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NORTHWEST TERRITORIES
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REPORT

Of the Subcommittee of the Committee of the Whole, of the Council of the Northwest Territories on proposed

LAND USE REGULATIONS

During the February 1971 Session of the Council of the Northwest Territories, a Subcommittee of the Committee of the Whole was set up to develop a position on certain proposed federal Land Use Regulations. The findings of the Subcommittee were transmitted to the Committee of the Whole of the Government of the Northwest Territories in a Report dated February 17, 1971 and the Report was accepted by Council with amendment. The February 1971 Report is appended to this document.

In effect, the Subcommittee noted some eighteen items in the proposed Regulations which it did not agree with, and so informed the Minister of Indian Affairs and Northern Development.

During the present Session of Council, it was learned that a redrafted version of the Land Use Regulations would be Gazetted on June 19, 1971, and after a set period of time the proposed Regulations would be discussed in the House of Commons and could become law.

In order to study the redrafted version of the proposed Land Use Regulations, a Subcommittee of the Committee of the Whole was reconstituted under the chairmanship of Dr. Louis Hamelin. Councillors Trimble (Lower Mackenzie), Sibbeston (Mackenzie-Liard) and Rabesca (Great Slave North) formed members of the Committee and Mr. Fogg was named secretary.

The reconstituted Subcommittee met June 21, 1971. In addition to Dr. Hamelin and the members named above, Councillor Butters attended the meeting, and played a part in the discussions. During its meeting, the Subcommittee compared the eighteen recommendations made by the original Subcommittee with those in the redrafted version of the proposed Land Use Regulations.

In studying the changes between the drafted version which a Subcommittee of the Council of the NWT considered in February, and which the reconstituted Committee discussed June 22, of the 18 (eighteen) items which the original Subcommittee commented upon, some have been amended and some lie remote in the redrafted version. But three items caused this Committee concern. They are items which the Government of the Northwest Territories has a real concern with because they concern the people who live here.

Firstly, there is the subject of compensation to those persons whose livelihood may be adversely affected by activities which are carried out on the land. On behalf of this Subcommittee, I would strongly recommend this Council urge a provision to the Land Use Regulations permitting the payment of compensation to Northwest Territories hunters, trappers and fishermen whose livelihood is adversely affected. This Subcommittee also recommends that a Compensation Board consisting of representatives from hunters, fishermen and trappers, the oil and mining companies and Government, be set up.

A further point which this Committee took strong exception to, is concerned with Zoning and the definition of boundaries and the permissible timing attached thereto. This appears to be an arbitrary decision which has no knowledge of the North attached to it. We strongly urge that this matter be rethought.

The matter of clearing from the land buildings, machinery and equipment is an item which this Committee thinks should be reconsidered in light of the people who live here. We ask for such reconsideration.

In view of the above recommendations, I would ask that this Council give consideration to the matters mentioned above, and so inform the Minister of Indian Affairs and Northern Development of the views of this Subcommittee.

Dr. Louis Hamelin, Chairman

Councillor Trimble

Councillor Sibbeston

Councillor Rabesca

SUBCOMMITTEE ON LAND USE REGULATIONS

In examining the Gazetted version of the Territorial Land Use Regulations to ascertain to what extent recommendations made by the Subcommittee of the Committee of the Whole, of the Council of the Northwest Territories on proposed Land Use Regulations has been incorporated, it is noted that the Gazetted version varies quite extensively from the proposed version used as a basis for the Subcommittee's recommendation.

The Application states these Regulations do not apply to (a) anything done by a resident of the Yukon Territory or the Northwest Territories in the course of hunting, fishing or trapping or (b) lands the surface rights to which have been disposed of by the Minister.

SUBCOMMITTEE'S RECOMMENDATION	ACTION PROPOSED IN GAZETTED VERSION
(P4-1) Consider including a provision permitting compensation to NWT hunters, fishermen and trappers whose land is adversely affected.	None.
(P4-2) Explosives - not a land use operation unless more than 50 lbs. used in any one day or 300 lbs. within a 30 day period.	This is now included as part of the interpretation. It was excluded in the interpretation previously, but did appear under Part 1, General, 5, (A) on Page 2.

