable.

Chapter 11 contains few details as to how the objectives are to be met relating to roles, process and funding for regional land use planning. (Further reference to this matter can be found under section 3, “Roles”.)

9.3 REGIONAL LAND USE PLANNING PROGRESS TO DATE

Specific progress during the first ten years of implementation can be summarized as:

- Council established in 1995. During the following three years, it advocated regional land use planning, albeit without apparent strategic program focus. Staff were hired (including a planner) during the latter part of this period, and some technical and strategic materials were developed to assist commissions.
- Council secretariat staff was hired in 1997/98.
- Council recommended eight planning regions in Yukon, with the development phase to arrive at a recommended plan to take about three years.
- Approximate boundaries for the eight planning regions were mapped.
- Council recommendation to the Parties for establishment of three regional planning commissions for north Yukon, Teslin region and Peel River watershed. (The Council also worked with the Northern Tutchone Tribal Council on preliminary preparations for establishing that region.)
- The first regional land use planning commission, Vuntut Planning Commission, was appointed in the fall of 2001. Limited orientation and training was provided by the Council. There were also a variety of internal and external communications difficulties that led to the loss of a quorum. The commission was subsequently re-established in 2003 as the North Yukon Planning Commission.
- The Teslin Regional Planning Commission was created in 2001, mandated to deal only with the portion of the Teslin Tlingit Council’s Traditional Territory not subject to overlaps. This arrangement was in lieu of planning for the entire previously identified Dakh Ka planning region, pending completion of Carcross/Tagish First Nation Final Agreement negotiations. After some successes and some difficulties, the terms of its members expired in 2004. To date, appointments/reappointments to the Commission have not been made.
- The Peel Watershed Planning Commission was appointed in October 2004.
- No regional land use plans have been recommended by a commission to date. The North Yukon Planning Commission expects to have a draft plan ready to recommend in the 2006-07 fiscal year.
- Recently, the Council has evolved into a more effective body, providing increased support for the regional planning commissions, and promoting more effective communication among the Council, commissions and Parties. Activities have included completion of a *Common Land Use Planning Process* document, positively received by the Parties. (This is discussed further under Section 3, “Role of the Parties”.)

With devolution of Northern Affairs Program on April 1, 2003, the Yukon government assumed the federal government's administrative role in respect to land use planning. The Yukon government now has the responsibility for making appointments to the Council and commissions, approves their annual budgets and is more accountable for activities supporting regional land use planning. In its new role as manager of Yukon lands and the associated natural resources, the Yukon government also has an increased interest in the outcome of land use planning activities.

9.4 ISSUES AND RECOMMENDATIONS

The issues related to implementation of Chapter 11 fall into four categories:

1. **Planning Progress:** No regional land use plans have been recommended or approved to date, in spite of considerable expenditure.
2. **Approach:** Until recently, the approach to implementing land use planning has been more reactive than strategic.
3. **Roles:** Clarification is needed of the respective roles of the Council, Commissions and the Parties.
4. **Funding:** In addition to a concern about the need for effective, results-oriented management of the funds available for regional land use planning, there is a need to identify adequate funding for the next ten year planning period, given the Council's and commissions' responsibilities.

9.4.1 PLANNING PROGRESS

Issue

Initial progress by the Council and commissions was not substantial. No regional land use plans have been recommended or approved to date, despite considerable expenditure.

Under the UFA IP, the Government of Canada made available \$7.428 million (1992 dollars) for Regional Land Use planning and \$447,519 (1992 dollars) per annum for the operation of the Council. By the end of the first ten year planning period, \$5,435,889 had been expended on the Council and commissions, while no regional land use plans had been produced.

During the first three years of its existence, the Council achieved little of consequence in effecting land use planning in Yukon. This contributed to the failure of the first commission (Vuntut Planning Commission), which quickly became dysfunctional and shut down. The lack of preparatory support by the Council to guide and assist the commission contributed to the difficulties experienced by this commission including:

- excessive time required for administrative duties which reduced productive time for strategic planning;

- internal divisions related to differing perspectives of the co-chairs as to the planning process and the mandate of land use planning;
- lack of Commission team building; and
- internal and external communication shortcomings, including poor communication between the Council, Commission and Parties.

For the Commission to have succeeded, the IRG is of the view that it required:

- administrative, technical and program management support;
- clearer definition of the roles of the Commission, Council and Parties;
- better communication between the Commission, Council and the Parties; and
- a clear statement of the product expected by the Council and Parties.

In short, the Commission needed the tools to succeed – the support of the Council and positive communication and cooperation by all involved, including the Parties.

More recently, Council interaction and participation with commissions has resulted in more substantial progress in regional planning. In addition, the Council has finalized production of a *Common Land Use Planning Process* document and more recently, draft land designation system, policy and procedures guidelines, starter kit for commissions, roles and responsibilities document and other tools of value to regional land use planning. The Yukon government has also contributed to some of these actions through input and in providing more and better information tools (e.g., an orientation manual for new commission appointees).

The North Yukon Planning Commission is currently working closely with the Council and Parties, who are communicating more effectively and supporting the Commission. The Commission's planning coordinator is a former Council employee, and the Council provided a more complete package of starter materials to enable the Commission to get back up and running in a functional manner; it also provides ongoing administrative support. With this commission having passed the mid-point of its planning process, the Council's new approach appears to be producing improved results. The more recently established Peel Watershed Planning Commission, which has been supported in a similar manner by the Council, also has had an effective start-up.

