ᓄᓇᕗᑦᒥ ᐸᕐᓇᐃᔩᑦ
Nunavunmi Parnaiyiit
Nunavut Planning Commission
Commission d'Aménagement du Nunavut

October 29, 2019

Megan Lord-Hoyle
Vice-President, Sustainable Development
Baffinland Iron Mines
2275 Upper Middle Road East, Suite 300
Oakville, ON, Canada L6H 0C3
By email: mailto:megan.lord-hoyle@baffinland.com

RE: Response to Comments on Nunavut Planning Commission Draft Rules for Public Proceedings released for comment July 26, 2019

Thank you for your comments on the Commission's Draft Rules for Public Proceedings (**Draft Rules**) received September 24, 2019, referencing the submissions of TMAC Resources dated September 20, 2019. The Commissioners have considered the comments of TMAC Resources on the Draft Rules, as well as the comments of others received within the 60-day period for public comment, and as a result of those comments will be making revisions to the Draft Rules. Please be advised that pursuant to section 38(4) of the *Nunavut Planning and Project Assessment Act* (Canada) (***NuPPAA***), the Commission will not be publishing any further notices before enacting amended Rules for Public Proceedings.

In response to your request for a time extension, the Commission gave the notices required by section 38 of the *NuPPAA*, available on the Government of Canada's Department of Justice Website, at www.justice.gc.ca. Subsection 38(2) sets a time limit, requiring written comments be received "within 60 days after publication of the notice", and subsection 38(3) requires the Commission to respond to comments made within that time limit. The Commission does not have the ability to consider comments made after the end of the 60-day time limit or to grant time extensions.

Please note that the Commission anticipates some rules will be renumbered due to the comments received, and this response addresses the comments made based on the original numbering of the draft rules released for public comment on July 26, 2019.

The Commission considered the comments of TMAC Resources and provides the following responses:

- In response to the request that the Commission clarify the process used to determine what constitutes reasonable best efforts to notify as many people potentially interested or affected by the Rules as possible, how that process is communicated to parties so they are aware of it, what process is used to determine when notices are posted to the NPC website as well as to the Public Registry, and to request Commission staff review the Nunavut Distribution List to ensure interested parties were made aware of the 60 day comment period, the Commission gave the notices required by section 38 of the *NuPPAA*, available on the Government of Canada's Department of Justice Website, at www.justice.gc.ca. The Commission notes this is not a request for a specific amendment to the Draft Rules.

- In response to the comment on the definition of “Notice to Participants” in rule 3 that there is a potential for Notices to Participants to be perceived by the NPC as being received by the Participants when they may not have been, as with any public body engaged in consulting the public the Commission makes reasonable best efforts to notify potentially interested persons of Proceedings. The Commission notes this is not a request for a specific amendment to the Draft Rules.
- In response to the request that the Commission clarify in what circumstances they would be conducting mapping and land use studies other than for preparation of a draft land use plan, the Commission has many roles in Nunavut both under the *NuPPAA* and the Nunavut Agreement requiring the collection of information other than in the context of Hearings on land use plans and Public Reviews of amendment applications and minor variances, including but not limited to section 11.4.4 of the Nunavut Agreement which directs the Commission to identify planning regions, planning objectives, goals and variable applicable to planning regions, and to contribute to the development and review of Arctic marine policy. The Commission notes this is not a request for a specific amendment to the Draft Rules.
- In response to the request that the Commission clarify in what circumstances it would be conducting "reviews of projects by the Commission" under Draft Rule 2(2), the Commission will be amending the rule to clarify the rules do not apply to conformity determinations under subsection 77(1) of the *NuPPAA*.
- In response to the comment on rule 3 of the Draft Rules that the Commission align definitions of Traditional Knowledge, Inuit Qaujimaningit and Inuit Qaujimajatuqangit, with other Institutions of Public Government in Nunavut, the Commission will be amending and enacting the rules based on the comments received, and takes note of your recommendation that it engage in a collaboration with other IPGs to consider a future amendment to the rules. The Commission will not be amending the rules to include a reference to “Inuit Qaujimaningit” as that term has not been defined in the comments or distinguished from Inuit Qaujimajatuqangit which is the term the Commission used in its existing regional land use plans.
- In response to the comment on rule 3 of the Draft Rules that the definition of "Commission" should not include the phrase "and Commission staff delegated by the Commissioners to conduct the Commission’s business functions, as the context requires", the Commission will not be amending the rule as suggested since Commissioners as of necessity delegate some functions to staff from time to time, and the Draft Rules expressly and implicitly reserve presiding over Proceedings and final decision-making to Commissioners exclusively. On review of the definition of the term “Commission” in the NuPPAA and Article 10 of the Agreement, the Commission will be amending the defined term to change the word “institute” to “institution” in the rules.
- In response to the comment on rule 3 that the definition of "evidence" be removed, the Commission received multiple comments on this term and will be amending this definition in rule 3 of the Draft Rules and providing more detail about the types of evidence the Commission may receive, and how, in rule 15, but will not remove the term as suggested.
- In response to the comment on rule 3 that the definition of "Hearing" be removed, the Commission will be amending this definition in rule 3 based on other comments received, but will not remove the term “Hearing using” as suggested.
- In response to the comment on rule 3 of the Draft Rules that proponents be given the opportunity to attend Information Sessions being held in relation to a project, and that these sessions provide an opportunity for the Proponent to answer questions from the public, the Commission will be amending rule 17 to give an Amendment Applicant or Proponent seeking a Minor Variance the right to attend an Information Session or a meeting relating to that Proceeding held under the rule so that it is aware of community comments and knowledge provided, but will not amend the rules to either require a Proponent or Amendment Applicant to answer questions at such a session or meeting, or to give a Proponent or Amendment Applicant a right to answer questions posed at such sessions or meetings. All Participants will instead be given an opportunity to file materials to include in the record within 14 days of the Information Session or meeting.

