

## 3. Concepts and Framework of the Recommended Land Use Plan

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### 3.1. Overview of Planning Approach

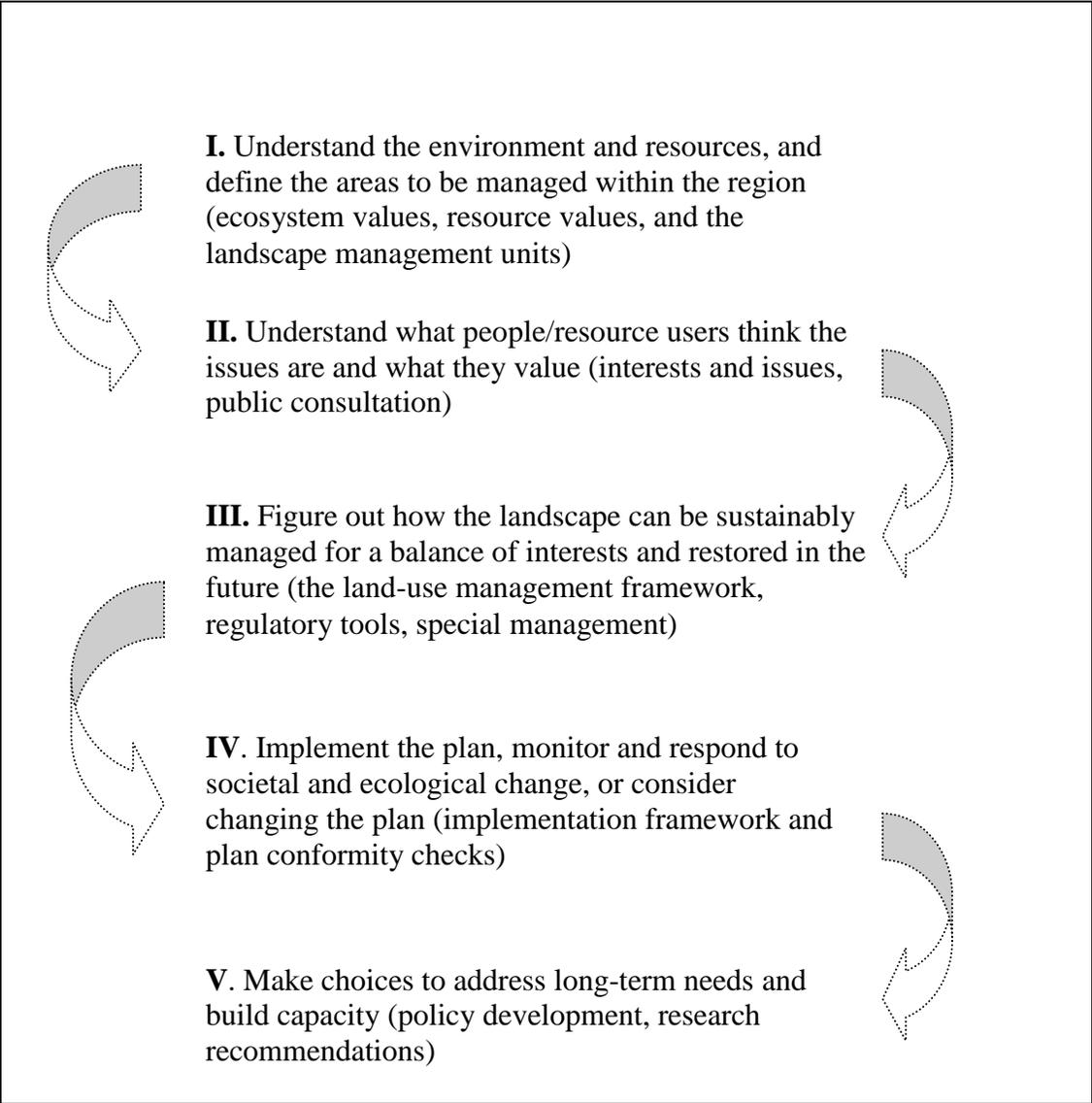
The Recommended Peel Watershed Regional Land Use Plan broadly outlines a vision for the region based on the foundation documents in Section 1 and the understandings outlined in Section 2. The framework of the Recommended Plan is described here, including description of our approach and methods to guide land-use decisions affecting the planning region. Later sections outline what pertains to various land-use sectors (4.1), landscapes (4.2) and general management interests (Section 4.3), and Plan implementation (Section 5).

The Peel River watershed is a complex natural landscape made up of steeply sloping mountains, limited surface vegetation, erodible river valleys, and sensitive wetland plateaus underlain with permafrost. Given the watershed's varied terrain, its wide range of ecological sensitivities, and the current understanding of land-use compatibilities, the Plan has adopted an ecosystem-based regional planning framework. This approach recognizes that:

