NUNAVUT PLANNING COMMISSION
PUBLIC HEARING ON THE 2016 DRAFT NUNAVUT LAND USE PLAN

WORLD WILDLIFE FUND CANADA

PRE-HEARING WRITTEN SUBMISSIONS

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TABLE OF CONTENTS

Contents

WORLD WILDLIFE FUND CANADA
Submission for the Public Hearing on the 2016 Draft Nunavut Land Use Plan

1/13/2017

1 Background and Objectives

WWF's mission is to stop the degradation of the planet's natural environment and build a future in which humans live in harmony with nature by conserving the world's biological diversity, ensuring that the use of renewable natural resources is sustainable and promoting the reduction of pollution and wasteful consumption.

Climate change is bringing new opportunities for economic growth for northern communities as annual sea ice retreats, opening the way for tourism, commercial shipping, fishing, and extractive development in Nunavut. But these changes also bring new challenges, with the disruption of wildlife habitat and movement patterns, change in food availability, and impediments to traditional ways of life. With Arctic marine and terrestrial ecosystems and the endemic species that these ecosystems support already stressed by climate change, it is vital to ensure that the effects of economic development are mitigated at every opportunity. Ecosystem-based management and sound marine and land use planning is essential to ensure the sustainability of future economic development, to conserve the ecosystems services of significant habitats in the future, and to safeguard the wellbeing of northern communities.

As an organization, we have been actively engaged in the development of the draft Nunavut Land Use Plan (NLUP), providing expert reports, data sets, geographic information, specific recommendations and comments, attending numerous technical and procedural meetings, and supporting the participation of others groups. We thank the Nunavut Planning Commission (NPC) for the opportunity to submit our final comments on the 2016 draft of the NLUP, and look forward to the upcoming final hearing.

2 General Comments and Recommendations

2.1 Fit with the integrated regulatory system

We commend the NPC on their 2016 draft of the NLUP, particularly the habitat protections afforded to caribou. These designations are necessary to ensure that caribou are not disturbed during the most sensitive times of their life cycle and annual migration.

It has been argued that the issue of safeguarding caribou herds from the detrimental effects of industrial development can be dealt with by the Nunavut Impact Review Board (NIRB) without the need for land-based protection in the NLUP. Whether or not advanced exploration or mining should be considered within sensitive caribou habitats (or indeed any habitat sensitive to disturbance) is not a question that can adequately be answered by environmental assessment. The goal of land use planning is to set the direction for land uses in these sensitive areas, and in the case of the NLUP, to potentially limit mineral development and mining within those Protected and Special Management Areas deemed to be of significant importance to Nunavummiut and the environment. The NIRB is responsible to look at a project in a specific area and the significance of impacts from that one project along with mitigation measures

designed to address the project-specific considerations. The first, broader consideration belongs to the NPC, and in the case of habitats sensitive to disturbance, projects with incompatible uses should be prohibited subject to a plan amendment or ministerial exemption.

Attempting to address potential impacts to caribou herds through the environmental assessment and the regulatory approvals process on a case-by-case basis is a limited approach that ignores and casts aside the intention of the integrated regulatory regime envisioned by the NLCA and legislated through NUPPAA, as well as landscape level cumulative effects that affect herd health. Proper land use planning will enhance the effectiveness of the environmental impact assessment process and will provide better guidance for development interests. The result will allow for greater clarity for development proponents for areas where certain uses are prohibited, and will prevent situations where proponents invest heavily in an environmental assessment process only to be denied on the basis of reasons which would have been apparent with a proper land use plan in place.

The issues around the limited scope and scale of environmental assessment apply to the marine area of the NSA as well. There have been increased calls to limit the scope of the NLUP in the marine region, particularly when it comes to restrictions on shipping. While alternative means to ensure environmentally sound shipping practices may be possible through increased collaboration with the Nunavut Marine Council, this should not take away from the mandate of the NPC, which is to create a land use plan for the entire NSA, including the marine region. The concerns from the Government of Canada surrounding the NLUP prohibiting community resupply, emergency response, search and rescue, and issues of national security can be alleviated by making these activities compatible uses wherever necessary. The ability of the NLUP to identify marine areas of interest which are off limits to future industrial development to conserve the wildlife or habitat contained within should not be compromised by concerns which can be alleviated by making the plan more explicit in its intent, and permitting essential activities wherever necessary.

