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Mayor and Council Hamlet of Pond Inlet
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May 27, 2015

VIA ELECTRONIC MAIL

RE: Response to QIA Letter to NPC and AANDC on May 20, 2015, and Hamlet of Pond Inlet Letter to NPC dated May 7th, 2015, received May 20, 2015

Dear Mr. Akeegok & Mr. Inuarak,

Thank you for your letters of May 7th and 20th, 2015, which clearly expressed your views, questions, and concerns. We especially thank Mr. Akeegok for his kind invitation to meet in Pond Inlet (Mittimatalik).

Due to the similar issue being discussed in both letters, that the date of receipt was identical, and that our response is somewhat lengthy, the Nunavut Planning Commission (Commission) has combined its response to your two letters. This is done with all respect.

Our response discusses the following topics:

1. The role of the Commission and regional land use plans
2. How the Commission determines if a project proposal conforms to a land use plan
3. Why Mary River Phase 2 project proposal does not conform to the North Baffin Regional Land Use Plan
4. Options the proponent may pursue and how they relate to previous plan amendments

1. The role of the Commission and regional land use plans

Article 11 of the Nunavut Land Claims Agreement (NLCA), Land Use Planning, requires the Commission to develop land use plans that guide and direct resource use and development in the Nunavut Settlement Area. Land use plans must reflect the values and priorities of residents and provide for their existing and future well-being. Plans can manage or prohibit uses from occurring in areas that are important to Inuit. Land use plans, such as the North Baffin Regional Land Use Plan (NBRLUP), are developed over many years, with extensive consultation with all communities, and must be accepted cooperatively by government. As noted below, once a land use plan is approved, the Commission must determine if project proposals meet the requirements that have been agreed to through the development and approval of the plan.

The Nunavut Land Claims Agreement provides fundamental guidance on how the Commission must conduct land use planning, as per NLCA s. 11.2.

Land use planning under the NLCA involves extensive public consultation, but it is important to note that this consultation takes place during the development of land use plans, not during the review of project proposals to determine if they conform to the requirements of land use plans.

2. How the Commission determines if a project proposal conforms to a land use plan

While the process to develop land use plans is itself naturally a social activity, the implementation of land use plans must be an *objective, legally defensible, predictable, non-political, and repeatable* process. Conformity Determinations are done against the approved Land Use Plan.

The planning process, as set out in the NLCA, ensures that political pressures do not easily counter-act the overarching cooperative wishes of the communities. To achieve this, land use plans have criteria that project proposals must conform to. Project proposals that meet the conformity criteria are approved and sent to the next step in the regulatory process. Those that do not meet the conformity criteria are not allowed to move forward and be reviewed by other regulatory authorities unless a special exemption is granted by the Minister.

NLCA s. 11.5.10 reads:

“The NPC shall review all applications for project proposals. Upon receipt and review of a project proposal, the NPC...shall:

(a) determine whether the project proposals are in conformity with plans...”

NLCA s. 11.5.11 reads:

“Where the NPC has determined that a project proposal is not in conformity with the plan, the proponent may apply to the appropriate Minister for exemption. The Minister may exempt the project proposal from conformity with the plan and shall, subject to Sections 12.3.2 and 12.3.3, refer it to NIRB for screening. Nonconforming project proposals shall not be sent to NIRB until such exemption is obtained or a variance has been approved.”

NLCA s 11.5.12 reads:

“When the appropriate Minister exempts a project proposal, the Minister shall supply the NPC with written reasons and such reasons shall be made public”

NLCA s. 12.3.4 reads:

“NIRB shall not screen project proposals that are not in conformity with land use plans, unless an exemption has been received under 11.5.11 or a variance has been approved under Section 11.5.10.”

Since the NRRLUP was adopted in 2000, hundreds of project proposals have been reviewed by the Commission for conformity with its requirements. The conformity review function of the Commission is entirely an internal process. The Commission does this by determining whether the project proposals meet the criteria identified in the approved land use plan.

