



November 14, 2014

Ron Robillard, Chief Negotiator
Athabasca Denesuline Negotiation Team
Chief Joseph Cluster Reserve #201
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Ron Robillard, rrobillard@adnlc.ca

Delivered by Electronic Mail

Re: Letter from Athabasca Denesuline Negotiation Team regarding Protected Areas Designation in Draft Nunavut Land Use Plan (DNLUP)

Dear Mr. Robillard

I write in response to your letter dated October 20, 2014, which Tina Giroux, Biologist/Lands & Resources Advisor for the Athabasca Denesuline Negotiation Team faxed to the NPC's office and e-mailed to Sharon Ehloak, Executive Director of the NPC on October 24, 2014. It was not the NPC's intention to introduce any uncertainty into the settling of the Benoanie litigation process. As I hope you will agree, based on my explanation below since the DNLUP has no legal effect and can be expected to change prior to, and even after being approved, it should not have any legal or practical effect on your ratification process.

I believe that a brief overview of the NPC's land use planning process set out in Part 5 of Article 11 of the *Nunavut Land Claims Agreement* (NLCA) would be informative. The NLCA sets out a multi-step process that, when complete, culminates in a recommendation by the NPC, not a legally binding plan. The NPC conducts such consultations as it finds appropriate and formulates a DNLUP, then solicits written and oral comments on the DNLUP from all appropriate federal and territorial government agencies,

Designated Inuit Organizations, communities and the general public. The NPC conducts public hearings, evaluates the DNLUP in light of the representations at the hearings, and revises the DNLUP as appropriate.

After the public hearings and revisions, the NPC submits the DNLUP with a written report to the federal and territorial Ministers for acceptance (and once the federal *Nunavut Planning and Project Assessment Act* is in force, to Nunavut Tunngavik Inc.). The Ministers (and NTI) may jointly accept it, in which case the Ministers may seek formal approval by their respective governments, or if any of them reject the DNLUP for whatever reason it is sent back to the NPC for reconsideration and resubmission. The NPC only recently revised the DNLUP, released June 20, 2014 (2014 DNLUP) based on consultations and submissions received by the NPC to that point at the insistence of the Government of Canada for the express purpose of proceeding to a public hearing. The NPC intends to proceed to a public hearing to determine whether revisions to the DNLUP are appropriate once it has the necessary funding to do so.

In response to your concern about the effect of the 2014 DNLUP on the settling of the Benoit litigation/negotiation process, the 2014 DNLUP is a “draft for discussion” at the public hearings, and it has no legal effect whatsoever. Regardless of any land use designations presently identified, it has no bearing on ownership, proposed uses of land, or any other individuals’ rights. The NPC’s public hearing is a forum in which all participants are invited to make submissions and present information and evidence, which the NPC will consider impartially and with an open mind and use to make any appropriate revisions to the DNLUP. I would also like to take this opportunity to note that the Denesuline of Northern Saskatchewan have full standing before the NPC pursuant to Article 40.5.7 of the NLCA to make representations respecting your interests in areas you use and continue to use. I encourage the Athabasca Denesuline (AD) to participate in the NPC’s public hearing on the DNLUP, as well as any pre-hearing technical meetings and conferences, to make further submissions and to put other evidence before the NPC for the DNLUP’s revision prior to being recommended to the Ministers. As I said above, this process does not result in a final decision by the NPC.

The NPC has in fact already received feedback on the DNLUP from several groups, which will be considered in due course and in a manner that is fair to all involved in the land use planning process. A revision made at this time at the request of any organization or group may be undone again later during revisions. To put it another way, if the NPC was to revise the DNLUP prior to the public hearing as you or any other group suggests, it is possible that as a result of information received at the public hearing, or even as a result of a decision made by government during the approval stage to refer the DNLUP back to the NPC with written reasons for final revisions, that a designation changed now could be changed again prior to final approval by government.

