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December 12, 2017

**RE: Final Comments on the North Baffin Regional Land Use Plan Amendment
Application by Baffinland Iron Mines Corporation [NBRLUP Amendment #3]**

The Government of Nunavut (GN) would like to thank the Nunavut Planning Commission (NPC) for hosting the recent public hearing in Pond Inlet on December 4 and 5, 2017, respecting Baffinland Iron Mines Corp.'s (Baffinland) proposed amendment to the North Baffin Regional Land Use Plan (NBRLUP). The GN remains committed to participating fully in all land use planning activities in the territory. Pursuant to the NPC's guidance at the hearing, please accept this letter as a final written submission for the above-mentioned process.

Division of Mandate and Responsibilities

The Nunavut Agreement contemplates both a land use planning regime and an impact assessment regime, and these regimes have been operationalized in the *Nunavut Planning and Project Assessment Act* (NuPPAA). These regimes regularly interact with one another but are meaningfully distinct. Land use planning contemplates the development and overseeing of uses and prohibitions of land throughout the Nunavut Settlement Area.

The GN submits that the NPC must ensure that it does not infringe upon the Nunavut Impact Review Board's (NIRB) jurisdiction by taking into consideration issues and facts that fall into the impact review process. This position is supported generally by the Nunavut Agreement and NuPPAA. In particular, Article 11.2.2(f) provides that "the planning process shall be systematic and **integrated with all other planning processes and operations, including the impact review process** contained in the Agreement" [*emphasis added*]. The NIRB has been specifically granted functions including (1) gauging and defining the extent of impacts caused by a project; and (2) reviewing the ecosystemic and socio-economic impacts of a project proposal (ss. 12.2.2(b) and (c)). It is imperative that the institutions of public government (IPGs) ensure they comply with their own regime without infringing on that of another IPG.

Procedural Fairness

The GN further submits that the public hearing itself was not an appropriate time to discuss project-specific impacts. Baffinland properly reviewed the requirements to request a conformity

determination and provided materials accordingly. Following instructions from the NPC, Baffinland provided an amendment application respecting the NBRLUP, again following the specific instructions provided. It is, of course, open to the NPC to test the adequacy of materials filed pursuant to the NPC's mandate from both the Agreement, NuPPAA, its rules and procedures, and the NBRLUP.

Procedural fairness is required in all administrative law decisions. This includes the requirement that parties must know the case they must meet. In this set of facts, Baffinland was not required to submit detailed environmental and socio-economic impact statements. In the absence of these materials, neither the proponent, community members, the NPC, nor intervenors were able to assess impacts in the manner envisioned by the Agreement. In addition, the appropriate parties to discuss impacts were not in attendance at the public hearing, including the NIRB. Intervenors at an impact assessment review would typically include various Government of Canada departments, as well as representation from all potentially affected communities. The GN submits that to render a land use planning decision based on the specific impacts of a project, where the impacts were not required to be produced in advanced, were never tested, and were not available to the appropriate range of intervenors or institution of public government, would be procedurally unfair.

Finally, the GN acknowledges the many concerns that were raised by interested parties during the hearing, including but not limited to: potential biophysical impacts, socio-economic impacts and benefits, hunter harvesting access, and travel disruption. It is imperative that adequate measures be taken to alleviate public concerns prior to any project's commencement. The GN looks forward to responding to these concerns through the appropriate impact assessment processes described in the Nunavut Agreement and NuPPAA, should the amendment in question be approved.

The GN is confident that the NPC will render its decision on the basis of information relevant to its mandate and the subject application materials for Amendment #3. The GN is confident the NPC will disregard submissions made which are outside the scope of the application, which are beyond the scope of land use planning, generally, and which properly form the basis of other IPGs' decision making functions.

Sincerely,



Steve Pinksen
Assistant Deputy Minister

c.c.: Stephen Williamson Bathory, Qikiqtani Inuit Association
David Rochette, Indigenous and Northern Affairs Canada
Enookie Inuarak, Hamlet of Pond Inlet
Ryan Barry, Nunavut Impact Review Board