Recommendation

The IRG recommends that:

- a. **The Parties¹⁷ make their common expectations clear to the Council with respect to its activities; and the Parties' and Council make their common expectations clear to newly appointed commissions concerning the respective roles of the commission, Council and Parties, the anticipated content of the regional land use plan, and the process and schedule for its production.**

¹⁷ In this case the "Parties" includes Canada, Yukon and YFNs with final agreements. Although more emphasis on expectations may come from Yukon and YFNs, Canada plays an important role supporting and monitoring involvement of other federal agencies.

- b. The Council continue to provide appropriate starter materials and administrative support upon the establishment of commissions.
- c. Commissions select a single chair, with the role of the chair as spokesperson and leader for the commission (not just a facilitator).
- d. The Council monitor the progress of the commissions, work collaboratively with the Parties to identify issues and provide assistance to the commissions and, as a matter of priority, facilitate effective ongoing communication amongst the commissions, Council and Parties.
- e. The Council assess the planning experience on an ongoing basis, in order to provide the most effective support for current and future commissions and to recommend to the Parties and/or commissions refinements to the planning process where needed.

9.4.2 APPROACH

Issue

Until recently, the approach to implementing land use planning has been more reactive than strategic.

The initial approach of the Council was to encourage interest in land use planning throughout Yukon, through attendance at meetings, hosting workshops and reacting to expressions of interest. The Council's recommendations to focus on a launch of the first three regional planning commissions were relayed as an expression of interest by those in the relevant regions, without rigorous assessment against any criteria or priorities. Recently the current Council has been taking steps toward a more strategic approach, including forecasting the scheduling and costing of staged implementation of the regional land use planning program throughout Yukon.

In its initial presentation to the IRG in 2004, the Council stated that the "delays in finalizing land claim settlements", "lack of defined planning region boundaries", "prolonged time requirements for land claims implementation", "delays in commission member appointments", and the absence of "enabling legislation" such as the Development Assessment Process legislation were factors that had inhibited progress in land use planning.¹⁸

The IRG has concluded that the main factor affecting progress, until recently, has been the lack of well-organized support for commissions by the Council and of a long-term strategy for the execution of regional land use planning in Yukon. In the view of the IRG, considerations that bear upon the sequence and rate of progress of regional land use planning in Yukon include:

¹⁸ *Review of Umbrella Final Agreement and Yukon First Nations Final Agreement Implementation Plans – Yukon Land Use Planning Council*, June 2004; pp 13-14.

- Settlement and ratification of YFN Final Agreements: Chapter 11, like much of the Umbrella Final Agreement, establishes a regime most easily and effectively implemented when all 14 YFNs have Final Agreements in effect. The land use planning experience to date already includes an instance, in the Teslin Regional Planning Commission, where land use planning could only be undertaken for a portion of an identified planning region, pending resolution of the Final Agreement for the other YFN whose Traditional Territory comprised another portion of that region. However, with 11 of 14 Final Agreements in place, there are sufficient “settled” Traditional Territories and regions that more than match the capacity of governments to support regional land use planning at the time, while an interim planning initiative is underway in southeast Yukon where Final Agreements are not in place.
- Planning Priorities: Regional land use planning is inevitably of higher priority in regions where natural resource development and conservation issues are more pressing. The priorities of the Parties vary from region to region across the Yukon; and the priority ascribed to a particular region may vary over time, depending on circumstances that include external factors over which the Parties have little or no control (e.g., world metal prices, fuel shortages, environmental impacts of global warming, and the like).
- Definition of Planning Region Boundaries: Areas of overlapping Traditional Territories have been excluded from some of the regions where regional planning is currently under way, which leaves those areas to be dealt with subsequently when the overlaps have been resolved. This has serious long-term consequences including financial, scheduling and other operational implications. Any resulting gaps between planning regions will be extremely difficult to address. It is very important that Traditional Territory overlaps be resolved to enable clarity in the definition of planning regions; however, where that is not possible, it is essential that a way be found to confirm planning region boundaries that do not result in gaps and which have the support of all parties, notably the affected YFNs. If planning processes are initiated without a definition of the boundaries the final cost of the planning process will be significantly higher and the workloads for the participant YFNs, the Council and Government will be increased substantially.
- Lack of Clarity Concerning Roles and Responsibilities: As earlier noted, Chapter 11 contains few details as to how the objectives are to be met relating to roles, process and funding for regional land use planning. That has resulted in some false starts, as the Council, commissions and Parties attempted to determine practical and productive roles and responsibilities for themselves and each other. (Further reference to this matter can be found under section 3, “Roles”.)
- Capacity: Experience suggests that a YFN typically needs several years of being an operational government before it is in a position to be an effective partner to regional planning processes. In addition, both the Yukon government and the Council have noted that their own capacity issues enable them to efficiently and effectively support only a limited number (3) of active regional planning exercises at any given time (with preliminary groundwork for the next commission to be established also under way).
- Funding Adequacy: The adequacy of implementation funding to support regional land use planning – both the total amount and the allocation for each planning region – is of concern. This is dealt with in greater detail under section 4, “Funding” later in this document.

Recommendation

The IRG recommends that:

- a. The Council continue its recent shift of operational focus toward a more strategic approach to regional land use planning, support for commissions and partnership with the Parties, devoting only minimal ongoing resources to advocacy of land use planning.
- b. The Council develop criteria for the long term prioritization and scheduling of regional land use planning for the remainder of Yukon for consideration by the Parties.
- c. Based on confirmed criteria, the Council develop and recommend, and revisit from time to time as needed and/or as requested by the Parties, a long term schedule for the development of land use plans pursuant to Chapter 11.
- d. YFNs make best efforts to resolve their outstanding Traditional Territory overlaps to enable clear definition of planning region boundaries; or, where such overlaps cannot be resolved in a timely manner, that an alternative approach be utilized to define planning region boundaries that will not give rise to planning gaps, can be successfully realized in a cost efficient manner and can be supported by all affected parties.
- e. The Council develop proposals for how to address any planning gaps that may have already arisen through the planning activities to date.
- f. No more than three active regional planning projects should be undertaken concurrently unless the Council and Parties can demonstrate increased capacity without negative effect to planning exercises under way.