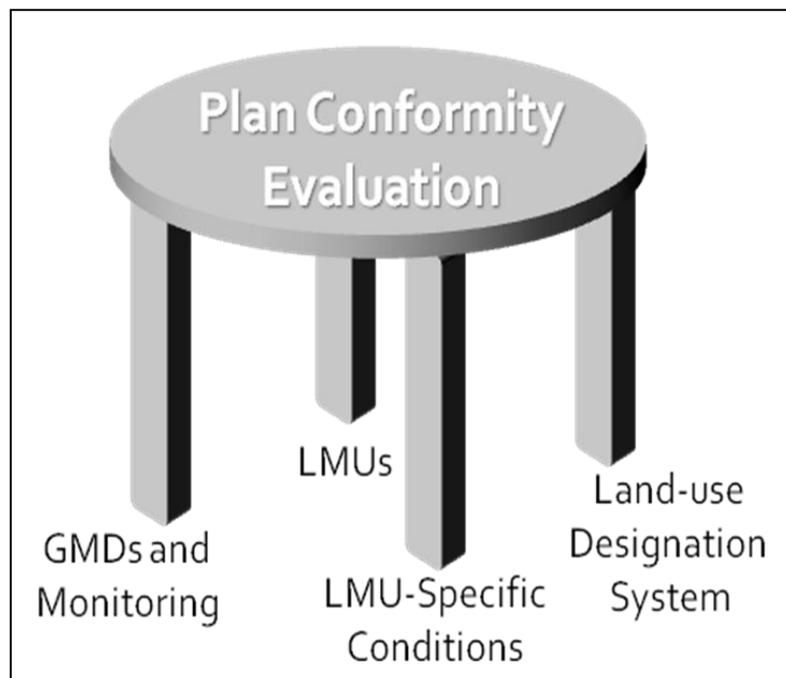
- the underlying structures, functions, and processes of natural ecosystems are incompletely understood and require ongoing monitoring. These underlying processes include hydrological function, wildlife behaviours, and climate change effects;
- some parts of the landscape are potentially more resilient in responding to or recovering from human-caused surface disturbance or resource use (extraction, harvesting);
- other parts of the landscape are much more sensitive to surface disturbance or intensive resource use.

Within the context of the Umbrella Final Agreement, the Plan framework provides three important functions as:

- a guide-book for governments and other public bodies to carry out land tenure review and disposition of public and First Nation settlement/fee simple lands;
- an agenda for action to guide research and the development of new regulations and policies for improved land-use management;
- a checklist for determining whether new land-use proposals conform to Plan directions. In Figure 3.1, we outline the key steps that generally apply to regional planning practice.



**Figure 3.1:** Key Steps of Regional Land Use Planning



**Figure 3.2: Key Components of the Peel Watershed Regional Land Use Plan**

## 3.2. Components of a Planning Framework

This section describes the components of the Commission’s planning framework. The Plan Conformity Evaluation, like the table top in Figure 3.2, holds the Plan framework (the “legs”) together. The “legs” of the framework are four planning tools that support decisions about ongoing land-use planning.

As we explain in Section 3.5, the Conformity Evaluation is a process (rooted in the UFA’s Chapter 11) for monitoring implementation of the Plan. It is used to allow regulators to decide whether proposed land uses are consistent (or in conformance) with the approved Plan. The Conformity Evaluation considers:

- allowable uses in the Plan, subject to management conditions
- uses that are not in conformance but can be modified to fit the Plan by adapting to the management conditions (achieved through a Plan variance)
- uses that are prohibited and require full Commission review to modify (uses requiring a Plan amendment).

### What is an Allowable vs. Prohibited Use?

- *Allowable*: this Plan allows this land use, subject to GMDs, LMU-specific *conditions* and the laws of general application (i.e. existing or new regulations)
- *Prohibited*: this Plan does not allow this land-use. A Plan amendment may alter this prohibition.

When considering a land-use proposal, the respective government agencies (First Nations and Yukon Government) will be able to use the four planning tools described below to make their decision on projects or uses affecting their areas of jurisdiction. They will be able to:

- clearly identify the location or land-use management unit (LMU)
- determine what land-use designation or zone (LUD) applies to the proposal and the type of regulatory designation tool being used
- understand whether the proposal is linked to other regional issues requiring guidance through general management directions and monitoring tools (GMDM). These tools allow regulators to track and limit land-use intensity (indicator) levels
- know the specific management conditions (MC) that set out how existing activities can be sustained and new land uses considered within each LMU.

The framework of the Peel Watershed Regional Land Use Plan builds on concepts in the North Yukon Regional Land Use Plan (Yukon Land Use Planning Council and the North Yukon Planning Commission), and respects existing government planning processes (e.g. as highlighted in Status of Yukon Government Land and Resource Planning, Yukon Government, 2009). The Commission's Plan framework is unique to the Peel Watershed planning region, and may not be appropriate to other Yukon regions or planning processes. Every region has its own ecosystem characteristics, settlement patterns, economic development potentials, institutional arrangements, and governance relationships.

In the future, new information may lead to a change in the Plan. Modifications to LMU boundaries or zone categories, for example, could result from any of the following: new government policy and regulations, economic opportunities, environmental management or industrial technologies, land-use and management assessment tools, and/or resource best-management practices. This flexible design is a cornerstone of the Recommended Plan and should serve regional planning needs well into the future.

The rationale for modifying certain management tools is based upon a commonly accepted practice of adaptive land-use management and planning. The practice incorporates (a) widely accepted ecosystem management principles; (b) the suitability of certain land uses within the ecosystems that make up the Peel region; and (c) some capacity to measure success in achieving land-use management goals and objectives. In keeping with the legal foundation for regional planning in the UFA, proposed new uses can be adjusted to conform to the Plan (see 3.5). Changes such as modifying an LMU boundary or the zoning system, for example, would require a Plan amendment. If a proposal to amend the Plan were referred to the Commission, it would consider new information and the implications for the affected Parties, existing tenure holders, and public stakeholder groups.

