



April 28, 2015

Mr. Hunter Tootoo
Chairperson
Nunavut Planning Commission
P.O. Box 2101
Cambridge Bay, Nunavut X0B 0C0
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Dear Mr. Tootoo,

Re: Clarification of NPC Processes and Timelines Regarding Potential Amendment to the North Baffin Regional Land Use Plan (NBRLUP)

Baffinland continues to review the Nunavut Planning Commission (NPC)'s conformity determination of April 8, 2015 (the Conformity Determination) with respect to Baffinland's Phase 2 Proposal and is considering its next steps. Since there is not a prescribed process for an amendment, Baffinland does not have a clear understanding of what changes to the NBRLUP would be required in order to bring Phase 2 shipping through ice into conformity, or of the administrative processes and timelines that NPC would follow in relation to such an application. As has been communicated to NPC, a lack of clarity in this area is of serious concern to Baffinland and has the potential to significantly affect our business.

During our discussions two weeks ago with you, senior NPC administrative staff and Sharon Ehloak (NPC Executive Director), you indicated that NPC could not provide any guidance on NBRLUP amendment process timelines and requirements until Baffinland provided questions in writing, as it was not possible for NPC to provide procedural guidance on hypothetical scenarios. We are therefore requesting by way of this letter some clarity from the NPC on an amendment process, should that option be pursued.

As timely feedback from the NPC on these matters is essential in Baffinland's decision making, Baffinland requests a written response to this letter (including NPC's response to the questions specified below) as soon as possible, and ideally on or before Monday, May 4, 2015.

A. Specifics of Potential NBRLUP Amendment

If Baffinland proceeded with an amendment application, we would want to ensure that the requested amendment would enable the NPC to issue a positive conformity statement in relation to the Phase 2 proposal. Based on the Conformity Determination, this could be achieved with an application under Part 6 of Article 11 of the NLCA and sections 3.5.11 and 3.5.12 of the NBRLUP. Specifically, section 2.2 of Appendix Q could be amended to add:

- *“The marine component includes trans-shipping during the open water season, including within areas in Eclipse Sound. The shipping season on the marine corridor may include shipping through open water and shipping through ice (excluding the months of April and May).”*
- *“Notwithstanding Sections 3.2.1 and 3.3.1 of the NBRLUP, transportation activities may proceed along the Milne Inlet Tote Road and marine transportation corridor provided such activities occur in compliance with all applicable laws and the terms and conditions of any required project certificate applicable to the activity. Regulatory authorities shall give careful consideration, through the project review process under Article 12 of the NLCA, to potential for impacts on opportunities for domestic harvesting and on wildlife and wildlife habitat, and the project certificate shall include any measures determined to be necessary to mitigate such impacts and to ensure Inuit values are conserved.”*

(collectively, the Potential Amendment).

- Can NPC confirm that the Potential Amendment wording would be acceptable, and that if these amendments to the NBRLUP were made, the Phase 2 project proposal would be in conformity with the NBRLUP?
- If NPC would prefer alternative wording, could NPC please provide Baffinland with proposed amendment wording that would result in a positive conformity statement?

B. NPC Amendment Process and Procedure

- Can NPC please advise of any NPC policies and procedures which would apply to the Potential Amendment application and process?
- Can NPC please provide a detailed overview which sets out the procedural steps that NPC would follow in processing the Potential Amendment application?

C. NPC Information Requirements

- Can NPC please provide the application form (if any) for the Potential Amendment?
- Can NPC please provide details about the technical and other information that would be required in order for NPC to start its process and to proceed to subsequent steps?
- When would the Potential Amendment application be deemed “complete” by NPC?

D. Anticipated Coordination with NIRB Processes

- Can NPC please confirm that the Potential Amendment application would proceed concurrently with NIRB processes (as occurred twice previously with respect to the Mary River Project and ERP)?
- Can NPC please provide details as to expected coordination between the Potential Amendment process and the NIRB process? For example, (if they are deemed necessary), would NPC hold joint meetings/hearings with NIRB and coordinate these with NIRB’s Article 12.8.2 hearings? The NBRLUP states that amendment would be a joint review process, and in 2009, NPC, NIRB and NWB agreed to a “coordinated process” for the Mary River project. Coordinated meetings would limit the potential

for confusion at the community level as well as provide an opportunity to enhance regulatory efficiency and reduce costs for all participants including NPC itself, NIRB, QIA, GN, the town of Pond Inlet, and others.

E. Timelines

- Can NPC please provide details as to the expected timelines that would apply to each procedural step as well as the overall amendment process timeline?
- What level of confidence can NPC provide that these timelines can be achieved?

Fundamentally, Baffinland supports Inuit land access rights and is committed to doing business in a way which supports the essential Inuit values the NLCA is designed to protect. Our respect for Inuit culture and the lands and water where we operate is at the core of everything we do and is clearly demonstrated in our Phase 2 proposal where shipping is not considered in April and May, and would be minimized in March and June.

Experience has shown that shipping through ice does not indelibly affect Inuit rights and land use. There are available practical measures which can be undertaken to ensure access and protection of wildlife, and shipping through ice regularly occurs in Nunavut (as an example, historically at the Nanisivik Mine, located within the current NBRLUP) and other areas in Canada. The Mary River Project Certificate includes detailed mitigation measures applicable to shipping through ice (via the southern route) which were developed following detailed consultation with Inuit. These measures were informed by careful consideration of Inuit traditional knowledge, comprehensive applicable shipping laws, and additional information gained through the NIRB review process. It is our belief that through continued consultations with the community, HTO and QIA, Baffinland and Inuit can find an acceptable way to move forward with Phase 2 shipping through ice. However, resolving the regulatory path is a key factor in continuing this essential dialogue. Currently Baffinland is unable to move the project proposal forward in a timely way into NIRB's environmental assessment process wherein the potential environmental and social impacts and potential mitigations can most appropriately be considered.

Thank you for your guidance on these matters. We appreciate the NPC's timely response to our request. It will greatly assist Baffinland in evaluating the options put forward by NPC in the Conformity Determination.

Please contact me or Oliver Curran directly if you have any questions.

Regards,

A handwritten signature in black ink, appearing to read 'Erik Madsen', with a stylized, cursive script.

Erik Madsen, Vice President
Sustainable Development, Health, Safety, and Environment

c.c. Sharon Ehloak (NPC)
Brian Aglukark (NPC)

Navarana Beveridge (QIA)
Stephen W. Bathory (QIA)
Ryan Barry (NIRB)
Tara Arko (NIRB)
Ben Kogvik (NWB)
Phyllis Beaulieu (NWB)
Georgina Williston (DFO)
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