SUBCOMMITTEE'S RECOMMENDATION	ACTION PROPOSED IN GAZETTED VERSION
(PS-2) Net weight of 2,000 lbs. for power driven vehicles too low depending on terrain - not a land use operation unless the ground is unfrozen, and bearing capacity is in pounds per square inch.	Weight qualification has been put up to 10,000 lbs. gross vehicle weight. This section has been changed quite considerably and its intent should be studied carefully. Mention of frozen terrain appears to be studiously avoided.
(PS-2) Diamond drilling at exploration stage should not be a land use operation.	This is included, still, with qualifications.
(PS-2) Campsites not a land use operation unless used longer than 10 days by more than 10 men when ground not frozen.	Page 2(f). Interpretation boosts this to 300 man days (one man for 24 hours) from 21 days, but again ignores reference to "frozen" ground, and does not specify number of men at any one time.
(PS-1) Excluded should be lands already under surface lease.	None.
(PS-1) Reference lines - that part of the HMF north of the transitional zone limited by the treeline and the line of discontinuous permafrost, or the Arctic Coast in the High Arctic Shield Area. Dates should be set for each zone on the basis of when the land is not frozen.	None.

SUBCOMMITTEE'S RECOMMENDATION	ACTION PROPOSED IN GAZETTED VERSION
(P6-5) Add historic sites and burial grounds.	Archeological site or burial ground is written in - historical sites would presumably be marked and covered under monuments, etc.
(P6-6) "Above the normal high water mark - not 10 feet above or 300 feet from the shore.	Page 3, Part 1, General 5-C appears to correct this.
(P6-7) Trenching done by prospectors in the initial exploration phase of mining except in special cases where trenching is extensive or dangerous, should be excluded.	New Section 6 (Page 4) has an exception for rock trenching, but this isn't quite a relief to the prospector under certain conditions (i.e.) off the Precambrian area, perhaps.
(P6-8) Removal from Territorial Lands of all buildings, machinery, equipment materials and fuel not advantageous ... Land use operators should be permitted to establish a proper camp, and if it is tidy, materials should be allowed to remain providing it is and all garbage, waste, etc., is eliminated.. This latter aspect strictly enforced while the land use operation is in process, and upon termination.	Certain cognizance to Territorial Ordinance has been given. This Section needs study to determine if this improves the situation or not. Fuel storage requirement before prior approval by an Inspector has been boosted from 500 gallons to 5000 gallons.
(P7-9) Subsection (3) of Section 17 should be deleted - "to submit to the engineer such further information or material as he may direct" ---	This has been altered so drastically, I would suggest qualified opinion be sought.

SUBCOMMITTEE'S RECOMMENDATION	ACTION PROPOSED IN GAZETTED VERSION
(27-10) Flexibility should be built into Section 19 to overcome possible administrative delays, particularly with regard to extensions to existing land use operations. Thirty days is too long, the Subcommittee feel.	There appears to be no alteration here.
(27-11) In Section 20, delete subsections (k) and (l) because they are repetitious.	These have not been deleted.
(27-12) Retain the suggested fees because they are an undoubted benefit to persons engaged in prospecting and exploration.	This seems to have gone up instead of down.
(27-13) "In his opinion" (refs. to the Engineer) be deleted.	This has been deleted.
(27-14) Subcommittee recommends these guarantee deposit should be reduced at a rate "not in excess of" \$1000 per acre - or less - to prohibit operation of small oil and gas operations.	This is now termed "Security Deposit" and has been altered to call for a security deposit not exceeding \$100,000 - which is not what was asked.