Regarding the suggestion that the NPC did not engage in discussions or consultations on land use designations, I am informed that the NPC has provided many opportunities for the AD to engage and provide feedback into the formulation of the Draft Nunavut Land Use Plan. As you know the AD provided a submission to the NPC on the Draft Nunavut Land Use Plan December 12, 2013 but this submission did not provide information regarding the lands subject to Order in Council PC# 2013-625.. The NPC attempted to contact all participants who made submissions by the NPC’s deadline to clarify

their submissions as necessary before releasing the DNLUP on June 20, 2014, but did not contact the AD as the submission was specific to protecting caribou in Nunavut and did not require clarification.

Furthermore, during community workshops NPC staff attempted to ask the AD to comment on land use designations prior to revising the 2014 DNLUP and was specifically prevented from doing so. You will recall that the NPC conducted community consultations in Wallaston Lake on April 30, 2014, and Fond du Lac on May 1, 2014, although a death in the community of Black Lake prevented hosting a workshop in that community. In the communities where workshops were held, you advised that there would be no mapping session. The NPC's staff respected your position and did not proceed to Appendix G of the NPC's Community Engagement Strategy (available on the NPC's website at <http://www.nunavut.ca/en/downloads>). Appendix G is the NPC's standard Mapping Session Script that was designed to solicit feedback on proposed land use designations in all community consultations. The AD's refusal to discuss land use designations meant the 2014 DNLUP underwent revision with no input from the AD on what land use designation should apply to the lands subject to Order in Council PC# 2013-625.

However, recognizing the AD's right to make written comments on the 2014 DNLUP and to participate in the public hearings with full standing, the NPC accepts your October 20, 2014 letter as the AD's written submission on the DNLUP as it relates to those lands subject to Order in Council PC# 2013-625. The NPC will consider your submission on this point in all future deliberations and revisions of the DNLUP pertaining to those lands subject to Order in Council #PC 2013-625, including considering whether your position should be preferred as part of the full range of possible outcomes, while still subject to fairness to other participants in the process. The NPC's land use planning staff has correspondingly made a note with respect to the land use designation of those lands subject to Order in Council #PC 2013-625 in the current DNLUP. For clarity, the NPC has not made a decision on whether or not it will revise the DNLUP prior to the public hearing or in the manner requested, and the NPC will consider all submissions and input received on the DNLUP with an open mind.

With respect to your concerns as to the timing of revisions to the DNLUP whether before or after the public hearing, the NPC had planned on holding public hearings in November 2014. The NPC was forced to suspend these hearings due to inadequate funding from AANDC. The NPC is pursuing all available options to obtain sufficient funding in order to hold the public hearing so that concerns such as yours can be resolved through the NPC's formal process in a timely way.

In summary, the NPC cannot affect the rights of any individual through its land use planning process, and the 2014 DNLUP has not yet undergone public hearings or further revision and has not been recommended by the NPC for approval by government. The 2014 DNLUP is therefore not legally binding in any respect and does not affect any ownership, uses, or other rights to the lands subject to Order in Council #PC 2013-625. The NPC will consider all evidence and submissions impartially and with an open mind, considering a full range of options, and will revise the DNLUP as necessary based on all of the information put before it through a fair and open process. The NPC hopes to conduct a public hearing on the DNLUP as soon as practicable, and in the meantime acknowledges your October 20th, 2014 letter as your written submission for the NPC's consideration, and furthermore strongly encourages you to

participate fully in the NPC's ongoing land use planning process as is your right under the NLCA. For these reasons, I trust that you will find your litigation/negotiation process has not been affected or unnecessarily complicated, and that the 2014 DNLUP does not presently need to be revised for you to continue that process.

Please let us know should you have any remaining concerns, and the NPC will do its best to give further guidance and clarification on the land use planning process.

Respectfully,



Percy Kabloona, Acting Chairperson

cc. Athabasca Denesuline Chiefs

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