### **3.2.1. Landscape Management Units (LMUs)**

The first major tool that the Plan uses is the Landscape Management Unit (LMU). These are distinct areas of land that typically have well-defined ecological boundaries (i.e., landforms, vegetation, and drainage). Some LMUs are further defined on the basis of unique ecological characteristics that require special management (e.g., lakes and wetlands on permafrost). Other units are further defined by the clustering of common existing or potential land use (e.g., Eagle Plains oil and gas basin, historical/existing mineral claim areas in the Wind River drainage, or overlapping First Nations community resource use as in the Hungry Lakes area).

LMUs are identified in the Peel Watershed Planning Region on Map 2 in Appendix A. Using the second major tool of the Plan, each unit has been assigned its own general land-use designation

or zone (see 3.2.4), and is defined according to a set of criteria agreed by the Parties. Boundaries of most LMUs have been created based upon one or more of the following key reasons:

- major wildlife migration corridors (e.g. river valleys);
- common land-use activity and/or values (e.g. subsurface resources);
- aquatic stewardship as a dominant management priority (e.g., watersheds).

### **3.2.2. General Management Directions and Monitoring**

The third major tool that the Plan uses is called General Management Directions and Monitoring (GMDM). These directions are expressed as recommended land management goals, objectives, strategies, and best management practices to guide regulatory processes over time. GMDMs operate at two scales: (1) over the entire planning region or (2) within specific LMUs.

Land management goals are statements that express general land-use intent, while objectives provide more specific and measurable terms to achieve desired outcomes. Strategies are actions or methods that land managers can use to achieve specific objectives. Strategies may include recommendations for further research, regulatory/policy development, and/or best management practices. Best management practices are operational methods that can reduce the intensity, impact, or duration of land-use activities. Many best management practices developed for Yukon relate directly to achieving the objectives and strategies of this Plan.

Wherever applicable, the GMDM is further developed into results-based indicators to support cumulative impact monitoring. Such specific land-use monitoring tools ensure that Plan goals and objectives are being met. Indicators such as water quality or surface disturbance are used to measure the success of the general management intent, and ultimately a particular objective or goal.

### **3.2.3. Management Conditions**

Management conditions can be thought of as rules that the Commission considers essential for guiding land uses in the planning region. This leg of the land-use planning framework is critical for maintaining underlying ecosystem values that are consistent with the Commission's view on sustainable development. They cover a range of important topics that strive to address key resource management issues and prevent potential problems from occurring. These issues may range from potential environmental degradation to water, fish and wildlife effects or land-use conflicts. All management conditions must be considered during Project approvals. Some we refer to as Class A conditions are considered mandatory to achieve conformity with the Plan and would be subject to a formal amendment process, while Class B conditions have some flexibility for minor change or variance. In section 3.5, we describe what is meant by Plan conformance, and how the Plan might be changed through an amendment or variance during implementation.

### 3.2.4. Land-use Designation or Zoning

Land-use designations or zoning are used to provide spatial separation for mutually incompatible land uses across the planning region. They provide the broadest level of guidance for land and resource decision-making. They consist of different landscape categories, or zones, together with a vision statement (desired future state), and management conditions and objectives that describe the management intent for an LMU.

The designation system:

- recognizes existing land-use tenures and provides guidance about the future of such uses, which may or may not conform with the management intent of any given LMU;
- allows varying degrees of both renewable and non-renewable resource use, subject to designation and LMU-specific conditions;
- places particular emphasis on managing for ecosystem and cultural values.

We have strived to achieve inter-regional consistency in this Plan by linking with other land-use zoning systems developed by the Gwich'in Land Use Planning Board and the North Yukon Planning Commission, though some terminology is unique to the Peel Watershed Regional Land Use Plan.

## 3.3. Description of Land-Use Management Zones

The Plan creates two major land-use planning/management zones to guide future land-use decisions in the region: Special Management Areas and Integrated Management Areas:

Special Management Areas flow from definitions in Chapter 10 of the Umbrella Final Agreement and are also referenced in FNFA's<sup>1</sup>. They are further broken into four areas of emphasis: (i) heritage management (ii) fish and wildlife management, (iii) watershed management and (iv) general environmental protection. The recommended zone for each LMU is shown on an indexed Map 2, Appendix A.

LMUs are identified as either an Integrated Management Area or a Special Management Area according to the current understanding of:

- ecological sensitivities and pressure to develop resources;
- availability of current regulatory tools to address public concern for valued ecosystem resources for addressing potential significant environmental effects;
- ability of non-renewable and renewable resource uses to be integrated, depending on the types of landscapes and resource users;

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<sup>1</sup> The NNDFFA Implementation Plan provides specific guidance on the designation of an SMA including referral of such proposals to the Mayo and District Renewable Resources Committee or Historic Resources Board.

- the long-term vision of the Parties about regional land-use management and sustainable development as advised through the PWPC's Senior Liaison Committee and government submissions; and
- public values and aims as stated in consultation processes.

#### **The Umbrella Final Agreement, Chapter 10: Special Management Areas**

##### 10.1.0 Objective

10.1.1 The objective of this chapter is to maintain important features of the Yukon's natural or cultural environment for the benefit of Yukon residents and all Canadians while respecting the rights of Yukon Indian People and Yukon First Nations.

##### 10.2.0 Definitions

In this chapter, the following definition shall apply.

"Special Management Area" means an area identified and established within a Traditional Territory pursuant to this chapter and may include:

- (a) national wildlife areas;
- (b) National Parks, territorial parks, or national park reserves, and extensions thereof, and national historic sites;
- (c) special Wildlife or Fish management areas;
- (d) migratory bird sanctuaries or a wildlife sanctuary;
- (e) Designated Heritage Sites;
- (f) watershed protection areas; and
- (g) such other areas as a Yukon First Nation and Government agree from time to time.

