ᓄᓇᕗᑦᑕ ᐸᕐᓇᐃᓐᑦ
Nunavunmi Parnaiyiit
Nunavut Planning Commission
Commission d'Aménagement du Nunavut

November 24, 2013

Ryan Barry, Executive Director
Nunavut Impact Review Board
P.O. Box 1360,
Cambridge Bay, NU.
X0B-0C0

By E-mail: rbarry@nirb.ca

Dear Mr. Barry:

Re: NPC reply to NIRB Letter dated November 22, 2013 – NPC – NIRB Public Review Baffinland's ERP Proposal

The Nunavut Planning Commission (NPC) notes your comments on November 22, 2013. The NIRB has made clear its present position in the ongoing discussions on the public review process between the NPC and the Nunavut Impact Review Board (NIRB). The NPC had clarified some of points of concern raised by the NIRB during our teleconference on November 20th. As we had indicated on that call the NPC will be issuing additional public notices and welcomes an opportunity to explain recent developments in the process.

The NPC reminds the NIRB that the previous public review of the Mary River Project (NIRB File No. 08MN053) railway south to Steensby Inlet was conducted by the NIRB pursuant to its powers to review projects under Part 5 of the NLCA. As you are aware, the NPC attended the NIRB's review hearings and took part in the NIRB's process. For the Early Revenue Phase (ERP) presently at issue, it was the NPC's understanding from the NIRB that the NPC would be leading the public review instead of the NIRB. The process map discussed and agreed on does not give any specific direction to the NPC on the conduct of the public review. It is important to note in fact, your office expressly requested that the NPC lead the public review process. At no point did the NPC believe it had been conclusively decided that the public review process would be limited to information sessions, as is the practice of the NIRB. In the NPC's opinion this do not provide sufficient opportunity to the public to make representations on such an important matter.

ᑎᑎᖅᑐᓯᕕᖕᒐ 2101
ᐃᖃᓗᒃᑑᑎᐊᖅ, ᓄᓇᕗᑦ ᐸᔾᐺ ᔾᕋᔾ
ᐅᖃᑦᑎᖕᒐ 867-983-4625
ᓱᒃᑲᔪᒃᑯᑦ 867-983-4626

P.O. Box 2101
Cambridge Bay, NU X0B 0C0
867-983-4625
867-983-4626

P.O. Box 2101
Ikaluktutiak, NU X0B 0C0
867-983-4625
867-983-4626

Until recently, the NPC only had rules for informal public hearings, not for public reviews, nor the specific type of "information sessions" your November 22 letter suggests were agreed to. Once it became clear to the NPC that the NIRB did not want to take the lead for the public review, the NPC took action to draft and enact new rules for public reviews pursuant to its mandate under Article 11 of the NLCA. This step is imperative in order to provide a procedural framework for all involved in the public review process. In reviewing the NPC's mandate under the NLCA for the purpose of enacting such rules for public reviews, the NPC noted in part:

- the primary responsibilities of the NPC in Section 11.4.1 of the NLCA;
- the overarching general principles which the NPC must act in accordance with in Section 11.2.1 of the NLCA;
- the factors in Section 11.3.1 of the NLCA;
- the express purpose of land use plans in Section 11.3.2 of the NLCA;
- various references to public involvement and interests in Article 11 of the NLCA;
- the NPC's obligation to grant standing to DIOs at hearings; and
- in particular, "at all times, give weighty consideration to the tradition of Inuit oral communication and decision making" as required by Article 11.4.17 of the NLCA.

Following this review, the NPC felt the information sessions the NIRB conducted for the railway, which merely informed the public that the NPC and the NIRB were reviewing the amendment application, did not provide the same opportunity for any Inuit, other resident of Nunavut who is potentially affected by the Amendment Application at issue, or the public to meaningfully participate in the potential amendment of the North Baffin Regional Land Use Plan (NBRLUP). The NPC is of the view that greater public involvement in the review of the ERP is necessary to satisfy the NPC's express and implied obligations in the NLCA to act in the public interest.

In order to satisfy its NLCA mandate and the principles in conducting a public review under section 3.5.12 of the NBRLUP, the NPC drafted and enacted the NPC's Rules of Procedure for Public Hearings and Public Reviews (RPHPR). The NPC was not able to engage in consultations with the NIRB on drafting the RPHPR, but notified NIRB staff when they were done. Acknowledging the NIRB's ability to control its own processes, NPC specifically provided, in Rule 3.2 of the RPHPR:

> These rules are not applicable to public reviews of an Amendment Application conducted jointly by the Commission with another reviewing entity, unless the Commission and the other reviewing entity agree in writing that they shall so apply, otherwise the Commission and other reviewing entity may jointly prepare the rules of procedure.

The NPC forwarded a copy of the RPHPR to you immediately after they were adopted by the Commissioners on November 14, 2013 for the NIRB to consider. This was several days before the NPC's first notice of the public review was published on November 18, 2013. The NIRB did not communicate to the NPC that it had any comments or concerns about using these rules for the public review. If the NIRB is of the view that the NPC's RPHPR ought not to apply to the public review process, the NPC asks what rules of procedure ought to apply, and whether the NIRB would agree to the application of particular sections of the RPHPR.

