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February 28<sup>th</sup>, 2011

Sharon Ehaloak  
Executive Director  
Nunavut Planning Commission  
Cambridge Bay, NU, X0B 0C0

*Via electronic mail to: [sehaloak@nunavut.ca](mailto:sehaloak@nunavut.ca)*

**Re: Review of December 2010 Draft Nunavut Land Use Plan**

Dear Ms. Ehaloak,

The Government of Canada is pleased to respond to the Commission's December 2010 letter requesting comment on its recent version of the working draft Nunavut Land Use Plan (Working Draft Plan). I would like to thank the Commission for the opportunity to provide comments, and re-iterate Canada's shared objective to assist the Commission in the development of a successful Nunavut Land Use Plan.

As was undertaken for the previous submission to the Commission in September 2010, seven federal departments and agencies have reviewed the most recent Working Draft Plan with an aim to provide the Commission with constructive feedback. This material speaks on behalf of Fisheries and Oceans Canada, Department of National Defence, Environment Canada, Indian and Northern Affairs Canada, Natural Resources Canada, Parks Canada Agency and Transport Canada. It is the product of both detailed and high level reviews, and reflects Canada's preliminary response to the new materials provided. As with previous submissions, Canada's response will have to be revisited as additional materials and additional information becomes available.

This response will be submitted to the Commission in phases. Attached in Annex 1 is the first round of Canada's comments that address high-level and over-arching issues. Some of these are areas where the need for more work by the Government of Canada has been identified. Others highlight areas where the Government of Canada would like to collaborate with the Commission in order to bring about further development of the Working Draft Plan.

In addition to the areas identified in Annex 1, Canada has identified two areas of critical and immediate need:

- 1) A complete and defined process description for external communication to all stakeholders for the development of a draft plan, through the public engagement, hearing and revision stages, up to the point of submission for acceptance; and



- 2) The establishment of a complete and accessible public registry to assist all participants.

Canada believes both are required in order to conform to the principles outlined in 11.2.1 (d) and (g) of the Nunavut Land Claims Agreement (NLCA). We believe a planning process that does not meet the requirements of the NLCA in all respects will present a significant obstacle in the approval and ultimate success of this planning exercise. Canada is prepared to collaborate extensively with the Commission to ensure adequacy in these areas.

As discussed between Bernie McIsaac and Adrian Boyd on February 24<sup>th</sup>, in the following weeks, a submission of detailed comments on the text of the December 2010 Draft Land Use Plan will follow. It is anticipated this second submission will be provided to the Commission no later than March 15<sup>th</sup>, 2011. Canada understands that the Commission's timeline for developing the Working Draft Plan will be able to accommodate this second set of comments, and that furthermore, additional workshops will be held by NPC after a first round of community engagement has taken place.

In addition, Canada intends to share its work plan for future work with the Commission once it is completed. This will ensure that the Commission is aware of Canada's activities and deliverables with respect to land use planning in Nunavut, but it is also because Canada expects to engage with the Commission staff at every opportunity to ensure shared understanding and expectations and to ensure our direction will be constructive and will contribute meaningfully to the Commission's objectives in completing the Draft Nunavut Land Use Plan.

In closing, I would like to acknowledge the extensive work that has gone towards producing the Working Draft Plan. This draft represents a significant improvement from its previous versions. It has been formatted in a manner that more closely aligns with the requirements of s.11.3.1, and with Canada's expectations. Its use of text, figures and maps are both easier to read and more functional than the previous version.

Canada is very pleased to continue assisting the Commission on this path towards the successful finalisation, approval and implementation of a Nunavut Land Use Plan. Moreover, we would like to invite the Commission to meet in Cambridge Bay at the Commission's convenience to further discuss the content of both submissions and to further identify where we can work together towards our common objectives.

Sincerely,

[original signed by]

Robin Aitken  
Regional Director General  
Indian and Northern Affairs Canada

c.c David Akeeagok, Government of Nunavut  
Annie Tattuinee, Nunavut Tunngavik Incorporated  
Nancy Anilniliak, Parks Canada Agency



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Randal Cripps, Environment Canada  
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Karen Hurst, Fisheries and Oceans Canada  
Paula Isaac, Indian and Northern Affairs Canada  
Ken Landa, Department of Justice  
Dan Godbout, Department of National Defence  
Harvey Nikkel, Transport Canada



## Annex 1

# GOVERNMENT OF CANADA GENERAL COMMENTS ON THE DECEMBER 2010 DRAFT NUNAVUT LAND USE PLAN

## Introduction

The purpose of this document is to provide the Nunavut Planning Commission with constructive feedback on general issues resulting from a broad Government of Canada review of the December 2010 Draft Nunavut Land Use Plan. A more extensive submission on the text will be provided to complement this document. Moving forward, it will be crucial that information pertaining to Government of Canada lands, legislation, policies and programs are accurately reflected before any working draft plan is broadly distributed.

### A. Required Process Definition & Public Registry

It is essential that a defined process description include more detailed information than the 8 steps currently described in the Working Draft Plan. Such a description would serve to inform all participants in the planning process of the following: a) the number, timing and nature (written vs. oral, with what preparatory material, thematic subject matters etc.) of opportunities in the process for government, institutional, and particularly public input, b) the purpose and intended outcome of each step carried out by the Commission and c) the decision-making processes employed by the Commission in shaping the final version of the Nunavut Land Use Plan.