Restrictions on ice breaking are also well within the NPC's mandate. There are certain areas (whale calving areas, polynyas, caribou sea ice crossings, etc.) where seasonal prohibitions are necessary to conserve the identified valued component of the area. With the wealth of knowledge collected on the marine area, and the strong concerns heard from community members in this regard, it would be irresponsible to park marine planning for future generations of the NLUP (as suggested in the December 14th table attached to the Government of Canada letter to the NPC reporting on the signatories meeting on November 1st), and would only create greater confusion for proponents as to the permissibility of future development proposals in the marine region of Nunavut.

3 Specific Comments and Recommendations

3.1 Whale calving grounds

3.1.1 Reference in DNLUP

Page 29, Section 2.5

3.1.2 Comment

Additional sensitive whale habitats are known and should be considered for designation under the NLUP.

3.1.3 Recommendation(s)

Designate known calving and nursing areas for Arctic whales as Special Management Areas with seasonal restriction on marine activities to avoid detrimental impacts on Arctic whale populations.

3.1.4 Rationale

In the 2016 draft of the NLUP, two areas were identified by the Coral Harbour Hunters and Trappers Organization as critical calving grounds for beluga whales. These areas were designated as Special Management Areas with seasonal restrictions. Given the importance of calving to the health of whale populations, these sensitive habitats merit seasonal restrictions in the NLUP to reduce conflict between marine activities and use of these habitats by whales. Narwhal and bowhead whales also calve and rear their young in the NSA. These three species are important to consider given their cultural significance, traditional use by communities, and their ecosystemic value.

We commissioned an assessment of four marine areas of interest to evaluate the ecological and cultural values, the current and trending marine activities, the risk these activities pose on the key features, and recommendations to reduce impacts from these uses (VARD, 2016). One of the recommendations to reduce impact on marine mammals and their habitat is to establish “procedures for actual avoidance of areas/seasons and species at higher risk”. A simple restriction of shipping or other disturbances in the area when the animals are calving or nursing their young will drastically reduce the impact of vessel traffic on Arctic whales. Further to this initiative, we sought to compile all of the available spatial information from scientific and TEK studies to identify the known whale calving areas in Nunavut, along with other critical habitats (Higdon, 2017). The best available data were used to produce a GIS-based inventory of critical whale habitat spatial information within the NSA and report on the biological value of these areas. The 2016 draft of the NLUP states that belugas are sensitive to disturbance during the summer calving season, and also identifies the need to "develop an improved understanding of whale calving, and when nursing cow whales and their young are most sensitive” in section 6.8.9. This report and the accompanying data can therefore assist the NPC in planning decisions regarding whale life cycles and sensitive periods.

3.1.5 Supporting Material

Hidgon, Jeff (for WWF-Canada), Mapping critical whale habitat in the Nunavut Settlement Area (2017)

3.2 Polynyas

3.2.1 Reference in DNLUP

Page 29, Section 2.6.2

3.2.2 Comment

The Hell Gate polynya is another highly recurrent and important polynya for many Valued Ecological Components (VECs) where it would be essential to reduce the impacts of disturbance by implementing seasonal restrictions on shipping and other marine activities.

3.2.3 Recommendation(s)

Designate the Cardigan Strait/Hell Gate EBSA as a Special Management Area and implement seasonal restrictions to conserve the polynya, prohibiting shipping activities during Ukiaq, Ukiuq, Upingaksaaq, and Upingaaq.

3.2.4 Rationale

As noted in the 2016 draft NLUP, polynyas are highly sensitive to disturbance and the impact of human activities on these environments should be minimal. The Hell Gate Polynya located in the High Arctic is one of the most productive area of the region, alongside the North Water Polynya and the Lancaster Sound Polynya. This marine system is already identified as a Key Bird Habitat Site (#11, Hell Gate and Cardigan Strait) because of its importance to northern fulmar, common eider, and brant geese. However, the biological productivity of the site covers a much wider range of species, including Atlantic walrus, polar bears, narwhal, ringed seals and bearded seals. This area was classified as a "Super EBSA" during the IUCN/NRDC Workshop to Identify Areas of Ecological and Biological Significance or Vulnerability in the Arctic Marine Environment. Super EBSAs are identified when they meet most or all of the seven Convention on Biological Diversity (CBD) criteria, or when they meet one or more at a global level of significance. As proposed for the North Water Polynya and the Lancaster Sound Polynya, seasonal restrictions on shipping and other marine activities will help to maintain the integrity of the Hell Gate polynya.