### **3.3.1. Lands in Special Management Areas**

The broad management intent of lands in Special Management Areas is conservation and/or protection of the following priorities:

- Hydrological function/water quality
- Caribou habitat and/or migrations
- Wilderness landscapes
- Ecological integrity
- Heritage and cultural resources

The Plan identifies four SMA management emphases (heritage, fish and wildlife, watershed, and general protection), based on the definitions in Chapter 10 of the UFA and FNFAs and the consensus recommendation of the Parties. The Plan also provides priority recommended regulatory tools that reflect the Yukon Government's authority under the UFA to manage non-settlement or public lands. The goal is to conserve and/or protect natural or cultural features for resource users of the planning region, local communities, Yukoners, and Canadians as a whole.

In developing these SMAs, the Commission provides a clear rationale and considers the linkages to all relevant chapters/clauses within the Umbrella Final Agreement and affected First Nation Final Agreements.

Management direction for land use in all SMAs is intended to reduce long-term resource-use conflict by limiting the surface footprint to a minimum acceptable level. Existing land-use tenures (i.e., mineral claims, oil and gas dispositions, and related activities) will be allowed to continue as a non-conforming use, but will be subject to specific management conditions. Land-use management conditions may be similar in all SMAs regardless of management emphasis, but may differ for any given LMU based upon area-specific rationales.

In all SMAs, new surface access (all-season or winter road, rail, etc.) is prohibited even where a mineral claim, coal license, or oil and gas disposition already exists. No new industrial (surface or subsurface) uses or tenures (including infrastructure, facilities, and waste disposal operations) will be permitted in an SMA. A formal Plan amendment would be required to change any of these core Plan recommendations.

Specific steps are set out in Chapter 10 of the UFA for establishing an SMA, and are intended to be consistent with both the regional land-use plan and the development assessment process (10.6.0). This Plan provides guidance for this process by outlining the rationale, management objectives, and conditions for SMAs. Key aspects of Chapter 10 include:

- Reference to established procedures within each First Nations Final Agreement, or deferral to laws of general application (e.g., regulatory designation tools such as the Parks and Land Certainty Act, Environment Act, etc.).
- Referral to an appropriate body such as Parks Canada or the Yukon Heritage Resources Board for heritage-based SMAs, or to Renewable Resource Councils concerning areas of overlapping traditional territory.
- Development of a management plan for each SMA within five years, and a review every ten years.



**Figure 3.3:** Traditional Use Activities along the Peel River with Elder Robert Alexie Sr. (Photo: PWPC)

**Table 3.1:** Regulatory designation tools for protection.

Type of Protection	Establishing Statute	Description and Purpose	Yukon Example
<b>Federal Protection</b>			
National Wildlife Area	Canada Wildlife Act (Canada)	<ul style="list-style-type: none"> <li>To protect lands for the purpose of research, conservation and interpretation in respect to migratory birds or, with the agreement of the Yukon Government</li> </ul>	Nisutlin Delta National Wildlife Area
Migratory Bird Sanctuary	Migratory Birds Convention Act (Canada)	<ul style="list-style-type: none"> <li>To protect critical habitat of birds subject to the Migratory Birds Convention, 1994 (i.e. international transboundary birds)</li> </ul>	None in Yukon Anderson River Delta (NWT)
National Historic Site	Parks Act (Canada)	<ul style="list-style-type: none"> <li>To protect places of profound importance to Canada's history, including defining moments, creative endeavours and/or cultural traditions.</li> </ul>	Chilkoot Trail National Historic Site
<b>Territorial Protection</b>			
Ecological Reserve	Parks and Land Certainty Act (Yukon)	<ul style="list-style-type: none"> <li>To protect an area of unique natural significance, unique ecological characteristics or importance for a population of rare or endangered flora or fauna which is intended to remain in its natural state</li> <li>Statutory prohibition on industrial development within an ecological reserve</li> </ul>	Coal River Springs and Fishing Branch Ecological Reserves
Natural Environment Park	Parks and Land Certainty Act (Yukon)	<ul style="list-style-type: none"> <li>To protect a representative or unique landscape that displays ecological characteristics or features of one or more of the Yukon's ecoregions</li> </ul>	Tombstone Territorial Park Agay Mene NEP (pending)
Wilderness Preserve	Parks and Land Certainty Act (Yukon)	<ul style="list-style-type: none"> <li>To protect an ecological unit or representative core area by conservation biodiversity and ecological viability</li> <li>Statutory prohibition on industrial development within a wilderness preserve.</li> </ul>	Fishing Branch Wilderness Preserve
Habitat Protection Area	Wildlife Act (Yukon)	<ul style="list-style-type: none"> <li>To protect habitat based upon the sensitivity of the area to disturbance, the likelihood of disturbance and the importance of the area as habitat for any population, species or type of wildlife</li> </ul>	Horseshoe Slough, Lhutsaw, Dhaw Ghro, Nordenskiold, Fishing Branch Habitat Protection Areas
Historic Site	Historic Resources Act (Yukon)	<ul style="list-style-type: none"> <li>To protect a site that is an important illustration or locality of the historic or pre-historic development of the Yukon, of the peoples of the Yukon and their respective cultures, or of the natural history of the Yukon.</li> </ul>	Buildings only (e.g. Dawson, Mayo)
Wilderness Management Area	Environment Act (Yukon)	<ul style="list-style-type: none"> <li>To preserve the wilderness resource in the Yukon (i.e. natural resources including land, water, forest, wilderness, wildlife, and other natural resources over which the YG has authority, ownership or control)</li> </ul>	None designated

## Heritage Management Emphasis

All affected First Nations have stated that the entire planning region is important for heritage and traditional-use interests. Certain shared traditional-use territories, however, showed many common elements among historical, current, and desired future community-use objectives. The Plan identifies areas of high cultural importance in landscapes of moderate to high ecological sensitivity as “heritage emphasis” SMA zones. The Plan also identifies several other smaller areas as culturally important areas or sites. These are shown on the Heritage and Cultural Resources Map (Map 4, Appendix A).