9.4.3 ROLES

Issue

Clarification is needed regarding the respective roles of the commissions, Council and Parties.

Chapter 11 contains few details relating to roles, process and funding for regional land use planning. In a number of instances, the responsibilities for implementing certain tasks are not clearly specified in either the Agreements or IPs. At the very least, the gradual defining of roles has been an adaptive learning process that indirectly has impeded progress. This process of adaptation based on experience will need to continue. Related matters currently identified for consideration are:

Commission Roles:

Chapter 11 is very clear in setting out that the responsibility to prepare regional land use plans lies with the commissions. However, commission responsibilities extend beyond merely producing a regional land use plan for recommendation to the Parties:

- UFA 11.6.3 and 11.6.5 contemplate an iterative exchange between a commission and the affected YFN(s) and Government to progress from a recommended plan to an approved one. This exchange could entail significant time and activity, particularly if the commission were to further consult various affected interests during this process. Currently, the funding arrangements for land use planning have been implemented presuming a three-year process for a commission to produce a recommended plan, and without consideration to the commission responsibilities that continue past that point.¹⁹
- UFA 11.2.1.3 requires monitoring of compliance with approved regional land use plans, and UFA 11.4.5.10 provides that this responsibility may be undertaken by the relevant commission. As the body most familiar with the approved regional land use plan and closest to the planning region, the commission is a likely candidate to perform this task in some manner – but in the absence of an approved land use plan, the question has not yet been resolved.
- UFA 11.2.1.4 and 11.2.1.5 require periodic review and amendment of regional land use plans. It is reasonable to assume that the commissions will have the lead role in carrying out periodic reviews and recommending plan amendments.
- 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...”*.
- UFA 12.17.1 requires a commission to review project applications that are subject to the Development Assessment Process, to determine if they are in conformity with the approved land use plan. This will be an ongoing activity for commissions, albeit the level of activity may vary from commission to commission and from time to time.

Council Roles:

The responsibilities of the Council are stated very broadly in Chapter 11. Based on experience to date with the land use planning process, the IRG believes that roles are emerging which the Council is best positioned to perform and which fall within its mandate:

- One objective of Chapter 11 is a common Yukon land use planning process (UFA 11.1.1.1) outside community boundaries. This calls for consistency in approach with each commission as it is established and on an ongoing basis, e.g., orientation, training, starter materials and other support. The Council is in the best position to give effect to this objective through its work with the commissions, with the support of the Parties. This reinforces the desirability of the Council’s recent approach in working with the commissions, the benefits of which are already apparent. Following that approach, the

¹⁹ There has been some disagreement on the amount of time needed to prepare a recommended plan versus time to achieve a final approved plan. The experience of the commissions to date, however, is that a minimum four-year timeframe is needed to produce a recommended plan. Thereafter, time is also needed for the Parties to meet their obligations under UFA 11.6.3 and 11.6.5, notwithstanding any role a commission may also play.

Council supports but does not usurp a commission's responsibility to prepare the regional land use plan. This allows the commission to focus on planning, rather than being distracted from that task by administrative functions (a frustration that had been identified by members of existing commissions before the Council's recent approach was adopted).

- Achieving cost efficiencies and effectiveness for regional land use planning on an ongoing basis is essential. Mechanisms to achieve this could include centralized data storage and retrieval systems for all Yukon planning regions, and records maintenance to enable ongoing corporate memory. Both are important to ensure that resource management decisions comply with the approved regional land use plans, and for use in the periodic update of the plans. In the long term, these functions could be carried out efficiently and effectively by the Council on behalf of commissions, along with maintaining updated data and/or land use plans and a record of relevant decisions made by the commissions and respective governments.
- Other areas where the Council could provide support to commissions that would result in consistency of the land use planning process and could result in cost efficiencies and effectiveness include: financial administration services, generic job descriptions and personnel policies, geographic information system and other technical services support, and planning training/organization²⁰.
- The importance of the Council role in coordinating or facilitating communication amongst those involved in regional planning has been positively demonstrated by recent practices of the Council with the present commissions.
- Similarly, in the absence of any approved land use plans, the expected ongoing role of commissions is still a bit unclear. Once plans are approved, commissions' responsibilities will continue, albeit likely at a reduced level and on a periodic or contingency basis. Therefore, it will be critical for the Council to support commissions in the long term to ensure continued efficiencies and effectiveness on an ongoing basis.

In endorsing the supportive and coordinating role to be played by the Council, the IRG wishes to emphasize that Chapter 11 sets out a regime whereby regional land use plans are developed at a local level. The responsibility to develop land use plans lies with the commissions; the Council's supportive and coordinating activities are not intended to displace the commissions' role.

Roles of the "Parties":

Many responsibilities of the Parties (including agency staff) are stated indirectly and implicitly in the agreements. The following bear consideration:

- The Yukon government and affected First Nations provide General Terms of Reference (GTOR) to the commissions, which are developed in consultation with the Council. These provide the basis upon which the commissions develop their Precise Terms of Reference, in conformity with the GTOR.