3.2.1 **Sea Ice Habitat**

Reference in DNLUP

Page 30, Section 2.8

3.2.2 Comment

With a warming climate, the most northern regions of Nunavut will soon be the only refuge for many ice-dependent species. A Special Management Area designation should be implemented to preserve this global ecologically unique habitat.

3.2.3 Recommendation(s)

Designate the Last Ice Area as a Special Management Area and implement seasonal restriction to preserve the sea ice habitat, prohibiting ice breaking activities and oil and gas related activities.

3.2.4 Rationale

The multiyear pack ice provides very unique habitat for specialized Arctic species such as polar bears, seals, and ice dependent whales. The pack ice supports ecological processes that sustain life in the High Arctic and is the main feature regulating the ecosystem on which Inuit communities and wildlife alike depend. Each year, summer sea ice is melting earlier in spring and reforming later in fall. There has also been a reduction in the amount of multi-year, or older sea ice in the Arctic and an increase in the temperature and acidity of the Arctic Ocean. As soon as 2040, multiyear pack ice is expected to remain only in the north-west Canadian Arctic Archipelago. The Last Ice Area has been identified by WWF as the projected area of sea ice extent in September 2050 based on the CCSM5 model and RCP 4.5 scenario. This area highlighted in several international and national processes as an essential Arctic habitat (Arctic Council, UNESCO, DFO EBSAs), and international experts have also designated this area as a Super EBSA (Speer and Laughlin, 2011). More recently, the importance of this area was re-affirmed through the United States-Canada Joint Arctic Leader's Statement issued on December 21st, 2016.

Based on the ecological value of the multiyear pack ice and the still poorly understood impact of its alteration on the Arctic marine ecosystem as a whole, it is essential to prevent destruction of this key habitat. Icebreaking activities directly impact the structure and sustainability of the pack ice habitat and should not be allowed within the Last Ice Area. Oil spill risk should be kept to a minimum to maintain the

pristine nature of this area, and the inability of a cleanup operation to remediate contamination in these remote waters.

3.3 Sensitive Benthic Areas

3.3.1 Reference in DNLUP

Page 29, Section 2.6

3.3.2 Comment

Sensitive benthic areas create productive marine ecosystems and are habitats where distinctive cold water species thrive. Although much of the marine area of Nunavut has yet to be categorized, detrimental activities within known significant benthic areas should be prohibited in order to avoid irreversible impacts on the long-lived species that make up this ecosystem.

3.3.3 Recommendation(s)

Designate the identified coral and sponge significant benthic areas as Protected Areas and prohibit destructive activities such as bottom trawling and scallop dredging.

3.3.4 Rationale

Benthic ecosystems provide habitat, support food webs and contribute to biodiversity in marine environments. The importance of significant benthic areas was also recognized at the United Nations General Assembly (UNGA) where resolution 61/105 calls upon “States to take action immediately, individually and through regional fisheries management organizations and arrangements, and consistent with the precautionary approach and ecosystem approaches, to sustainably manage fish stocks and protect vulnerable marine ecosystems, including seamounts, hydrothermal vents and cold water corals, from destructive fishing practices, recognizing the immense importance and value of deep sea ecosystems and the biodiversity they contain”.

There have been discussions throughout the planning process regarding jurisdictions over non-quota harvest limitation such as fishing equipment restrictions. NPC has the jurisdiction to impose limits on fishing equipment to protect critical habitats. Considerations regarding prohibited uses in these areas falls under NPC’s mandate under the NLCA, Article 11 (for more details, see submission from Ecojustice on behalf of WWF-Canada regarding 2016 draft of the NLUP and regulation of bottom trawling). Bottom trawling and scallop dredging fishing techniques are causing irreversible harm to highly productive areas by removing and destroying the cold water sponge and coral communities that are the foundation of these ecosystems (DFO, 2006). Therefore, we recommend NPC designate the already identified coral and sponge areas as Protected Areas where bottom trawling and scallop dredging are prohibited. The spatial information from a recent assessment by DFO which identities these regions has been provided to NPC to assist in this regard.

3.3.5 **Supporting Material**

Department of Fisheries and Oceans Canada. 2006. Impacts of trawl gears and scallop dredges on benthic habitats, populations and communities.

3.4 Caribou habitat

3.4.1 Reference in DNLUP

Page 27, Section 2.2

3.4.2 Comment

The current draft of the NLUP is appropriate for caribou protection, and ensures a balance between habitat protection and economic development opportunities in Nunavut.