SUBCOMMITTEE'S RECOMMENDATION	ACTION PROPOSED IN GAZETTED VERSION
<p>(28-15) Powers of Inspectors. "of the opinion" in subsection (1) of Section 28 should be deleted. A reasonable even though minimal amount of time should be permitted to allow default correction before an operation is suspended by an Inspector. The Subcommittee doesn't think the Inspector should have the power to shut down an operation - only the Engineer.</p>	<p>This section has been altered to take away reference to the "opinion" of the Inspector - the Minister takes responsibility for designating an Inspector.</p>
<p>(17-16) Modifications should be made to Section 17(3) - (4) - 21(1) and 22(1) with regard to the qualifications of the Inspector and the Engineer.</p>	<p>The Subcommittee has a decision to make upon this matter, in view of the redrafting of this proposed Regulation.</p>

Fogg
Acting Secretary to the Subcommittee on proposed Land Use Regulation
Yellowknife
June 21, 1971

REPORT

Of the Subcommittee of the Committee of the Whole, of the
Council of the Northwest Territories on the Proposed

LAND USE REGULATIONS

I. Introduction

On the 9th of February, 1971, Mr. Alex Reeve, Mr. Bryan
Trever and Mr. Bill Armstrong, all three being officers
from the Northern Economic Development Branch of the
Department of Indian Affairs and Northern Development,
appeared before the Council of the Northwest Territories
in the Committee of the Whole to discuss with the Council
of the Northwest Territories the matter of proposed
Federal Land Use Regulations. As a result of this dis-
cussion a Motion was passed by the Council of the Northwest
Territories calling for the formation of a Subcommittee
of three, with Mr. Searle as Chairman, and the other two
members to be named by the Commissioner, to develop a
position on the Land Use Regulations, and report back to
the Committee of the Whole.

In carrying out its duties the Subcommittee was authorized
to speak to whomever wished to make representations to
the Subcommittee. As a result, the Subcommittee met with
representatives of the Canadian Petroleum Association and
the Northwest Territories Indian Brotherhood. In
addition, submissions were received from the Northwest
Territories Chamber of Mines and the Yellowknife Board
of Trade, the Audubon Society, the National and Provincial
Parks Association of Canada, Dr. A. R. Thompson, and the
Canadian Wildlife Federation. All of these submissions
have been examined, considered and weighed by the Committee.

in coming to its conclusions.

On the matter of consultation by the Committee with other persons, bodies and groups interested in land use in the Northwest Territories, the Subcommittee regrets that the time available to it to consult and to report was limited to the period commencing the 9th of February and ending this date. The Subcommittee would have preferred to become a standing committee and carry on consultations after prorogation of this Session until the June Session. This would have enabled fuller consultation and as a result a more detailed and comprehensive report. Such, however, was impossible due to the time-table for implementation of the proposed regulations as communicated to us by the officials of the Department of Indian Affairs and Northern Development. These officials made it clear to the Subcommittee that the plan of the Department is to promulgate these regulations before June of 1971, hence any report by this Subcommittee to the June Session of the Council of the Northwest Territories would simply have been too late. As a result, the Subcommittee was compelled to do what it could within the eight days available to it.

II. (Preamble)

In considering the matter of protecting our northern environment the Subcommittee considers it essential that not only should there be protection to the land such as is afforded pursuant to the provisions of the proposed Land Use Regulations, but so too should there be protection of our northern waters, whether the water be fresh, brackish, or salt, whether the water be in rivers, lakes, swamps or along our coast lines.

Dealing specifically with land, however, we note that the proposed Regulations deal, not with the disposition of title to land, but rather with the way a proposed user may use the land. We also note with approval that section 3 of the

proposed regulations exempt from the application of said regulations anything done by a resident of the Yukon Territory or Northwest Territories in the course of hunting, fishing or trapping. Because of the above two points the Subcommittee, in consultation with the Northwest Territories Indian Brotherhood, formed the conclusion that the Northwest Territories Indian Brotherhood felt firstly that the people living off the land would not be effected and secondly that the proposed regulations do not effect any land claims which the Indian people may be asserting.

The Subcommittee wishes to recommend, in the strongest possible terms, that the principle behind the proposed Land Use Regulations be fully supported. This principle is that that resource development in the Northwest Territories be permitted within well defined guidelines setting out how the land might be used, safe guarding against needless or irreparable damage to the land and the delicate ecological balance. Furthermore, it is clear to the Subcommittee that because of the extremely high rate of unemployment of our native people residing in the Northwest Territories that there must be development of our mineral resources for the benefit of our people. The Subcommittee stresses, however, that this development need not and should not be done at the expense of needless or irreparable damage to the land.