²⁰ It cannot be assumed that the current costs to prepare a regional land use plan in one region may be less for a future plan in another simply by virtue of possible efficiencies. For example, other unforeseen complexities (size; level of existing development; number of affected YFNs or communities, etc.) may actually "add" to the cost. However, the various efficiencies and consistency identified above in relation to common functions can be reasonably expected to keep overall costs down.

- Mechanisms such as the Senior Liaison Committee and Technical Working Group have emerged to support the working relationships between the commissions and Parties. These bodies have been used on a limited basis but their involvement, particularly at the technical level, is increasing. As experience with these groups grows, the administrative arrangements need to be worked out and standardized between the commissions and Parties' agencies, and with linkages to the Council where appropriate²¹.
- As experience with the planning process has grown, contributions and involvement of stakeholders has been an emerging issue for regional planning. Given time commitments and honoraria policies, it may be difficult for commissions to solicit participation by private sector professional/business people in the regional planning process; yet ensuring adequate public participation is a requirement under UFA 11.2.1.8 and 11.4.5.3. Lack of public and stakeholder involvement has the potential to be a source of bias in the planning process and could result in regional land use plans that the relevant governments are unwilling to approve. Either the commissions will have to obtain broad public, industry or interest group input during plan development, or the Yukon government and affected First Nations will need to solicit their input in order to incorporate it into consideration during their own plan approval processes.
- UFA 11.9.1 requires commissions to submit their draft annual budgets to the Council, after Consultation with the affected YFN(s). Per UFA 11.9.2, the Council reviews the commission budgets and after Consultation with each commission, proposes the comprehensive annual budget (including its own requirements) to the Yukon government. In practical terms, this arrangement makes it awkward and difficult for the Yukon government Minister responsible for approving the budget, in that formal Consultation with both YFNs and the commissions has occurred *before* the Yukon government (even at the officials level) has been given the opportunity to see and comment on the budget proposals under consideration. A more collaborative budget development process that involves officials for all the affected parties from the outset might be more conducive to open communications amongst them, and the promotion of financial efficiencies. Such an arrangement can continue to meet the UFA obligations, in a more constructive manner than has been the experience to date²².
- An additional consideration relating to Development Assessment Process reviews is the possibility that regional land use plans may set out thresholds to development. If a plan recommends thresholds, it is assumed the relevant government will be responsible for managing these thresholds²³.
- The Council has brought forward issues relating to the amount of time it takes to appoint Council and commission members, the desirability of establishing selection criteria for members, and the need to consider staggered appointments as a way to facilitate continuity.

²¹ Canada has no role in the Senior Liaison Committee, but may have a role in the Technical Working Group, particularly where specific federal agencies can contribute technical data and expertise in plan preparation.

²² A change to formalize this under the UFA is not recommended. This is about transparency, relationships and open communication as part of an *informal* process to meet the UFA obligations.

²³ Thresholds management includes setting limits of acceptable change through cumulative effects. This approach is unique in applying to a broad land use planning perspective and is currently being reviewed (particularly by Yukon) in discussion with commission and the Council to determine appropriateness and acceptability *before* a recommended plan is submitted.

Recommendation

The IRG recommends that:

- a. The Parties should reach a common understanding on the full range of commission responsibilities and those responsibilities should be addressed in the development of future implementation arrangements. These common understandings should be recorded in the Implementation Plans.
- b. Future implementation arrangements take full account of the requirement for public and stakeholder input into regional land use planning, in order to enable production of recommended plans that can be approved by the relevant governments.
- c. In completing the arrangements for future implementation of the agreements, the Parties clarify and confirm their intentions for their ongoing roles in the land use planning process and those of the Council and commissions (i.e., in the GTOR, in the latter case), including the role and use of commissions in sub-regional or district plans.²⁴
- d. The Parties ensure that the Council and commissions are provided with clear information on the Parties' intentions regarding roles and responsibilities in the land use planning process.
- e. Officials of the relevant Parties participate informally and collaboratively in development of annual budgets for commissions and the Council.
- f. The Parties agree to stagger the terms of commission member appointments, or otherwise ensure that there is continuity amongst the commission members in place throughout the planning process.

9.4.4 FUNDING

Issue

In addition to a concern about the need for effective, results-oriented management of the funds available for regional land use planning, there is a need to identify funding for the next ten year planning period, given the Council's and commissions' responsibilities and the Parties' capacity to support them and participate in the land use planning process.

As previously noted, the existing UFA IP provides two allocations of funding for regional land use planning: \$447,519 (1992\$) annually for the Council and \$7.428 million (1992\$) for "Regional Land Use Planning" (i.e., for commissions). These arrangements for the Council and Commissions resulted in a total expenditure of \$5,435,889 by 2004-05 fiscal year-end, with no plans having been recommended or approved. Clearly, this raises uncertainty about whether the expenditures to date have all been well conceived and

²⁴ The KDFN FA, which came into effect on April 1, 2005, explicitly contemplates that sub-regional or district land use plans for that YFN's Traditional Territory shall be developed by a Regional Land Use Planning Commission or a body similar in composition.

purposeful or whether Chapter 11 has proven to be more complex in actual execution than in design.

All Parties recognize that there is a limited amount of funding available for land use planning. Experience to date has helped crystallize recognition that any funds available will have to be managed in an increasingly efficient and effective manner. The IRG believes that if the recent practices adopted by the Council continue to be followed, and if the Council follows the other recommendations contained in this report regarding planning, approach and roles, then it is reasonable to expect that financial efficiencies will occur.