3.4.3 Recommendation(s)

Caribou core calving areas, post calving areas, freshwater crossings, and key access corridors should remain designated as Protected Areas that prohibit incompatible uses. Caribou sea ice crossings should remain Special Management Areas which prohibit incompatible uses such as ice breaking during seasonally appropriate times.

3.4.4 Rationale

Almost every major herd of barren-ground caribou across the Canadian Arctic is in decline, many by over 90%. While caribou populations cycle naturally over a period of 40-50 years, there are many more stresses across the Canadian Arctic today than there were the last time caribou populations recovered from a large scale decline. These stresses include increased industrial exploration and development, a warming climate, and increased human presence. This is a critical time for barren-ground caribou herds, and it is important that they be given the opportunity to rebound. Barren-ground caribou were recently assessed as Threated by the Committee on the Status of Endangered Wildlife in Canada, heightening the need to enact conservation measures to safeguard the herds while they are at perilously low states.

During the NLUP consultation process, government biologists, regional wildlife organizations, caribou management boards, local hunters and trappers organizations, and community members alike have expressed the need to protect caribou calving grounds and other critical habitats from disturbance in order to increase the reproductive output of the herds. Both scientific knowledge and IQ agree that disturbing caribou during calving can lead to calf abandonment and lower caribou populations.

Many barren-ground caribou herds use habitat in more than one territory or province during their seasonal migrations each year. Still, almost every major herd has their calving grounds in Nunavut. The responsibility to ensure that calving grounds are protected so the herds can remain strong for the Inuit, Dene, Metis and Cree people that depend on them rests firmly on the shoulders of Nunavummiut.

A recent survey conducted by Environics on behalf of WWF-Canada polled 153 respondents spread equally across Nunavut, Yukon and Northwest Territories. Respondents were asked whether they supported or opposed making caribou calving grounds in Canada's North fully protected areas that do not allow industrial development such as oil and gas or mining projects. Respondents were also asked to identify their cultural identity, to ensure the sample was representative of the people of Canada's North. Of those surveyed, 77 per cent strongly supported such protections for caribou calving grounds, and a further 12 per cent said they somewhat supported full protection.

The Protected Areas in the 2016 draft of the NLUP designated for calving grounds, post-calving grounds, freshwater crossings, and key access corridors, encompasses less than 11% of the terrestrial portion of the Nunavut Settlement Area if the calving grounds found within the Queen Maud Migratory Bird Sanctuary and Thelon Wildlife Sanctuary are excluded, as these areas are already off-limits to industrial development.

There are over 241,000 square kilometres identified as having high mineral potential in Nunavut. Seventy-five per cent of this land is outside of the caribou protected areas proposed by the NPC in the 2016 draft of the NLUP. Protecting critical caribou habitat would mean only 25 per cent of Nunavut's high mineral potential areas would be off limits because of caribou, with the plan up for review in five years. There would also be implications for accessory uses of other mineral development projects outside of these protected areas in terms of transportation networks and accessibility that would need to be mitigated to ensure responsible economic development occurs outside of these habitats.

The designation of Protected Area status does not create a National or Territorial Park, nor does it confer total prohibition on incompatible uses in the short or long term. Rather, it assigns incompatible uses that require ministerial exemptions or plan amendments in order to protect identified values within specifically bounded geographical areas of Nunavut. Assigning Protected Area status will trigger a process requiring new industrial development projects to seek a plan amendment in order to explore or operate within critical caribou habitat. At which point, the pros and cons can be weighed by NPC and relevant bodies on the merits of such an application.

Infrastructure projects such as the Kivalliq road to Manitoba, the Grays Bay corridor, and highways connecting communities will bring economic prosperity to Nunavut and should be explored. However, these projects should be subject to submission to NPC for consideration, with the knowledge that if there is community support for these initiatives, the plan can be amended to accommodate the needs and desire of Nunavummiut after a complete project proposal has been submitted.

In the December 14th letter from the Government of Canada reporting on the November 1st meeting of the signatories, and the accompanying table dated December 16th, the parties expressed a common interest in assessing seasonal caribou protection measures. While seasonal measures may ensure caribou are not disturbed by active development while they are on critical habitats at certain times of the year, seasonal measures will not protect the habitat that the caribou depend on, or mitigate accessory threats from development during off seasons such as greater road presence, or permanent infrastructure on the habitat. Outright prohibitions are listed as not being the ideal approach by the signatories, but we, and many others, argue that they are necessary at this time. Prohibitions on incompatible uses eliminates the effects of accessory threats, and provides greater clarity to industry by creating areas that are off-limits without a plan amendment or ministerial exemption. They also ensure the resilience of the habitat itself, which will be compromised by development in the off seasons should remediation not occur annually.

