

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

North Slave Metis Alliance

PRE-HEARING WRITTEN SUBMISSIONS

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North Slave Metis Alliance

Submission for the Public Hearing on the 2016 Draft Nunavut Land Use Plan

1/13/2017

1 Background and Objectives

NSMA members' Aboriginal rights

The North Slave Metis Alliance (“NSMA”) is an Aboriginal organization that represents s.35 Aboriginal rights-bearing Metis people in the area north of the Great Slave Lake area. NSMA members are Metis people of the Northwest Territories (“NWT”) with asserted Aboriginal harvesting rights recognized and affirmed under section 35(1) of the *Constitution Act*, 1982. The Minister of Aboriginal Affairs and Northern Development Canada and the Supreme Court of the NWT, have both acknowledged that NSMA members have a good *prima facie* claim to the Aboriginal right to hunt caribou on their traditional territories in the area north of Great Slave Lake, NWT (North Slave Region), and are entitled to be consulted when those asserted rights may potentially be adversely impacted by a Crown decision.

Potential Adverse Effects on NSMA Members' Aboriginal rights as Metis

NSMA applied to become an intervener in the Nunavut Planning Commission’s (“NPC”) public review process for Nunavut Land Use Plan on February 1, 2016. Subsequently, NSMA was granted standing as an intervener.

Draft Nunavut Land Use Plan (“DNLUP”) was provided, in 2016, for review by interveners. NSMA reviewed the DNLUP on the basis of its potential impacts on migrating barren-ground caribou herds.

2 General Comments and Recommendations

Following lists NSMA’s general observations about the DNLUP.

2.1 Overall structure and clarity of the DNLUP;

NSMA is pleased to find that the 2016 DNLUP is clearly written, and well-organized.

2.2 Consistency with the applicable legal requirements and policy context;

NSMA has no comments respecting the consistency of the 2016 DNLUP with the applicable legal requirements and policy context.

2.3 Fit with the integrated regulatory system;

NSMA has no comments respecting how NLUP fits with the integrated regulatory system.

2.4 Quality of the planning process;

NSMA has no comments respecting the quality of the planning process.

2.5 Incorporation of input from participants in the planning process;

NSMA has no comments respecting the incorporation of input from participants in the planning process.

2.6 Overall balance among competing interests on important issues;

NSMA is pleased to find that the 2016 DNLUP provides significant protection to wildlife, including barren-ground caribou and migratory bird habitats, while allowing developments in less sensitive areas.

2.7 Governance and implementation;

NSMA has no comments respecting the governance and implementation.

3 Specific Comments and Recommendations

NSMA has two specific recommendations to DNLUP, both in respect with barren-ground caribou habitats. NSMA acknowledges and strongly supports DNLUP in its approach to protect calving, post-calving, freshwater crossings, and key access corridors. NSMA supports application of the “Option 1” to above areas. NSMA remains concerned with regards to the following two barren-ground caribou habitats; rutting area and migration corridor.

3.1 Caribou Rutting Area

3.1.1 Reference

DNLUP p.43, Map 54

3.1.2 Comment

Rutting areas are known key habitat for caribou, where they are especially vulnerable to disturbances. Given the importance and sensitivity of the habitat type, rutting areas should receive a special consideration.

3.1.3 Recommendation(s)

Rutting areas should be given “Option 2: Special Management Area” protection.

3.1.4 Rationale

Rutting areas are known sensitive habitat for caribou. Disturbing caribou during their rut can lead to reduced reproduction and hinder population recoveries of the many herds in decline. NSMA acknowledges that this habitat type is less sensitive than calving and post-calving areas. In that sense,

NSMA believes some forms of developments, with guidance, can occur in this area. Therefore, Option 2, Special Management Area is the appropriate zoning for the Rutting Areas for caribou, which is a reasonable compromise between environmental protection (for caribou) and economic development.

3.2 Caribou Migration Corridor

3.2.1 Reference

DNLUP p.44, Map 55

3.2.2 Comment

Migration Corridors are known key habitat for caribou, disruption of which can lead to negative impacts on their health. Given the importance and sensitivity of the habitat type, migration corridors should receive a special consideration.

3.2.3 Recommendation(s)

Migration Corridors should receive “Option 2: Special Management Area” protection.

3.2.1 Rationale

Migration Corridors are known sensitive habitat for caribou. Disrupting caribou migration routes can lead to increased stress and hinder population recoveries of the many herds in decline. NSMA acknowledges that this habitat type is less sensitive than calving and post-calving areas. In that sense, NSMA believes some forms of developments, with guidance, can occur in this area. Therefore, Option 2, Special Management Area is the appropriate zoning for the Migration Corridors for caribou, which is a reasonable compromise between environmental protection (for caribou) and economic development.

4 Editorial Recommendations and Considerations

Page #	Description, Recommendation and Rationale
P. 52	<p><u>Section 6.5</u> – Grandfathering of Existing Rights in respect of Projects/Project Proposals</p> <p>The NLUP and any future Plan Amendments may apply to some Projects/Project Proposals that had Existing Rights before the approval the NLUP. Users are encouraged to refer to the NUPPAA for guidance on whether the NLUP applies in specific circumstances.</p> <p>NUPPAA requires a Project/Project Proposal to be submitted for a Conformity Determination if there is a “significant modification” to a Project/Project Proposal with Existing Rights. Significant modifications may include but are not limited to a change in scale or intensity of the Project/Project Proposal, new or modified works, activities, or components that were not included in the original Project/Project Proposal carried out prior to the approval of the NLUP as well as the following examples of significant modifications:</p>

1. Any change to the location of the work or activity;
2. Any change to the type of land use;
3. Any change to intensity or scale of the activity that, for example results in a larger footprint, deeper excavation, increased pollution or more human activity; and
4. Any change to the timing of the work or activity (e.g. seasonal changes).

This list is non-exhaustive and simply illustrates what the NPC may consider to be a “new project” or “significant modifications” from a planning perspective.

In the mining sector, the notion of grandfathering is complex, as projects move through a number of fairly distinct stages, presented in Figure 9. NPC considers there to be seven (7) distinct stages in Mineral Exploration and Development. A Project/Project Proposal, as it was approved or accepted as a completed submission, prior to approval of the NLUP, may be considered grandfathered under the NUPPAA for the purposes of Conformity Determination. However, the transition from one stage of Mineral Exploration and Development to another may require a new Conformity Determination.

Note that the terms in Figure 9 above are defined in the Definitions section. Transitioning from one stage to another may be considered a significant modification and could require a Conformity Determination.

Recommendation – See following modified section with track-changes:

See August 29, 2016 submission by Ecojustice.

Rationale for change – NSMA reviewed information submitted by Ecojustice (August 29, 2016) and the Government of Canada (December 10, 2015). NSMA is of the view that recommendations provided by Ecojustice will provide reasonable and strong protection for the barren-ground caribou and migratory wildlife habitats. NSMA’s recommendation above is based on the August 29, 2016 Ecojustice submission regarding the Grandfathering clause.