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March 11, 2024

ʔehdzo Got'ıne Gots'ę Nákedı
Sahtú Renewable Resources Board
P.O. Box 134
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Delivered via email to eas@srrb.nt.ca

Dear SRRB:

RE: TŁEGŦHŁI 2024 PUBLIC LISTENING SESSIONS

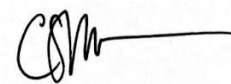
On behalf of the Fort Good Hope Renewable Resources Council (FGH RRC), I am writing to submit our position and response concerning the Public Listening Sessions and SRRB's *Draft Hıdó Gogha Sénegots'ı́ a Guidance (PFF)*.

Our submission articulates the collaborative and knowledge-based management approach that defines not only the SDMCLCA and the co-management regime established within it, but also Ts'ude Nilıne Tuyeta (TNT) and its constituent parts, including its Establishment Agreement. We provide herein our understanding of the SRRB's role in relation to this regime, asserting SRRB's role does not extend to approval authority or application of the PFF policy to the TNT Management Plan.

Thank you for considering our submission.

We look forward to continuing to work together in a manner that respects the rights, knowledge, and management authority of the K'áhshó Got'ıne, and that contributes to the well-being of our lands, wildlife, and people.

Mahsi Cho,



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FORT GOOD HOPE RENEWABLE RESOURCES COUNCIL

cc:

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COMMENTS ON TŁEGŪHŁI 2024 PUBLIC LISTENING SESSIONS

Ts'ude Niljné Tuyeta (TNT) is a significant step forward in the realization of K'ahsho Got'ine self-determination and the preservation of our way of life. Its establishment as an Indigenous Protected and Conserved Area (IPCA) underscores our deep-seated commitment to stewarding our lands and resources in alignment with our ancestral values, practices and traditions. It was created with the shared goal of advancing K'ahsho Got'ine self-determination. It is our firm position that the role of the Sahtú Renewable Resources Board (SRRB) does not include approval authority over the TNT Management Plan, as evidenced by both recent discussions and inquiries.

TNT – Essence, Purpose and Governance Framework

The Ts'ude Niljné Tuyeta Establishment Agreement, executed in 2019 between the GNWT and the K'ahsho Got'ine District's bands and land corporations, (the “TNT Agreement”), heralded the creation of the TNT IPCA. TNT was subsequently designated as a protected area under the GNWT's *Protected Areas Act* (PAA)¹ via the *TS'UDÉ NILJNÉ TUYETA Territorial Protected Area Regulations*.²

The TNT Agreement signifies a departure from traditional conservation frameworks. It establishes TNT not as a park under the *Territorial Parks Act*³ or the *Canada National Parks Act*,⁴ and neither are the lands within TNT described in either Act. Nor is it a “conservation area,” which is reserved for “game reserves, sanctuaries, migratory bird sanctuaries, national wildlife areas, and similar areas for the protection of wildlife and wildlife habitat established under federal or territorial legislation.”⁵ Instead, TNT is established as a novel entity under both Indigenous law and the PAA. It is aimed at preserving ecological integrity, cultural heritage, and the K'ahsho Got'ine way of life. This distinction is crucial, further exempting it from the definitions of “territorial park” and “national park” in the *Sahtú Dene and Metis Comprehensive Land Claim Agreement* (SDMCLCA).

Distinct Nature of IPCAs and the Comprehensive Scope of TNT's Management Plan

IPCA initiatives like TNT diverge fundamentally from the conservation areas, territorial parks, or national parks envisioned by the SDMCLCA. The Management Plan for TNT encompasses a broad spectrum of considerations, extending beyond wildlife management to embrace the rights, culture, perspective, and traditions of the K'ahsho Got'ine. This expansive approach reflects the unique status of IPCAs, which were not explicitly contemplated during the SDMCLCA negotiations.

The primary purpose of TNT is to prohibit land uses that would adversely affect ecological integrity and safeguard our cultural heritage resources and the K'ahsho Got'ine way of life and self-determination within the protected area.⁶ The TNT Agreement creates a collaborative

¹ S.N.W.T. 2019, c.5

² N.W.T. Reg. 099-2019

³ S.N.W.T. 2002, c.18

⁴ R.S.C. 1985, c.N-14

⁵ SDMCLCA at 2.1.1.

⁶ TNT Agreement at 5.5 and 5.6

relationship between the K’ahsho Got’ine and GNWT (the Parties) that is based on mutual respect and mutual consent over decision-making on land use.