Since cultural and traditional-use activities are to be maintained under UFA/FN agreements, they form the primary management direction in several specific areas<sup>2</sup> of the planning region. Any proposed developments in these areas would require enhanced consultation with all affected First Nations beyond what may be required elsewhere in the planning region. This designation is intended to provide a holistic approach so that character-defining elements — landscapes, traditional uses, and cultural associations or meanings — can be managed in an integrated manner, using Yukon and First Nation policy, legislation, and the UFA. The Commission suggests that current regulatory tools include Heritage Sites and Territorial Parks (YG), or National Historic Sites<sup>3</sup> for cultural landscapes (Parks Canada).

## Fish and Wildlife Management Emphasis

The management intent for this type of zone is the emphasis of fish and wildlife. Renewable resource uses and associated surface-use tenures (e.g., facilities, structures) are allowed. During the term of this Plan, access to existing mineral claims by air is conditionally allowed by conventional practice, following general and special management directions and strategies by each LMU. Industrial development and associated access would require a comprehensive impact/benefit assessment (both socio-economic and environmental).

Existing regulatory tools that might serve the Commission’s intent for this general zone or designation include ecological preserve or wilderness preserve (Parks and Land Certainty Act), habitat protection area, ecological reserve, wildlife reserve, or wildlife area (Environment Act).

## Watershed Management Emphasis

Although the Peel region has a general management direction to maintain water quality and flows, the Commission identified at least one LMU that needs special emphasis. Indicators include both high land and water-use activity (or potential activity) and a complex, sensitive drainage system (including groundwater storage, lakes/wetlands, and high elevation water courses). Such an emphasis requires regulatory agencies to have adequate baseline hydrological data and other management measures for protection. In this type of zone, possible regulatory

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<sup>2</sup> Yukon and First Nation governments have specific management responsibilities towards historic and heritage sites and areas that are well-defined in the Historic Resources Act and Heritage Chapter 13 of the UFA.

<sup>3</sup> Parks Canada has signed an MOU for a National Historic Site designation with the Sahtugot’ine and Métis people of the NWT. The area known as “Sahoyúé- Şehdacho” represents an Aboriginal cultural landscape of 5587 square kilometres (approximately the size of Prince Edward Island) located on two peninsulas at Great Bear Lake in the Mackenzie Lowlands, NWT. The site has great cultural and spiritual significance to the Sahtugot’ine.

tools include Watershed Protection Area, Habitat Protection Area (YG Environment Act), or Ecological Preserve (YG Parks and Land Certainty Act).

### **General Environmental Protection Emphasis**

The intent of this zone is the support and maintenance of ecosystem function, wilderness integrity, biodiversity, and peaceful enjoyment of land while allowing very limited, provisional access for renewable resource activities. The Plan recommends that these zones be withdrawn from the establishment of new tenures (e.g., mineral claims, oil and gas exploration permits, lodges, big-game outfitting base camps) in order better to protect natural resources of very high ecological and heritage/cultural value. The Plan allows existing tenures in these zones, subject to specific management conditions. A future Commission would issue variances for such uses on a case-by-case basis to maintain the integrity of this rigorous zone designation.

Areas in the Peel region under a protection emphasis are unique because of key functions and purposes. These include: (a) rare, threatened, or endangered species, or species of special concern; (b) representative examples of natural phenomena; (c) unique natural features; (d) genetic diversity; and/or (e) peaceful enjoyment for cultural use.

The Commission views a Wilderness Preserve (Parks and Land Certainty Act) as the appropriate regulatory tool. Another tool might be an Ecological Reserve, given that the Plan’s core recommendations prohibit new surface development.

#### **3.3.2. Lands in Integrated Management Areas**

This designation permits existing and future surface uses and subsurface resource extraction while limiting land-use conflicts and maintaining long-term ecosystem function. IMAs still have very high ecological and heritage/cultural values within sensitive biophysical settings. However, the Commission believes these zones can accommodate industrial resource development in a working landscape. The overarching “no winter or all-season road access” condition will remain for all IMAs. However, the Plan provides an amendment process if industrial development can meet the environmental and socio-economic goals of the Plan (see 3.5).

The Plan proposes a low level of development intensity for IMAs in the Peel region (with the possible exception of the Dempster Development Area<sup>4</sup>). However, unlike SMAs, the Plan gives some priority to subsurface resource development for IMAs, including exploration of existing tenures and consideration of new subsurface tenures. The following general management conditions will apply in all IMAs:

- Coordinate the resource development industry and other resource users to limit conflicts;
- Provide for the infrastructure necessary for exploration and development. With the exception of the Dempster Highway corridor (IMA 2), the Plan designates development of access as a non-conforming use. Winter roads require a Plan variance, and all-season roads require a Plan amendment;

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<sup>4</sup> The Dempster Highway Development Corridor or LMU 2 is expected to receive unprecedented development pressure in the near future. Given the overlap of resources and land use interests, this area has been recommended for future sub-regional planning. See 4.2 LMU 2 for further information on this unit.