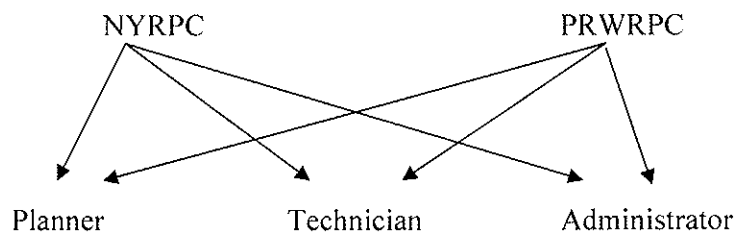
To date, the funding level for the Council has been adequate and more than adequate in some years, as demonstrated by the fact that until recently, the Council has not expended the full amount of its annual allocation pursuant to the UFA IP. However, it must be recognized that there are factors to account for this. For instance, many UFA boards, including the Council, under-spent their annual allocations significantly during their initial years of operation. In addition, due to the fact that commissions were not fully functional until recently, the Council was not being called upon to provide centralized support for them. As commissions have progressed with regional planning, demands upon the Council have increased above initial levels, but have remained within the annual allocations. To avoid duplication and maximize fiscal efficiencies, it is essential to recognize the central support functions played by the Council in the current "business model" (described below) under which planning is occurring. However, in these circumstances the Council is compensated by the commissions for the work performed on their behalf out the budgets allocated for regional land use planning in all three phases (see below under Funding). The initial funding for the Council, \$447,519 in 1992\$, is increased annually by an escalator and for fiscal year 2006/07 it had risen to \$541,113. The funding arrangement with the Council allows for the carry over of un-expended funds within a ten-year implementation period and thus, within that limitation, allows it to deal with fluctuations in requirements.

In its November 2003 submission to the IRG, the Council identified the need for an increase in its funding of approximately 25% over 2003-04 levels, comprising funds for an additional planner position that would provide support to commissions and a 10% increase to enable a greater participation of council members. A total of approximately \$6.5 million was requested by the Council for the next 10-year implementation period, during which land use plans are projected to be recommended (and in most cases approved) for all the planning regions associated with the 11 YFNs with agreements in effect.

Since the Council's submission was received, a new business model for the functioning of commissions has emerged. The significant benefit associated with the current business model is its cost effectiveness, achieved via reduced duplication of administrative and technical planning functions common to all commissions. Fiscal economies are achieved by a) taking advantage of opportunities that arise for economies of scale on similar projects that two or more commissions are undertaking; and b) having generic administrative and technical support services that pertain to all commissions delivered centrally by the Council, while preserving the commissions' autonomy from the Council. The mechanism

to formalize the business relationship between a commission and the Council is a Memorandum of Understanding (MOU) between the two.

To illustrate, the North Yukon and Peel River Watershed Regional Planning Commissions are currently operating with shared staff who have been seconded from the Council, and have coordinated certain projects so they could be undertaken jointly. They also receive support from the Council in the form of assistance with work planning, budgeting, personnel administration (e.g., hiring, payroll administration, group insurance), financial administration, meeting facilitation, public communications, and technical support services such as GIS architecture, data processing, spatial analysis and internet website maintenance. Relying on the Council for these support services has enabled the commissions to focus on their central task, i.e., land use planning. Each commission has signed a series of one-year MOUs with the Council, documenting their understandings concerning the Council's and commission's roles and the services that the Council will provide. The arrangements are reviewed at the end of each year in anticipation of the next year's MOU. That enables them to be adjusted as needed and also provides an opportunity for the commissions to apprise the Council of other forms of generic support it could provide that would reduce their administrative burdens and allow them to stay focused on planning.



One result of these arrangements has been to decrease the Council's expenditures, as some Council costs are now being cost-shared with the commissions, in a manner that is cost-effective for both. Assuming that planning for the remaining six regions rolls out sequentially and that this business model is followed throughout, these kinds of economies can be sustained for the duration of the next implementation period. That would reduce the Council's financial requirements during the next ten-year implementation period.

Furthermore, after land use plans are approved and commissions assume a general monitoring function, the Council could also provide an additional generic, technical support function: developing and maintaining a unified land information management system for recording the land use plans and ensuing land-based activities, upon which commissions can rely in carrying out their post-planning functions. The IRG makes the assumption that, as with the current services the Council provides to commissions, the associated costs would be covered via cost-sharing arrangements between the Council and commissions.

With respect to a projected budget for the Council during the next ten-year implementation period, the net result of the projected increases and decreases is essentially neutral.

Therefore, the IRG has concluded that the Council's present funding level²⁵ is adequate to meet the expenditure requirements associated with its core responsibilities over the next ten-year implementation period. However, as noted above, where the Council provides services to the commissions it will have to be compensated for those services by the commissions.

In respect of commission activities during the next ten-year implementation period, in 2004 the Council identified a requirement of \$20 million. In early 2005, the Council revised the original estimate and identified a requirement of approximately \$14 million as illustrated in the following chart:

Yukon Land Use Planning - Projected Commission Budgets for Plan Production and Ensuing Activities