In exercising shared management of TNT, the Parties must make decisions consistent with the purposes of “respecting and protecting land and water”, “sustaining the K’ahsho Got’ine way of life”, and “contributing to reconciliation between the Parties.”⁷ Notably, TNT’s management framework does not encompass the direct management of wildlife populations or habitats, thereby safeguarding the rights of SDMCLCA participants, including hunting and harvesting rights.⁸

Commercial Activities within TNT: A Distinct Approach

The TNT Agreement stipulates that the Management Board may recommend decisions regarding new Authorizations for Commercial Activity, including wildlife-related activities such as harvesting, guiding, and outfitting.⁹ This provision ensures that commercial endeavours within TNT are conducted in a manner that aligns with its conservation and cultural objectives, distinct from the SRRB’s broader mandate in this area under the SDMCLCA. The SRRB’s mandate includes determining the permissibility of commercial harvesting in specific areas for particular species or populations, along with prescribing terms and conditions¹⁰.

The TNT Management Board’s role in recommending policies for commercial activities within TNT is guided by the specific conditions outlined in the TNT Agreement. This nuanced approach ensures that commercial activities not only comply with the broader regulatory framework established by the SRRB but also adhere to the specific conservation and cultural values that TNT seeks to uphold. In essence, the management of commercial activities within TNT represents a balanced framework that harmonizes the regulatory authority of the SRRB with the unique conservation and cultural objectives of TNT. This alignment between the SRRB’s regulatory directives and the TNT Management Plan’s objectives exemplifies a model of cooperative governance and a commitment to respectful and integrated management.

Our Position on SRRB’s s. 13.8.23(c) “Approval Authority”

The SRRB, as the designated main instrument of wildlife management within the Sahtú Settlement Area (**SSA**), possesses specific powers under the *Sahtú Dene and Métis Comprehensive Land Claim Agreement (SDMCLCA)*. These responsibilities include the authority to offer recommendations on the management and protection of certain wildlife populations and habitats within designated conservation areas, territorial parks, and national parks, as detailed in subsection 13.8.23(c) of the SDMCLCA. We assert unequivocally that the SRRB’s function is fundamentally advisory, with its recommendations subject to the Minister’s discretion for acceptance, variation, or replacement, underscoring the advisory nature of its role within the SSA¹¹.

The SDMCLCA delineates the SRRB’s responsibilities, which include:

⁷ TNT Agreement at 5.1.

⁸ TNT Agreement at 2.5, 5.3, and 16.3.

⁹ TNT Agreement at 9.5 and Appendix D.

¹⁰ SDMCLCA 13.7.1

¹¹ SDMCLCA 13.8.28

- i. Recommending plans for the management and protection of specific wildlife populations and habitats, including conservation areas, territorial parks, and national parks within the SSA.
- ii. Approving the designation of conservation areas and endangered species.
- iii. Approving provisions of interim management guidelines, park management plans, and policies that impact wildlife and harvesting by participants in a national park.

Notably, the SRRB operates within a structured, iterative decision-making process as outlined in SDMCLCA. This established decision-making regime reinforces the SRRB's role as fundamentally advisory and consultative in nature.

The Advisory Process Mandated by the TNT Agreement

The TNT Agreement meticulously outlines the approval process for the TNT Management Plan, emphasizing a collaborative approach rather than conferring veto, consent, or approval powers to the SRRB. This process is designed to leverage the SRRB's expertise in the development of the Management Plan, allowing the TNT Management Board to consult the SRRB for insights on wildlife populations and habitats within the draft Management Plan, in accordance with section 13.8.23(c) of the SDMCLCA.

Iterative Decision-Making and the Advisory Role of the SRRB

The Management Plan development process, as set forth in the TNT Agreement, supports an iterative consultation and informed decision-making framework:

- 1. Initial Consultation:** The Management Board seeks assistance from the Parties and other co-management partners, including the SRRB, Sahtú Secretariat Incorporated, Renewable Resource Council, and others, in their respective areas of specialization and expertise on the initial draft of the Management Plan, per sections 8.2 and 8.3.
- 2. Party Review:** Following initial feedback and any resulting agreed-upon alterations to the Management Plan, the Parties review the Management Plan and provide comments, as outlined in section 8.5.
- 3. SRRB-specific Consultation:** In line with section 8.6, the GNWT presents the draft Management Plan to the SRRB for its consideration under section 13.8.23(c) of the SDMCLCA, initiating a structured dialogue between the GNWT and the SRRB.
- 4. Recommendation Process:** The SRRB, through this consultative process, makes recommendations to the Minister, ensuring comprehensive consideration of the SRRB's insights.
- 5. Potential Integration of Recommendations:** Any SRRB recommendations through this process may be integrated into the Parties' comments and reviewed in the subsequent stages of the Management Plan approval process, as per section 8.7.