∩∩%ᐅᓯᕕᖓ 2101
ᐃᖃᓗᒃᑑᑎᐊᖅ, ᓄᓇᕗᑦ ᐸᔾᕼ ᔭᕋᔭ
ᐅᖃᑦᑎᖓ 867-983-4625
ᓱᒃᑲᔪᒃᑯᑦ 867-983-4626

P.O. Box 2101
Cambridge Bay, NU X0B 0C0
867-983-4625
867-983-4626

P.O. Box 2101
Ikaluktutiak, NU X0B 0C0
867-983-4625
867-983-4626

Unlike the NIRB, the NPC does not have a legal mechanism by which it can reconsider a certified project and must follow its process for conformity determinations under Section 11.5.10 of the NLCA, which includes ensuring all conformity requirements in an applicable land use plan have been met before it can issue a positive conformity determination—section 3.5.12 of the NBRLUP is such a conformity requirement that, if not carried out, may result in a negative conformity determination for the entire ERP. To be clear, if the NIRB or another panel is not properly appointed to act as the NPC's public review partner, or does not publicly review the application to amend the NBRLUP with the NPC as your November 22 letter suggests, the NPC may be forced to discontinue the public review as a direct consequence.

On the NIRB suggestion that there has been no discussion between the NPC and NIRB, we must make clear that, despite requests by the NPC early on, the NIRB expressly left it to the NPC to devise the public review process. The NIRB decided not to take the lead in the planning for the public review. The NPC nevertheless advised the NIRB on an ongoing basis of many of these steps. Therefore, the suggestion of a "complete lack of communication" on these matters is not a fair characterization . It should not be surprising that the NPC has taken necessary steps without the NIRB's input.

As to the desired outcome of the hearings, the public review is to determine whether information requirements established by the NBRLUP Appendices J and K have been met, and moreover, to assist the NPC in determining whether to recommend the proposed amendment to the NBRLUP, whether in whole or in part, to the Ministers. The word "review" suggests an assessment with the intention of making revisions if necessary, and the NPC is of the view that reviewing something "publicly" necessitates meaningful public involvement. The NPC will consider all views and evidence relevant to these issues and the principles set out in Section 7 of the RPHPR, whether submitted by the proponent, a government agency, or the public.

As explained in our teleconference on November 20, 2013, the NPC is taking further steps to reasonably notify all persons potentially affected by the application to amend the NBRLUP, and will be providing new notices with time extensions to become a participant. Under the RPHPR, any Inuit, aboriginal person under Article 40 of the Agreement, or other resident of Nunavut who is potentially affected by the Amendment Application at issue is already entitled to act as a "party" and will be asked to notify the NPC by December 16th of their intention to participate but need not apply for standing. Furthermore, to minimize prejudice, under the RPHPR the NPC may recognize parties and grant standing to interested persons at the hearings themselves. The NPC will also accept comments from anyone not acting as a participant, subject to reasonable time limits, and so provides many opportunities for potentially affected persons to give meaningful input to the process.

In sum, the NPC appreciates the opportunity to clarify some of the NIRB's points of confusion, and trusts that the NIRB will reconsider its present position in light of the NPC's response. In particular, the NPC hopes that the NIRB realizes that by both refusing to agree to the application of the RHPHR to the public review, and refusing to participate in the planned public hearings, that the NIRB may deprive the NPC of any rules under which it may run a public review and terminate the public review process. If the NIRB now wishes to have a hand in establishing the procedures for the public review, the NPC suggests that the

ᑎᑎᖃᐅᓯᕕᖓ 2101
ᐃᖃᓗᒃᑑᑎᐊᖅ, ᓄᓇᕗᑦ ᐸᔾᕼ ᔾᕋᔾ
ᐅᖃᑦᑎᖓ 867-983-4625
ᓱᒃᑲᔪᒃᑯᑦ 867-983-4626

P.O. Box 2101
Cambridge Bay, NU X0B 0C0
867-983-4625
867-983-4626

P.O. Box 2101
Ikaluktutiak, NU X0B 0C0
867-983-4625
867-983-4626

NIRB propose a process that provides for meaningful public participation and consideration to the tradition of Inuit oral communication and decision making.

Yours truly,

Sharon Ehaloak, Executive Director
Nunavut Planning Commission

cc. The Honourable Berbard Valcourt, Minister of Aboriginal Affairs and Northern Development
Erik Madsen, Baffinland Iron Mines Corporation
Mary River Distribution List

ᑎᑎᖅᐅᓯᕕᖓ 2101
ᐃᖅᓗᒃᑑᑎᐊᖅ, ᓄᓇᕗᑦ ᐸᔾᐺ ᔾᕋᔾ
ᐅᖅᑐᑎᖓ 867-983-4625
ᓱᒃᑲᔪᒃᑯᑦ 867-983-4626

P.O. Box 2101
Cambridge Bay, NU X0B 0C0
867-983-4625
867-983-4626

P.O. Box 2101
Ikaluktutiak, NU X0B 0C0
867-983-4625
867-983-4626