Year\Region	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013	2013-2014	2014-2015	2015-2016	Cost
IP Year	1	2	3	4	5	6	7	8	9	10	(All Phases)
NYPC	\$220,000.00	\$200,000.00	\$150,000.00	\$150,000.00	\$150,000.00	\$250,000.00	\$200,000.00	\$200,000.00	\$150,000.00	\$150,000.00	\$1,820,000.00
TRPC	\$375,000.00	\$220,000.00	\$200,000.00	\$150,000.00	\$150,000.00	\$150,000.00	\$250,000.00	\$200,000.00	\$200,000.00	\$150,000.00	\$2,045,000.00
PWPC	\$340,000.00	\$375,000.00	\$220,000.00	\$200,000.00	\$150,000.00	\$150,000.00	\$150,000.00	\$250,000.00	\$200,000.00	\$150,000.00	\$2,185,000.00
NTC	\$270,000.00	\$340,000.00	\$375,000.00	\$220,000.00	\$200,000.00	\$150,000.00	\$150,000.00	\$150,000.00	\$250,000.00	\$200,000.00	\$2,305,000.00
Dawson	\$0.00	\$270,000.00	\$340,000.00	\$375,000.00	\$220,000.00	\$200,000.00	\$150,000.00	\$150,000.00	\$250,000.00	\$200,000.00	\$2,105,000.00
Whitehorse	\$0.00	\$0.00	\$270,000.00	\$340,000.00	\$375,000.00	\$220,000.00	\$200,000.00	\$150,000.00	\$150,000.00	\$150,000.00	\$1,855,000.00
Kluane	\$0.00	\$0.00	\$0.00	\$270,000.00	\$340,000.00	\$375,000.00	\$220,000.00	\$200,000.00	\$150,000.00	\$150,000.00	\$1,705,000.00
Totals	\$1,205,000.00	\$1,405,000.00	\$1,555,000.00	\$1,705,000.00	\$1,585,000.00	\$1,495,000.00	\$1,320,000.00	\$1,300,000.00	\$1,250,000.00	\$1,200,000.00	\$14,020,000.00

Production (black)
Implementation (red)
Review (blue)
Implementation #2 (green)

The IRG conducted its own review and analysis of the amounts projected by the Council, with technical assistance from Yukon government staff involved in land use planning. The \$7.428 million provided for regional land use planning in the existing UFA IP corresponds to approximately \$8.8 million in current year dollars, after adjustment. Divided among eight planning regions, this amounts to approximately \$1.1 million per planning region. Significantly, the Teslin Regional Planning Commission, for example, *planning for only a portion of one planning region*, had spent \$652,118 to the end of fiscal year 2004-05, yet was still some distance from having a completed plan to recommend²⁶. Including its initial false start, the North Yukon Planning Commission had spent \$405,374 to that date, and was just then getting into the substantial development of its plan. Even when allowance is made in both instances for higher costs associated with being the initiators in the land use planning process, it is still clear that \$1.1 million per planning region will not likely enable a commission to complete its recommended land use plan and support it in the long term as it carries out its ongoing responsibilities.

Under the business model currently being used by the North Yukon and Peel River Watershed Planning Commissions, the projected costs for each commission to produce its recommended plan are estimated at \$1.2--1.5 million. With a less cost-effective business model, the plan-development costs could reasonably be expected to be higher. Cost estimating the subsequent activities of the commissions based on the IRG

²⁵ Adjusted annually.

²⁶ Since the 2004-05 fiscal year, there have been no appointees to the Teslin Regional Planning Commission, hence at this time there continues to be no completed land use plan for that region.

recommendations, the following cost estimates were developed for the three distinct phases of an ongoing land use planning process pursuant to the UFA:

**PLAN DEVELOPMENT & APPROVAL
PHASE**

	Year 1	Year 2	Year 3	Year 4	Year 5	TOTAL
Administration	50,000	50,000	50,000	50,000	50,000	250,000
Commission	50,000	50,000	50,000	50,000	50,000	250,000
Startup / 5yr work plan	20,000					20,000
Base mapping	30,000					30,000
Issue & interest identification	25,000	25,000				50,000
Information gathering	25,000	100,000	75,000	25,000	25,000	250,000
Analysis & planning scenarios		50,000	25,000			75,000
Draft plan development & review			100,000	125,000		225,000
Final plan development & approval					50,000	50,000
	200,000	275,000	300,000	250,000	175,000	1,200,000

**WORKING
ASSUMPTIONS:**

Minimum costs – The costs shown in the table are at the low end of the projected \$1.2—1.5 million range.

Administration - Some administrative tasks carried out by Yukon Land Use Planning Council on behalf of Commission so as to achieve economies of scale.

Commission - Costs include honoraria and travel costs for all activities.

Startup / 5yr work plan - The Yukon Land Use Planning Council and affected Parties will provide assistance to new Commissions in developing Terms of Reference and Work Plans.

Base mapping - Cost as estimated by the Yukon Land Use Planning Council.

Issue & interest identification - Consultation and analysis of issues raised.

Information gathering - Initial information gathering in first three years, followed by maintenance of information base on an ongoing basis.

Base mapping - Cost as estimated by the Yukon Land Use Planning Council.

Analysis & planning scenarios - Analysis of information and data collected and scoping out of land use plan.

Draft plan development & review - Includes salary of land use planner and consultation in the latter stages of plan development

Final plan development & approval - Final revision of land use plan and support during the approval process

PLAN IMPLEMENTATION PHASE

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	TOTAL
Administration	25,000	25,000	25,000	25,000	25,000	25,000	25,000	175,000
Commission	50,000	50,000	50,000	50,000	50,000	50,000	50,000	350,000
Review of Proposals	25,000	25,000	25,000	25,000	25,000	25,000	25,000	175,000
Maintenance of Information base	25,000	25,000	25,000	25,000	25,000	25,000	25,000	175,000
	125,000	125,000	125,000	125,000	125,000	125,000	125,000	875,000

WORKING ASSUMPTIONS:

Administration – Some administrative tasks carried out by Yukon Land Use Planning Council on behalf of Commission so as to achieve economies of scale

Commission - Costs include honoraria and travel costs for all activities

Review of proposals - Conducted by the Yukon Land Use Planning Council or some other body on behalf of the Commission

Maintenance of information base - Conducted by the Yukon Land Use Planning Council or some other body on behalf of the Commission