At no step in this process does the TNT Agreement grant veto, consent, or approval power to the SRRB. Instead, it assigns the SRRB an advisory role as a co-management partner, enabling the TNT Management Board to seek the SRRB's expertise in crafting the Management Plan. This process underscores the SRRB's role in offering insights and advice rather than conferring approval authority. The language used in the TNT Agreement, which directs the GNWT to submit a copy of the draft Management Plan to the SRRB for its "consideration," indicates that the SRRB's input is intended to inform and advise.

Moreover, the Agreement's provisions for SRRB-specific consultation (at both steps 1 and 3) highlight the iterative feedback mechanism, which is aligned with the SDMCLCA's framework.

By extension, this legal framework supports the understanding that the SRRB's involvement in the TNT Management Plan is consultative and aimed at providing expertise and recommendations rather than exercising approval authority. This interpretation aligns with the collaborative spirit of the TNT Agreement and the shared governance model it seeks to establish, ensuring that the ecological integrity and cultural heritage of Ts'ude Niljné Tuyeta are preserved for future generations in accordance with the K'ahsho Got'ine's vision and stewardship.

Applicability of SRRB's Draft Hı́dót Gogha Sénegots'ı́ a

Guidance (**PFF**) applies to the approval and governance of the TNT Management Plan. The Draft PFF outlines the SRRB's expectations for written plans concerning the management and protection of wildlife and habitats within the Sahtú region and its intent being to create a final version of the PFF to "provide guidance about what content the SRRB is looking for in a written plan."¹²

Distinct Nature of the TNT Management Plan

However, as discussed above, the TNT Management Plan does not require SRRB approval and transcends the conventional scope of wildlife management or conservation plans. It embodies the broader aspirations of the K'ahsho Got'ine for self-determination, cultural preservation, governance and ecological integrity. The TNT Management Plan, while comprehensive, does not target wildlife populations or habitat management. Instead, it focuses on a wide array of considerations, from promoting the K'ahsho Got'ine way of life to addressing climate change impacts.

The Misalignment of PFF Objectives with TNT Goals

In addition to the Plan's unique nature, there are specific provisions outlined in the TNT Agreement that do not coincide with an approach that would seek to have the SRRB's PFF apply to the TNT Management Plan. For instance, the TNT Agreement itself—not the Management Plan—sets the foundational terms for the governance and management of TNT. The TNT Agreement cannot be altered by the Management Plan, nor should the Plan be required to reiterate elements already established in the Agreement, such as evidence of community support or the Plan's purposes, yet these are requirements under the PFF¹³. Moreover, the PFF's characterization as a "viable conservation approach that is community-led and a more effective and more rights-compliant alternative to harvest limits."¹⁴ does not align with the TNT Management Plan's objectives, indicating a fundamental misalignment in goals and purposes.

Upholding the Integrity of the TNT Agreement

The management and approval process for the TNT Management Plan, as delineated in the TNT Agreement, relies on a bilateral consent mechanism between the K'ahsho Got'ine (through the K'ahsho Got'ine Foundation) and the GNWT, without necessitating approval or direct oversight by the SRRB. The Agreement explicitly outlines the SRRB's advisory role, reinforcing the

¹² PFF at pg. 2

¹³ PFF at pgs. 5 and 10

¹⁴ PFF at pg. 3

importance of maintaining the mutual consent framework established for the management of the IPCA. Applying the PFF to the TNT Management Plan would not only undermine this framework but also risk altering the negotiated approval process between the Parties, introducing elements such as public hearings and Renewable Resource Council support that are not required by the Agreement.

GNWT Evidence Does not Support Application of the PFF to the TNT Management Plan

In Information Request 2, delivered to PLS 3 Parties on January 2, 2024, the SRRB asked the GNWT, “Has the GNWT – ECC been involved in any community *Hıđ o Gogha Séñ éğ ots’ı́ a* (Planning for the Future – PFF) since the second PLS (April 2022)?”¹⁵

The GNWT’s response, dated January 31, 2024, indicated that during the period in question, they had only participated in one *Hıđ o Gogha Séñ éğ ots’ı́ a* (Planning for the Future – PFF) gathering, unrelated to TNT Management Planning.¹⁶ As a Party to the TNT Agreement, the GNWT appoints a senior party representative to attend and participate in all TNT Management Board meetings where the development of the TNT Management Plan occurs.¹⁷ The GNWT plays an active role in the ongoing development of the TNT Management Plan.¹⁸

The GNWT’s omission of its role in developing the TNT Management Plan between April 2022 and January 31, 2024, in its response to Information Request 2, suggests that the GNWT shares our opinion that the PFF does not apply to the TNT Management Plan.

