Introduction

This joint submission of Nunavut Tunngavik Incorporated (NTI) and the three Regional Inuit Associations (RIAs) is in reply to the written submissions provided to the Nunavut Planning Commission (NPC) in November 2018 on the Draft Nunavut Land Use Plan (DNLUP) 2016.

As indicated by NTI in correspondence to the NPC on January 24, 2019, NTI and the RIAs are encountering some challenges in fully analyzing the submission of the Qikiqtaaluk Wildlife Board (QWB), that includes over 40 distinct documents, as it has not been possible to arrange for access to the spatial data (shapefiles). As a result, the extent of the implications of the QWB proposals on the management of Inuit Owned Lands (IOLs) remains unclear. Taking into this account, some of our comments are general and reiterate, or elaborate, on previous submissions.

For a number of reasons including efforts to coordinate with other Inuit organizations, we are submitting our reply after the deadline. We note that the Section 11.2.1 (d) provides that the NPC allow for appropriate and realistic schedules and we have taken the time needed to develop a submission that will be of assistance to the NPC. We would appreciate confirmation that you have accepted this submission and will consider it in your deliberations. Unless indicated otherwise in this submission, the previous NTI and RIA joint submissions, as well as the submissions of each RIA, continue to reflect the views of NTI and the RIAs regarding the DNLUP 2016 and the land use planning process.

November 2018 Submissions Received by the NPC

There are several submissions from Hunters and Trappers Organizations and the QWB that provide important information about wildlife populations and recommend actions for the conservation of wildlife populations, wildlife habitat and address other community concerns. NTI and the RIAs share an interest in the long-term health of wildlife populations in Nunavut and have also made several submissions regarding measures to protect wildlife within the DNLUP 2016.

Additionally, several submissions have been made regarding how IOLs should be addressed in the DNLUP. As the NPC is aware, NTI and the RIAs have the responsibility to manage IOLs and advocate for land use plan terms and conditions that respect Inuit ownership and that ensure that the NPC meets the obligation in section 11.8.2 of the Nunavut Agreement to “take into account Inuit goals and objectives for Inuit Owned Lands” in land use plans. Fulfilling this obligation requires that the NPC show how the views of NTI and the RIAs are being considered.

The NPC has the difficult task of revising the DNLUP 2016 considering proposals and submissions of stakeholders regarding numerous values including wildlife, water, marine and cultural resources, while ensuring that it adequately addresses NTI and the RIAs submissions on Inuit goals and objectives for IOLs, consistent with the duty to ensure that land use plans reflect the priorities and values of the residents of the planning region. NTI and the RIAs have consistently advocated for revisions to the DNLUP 2016 that do not restrict our authority to make land use decisions on IOLs using the processes in place to address community priorities. In the case of IOL subsurface parcels that were selected for their resource potential, and IOL parcels that are covered in part, or entirely, by a Mineral Exploration Agreement, NTI and the RIAs continue to advocate that these parcels not be included in designations that prohibit mineral exploration and development.

The new submissions from HTOs include many proposals for Community Areas of Interest. NTI and the RIAs continue to advocate that, in most cases, the values that the communities would like to see protected e managed through the application of terms and conditions within Special Management Areas. Specific terms and conditions should be developed, in consultation with the HTOs, for each value identified within proposed Community Areas of Interest.

<u>Government of Canada Submission</u>
This is in reply to the Government of Canada (GoC) submissions in response to questions 51 and 52 by the NPC.

The Government of Canada provided a submission in response to the NPC's question #51 regarding the potential interference of land use plans with Inuit Impact and Benefit Agreements (IIBAs). It states that:

> *Parks and Conservation Areas, which require an Inuit Impact and Benefit Agreement (IIBA) under Articles 8 and 9 of the Nunavut Agreement, are not the same as protected areas in a land use plan. Parks and Conservation Areas are established by governments under distinct, specific regulations with the intent that the protection measures of these areas will last forever or for a very long period of time.*
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> *A protected area in a land use plan, where certain uses are prohibited or subject to conditions, is a type of zoning designation and is not intended to last forever as it may be amended during periodic review of the plan. In addition, prohibited activities may be permitted in these areas if projects receive a minor variance or amendment to the plan from the Commission or an exemption from the Minister. Therefore, the protections proposed in the land use plan do not permanently withdraw these lands from development.*
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> *If a different approach or more permanent protection is needed, the "protected area" designation in a land use plan does not prevent governments from establishing these areas as a Park or Conservation Area under specific legislation. If a Park or Conservation Area is selected as the approach to addressing an area, governments would be required to negotiate and conclude an Inuit Impact and Benefit Agreement prior to its establishment.*

NTI and the RIAs do not agree with the above view on the applicability of IIBAs. We do concur that there are legal and practical distinctions between designated protected areas in land use plans and legislated protected areas. We do not agree, however, with the GoC's suggestion that the Nunavut Agreement's

IIBA requirements are inapplicable across the board to protected areas in a land use plan. In our view, a number of factors are relevant to the determination of whether an IIBA is required. For example, the larger the protected area, the greater the number and types of land use restrictions that apply, and, importantly, the more formal and legislative-like the restrictions (i.e. where ss.48(4) and 74(f) of Nunavut Planning and Project Assessment Act create prohibitions, offenses and enforcement powers), the greater the likelihood that IIBA requirements are implicated. Another factor is the length of time that land use restrictions will be in place. The GoC suggests that restrictions in a land use plan "are not intended to last forever as it may be amended during periodic review of the plan". This is not a satisfactory response as there are no commitments to a fixed timeline for the periodic review of an approved NLUP or the sunsetting of land use restrictions once the restrictions are in place.

Land use restrictions proposed in the DNLUP 2016, as currently envisioned and designed, would be in place for an indefinite period of time creating designations that are akin to Parks and Conservation Areas. Moreover, the ability to seek an amendment to the land use plan, or an exemption from the Minister, does not provide any certainty regarding the lifting of broad land use restrictions or suggest that land designations would not be in place for indefinite period of time. The current amendment process is lengthy, subject to budget allocations and requires the consensus of the federal and territorial Ministers, as well as NTI, before it is approved.

The GoC provided a submission in response to the NPC's question #52 regarding Inuit access rights stating that:

The Nunavut Agreement sets out Inuit access rights to lands for the purposes of harvesting, and sets out rights relating to outpost camps. The land use plan has no direct power to restrict Inuit harvesting access rights or the right to set up outpost camps.

However, land use activities that conform to the approved plan can lawfully affect the environment in which those rights are exercised, and in some cases the presence of a development of a certain kind can limit the ability to exercise those rights within a defined area (see Article 5.7.17[2], for example). This is authorized by and consistent with the rights established in the Nunavut Agreement

As developments can affect harvesting and outpost camps, it is important that land use designations and the land use plan as a whole be developed with active and informed participation of Inuit. The Commission should take care to consult with Nunavummiut and especially HTOs to determine whether there are areas of particular importance for harvesting purposes or outpost camps, and should develop zoning rules that consider and balance the different uses to which land use can be put and the priorities and values of the communities.

The view of NTI and the RIAs is that the limitation created by subsection 5.7.18 (d) on Inuit access rights is narrow in scope. Inuit access rights can only be limited when there is a direct conflict between an authorized land use activity and only for the period of time necessary to carry out that activity. NTI and the RIAs recommend that the NPC prioritize Inuit access to land and wildlife resources when considering land use designations and that any limitations on Inuit access only occur with the consent of Inuit.