- In response to the comment on rule 3 that the Commission should consider the NIRB process for granting Intervenor status, the Commission will be amending the rules to clarify the criteria Commissioners will consider when deciding whether to register people who have knowledge, information or views useful to the Commission as Participants.
- In response to the comment on rule 3 that the definition of "minor variance" be reworded, the Commission received multiple comments on this definition and will be amending this definition in rule 3 in light of those comments.
- In response to the comment on rule 3 that the definition of "Participant" should be simplified and re-written in a plain language manner, although exact wording was not suggested the Commission will be amending the definition to simplify the definition.
- In response to the request that rule 3 of the Draft Rules simplify the definition of “Public Review" and rewrite in a plan language manner, although exact wording was not suggested the Commission will be amending the definition to simplify the definition.
- In response to the request that the Draft Rules reference Inuinniaqtun, the Commission received multiple comments on the definition of the term “Inuktitut” and will be amending the rules to remove the definition of Inuktitut entirely so the term “Inuktitut” will be interpreted as it is defined in the *NuPPAA*, which includes Inuinniaqtun.
- In response to the comment that the Draft Rules provide clear criteria that must be met in order for the Commission to consider lengthening or shortening times for actions, establishment of further procedures, and/or the varying or waiving of the application of the rules, the Commission will be amending rule 4 to require Participants be notified in advance of decisions, Motions and directions on procedure, and to require that the Commission’s decisions be consistent with the purpose of the rules. The rules will also be amended to provide a list of factors to be considered if the Commission considers extending or reopening the record for a Public Review or a Hearing.
- In response to the request for clarification of rule 10 regarding compatibility with the Commission’s information technology, equipment, software and processes, if the Commission receives an electronic submission that it cannot access for whatever reason, whether due to file corruption, use of outdated software, file incompatibility, or otherwise, the Commission would inform the Participant that it could not accept the material and would decline to consider the material. The Commission will not be amending the rule as no exact wording was suggested and the Commission is unclear what additional clarification to add to the rules.
- In response to the comment that rule 11(3) of the Draft Rules be rewritten in plan language, although exact wording was not suggested by TMAC the Commission will be amending the rule based on other comments received.
- In response to the comment that rule 11(4) of the Draft Rules be removed, other comments received proposed modifications to the rule and the Commission will be amending the rule rather than removing the rule in its entirety.
- In response to the comment that rule 12 of the Draft Rules that the Commission provide active notification to relevant Participants when arguments, Documents and Evidence are filed in a Proceeding on the Public Registry rather than passive notification which may require constant monitoring of Public Registry to ensure Participants are current on submissions, the Commission considers this a reasonable suggestion and notes other participants made similar comments; however, at present the documents section of the Commission’s public registry does not allow users to sign up to receive automatic notifications whenever new documents are posted and the Commission will not be amending rule 12 as suggested. The Commission has made a note of the requests that it develop email distribution lists and provide more frequent notifications and will consider adding this functionality to its public registry.
- In response to the comment that rule 13 provide clear options that the Commission will consider when a motion is filed, the criteria to be used to evaluate and select the preferred options, and what process will be