The Subcommittee further noted the concern of this and previous Councils of the Northwest Territories for protection of the environment and our northern wildlife. This concern

is evidenced by the present quota systems employed by our game branch as applied to the harvest of our wildlife on a sustained yield basis. It is further evidenced by and through the legislation which this Council has recently passed and which has been requested. In particular, we refer to the Pesticides Ordinance which was passed by the last Council, controlling the use of DDT. Just this Session the Council further requested the preparation of a Litter Ordinance to be presented to the June Session of the Territorial Council for enactment.

(Recommendations)

In light of the foregoing general principles and the submissions made to the Subcommittee, the Subcommittee recommends the following:

1. That the Minister consider including in the proposed Land Use Regulations a provision which would permit compensation to be paid to residents of the Northwest Territories engaged in hunting, fishing or trapping should the use of the land by land use operators adversely affect the traditional hunting, fishing or trapping area of an NWT resident. This could be done either through an arbitrator appointed to assess such damage and adjudicate on such claims, or through a Board, from funds on deposit with the Minister as a result of Section 24 of the Regulations.
2. In order not to discourage mining exploration, the Subcommittee recommends a redefinition, under Section 2 of the proposed Regulations, of "Land Use Operations" along the following lines. Respecting the use of explosives, we would recommend that the use of explosives should not fall within a land use operation, unless more than 50 pounds of explosives in any one day or 300 pounds of explosives within any 30 day period where used. Concerning the use of power

weight of 2000 pounds is too low, but appreciate that this depends on the nature of the terrain. We recommend, however, that the use of a power driven vehicle should not be a land use operation unless the terrain is unfrozen and only then if the bearing capacity exceeds a prescribed number of pounds per square inch. Concerning the use of any stationary power driven machine for drilling, the Subcommittee further recommends that the type of diamond drilling done in the exploration stage of mining should not come within a land use operation. Concerning the establishment of any campsite, the Subcommittee recommends that such should not constitute a land use operation unless it is to be used for longer than 30 days by more than 15 men when the ground is not frozen.

3. Concerning the definition of "Territorial Lands" in section 2 of the proposed regulations, the Subcommittee recommends that this definition should be expanded to make it clear that excluded from the application of these regulations are lands already under surface lease.
4. Concerning the prohibition without the prior written authority of the engineer, to a land use operation being conducted north of the 65th parallel of north latitude between May 1 and October 31, as found in section 5(2)(b) of the proposed regulations, it is the feeling of the Subcommittee that this is a line which could be better defined by reference instead to that part of the Northwest Territories north of the transitional zone limited by the tree line and the line of discontinuous perma-frost, or the Arctic Coast for that area of continental N.W.T. which is part of the Precambrian Shield. This line could then be drawn on that basis on the zoning map. The Subcommittee further feels that the dates above referred to are too arbitrary and recommends instead that dates be set for each zone on the basis of when the land is not frozen.

2. Concerning section 5(2)(c) of the proposed regulations the Subcommittee recommends the addition of "historic sites" and "burial grounds" as subsection (iii).
3. Concerning section 5(2)(f) of the proposed regulations the Subcommittee recommends that the placement of a fuel or supply cache be merely above the normal high water mark, not 10 feet above or 300 feet from the shore as this is impractical.
7. Concerning the restoration of all excavations, pursuant to section 6 of the proposed regulations, the Subcommittee feels that it is not practical to expect trenching, done by prospectors in the initial exploration phase of mining, to be filled and restored except in certain special cases where the trenching is extensive or dangerous to other users of land. The Subcommittee recommends, therefore, that trenching as described above, be excluded from the operation of section 6.
8. Concerning section 12 of the proposed regulations, it is the definite feeling of the Subcommittee that the requirement to remove from Territorial Lands all buildings, machinery, equipment, materials and fuel is not to the advantage of the people of the Northwest Territories. Such buildings are often used by hunters and trappers as a means of protection from the elements and we consider it a very important safety role for other Arctic travellers. Cached equipment, materials and fuel often becomes of considerable importance to northern people while out on the land and to "bush pilots" in times of emergency. Therefore, the Subcommittee feels that land use operators should be permitted to establish a proper cache and providing such a cache is tidy, then machinery, equipment, materials and fuel drums, whether full or empty, should be

permitted to remain. The Committee, however, completely agrees with the requirement that the land use operations shall be kept clean and that the operator shall eliminate all garbage, waste, and debris, by removal, burning or burial, both while the land use operation is in process, and also on termination of the land use operation. This aspect should, of course, be strictly enforced.