With respect to a public registry, although the Commission acknowledges in the Working Draft Plan that a public registry will be established in the future, we believe that in order to meet the principles outlined in 11.2.1 (d) of the NLCA a complete and accessible registry must be established as soon as possible. A public registry will also enable all participants to have equal knowledge of the history of this file, of all the information that is before the Commission and of details of decisions previously made by the Commission.

It is arguable that participants who do not have access to a registry and a defined process description are at a disadvantage in their understanding and therefore in their participation. If such a situation persists, it will be challenging to conclude that the final plan has been developed through a fair and transparent process.

### B. Further analysis in light of Bill C-25

Canada has identified that it is essential that any review of the Working Draft Plan include analysis of consequences of the potential coming in to force of Bill C-25 on the meaning and application of all provisions in the plan. This work is currently underway and will be shared with the Commission as it becomes available.

We have already completed an initial review of the congruence of the Working Draft Plan with the current version of Bill C-25 and will provide more specific comment in its upcoming detailed submission.



### **C. Approach to Use of Zones and Conformity**

One of federal department's key concerns regarding the Working Draft Plan is its proposed approach to use of zones and conformity. Reviewers have noted a marked absence of clear identification and characterization of zones and very limited detail in the conformity requirements, such as permitted and prohibited uses, that are contained in the Working Draft Plan. Many of the zone types that are identified fall under the broad umbrella of Special Management Areas. In casting the net so broadly, the Working Draft Plan does not yet adequately describe the specific conditions (or conformity requirements) that would be required for a proposed land use to meet the objectives for a given zone. Similarly, sensitive areas requiring clear management provisions, including special protection and restricted access, are not yet adequately described.

We therefore encourage the Commission to pursue more a focused approach to use of zones and conformity to better reflect both restricted and permitted uses of land. Federal departments possess significant expertise and background information that could be useful for refining the current approach to zones and conformity. We would be pleased to discuss this matter in greater detail with the Commission.

### **D. Public Engagement**

Canada is of the view that public engagement as a whole must be comprehensive, meaningful and completed at appropriate stages throughout the development of a Nunavut Land Use Plan. As stated in previous correspondence, we respectfully request that the Commission provide a description of its public engagement plan with respect to this planning process. The adequacy of such a plan is of critical importance to the question of whether all NLCA obligations are being met. We are willing to assist and provide guidance to the Commission in this regard.

### **E. Cumulative impacts assessment and referrals**

The approach to cumulative impacts described in the Working Draft Plan and the definition of cumulative impacts provided in the plan itself are inconsistent. Furthermore, this approach is also inconsistent with the definition of cumulative impacts as currently described in Bill C-25. Subsection 80(1) of Bill C-25 requires that the Commission evaluate each project that is exempt from screening and consider whether the impacts of that project combined with those of any other project that has been carried out, is being carried out or is likely to be carried out causes the Commission concerns with respect to those impacts when considered cumulatively.

While the Commission may wish to specify areas in the plan for which this consideration will be undertaken with additional care (e.g. important bird habitat), it seems contrary to the intent of subsection 80(1) that every project in certain areas will automatically be forwarded to NIRB for cumulative impact concerns, regardless of whether there are any such concerns identified. Canada recommends that a new approach be developed to appropriately identify areas where cumulative impacts are of concern. Further, we also recommend that this approach should account for the potential for rapid increases in



development density, and ensure flexibility to capture such increases without necessitating any amendment.

## **F. Gap Identification**

Canada is of the view that identification of gaps is a crucial component of the planning process. Although the Draft Plan itself may not be the most suitable location, it is essential that a list of known information gaps, both technical and policy based, be developed. Clear indications of *how* and *when* the Commission envisions these gaps being filled must be provided to all participants in the planning process. We are prepared to contribute to the establishment of such a list.

## **G. Review of Plan in light of 11.4.1 (a) and NLCA**

Canada intends to complete a more thorough review of the conformity of the Working Draft Plan with the requirements set out in the NLCA and the policies described in the Commission's 11.4.1 (a) policy document. The results of this review will be shared with the Commission as they become available.

## **H. Background documents vs. plan content**

Canada has observed that a significant portion of the information in the plan will be subject to change over time and in some cases will be outdated within a year or less. While this is expected and unavoidable, in the interest of maintaining a Nunavut Land Use Plan that is of utmost utility, it is recommended that dynamic information be included in the actual document only as essential and that other dynamic information be placed in background documents. These background documents would not need to bear the scrutiny of approval and could be updated frequently and without formal amendments. References in the Nunavut Land Use Plan to specific sections in background documents would enable the accessibility of this background information while allowing it to evolve.

Further to this, it has been noted that the Working Draft Plan contains extensive paraphrasing of the NLCA and of Bill C-25. We recommend that this practice be kept to a minimum as verifying the legal accuracy of such text during the approval process would be excessively onerous. The development of a companion guide or other background document for this information is preferable. Canada would be pleased to collaborate with the Commission on such documentation.

## **I. Comments provide by GoC in September 2010**

Some very significant comments that were made in Canada's submission from September 2010 have not yet been addressed in the December 2010 version of the Draft Plan. Specific examples of these will be identified in Canada's March 15 submission.