Commission - Costs include honoraria and travel costs for all activities

PLAN REVIEW PHASE

	Year 1	Year 2	TOTAL
Administration	25,000	25,000	50,000
Commission	50,000	50,000	100,000
Review of proposals	25,000	25,000	50,000
Maintenance of Information base	25,000	25,000	50,000
Issue and interest identification	25,000		25,000
Plan review / revision		75,000	75,000
	150,000	200,000	350,000

WORKING ASSUMPTIONS:

Administration – Some administrative tasks carried out by Yukon Land Use Planning Council on behalf of Commission so as to achieve economies of scale

Commission - Costs include honoraria and travel costs for all activities

Review of proposals - Conducted by the Yukon Land Use Planning Council or some other body on behalf of the Commission

Maintenance of information base - Conducted by the Yukon Land Use Planning Council or some other body on behalf of the Commission

Issue & interest identification - Consultation and analysis of issues raised

Plan review / revision - Review of plan and revision if required

Taking into consideration the current progress on land use planning (September 2006) and expected progress up to March 2008, as projected by the Council, the above estimates were set out in the following model as a minimum estimate of funding requirements for the next ten year planning period:

Yukon Land Use Planning - Projected Commission Budgets for Plan Production and Ensuing Activities

Year\Region	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018	Cost
IP Year	1	2	3	4	5	6	7	8	9	10	(All Phases)
NYPC	\$125,000	\$125,000	\$125,000	\$125,000	\$125,000	\$125,000	\$125,000	\$150,000	\$200,000	\$125,000	\$1,350,000
PWPC	\$175,000	\$125,000	\$125,000	\$125,000	\$125,000	\$125,000	\$125,000	\$125,000	\$150,000	\$200,000	\$1,400,000
Third	\$275,000	\$300,000	\$250,000	\$175,000	\$125,000	\$125,000	\$125,000	\$125,000	\$125,000	\$125,000	\$1,750,000
Fourth	\$200,000	\$275,000	\$300,000	\$250,000	\$175,000	\$125,000	\$125,000	\$125,000	\$125,000	\$125,000	\$1,825,000
Fifth	\$0	\$200,000	\$275,000	\$300,000	\$250,000	\$175,000	\$125,000	\$125,000	\$125,000	\$125,000	\$1,700,000
Sixth	\$0	\$0	\$0	\$0	\$200,000	\$275,000	\$300,000	\$250,000	\$175,000	\$125,000	\$1,325,000
Seventh	\$0	\$0	\$0	\$0	\$0	\$200,000	\$275,000	\$300,000	\$250,000	\$175,000	\$1,200,000
Eighth	\$0	\$0	\$0	\$0	\$0	\$0	\$200,000	\$275,000	\$300,000	\$250,000	\$1,025,000
Totals	\$775,000	\$1,025,000	\$1,075,000	\$975,000	\$1,000,000	\$1,150,000	\$1,400,000	\$1,475,000	\$1,450,000	\$1,250,000	\$11,575,000

Plan development & approval phase (black)

Plan implementation phase (red)

Plan review phase (blue)

Plan implementation phase #2 (green)

WORKING

ASSUMPTIONS:

Assume that North Yukon land use plan is approved at end of fiscal year 2007/08

Assume that the Peel River Watershed land use plan is approved at end of fiscal year 2008/09

Assume that the third regional Commission is started in 2007/08

Assume that the fourth regional Commission is started in 2008/09

Assume that a maximum of three concurrent processes in the plan development and approval phase can be sustained

The estimate of approximately \$11.6 million is based on a critical assessment of the expenditures during the first ten-year planning period and the projected costs provided by the Council. Technical assistance was provided by Yukon and federal government staff familiar with land use planning. By and large, this estimate is not significantly different from that developed by the Council. The difference in the total amount is largely accounted for by the recognition that experience in Yukon is, as elsewhere north of 60, that it takes approximately five years to produce and approve a plan. Given that there is a consensus that a maximum of three processes can be supported concurrently, the front end cost of plan development will be spread out over a longer timeframe and the overall cost of the next planning period will be less than when it is assumed that a plan can be produced in three years. Further minor economies, in comparison with the estimates of the Council, were achieved when factoring in the cost effective support role of the Council recommended by the IRG for the plan implementation phase and the plan review phase. Finally, the amount of new funding required for the next planning period will be less than the estimated amount of \$11.6 million because it will be partially funded by the balance remaining from the original \$7.428 million (1992\$) identified in the UFA IP.

In its presentation to the IRG, the Council also raised as an issue the methodology for allocating the funds available for land use planning by planning region. In the absence of criteria to guide a more rational allocation of the funds among the planning regions, to date the allocation of funds to commissions has been based on the proposition of eight planning regions, each plan requiring three years to develop (annual allocation = \$ 7.428 million divided by eight, divided by three). In reality, several factors can affect the costs of planning in a region, including:

- The size of the area being planned;
- The number of YFNs whose Traditional Territories fall within the area;
- The area's remoteness, which, while it may reflect less intensive pressures on the land than in more developed areas, can also reflect increased costs of planning associated with the travel costs for commission members from remote communities and for travel in order to consult with region residents in the plan development and approval phases;
- The availability of data for the area;
- The number and complexity of the interests and/or development pressures associated with the area, the general rule being that the greater or more complex the interests/pressures, the greater will be the planning costs;
- The scale of the plan being produced, the general rule being that areas with greater density of interests, population or usage conflicts will require more detailed land use plans; and
- The business model that will be used for developing the plan.