Procedural Fairness and Administrative Law Considerations

Given the unique nature and objectives of the TNT IPCA, as well as the specific provisions outlined in the TNT Agreement, it is our position that the SRRB’s Draft PFF does not apply to the TNT Management Plan. During the PLS 3, when the applicability of the PFF to IPCAs generally, and the TNT IPCA particularly, was raised by us seeking clarity on this, the SRRB’s response highlighted a procedural concern. The SRRB noted that “...the issue of IPCA, Indigenous Protected Conservation Area, was not on the agenda for this PLS. And other parties did not have the notice.”¹⁹ This response, coupled with the refusal to engage in a dialogue on the PFF’s applicability to the TNT Management Plan, suggests an acknowledgment, albeit implicit, that the PFF does not apply to the TNT Management Plan. To argue otherwise at this juncture would contravene principles of procedural fairness, given the lack of discussion and clarity provided during the PLS.

The duties of procedural fairness have been canvassed by the court in the context of Indigenous rights. The Court in *Benga Mining Limited v Canada (Environment and Climate Change)*, 2024 FC 231 (“*Benga*”), held that where there is a reasonable expectation that a decision-making body will follow a specific procedure, that procedure is then required to be followed by the duty of fairness (at para 186).²⁰ In *Benga*, the court was looking at the duties of procedural fairness in the context of consultation with Indigenous communities for resource extraction projects, and utilizes the principles of procedural fairness as laid out in *Baker v Canada (Minister of Citizenship & Immigration)*, 1999 SCC 699 to determine that the decision-making

¹⁵ *Tłegóhı́ 2024 Public Listening Session Information Request 2* at page 5.

¹⁶ GNWT *Tłegóhı́ ʔelets’éhkwę Godı ʔekw’ó heots’edıgha go ʔeʔá, ʔehdagókéggha, nek’e areyone gok’erek ó* NORMAN WELLS 2024 PUBLIC LISTENING SESSION – INFORMATION REQUEST ROUND 2 at page 29.

¹⁷ TNT Agreement at 7.10.

¹⁸ TNT Agreement at 8.2.

¹⁹ PLS Transcript, February 21, 2024, pg. 20

²⁰ *Benga Mining Limited v Canada (Environment and Climate Change)*, 2024 FC 231 (“*Benga*”).

body had not met its duty by stating they would provide opportunities for public consultation and then not doing so on specific aspects of their decision.

The whole stated purpose by the SRRB in sharing the PFF and conducting the PLS was so rightsholders could comment on it before the SRRB creates a final version.²¹ Accordingly, in terms of both procedural fairness and administrative law, it would be inappropriate to now decide that the PFF policy does apply to Tuyeta.

In light of these considerations, we respectfully assert that the SRRB's Draft PFF, while valuable in guiding future wildlife management planning within the Sahtú region, does not extend to the governance or approval of the TNT Management Plan. This assertion reinforces our ongoing commitment to exercise self-determination, uphold our inherent rights, and ensure the preservation of our land and cultural heritage for future generations.

Conclusion: SRRB's Collaborative Advisory Role

In summary, the TNT Management Plan represents a comprehensive approach to land stewardship that transcends traditional wildlife management, focusing instead on broader cultural, rights-based, and ecological considerations. This approach is reflective of the unique governance model established by the TNT Agreement, which delineates a partnership based on mutual respect and collaboration between the K'ahsho Got'ine and the GNWT. Within this framework, the SRRB's role is explicitly advisory, providing valuable insights and recommendations that enhance the management and stewardship of TNT.

It is important to reiterate that the SRRB does not possess approval authority over the TNT Management Plan, a stance that is consistent with the structured processes and mutual consent mechanisms outlined in the TNT Agreement. Furthermore, it is our firm position that the SRRB's PFF does not apply to the TNT Management Plan. The principles and objectives guiding the TNT initiative are founded on K'ahsho Got'ine self-determination and collaborative management, emphasizing the preservation of cultural heritage and ecological integrity. These principles diverge significantly from the wildlife management focus of the PFF, underscoring the inapplicability of the PFF to the TNT Management Plan.

We advocate for a continued partnership where the SRRB supports and advises within its mandate, respecting the autonomy and management authority vested in the K'ahsho Got'ine and all other Sahtu Dene and Metis governments. The governance model established by the TNT Agreement, coupled with the advisory role of the SRRB, fosters a cooperative management approach, and we look forward to continuing to work collaboratively together, guided by a shared commitment to the well-being of both the region and the territory as a whole.

²¹ PFF at page 9.