used to determine if the Motion needs to be communicated to other Participants, the Commission will amend the rules to require other Participants in a Proceeding be notified of a Motion, meaning Participants may respond to Motions proposing what criteria and processes the Commissioners should consider in the specific circumstances, and Motions will be included in the public registry unless the Commission directs otherwise.

- In response to the comment that rule 15 should be amended to require clear notice to Proponents as to what issues the Commission is considering, the Commission will be amending rule 15(2) to remove the express reference to a list of issues, and the Commission will communicate the issues to be considered to participants in advance of making a decision through a number of other means including but not limited to Notices, participant meetings, Information Requests, and the placement of Participants' materials in the public registry, as well as with reference to the applicable land use plans.
- In response to the comment that rule 15 of the Draft Rules should ensure Proponents be invited to Meetings of Technical and Traditional Knowledge Experts, the Commission will be amending the rules to give an Amendment Applicant or Proponent seeking the Minor Variance the right to be invited to these meetings, and will provide 21 days notice prior to holding such a meeting.
- In response to the comment that rule 17 provide better clarity as to the process in the event the Commission grants a Motion for confidentiality, the Commission received multiple comments on this and will be amending the rules to move the standalone rule on confidentiality into rule 12 dealing with disclosure on the public registry, and furthermore, the Commission will amend the rule to require a Participant claiming confidentiality to advise as to whether all or some of the material is confidential and the specific harm that would result if it were disclosed, and that the Commission may decline to rely on confidential information if doing so would prejudice others who cannot reply to the information.
- In response to the comment on rule 19 that the Rules should not set a minimum 30-day notice period as the Commission could determine a shorter notice is appropriate, and asking why a Public Review period would not commence on the date a notice is published, other comments on the Draft Rules requested a minimum 30 day period to ensure meaningful participation by others, and because there may be multiple publication dates for a single notice depending on the periodical used, for consistency and fairness a Public Review should start on a single date independent of the publication schedules of third party periodicals.
- In response to the request for further details regarding timelines under rule 25 of the Draft Rules, the Commission will be amending the rule based on comments by others to provide several factors the Commissioners will consider if contemplating an extension or reopening of the record, including availability of the Evidence, diligence, and the public interest.
- In response to the comment on rule 28 that the Commission should require Participants and Commission staff to answer any questions raised to the best of their ability, the Commission's processes are not adversarial and the Commission does not have the power to subpoena witnesses, compel answers, or to require testimony under oath, and cannot require any witness to answer any question. As employees of the Commission, staff are present at a Hearing to assist the Commissioners and Participants with confirming facts in the record or clarifying ambiguities in materials, and must answer questions to the best of their ability if directed to do so by the Chairperson, but are not opposed in interest to any Participant. The rules will not be amended to enable the Chairperson to compel answers, or to provide for questioning of staff by Participants.
- In response to the comment on rule 29 that a quorum of Commissioners be required to hold Hearings, the Commission will be amending the rule to exempt Amendment Applications and Minor Variances from such Hearings before less than a quorum of Commissioners; however, the rules will retain the ability for the Commission to hold Hearings in respect of land use plans with less than quorum present and for such Evidence to be presented to a quorum of Commissioners as a report of a committee. The Commission received other comments on directions on procedures, and will be amending the rules to provide Participants affected by a direction on procedure a meaningful opportunity to provide their views, recognizing that if a direction on procedure is issued at a Hearing Participants may ask for an adjournment.

- In response to the comment that the Draft Rules should not be applied retrospectively, the Commission notes that procedural changes are presumptively retrospective. The Commission will not be making the requested amendment.

On behalf of the Commission, I want to thank you again for your input. The Commission will publish the notices required by section 38(5) of the *NuPPAA* when it makes the Rules amended based on the comments received. If you also provided comments on the Commission's Draft Rules for Project Description, the Commission will be considering and responding to those comments separately in due course.

Sincerely,

Andrew Nakashuk
Chairperson
Nunavut Planning Commission