



Northwest Territories Protected Areas Strategy

Guidelines for Compensation of Third Party Interests

I. INTRODUCTION

The Guidelines for Compensation of Third-Party Interests are intended solely as guidelines which may be voluntarily adopted to address issues which may arise in regard to the compensation of holders of existing interests facing negative impacts as a result of the creation or modification of a protected area, and to provide a basis for mutually acceptable negotiated settlement. Some suggested procedures for notification of the intent to advance candidate protected areas are also provided.

These Guidelines are not intended, and should not be construed, to create or affect any rights or obligations of any person, government or other body. In addition, the participation of any person, government or other body in developing, drafting, approving or otherwise dealing with these Guidelines is hereby expressly stated to be without prejudice to any rights or obligations of such person, government or body.

Existing land claim agreements in the Northwest Territories contain provisions for expropriation of settlement lands, including the scale and form of compensation and dispute resolution processes. These guidelines are intended to be consistent with all land claims agreements, Aboriginal and treaty rights, self government agreements and overlap agreements, and apply only to federal Crown lands. In the event of any unforeseen conflicts between these guidelines and such agreements, the latter takes precedence.¹

Direction Set by the Northwest Territories Protected Areas Strategy

One principle of the NWT PAS is to avoid where possible, designations on lands where the existing third-party interest is incompatible with the values of the candidate protected area. The NWT PAS includes provisions for the identification of existing surface and subsurface interests at an early stage in the planning process.² In the event that no other area meets the criteria for evaluation as a protected area, cooperative measures will be sought to resolve conflicting values. Negotiation with the interest holder by the sponsoring agency may be required.

II. OBJECTIVES OF THE GUIDELINES FOR THIRD-PARTY COMPENSATION

The objectives of the guidelines for third-party compensation are:

1. To define the context in which compensation may be provided to existing third-party interests facing negative impacts resulting from the establishment or modification of a protected area, through the identification of principles.
2. To outline and clearly define the procedure for notifying third party interest holders of the intent to advance candidate protected areas under the NWT PAS.
3. To provide the basis for a negotiated settlement process for third-party interest holders and the sponsoring agency of the candidate protected area.

III. PRINCIPLES FOR COMPENSATION OF THIRD-PARTY INTERESTS

The following principles present the basis for the provision of compensation to an existing third-party interest holder:

1. In situations where the objectives of a third-party interest holder and the sponsoring agency are incompatible, negotiations leading to an acceptable settlement may be conducted in a fair and timely manner.
2. All decisions regarding the continuation or limitation of a third-party interest should be consistent with government legislation, policies and practices in such matters.
3. A third-party interest holder and the sponsoring agency should consider alternatives to cash compensation for lost interests.
4. The sponsoring agency is responsible for leading and coordinating the compensation negotiations for a third-party interest.
5. A third-party interest such as outfitting, a recreational lease or a rural residence may be compatible with the conservation objectives of the candidate protected area, in which case a negotiated settlement for compensation may not be required.
6. A third-party interest such as sustainable timber harvesting, a mineral claim or mineral lease, may or may not be compatible with the conservation objectives of a candidate protected area. The particular circumstances of each case will determine whether or not the sponsoring agency would initiate the acquisition of the interest.

7. A third-party interest issued within the boundaries of a candidate protected area, established prior to the public announcement of the intent to seek interim protection under the NWT PAS, should be recognized and respected throughout the process.
8. In situations where access to a third-party interest lying outside the boundaries of a candidate protected area has effectively been lost, a negotiated settlement may be required.
9. The quantum and mode of compensation payable should be established through negotiation. The value of a third-party interest should be determined by an independent and accredited valuator if the parties cannot come to mutual agreement. Legal proceedings should be a last resort.

IV. PROVIDING NOTIFICATION TO THIRD-PARTY INTEREST HOLDERS

Opportunities for information sharing and consultation with stakeholders about protected area proposals will vary from region to region due to differences in ecological, cultural and political settings.

The following are points of communication and information sharing with third party interest holders in the NWT PAS process:

1. The preparation of a protected area proposal may provide opportunities for notification and consultation with third party interest holders. If a land withdrawal is sought as a means of providing interim protection to the area, the application for land withdrawal requires a description of the consultation process with various interest holders.
2. Once the PAS Secretariat receives a protected area proposal, various methods will be used to notify as many third-party interest holders as possible of the intent to advance the area through the NWT PAS process. For example, notice submitted to Northern News Services or to industry websites.
3. The area under consideration will be delineated on maps provided by the PAS Secretariat and will be distributed to communities, regional organizations, land claim bodies, regulatory agencies and all potentially affected third-party interest holders.
4. After interim protection measures are in place, the sponsoring agency and proponent organization will provide notice to all holders of existing interests in the proposed protected area as soon as possible.

V. SCALE OF COMPENSATION

The method of valuation that is applied to a compensable third-party interest should be based on the following principles:

1. The valuation of a third-party interest should be based on a fair approach that is commonly used in comparable situations and is appropriate to the stage of investment or development of the interest.
2. An independent and accredited valuator selected from a mutually agreed upon roster should be used to determine the value of a third-party interest, if the parties cannot come to a mutual agreement.
3. The method of valuation and the approach used should be clearly reported and justified.
4. Examples of factors commonly used in determining the amount of compensation include:
 - the valuation date;
 - stage of development and or investment in the third-party interest;
 - the value of the lands for the purpose of harvesting of wildlife and the cultural or other special value³; and
 - assessment of cost, or potential costs, associated with site contamination, habitat loss, road construction, stream siltation, erosion and other on going effects, as well as environmental clean up and site remediation costs.

Compensation can take various forms, and options for alternatives to cash settlement should be presented in the initial negotiation stages. More than one mode of compensation may be implemented in the final compensation settlement.

VI. COMPENSATION NEGOTIATION PROCESS

The following outlines the recommended process for compensation negotiations under the NWT PAS:

1. Once a decision has been made to formally establish a legislatively protected area at Step 6 of the NWT PAS, the sponsoring agency should initiate compensation negotiations with any third-party interest holders that would be negatively affected by establishment of the protected area. Prior to entering into negotiations the participants should clarify whether or not such negotiations are without prejudice to their respective legal rights.
2. Alternatives to cash compensation should be presented and discussed at this

stage of the negotiations.

3. If the parties cannot agree on the scale of compensation, an independent and accredited valuator should be selected and agreed upon by both parties.
4. If negotiations are not progressing in a satisfactory manner, the parties may choose to use alternative dispute resolution mechanisms.
5. Should the parties still fail to reach an agreement on the form of compensation, the next step could be for the parties to enter into the process of binding arbitration. Both parties would mutually decide on an arbitrator.

Endnotes:

1. NWT Protected Areas Strategy, September 27, 1999, page 1. This document is intended to provide guidance to those parties involved in the NWT PAS. It is not intended to restrict the scope of any discretionary power conferred by law.

2. Refer to the NWT Protected Areas Strategy, Section A 3.3.3, and the NWT Protected Areas Strategy Implementation Steps Flow Chart, September 2000

3. Gwich'in Comprehensive Land Claim Agreement, Chapter 23.1.11, and Sahtu Dene and Metis Comprehensive Land Claim Agreement, Chapter 24.1.11.