3. Why the Mary River Phase 2 project proposal does not conform to the North Baffin Land Use Plan

After extensive review and consideration of all available information, the Commissioners unanimously determined that Baffinland Iron Mine Corporation’s (BIMC) Phase 2 proposal for the Mary River project does not conform to the NBRLUP. Details are contained in the conformity determination issued on April 8, 2015, which is being sent along with this letter for your convenience. For expediency, a portion of Paragraph 35 is reproduced here (italics added):

“...BIMC proposes regularly damaging community travel routes and provides examples of other ice breaking activities and mitigation measures [*Voisey’s Bay and Raglan*] that are not comparable or relevant to the Commission’s conformity determination as noted above. Based on the calculated frequency of 44 to 84 one way ice breaking ship transits each winter, the Commission is satisfied that this would amount to prohibiting or preventing the wildlife harvesting and traditional activities expressly protected by...the NBRLUP.”

4. Options the proponent may pursue and how they relate to previous plan amendments

As outlined in the Commission’s negative conformity determination of April 8, 2015 attached to this letter, under the NLCA, in the event of a negative conformity determination, the proponent has four options. It may:

- a) apply to the appropriate Minister for an exemption from the NBRLUP in accordance with the NLCA;
- b) amend the project proposal to comply with the NBRLUP and resubmit the amended project proposal;
- c) apply to the Commission to amend the NBRLUP; or
- d) re-evaluate the project proposal.

The Commission is not involved in the proponent’s request for a Ministerial exemption under the NLCA. If the proponent requests an amendment to the NBRLUP, a plan amendment process would be initiated. The Commission wrote to Erik Madsen, Vice President of Sustainable Development, Health, Safety & Environment at BIMC on May 19, 2015 to outline the amendment process and attached the Commission’s internal procedure for plan amendments. A plan amendment, much like the development of a land use plan, may trigger a public process requiring considerable community and public involvement and consultation. If the proponent modifies its proposal and submits it for a new conformity review, the Commission would review the project proposal internally pursuant to the NLCA and NUPPAA.

A first plan amendment to the NBRLUP was considered in order to allow for the development of a surface transportation corridor from the Mary River site south to the southern perimeter of the North Baffin planning region (enroute to Steensby Inlet). Approximately 34 kilometers out of the total 149 kilometers of the proposed railway was within the boundaries of the NBRLUP (see map at Appendix 1 on page 23 of

the attached Negative Conformity Determination dated April 8, 2015). This was for the Mary River project as originally envisioned by BIMC. The Steensby route was considered a 3.5.12 Joint Review under NLCA s. 3.5.12, as directed by the Minister. The Nunavut Impact Review Board (NIRB) agreed at that time to provide all of the information related to corridor development to the Commission.

A second plan amendment to the NBRLUP occurred in 2013 to 2014. It allowed for development of a surface transportation corridor from the Mary River site north to Milne Inlet, relating to a major expansion of an existing road, plus the development of a marine transportation corridor from Milne Inlet through Pond Inlet to Baffin Bay. This was for the Early Revenue Phase (ERP) of the Mary River mine project (now operational). The Commission undertook this process with a commitment from staff at Aboriginal Affairs & Northern Development Canada (AANDC) that it would reimburse the Commission's costs for the public review. The Commission was not reimbursed for these costs.

As I outlined to President Tom Padden, April 17th, 2015, if BIMC proceeded with a Plan Amendment that was not anticipated in our current fiscal year approved budget and work plan, I committed to communicating immediately with AANDC the need for this amendment to proceed in a timely way. In anticipation of such an amendment application, as Tom indicated to me would be coming, I have scheduled meetings with the Implementation Branch the week of June 8th 2015. In the Commission's May 5 and 19, 2015 letters we informed the proponent BIMC that the Commission will work with BIMC if it chose to proceed with an application to amend the NBRLUP. It is my understanding that BIMC has applied for a Ministerial exemption. If it is not granted, BIMC may still apply for an amendment, and my commitment to work with them on this process remains.

Conclusion

Following the regulatory process established in the NLCA, the Commission carefully reviewed BIMC's Phase 2 project proposal and determined that it does not conform to the NBRLUP. I would be happy to discuss this further at your convenience.

Respectfully,



Hunter Tootoo, Chairperson
Nunavut Planning Commission

Attmnt.

NPC Conformity Decision by the Commissioners, Mary River Project Phase 2, April 8. 2015 and cover letter

Internal Commission approved LUP Amendment Procedure

CC: Bernard Valcourt, Minister AANDC
Cathy Towtongie, President NTI
Peter Taptuna, Premier, GN
Johnny Mike, Minister Environment, GN
Leona Aglukkaq, MP

Ryan Barry, NIRB
Enookie Inuarak, Community Director, QIA
Tom Paddon, President BIMC
Joe Enook, MLA
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