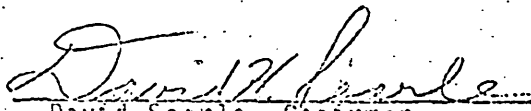
9. Concerning section 17(3) of the proposed Land Use Regulations, the Subcommittee feels that this subsection should be deleted because it virtually gives the engineer power to regulate as he sees fit using unfettered discretion.
10. Concerning section 19 of the proposed Land Use Regulations, the Subcommittee is concerned with foreseeable administrative delays involved in the processing of applications for the land use permit. With reference particularly to requests simply for extensions to existing land use operations already permitted, where speed in the processing of an application for extensions is required, surely 30 days is not required. The Subcommittee recommends that some flexibility be built into section 19 to permit extensions to the area of land in an already permitted land use operation, within a matter of days.
11. Concerning section 20, which deals with the terms and conditions of permits, the Subcommittee feels that subsection (k) of subsection (1) of section 20 should be deleted and so recommends because it appears to the Subcommittee that all of the matters conceivable are already covered previously in that section.
12. Concerning the fees to be paid, it is the recommendation of the Subcommittee that these be reconsidered as they will undoubtedly put a very heavy burden on persons engaged in prospecting and exploration.

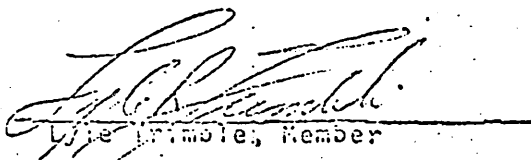
13. Concerning section 23(4) of the proposed Land Use Regulations, the Subcommittee recommends that the words "in his opinion" be deleted.
14. Concerning the guaranteed deposits set out in section 24 of the proposed Land Use Regulations, the Subcommittee recommends that the guaranteed deposit be computed at the rate of "not in excess of" \$1000 per acre. Furthermore, in support of the foregoing suggestion the Committee firmly believes that unless this is done mining exploration will become virtually prohibitive and also the small oil and gas operators will be virtually excluded.
15. Concerning the powers of Inspectors as set out in section 28 in the proposed Land Use Regulations, the Subcommittee recommends firstly that the words "of the opinion" as they appear in subsection (1) of section 28 be deleted. Furthermore, the Subcommittee recommends that before an Inspector be permitted to order the operator to suspend the land use operation, a reasonable even though minimal period of time be given to correct the default before suspension of the operation is ordered. Only if the correction is not made within the time period stated, then should the Inspector be able to order the suspension of the operations. The Subcommittee further questions whether the power to order a shut down or suspension should reside in an Inspector and considers that only the engineer should have this power.
16. The Subcommittee, furthermore, is concerned about the qualifications of the proposed Engineer and Inspectors. In view of this, the Subcommittee recommends that the areas of wide discretion of the engineer and inspectors be reviewed with a view to modification of same; these


sections being section 17(3), section 20(k), section 23(4) and section 28(1), as heretofore stated.

Conclusions

Together with making the foregoing recommendations, which this Subcommittee makes to the Committee of the Whole of the Council of the Northwest Territories, with the recommendation that they be adopted by the Council of the Northwest Territories for transmission to the Honourable Jean Chrétien, Minister of Indian Affairs and Northern Development, the Subcommittee would also comment that lately there would appear to have been a breakdown in consultation between the Department and some of the proposed land use operators, particularly the N.W.T. Chamber of Mines and the Canadian Petroleum Association. It appears that these bodies were initially involved in some of the initial drafts but the latest draft of the Land Use Regulations tabled at this Session of the Territorial Council was never officially discussed with the N.W.T. Chamber of Mines until the evening of the 5th of February, and has not yet been officially discussed with the Canadian Petroleum Association.


David Searle, Chairman


Lyle Grimble, Member


W.W. Phipps, Member