We agree with the signatories' assessment that mobile measures are too costly and stressful to the herds. We also agree that herd management plans will be an essential part of caribou management in Nunavut, and entreat the Government of Nunavut to invest in developing these plans, which currently are lacking for almost every herd in the territory. While caribou require active management, and the NLUP may be static in nature, the NLUP is one tool in a suite of measures necessary to safeguard caribou in Nunavut, and should be used to apply land-based protection for the most sensitive habitat on the caribou range. As new caribou collar data and TEK become available, the plan can be amended to accurately reflect the habitat requirements of the herds.

Should Protected Area status not be assigned to core caribou calving grounds, post calving grounds, freshwater crossings and key access corridors, the risk is that we may irreversibly hinder, or greatly dampen the reproductive capacity and viability of caribou herds in Nunavut. The relatively small geographic extent of the Government of Nunavut identified core caribou calving grounds represents a

conservative estimate, not an absolute representation of the known calving grounds of Nunavut. A purely conservation approach would dictate the protection of the historical calving grounds, which would cover a much larger extent of land in the territory. By assigning Protected Area status to the telemetry and IQ derived core caribou calving grounds, post calving grounds, freshwater crossings and key access corridors based on the best available information, as well as Special Management Areas status to well-known sea ice crossings, a compromise is already being struck between caribou protection and economic development in Nunavut.

3.5 Polar bear denning areas

3.5.1 Reference in DNLUP

Page 28, Section 2.3

3.5.2 Comment

There are not sufficient protections in the 2016 draft of the NLUP for polar bear denning habitats. Seasonal mitigation measures have been put forward by the Government of Nunavut, and these should be integrated into the final draft of the NLUP.

3.5.3 Recommendation(s)

Polar bear denning areas should be designated as Special Management Areas with specific seasonal terms for conformity determinations for projects.

3.5.4 Rationale

Polar bear denning areas were listed as Special Management Areas in the 2014 draft of the NLUP with no protections and very little direction to regulatory authorities to mitigate disturbance on denning polar bears by development projects. The 2016 draft has dropped this designation for polar bear denning areas, assigning them a Mixed Use designation with no prohibited uses and no site specific mitigation measures for polar bear dens within the vicinity of industrial development projects.

The recent position of the Government of Nunavut is in favour of the Special Management Area designation with specific terms for conformity determinations for projects within polar bear denning areas (page 7 of the Government of Nunavut submission to NPC on May 16th, 2016).

The Government of Canada position from the May 30th indicates that the “specifics of proposing specific designations or zoning of polar bear habitat under the Nunavut Land Use Plan [is] the responsibility of the Government of Nunavut. Canada will provide the Government of Nunavut with polar bear denning and other habitat information held by ECCC, to assist them in their decision making process” (page 6) And also says, “At this time, the Government of Canada will confirm that the Government of Nunavut has polar bear denning and other habitat information held by ECCC. The Government of Nunavut can then provide the appropriate polar bear denning and other habitat information to the NPC, along with recommendations on what, if any, activities restrictions should be imposed on those areas” (page 6).

The Government of Canada has confirmed in correspondence with WWF-Canada on September 21st, 2016 that it does not have any additional denning information to share with the Government of Nunavut.

The NTI/RIA joint submission on May 16th included two recommendations (page 7):

1. NTI and the RIAs support the investigation of whether polar bear denning areas can be placed in a Special Management Area designation with terms and conditions that protect polar bear dens. Discussions should be initiated with RWOs, RIAs, NTI and other wildlife organizations regarding this approach.
2. Polar bear denning areas and polar bear dens should be identified in consultation with RWOs, RIAs, NTI and other wildlife organizations.

Through a reading of the NLUP signatory positions, it is evident that there is consensus on the need for the NLUP to better address polar bear issues. In addition, the QWB has indicated on numerous occasions that they are in favour of Protected Area designation for polar bear denning areas.