Follow current best management practices and/or other general management directions for water quality protection, permafrost protection, etc; however, regional access by air (float plane, helicopter, and heliportable) is a conforming means of access during exploration phases of development within IMAs;

- Research linear density and footprint indicators based on realistic scenarios for likely development (e.g., a gas field over time) and include as a future management condition;
- Limit land-use impact, maintain ecological integrity, and protect heritage or cultural resources.

### 3.3.3. Enhanced Consultation

The Plan calls for enhanced consultation for several LMUs, primarily those zoned as Integrated Management Areas. This guideline makes sure that affected First Nations are consulted before any significant new land use. In many cases, existing regulations already specify higher levels of consultation. Nonetheless, the Plan calls for enhanced consultation in cases where existing regulations are unclear or weak. Based on its review, the Commission considers the Oil and Gas Disposition process as satisfactory and a standard for other consultations.

The enhanced consultation called for in this Plan is not meant to replace existing consultation requirements. Instead, it is meant to allow the Parties a full review of proposals that may affect their land-use interests. Other goals of enhanced consultation are<sup>5</sup>:

- Identifying specific areas that require a more thorough understanding of effects before granting future land use dispositions. These areas are typically too small for the scale of a Regional Land Use Plan.
- Ensuring that adequate measures are in place to avoid or mitigate effects on areas of high significance or value.



Figure 3.4: Plotting a flight plan in the Peel (Photo: PWPC)

<sup>5</sup> adapted from [www.centralelgin.org/portal/uploads/d/DonLeitch/3225.pdf](http://www.centralelgin.org/portal/uploads/d/DonLeitch/3225.pdf)  
*Recommended Peel Watershed Regional Land Use Plan (December 2, 2009)*  
 (Revised January 8, 2010)

### What is Enhanced Consultation?

The Plan draws its definition of *enhanced consultation* from the consultation protocol in the Yukon Oil and Gas Act and the definition of *consultation* in the Umbrella Final Agreement. *Consultation* in the Umbrella Final Agreement provides three things: 1) adequate notice of the matter (e.g., new land use or land tenure) to the parties; 2) a reasonable period for the parties to prepare and present their views; and 3) full and fair consideration of these views.

In this Plan, *enhanced consultation* asks government representatives (e.g., the Minister) to consult confidentially with the First Nation\* before any new and significant land uses or land tenures are made available on that First Nation's traditional territory\*\*. Before any new and significant land uses or land tenures on settlement land, the First Nation should consult with government representatives. Finally, the land owner (i.e., the Minister or the First Nation) may make any decision considered appropriate. In other words, *enhanced consultation* does not confer a veto on the affected First Nation. In Section 4.3, a recommendation is offered on the development of a policy on enhanced consultation.

\**First Nation* includes all regional Yukon First Nations and the Tettit Gwich'in First Nation of the Northwest Territories. The Gwichya Gwich'in Council, also of the Northwest Territories, should be consulted before land-use decisions along the eastern edge of the Gwich'in Primary Use Area.

\*\*For the purposes of this definition, *traditional territory* includes the Traditional Territories of all regional Yukon First Nations *and* the Gwich'in Primary Use Area

### 3.3.4. Sub-Regional Planning

This Plan provides for sub-regional planning as an additional planning tool based upon UFA (11.2.1.9, 11.8.3 and 11.8.4), and is available to both settlement and non-settlement lands. The intent of this tool is to enable detailed planning and consultations about resource use and development along the Dempster Highway Corridor, respecting both existing legislation and the desired future state of this land management unit. Such planning must be based upon mutually agreed planning boundaries and terms of reference for this Integrated Management Area.

#### **The Yukon Department of Energy, Mines and Resources, et al. v. Little Salmon/Carmacks First Nation, et al.**

In November 2009, a dispute between the Little Salmon/Carmacks First Nation and the Yukon Government went to the Supreme Court of Canada. At issue was whether the Yukon Government has a duty to consult with a First Nation when development is proposed in that First Nation's traditional territory, but outside of any settlement lands.

This Plan recommends enhanced consultation to avoid such disputes, to enable consideration of values and features that are not considered at a regional scale, and to enhance First Nations participation in the regional economy.

### 3.4 Plan Conformity and Changing the Plan: Variances, Amendments and Periodic Review

The Commission recognizes that the Peel Watershed Regional Land Use Plan may need modifying once it is approved. The Plan guides consideration of existing and new land-use proposals through the regulatory approval process. Chapter 11 of the Umbrella Final Agreement also (11.4.5.10) provides for such Plan monitoring and review if the Parties agree concerning their respective jurisdictions and lands. Project reviews by YESAB, or a formal Plan review at a future date, may also lead to Plan modifications. Various factors that may influence decisions about changing the Plan are:

- new land management concepts or approaches;
- significant new land and resource information;
- better knowledge about land-use effects;
- changed societal values;
- changed demand for land and resources in the region;
- changes or emerging technology affecting land-use management.

The Plan identifies three ways of allowing land uses to change from their current status in the Plan:

- through the authorization of Plan variance (non-conforming uses that are inconsistent with the Plan);
- through amendments to the Plan (alterations to Plan framework, policy, or management directions);
- through Plan review (a systematic process for updating the Plan, either after a five to seven year period or when the Yukon and signatory First Nation Governments require a review).