To ensure that plans of an equitable standard can be produced for every region, it is essential that a way be found to more realistically allocate the available funds among the planning regions according to "need" (and keeping in mind efficiencies).

In short, it is clear that all players involved in the regional land use planning process will have to be mindful of opportunities and practices that will enable effective financial management. At the same time, however, there is already evidence that the total funding allocated for land use planning in the existing UFA IP will be insufficient and that an increased level of funding for both the Council and commissions will be needed during the next ten-year implementation period.

Further, it must be noted that, while sub-regional and district planning has not been a factor during the first ten-year implementation period, the Kwanlin Dun First Nation (KDFN) Final Agreement, which came into effect April 1 2005, sets out at section 11.8.4.10 that "*if Government and Kwanlin Dun First Nation agree to develop a sub-regional or district land use plan jointly, that plan shall be developed by a Regional Land Use Planning Commission established pursuant to 11.4.0, or a body similar in composition...*". Specific provisions 11.8.4.1-11.8.4.11 were added to the KDFN's Final Agreement because it indicated a preference for sub-regional and district planning over larger-scale regional land use planning. The cost estimates set out above are based on an assumption that regional land use planning will occur in eight designated planning regions; however, if KDFN effectively bypasses the regional land use planning process in favour of sub-regional or district planning, the estimates become less reliable for two reasons. One concerns the possibility that economies of scale present with the "eight planning regions" approach will

be reduced if the net effect of KDFN following a different approach is to add an additional planning region. The other concerns comparative costs of sub-regional and district planning – it was beyond the scope of this report to compare those costs with the costs of regional planning, but it is not unreasonable to suppose that a single regional plan could be less costly than multiple sub-regional plans.

Despite the requirement under Final Agreements that any sub-regional or district land use plan must conform to the overall regional plan, a sub-regional plan established in the manner set out under the KDFN Final Agreement will likely incur costs similar to that required to develop a full regional land use plan. It is also highly probable that the work and effort involved in establishing a sub-regional or district plan would also be similar to that of a full regional land use plan.

Because sub-regional or district planning is, to date, an untried element of the overall land use planning regime pursuant to the Final Agreements, it is not clear yet whether sub-regional planning could occur concurrently with regional land use planning or would also be subject to the current wisdom that capacity issues prevent more than three land use planning exercises occurring simultaneously. If experience substantiates that only three such exercises can proceed at one time, the net result will simply be to extend the overall timeframe required to produce a first plan for every region or sub-region/district. Nonetheless, because this remains to be seen, the IRG felt that the possibility of additional planning exercises occurring within the next ten-year implementation period should be noted.

Finally, recognition has to be given to the Parties' own capacity requirements to enable them to participate in the land use planning process, both to support the commissions during plan development and to undertake their approval processes. First Nations with settled land claims currently experience general capacity issues with respect to self-government responsibilities. When recommended plans are submitted for review, approval and implementation by the Parties, First Nations in particular could experience capacity issues.

Recommendation

The IRG recommends that:

- a. The annual and long-term funding arrangements for commissions reflect the full spectrum of their responsibilities, both during land use plan development as well as for ongoing commission responsibilities.**
- b. The Parties, in negotiating the implementation arrangement for the next ten-year implementation period, give consideration to increasing funding for regional land use planning for commissions to a minimum of \$11.6 million, to be funded in part via any balance remaining in the \$7.428 million identified in the existing UFA IP, and continue funding of the Council at the level identified in the UFA IP.**
- c. The Parties, in negotiating future implementation arrangements which impact regional land use planning, recognize the possibility of the development of sub-**

regional or district plans, and ensure that it is considered in identifying the level of funding to be provided for land use planning in the future.

- d. Annual funding to the Council and commissions continue to be linked to performance measures (e.g., work plans) in order to ensure effectiveness of program expenditures.
- e. Use of the current business model for developing land use plans be maintained for future planning commissions.
- f. Fair and equitable criteria be developed upon which the funding provided by Canada for regional land use planning will be allocated among planning regions in future.
- g. Future YFN funding arrangements ensure that they will have the fiscal capacity to review, approve, and implement applicable regional and/or sub-regional plans.

9.5 CONCLUSION

Although regional planning has been underway for several years, it is still in its infancy. It will take many years to complete the first round of regional planning in all regions. In the meantime, there is much room to learn from past planning experiences and apply our knowledge.

10.0 CONCLUSIONS

The IRG urges the Parties to complete the funding adequacy review. Despite the fact that this element of the reviews remains outstanding, the IRG is able to present some conclusions:

The YFN Agreements are good agreements. The SGAs are in many ways the most advanced self-government agreements in Canada. Many aspects of implementation are working well. In some respects, the progress made in the first ten years has been extraordinary. The magnitude of the transformation from *Indian Act* bands to self-governing First Nations makes the progress achieved all the more remarkable.

However, in other respects progress has been frustratingly slow. It became apparent to the IRG that, in many cases, implementation issues exist primarily because the related provisions of the Agreements and IPs have not been followed. Most of the problems that have arisen with implementation can be corrected if the Agreements are implemented according to the terms agreed to by the Parties. In addition, some provisions of the Agreements have not yet been triggered, so no conclusions could be drawn about them.

The IRG urges the Parties to fulfil existing obligations so that the commitments in the Agreements are met and implementation can proceed as originally intended. The Parties should also conduct future reviews to measure ongoing progress and consider the implementation of provisions not triggered at the time of this review. The IRG also urges the Parties to ensure that implementation issues are dealt with in a timely and proactive manner.

In the final analysis, the Parties must fulfill the commitments they have made in order to achieve the objectives of the Agreements.

Appendix E Technical Review of Chapter 11