In the 2016 Options and Recommendations document, the NPC indicated that NIRB has advised that consideration be given to polar bear habitat, and that there is precedent in the North Baffin Regional Land Use Plan to restrict development activities near polar bear denning areas. The main reason given for not including a designation for polar bear denning areas on Schedule A was that the areas cover a large geographic extent and that use of these areas is thin and sporadic. Assigning a Special Management Area with seasonal specific terms for conformity would limit the actual land impacted by these polygons by focusing the restrictions on known and discovered denning sites. Despite the fact that the polygons will cover a large extent on the map, the actual land implications will be small in terms of restricting development, and the benefits for polar bears will be large in terms of minimizing disturbance on denning females during a seasonal portion of the year. As the polygons for polar bear denning habitat is refined through community consultation and additional scientific and TEK research, the Special Management Areas can be easily amended in the NLUP and reduced where necessary.

3.6 Walrus haul-outs

3.6.1 Reference in DNLUP

Page 28, Section 2.4

3.6.2 Comment

While the conditions on walrus haul-outs are appropriate in the 2016 draft of the NLUP, there are additional walrus haul-out sites in the NSA that warrant protection to ensure the rationale behind assigning Protected Area status to walrus haul-outs is fully realized.

3.6.3 Recommendation(s)

Assign Protected Area status to additional known walrus haul-out sites in the NSA.

3.6.4 Rationale

Atlantic walruses in the eastern Canadian Arctic require suitable areas to haul out of the water throughout the year. Sea ice is an important haulout substrate when it is available, but during the time of sea ice minimum in late summer and early fall, terrestrial haulout sites (uglit) become of critical importance to walruses.

Walruses are sensitive to disturbance at uglit, and human disturbances may cause them to stampede into the water, resulting in potential mortality through trampling, increased energy expenditures and stress levels, and impaired thermoregulation. In some areas, hunting and noise disturbance has caused walruses to abandon uglit near communities in favour of less accessible islands and shores. Prolonged or repeated disturbances may cause walruses to abandon uglit, and their ability to recolonize areas and to habituate to disturbances is largely unknown.

Protection of walrus haulouts from disturbance is an important conservation goal, particularly with increasing human use of Arctic waters and declining sea ice cover. The NPC has recognized the importance of walrus haulouts in the 2016 draft of the NLUP, and these areas are assigned a Protected Area designation that prohibits incompatible uses and includes setback requirements of up to 5 km. The walrus haulouts identified and mapped by the NPC are from R.E.A. Stewart et al. (2013) and are based on research from the Department of Fisheries and Oceans. This research was conducted only in northern Foxe Basin, however, and the NPC walrus haulout database is therefore missing a significant number of sites throughout eastern Nunavut. Walrus Island (site #76 is the NLUP) was identified by the community of Coral Harbour as a Community Areas of Interest, and these areas are also assigned a Protected Area designation. This will also protect some important walrus haulout sites in the Kivalliq Region. A large number of additional walrus haulout sites are reported in the literature however, and they should be added to the NPC database. Having a comprehensive walrus haulout database will improve land use planning in Nunavut and assist with conservation efforts for the species.

3.7 Existing rights

3.7.1 Reference in DNLUP

Page 52, Section 6.5

3.7.2 Comment

While there have been significant improvements in the existing rights framework in the 2016 draft of the NLUP, additional clarity is necessary to clarify the requirements for projects to be grandfathered into the plan, and that moving from one stage of mineral exploration and development to another constitutes a new project, not a significant modification.

3.7.3 Recommendation(s)

The NLUP needs to provide greater clarity on the issue of grandfathering, significant modifications, and transitioning between stages of mineral exploration and development.

3.7.4 Rationale

Uncertainty remains on the grandfathering policies of the 2016 draft of the NLUP, specifically around which stage of projects do and do not qualify for grandfathering, and the conformity process of moving from one stage of mineral exploration and development to another. This ambiguity rises from the use of the word ‘may’ in section 6.5 of the NLUP, where it is indicated that projects that were approved or accepted as a completed submission *may* be considered grandfathered, and that the transition from one stage of mineral exploration and development *may* require a new conformity decision.

We recently commissioned EcoJustice to submit a legal opinion to the NPC on existing rights and the NLUP. This opinion concluded that; an “existing right” does not arise unless the NPC has already made a conformity determination for the project proposal or received a complete project proposal; project proposals without conformity determinations are not “existing rights” eligible for grandfathering; and moving from one stage of mineral exploration and development to another constitutes a new project, not a significant modification.

We note that no other party has submitted a legal opinion on this matter, and encourage others to engage on this issue. We also would like to request more information arising from the NuPPAA workshop in January on any discussion of existing rights.