Both the First Nation Final Agreements and YESAA legislation outline the process for approving an individual new project application that does not conform to the Plan (this is referred to as a Plan variance). However, these agreements are less clear on Plan amendment and Plan review processes. The PWPC identifies three means of allowing land uses to occur that vary from the current version of the plan through the undertaking of:

- **Plan Variances** (non-conforming uses that are inconsistent with the Plan);
- **Plan Amendments** (alterations to Plan framework, policy or management directions presented in the Plan);
- **Plan Review** (a systematic process for updating the Plan after a 5-7 year period or when the Yukon and signatory First Nation Governments agree a plan review is required).

Both the First Nation Final Agreements and YESAA legislation make clear the process by which an individual project can take place that does not conform to the plan (Plan Variance) but these agreements are less clear on the Plan amendment and Plan review process. In determining how

its various types of Plan recommendations are to be considered, the Commission developed three categories:

- **First**, certain recommendations are presented as core or mandatory directions for the Plan. They are mandatory during all project approvals in order to maintain conformity with the Plan. If not followed, they would fundamentally alter the management intent of the Plan and would be a contravention of the Commission’s Statement of Intent and/or Plan Principles. These recommendations would require that a Plan Amendment be considered by the Commission and would typically apply to major land-use proposals in the planning region. Amendments pertain to the following:
  - Section 4.2 LMU Boundaries; LMU Zoning; LMU Primary Regulatory Designation Tool, Allowable Uses and Class A Management Conditions
- **Second**, another set of recommendations were identified as important directions for regulatory bodies to consider for project approvals to be in conformance with the Plan. If not followed, they would erode the management intent of the Plan; therefore these recommendations would require a Plan Variance to ensure that any given land-use proposal could be brought into conformance with the Plan based upon site-specific considerations. This recommendation category pertains only to the following:
  - Section 4.2 Class B Management Conditions
- **Third**, the remaining recommendations were identified as supplementary directions for the Plan. They are proposed for the Parties to undertake to support the management intent of the Plan, or improve decision-making on land use over time. Once adopted, they could be modified at the Plan review stage. This category of recommendations pertain to the following:
  - Section 4.1 or 5.0 Policy or Research Recommendations
  - Section 4.2 Special Management Considerations
  - Section 4.3 General Management Directions
  - Appendix B: Supplementary Management Considerations (Best Management Practices or Strategies)

**Figure 3.5: Guiding activities in the BonnetPlume watershed (Photo: PWPC)**



### 3.4.1. Plan Variances

Plan variances are for smaller individual projects that do not conform to the Plan and that enter the permitting process through the Yukon Environmental and Socio-Economic Assessment (YESAA) process. Plan variances are to be granted only to projects that are small enough to be processed through a YESAA Designated Office Evaluation.

In Plan variance decisions, the only role of the Commission is confirming whether or not a project is conformity with the Plan. The YESAA Designated Office is then required to recommend ways in which the project could be made to conform to the Plan (12.17.3, First Nation Final Agreements). The Yukon or First Nation Governments must then decide whether to allow the variance, and must notify the Commission of their decision.

It is important to establish a Plan variance process that does not involve a conformity check for every project, or at least limits the work associated with this land claim obligation. As a practical solution, the Commission has proposed using YESAA project screenings and reviews for individual conformity checks. Alternately, the Commission could delegate project-by-project conformity checks to its own staff or to a planner seconded from the Yukon Land Use Planning Council.

### 3.4.2. Plan Amendments

Plan amendments will occur only when there is recognition that key elements need to be altered. Plan amendments could involve:

- changing key Plan goals, principles, or policy recommendations (e.g., surface access designations);
- re-configuring the management framework and associated action (e.g., modifying LMU boundaries, changing the land-use designation system).

Triggers for a Plan amendment could be:

- frequent decisions by the Yukon or First Nation Governments to allow land-use variance (Note: This is not a desired trigger for Plan amendment, as Plan variances are to be avoided whenever possible);
- a recommendation by the Peel Watershed Planning Commission, the Yukon Government, or First Nation Governments based on territory-wide land-use policy initiatives, including public consultation processes;
- a decision by the Yukon or First Nation Governments to allow a large-scale project that does not conform to the Plan and that is associated with a YESAB Executive Screening, YESAB Panel Review, or similar decision-making process (e.g., Canadian Environmental Assessment Act).

The process for amending the Plan would be similar to the process of Plan creation (Figure 3.7). The Commission would consider the recommended amendment before the Yukon or First Nation governments approved, modified, or rejected it. The Commission is required to make a recommendation on those amendments submitted by the Yukon Government (for public land) or a First Nation Government (for settlement land), but is not required to make a recommendation if the amendment was presented by the public or stakeholders. A public and stakeholder notification procedure is a key part of any Plan amendment. The Commission and the parties

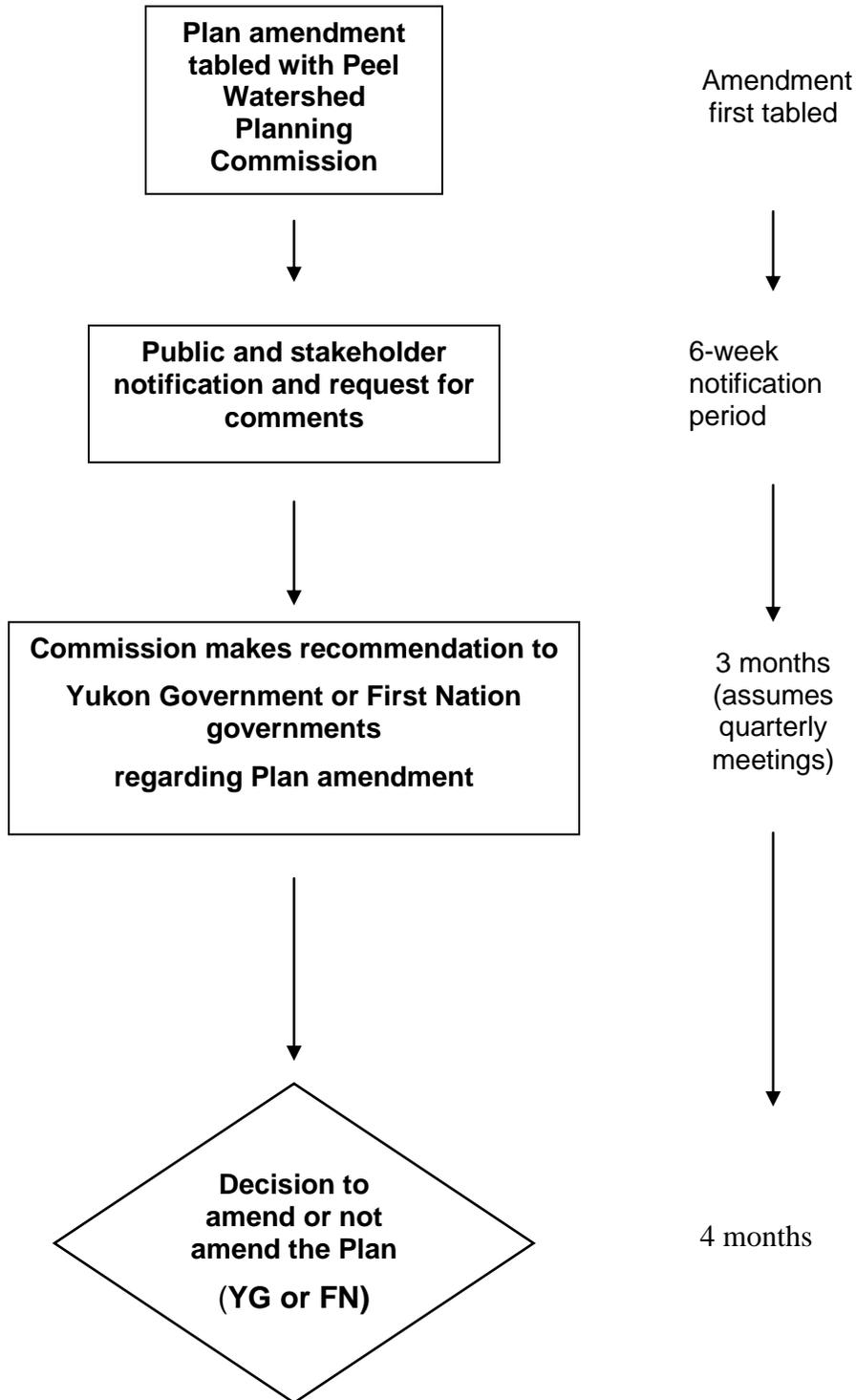
would determine the scope, but at a minimum it would include newspaper announcements, letters/e-mails to stakeholders, website postings, and other communication tools (e.g., radio). The notification should include:

- a brief summary of the amendment;
- the place, date, and time of the Commission meeting to consider the amendment;
- the methods of submitting comments to the Commission.

The Commission must outline its Plan review process six months before it occurs. The Plan review will take no longer than one year, and the approval process will be the same as that of the original Plan, as outlined in Section 11.6.0 of the First Nation Final Agreements. If the origin of the amendment is a project stemming from a YESAB Executive Committee screening or YESAB Panel Review, the timeline for the amendment process shall be within the timeline established by the YESAA process (see YESAB process chart). Other amendments would require a minimum of two Commission meetings before the Commission makes a recommendation to the Yukon Government or the First Nation Governments.



**Figure 3.6: Scenic views in the Snake River valley (Photo: PWPC)**



**Figure 3.7: Potential Plan amendment process for Peel Watershed Regional Land Use Plan.**

### 3.4.3 Plan Review

The Plan review is a process of comprehensive examination. It is an opportunity to make changes to the Plan by evaluating its success in meeting its goals and objectives. A review may require modification of the Plan to reflect changing land status or conditions within the region. Major land decisions, such as those regarding the status of Interim Protected Areas, may also be required. Changes to the Plan should be expected, as the Peel Watershed Planning Commission will be periodically monitoring land-use information and issues throughout the life of the Plan.

Land use planning is an iterative or feedback-based process requiring up-to-date information supplied through research and consultation. Completing the research priorities identified in Section 4.0 can improve the information base necessary to guide future land-use decision-making. It is the Commission that is primarily responsible for conducting the first Plan review. It will take place after a five to seven year period, or when the Yukon Government and First Nation Governments agree that a Plan review is required.

The Plan review should assess:

- whether the Plan met the principles, goals, and objectives outlined in Section 1 of the Plan;
- whether implementation was carried out, and whether there were successes, failures, or omissions;
- the number and nature of requests for Plan variance and the potential implications for the Plan;
- the accuracy of information and forecasts used to develop the Plan;
- whether the overall Statement of Intent for the planning region was met.

As part of the Plan Review, there will be a consultation process. Communities, approval agencies, stakeholders, and other groups will be solicited for feedback on the effectiveness of the land use plan in meeting management objectives, addressing land use issues and meeting the terms of the FNFA's.

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