



Prospectors & Developers Association of Canada
Association canadienne des prospecteurs et entrepreneurs

August 27, 2010

BY ELECTRONIC MAIL AND FACSIMILE

Ms. Sharon Ehaloak
Executive Director
Nunavut Planning Commission
P.O. Box 2101
Cambridge Bay, Nunavut
X0B 0C0

Dear Ms. Ehaloak:

Re: Draft Nunavut Land Use Plan Issued on June 22, 2010

Established in 1932, the Prospectors and Developers Association of Canada (PDAC) is the national organization that represents the interests of the Canadian mineral exploration and development sector both domestically and internationally. Our membership includes more than 950 corporations encompassing senior, mid-size and junior exploration and mining companies, as well some 6000 individuals consisting of prospectors, developers, geoscientists, consultants, mining executives, other professionals and students.

The PDAC's membership spans a wide range of companies that are actively exploring in Nunavut and have, therefore, taken a strong interest in the development of the land use plan for the territory. While the PDAC was not able to participate in the Technical Workshop that the Nunavut Planning Commission convened on May 18 and 19 in advance of the release of the current working draft, representatives of a number of our member companies were in attendance. This letter, which reflects the views, concerns and recommendations of our members, is intended to respond to the invitation to comment on the draft land use plan that the Commission extended to the mineral exploration and mining sector in conjunction with that workshop.

The PDAC's approach to Legislation and Policy

The PDAC believes that the mineral exploration community has an important role to play in the development of legislation and policies that will ensure a robust mining industry in Canada based on the principles of sustainable development. The association's mission statement affirms its commitment to promoting the highest technical, environmental, social and safety standards

within the exploration sector in Canada and abroad.

In keeping with these principles, the PDAC frequently offers its views and recommendations to government and other bodies on a wide range of issues that are important to the mineral exploration community, including those related to Aboriginal affairs, corporate social responsibility, environmental management, access to land, and worker health and safety.

Consistent with this approach, the association has actively participated, in collaboration with the Northwest Territories & Nunavut Chamber of Mines and the Mining Association of Canada, in the consultation process that Indian and Northern Affairs Canada (INAC) has undertaken since April 2009 in relation to Bill C-25, the proposed *Nunavut Planning and Project Assessment Act*.

With these considerations in mind, the PDAC and its members view the working draft of the land use plan that the Commission issued on June 22 as a document having significant implications for the long-term economic development of the territory's promising mineral endowment. We also acknowledge the issuance of the draft plan, as well as the First Reading of Bill C-25, as important and long-awaited steps toward the full implementation of the regulatory regime established under the Nunavut Land Claims Agreement (NLCA).

Against this backdrop, the association and its members remain committed to contributing to the development of a land use plan that will fully achieve the objectives spelled out in Article 11 of the NLCA, and thereby protect and promote the existing and future well-being of the residents and communities of Nunavut, taking into account the interests of all Canadians. Given the significant role that mineral exploration programs and mining operations are destined to play in the economy of Nunavut, we believe it is essential to offer our knowledge, expertise and perspectives to the Commission in support of its critically important work.

In that spirit, we submit the following comments, recommendations and proposals in relation to the June 22 working draft for your consideration. They are based on our review of the documents that the Commission made available on its ftp site, as outlined in your letter of the same date addressed to INAC, Nunavut Tunngavik Incorporated and the Government of Nunavut.

1. Draft Land Use Plan – Conformity with the NLCA

As noted in your June 22 letter, we understand that the current version of the land use plan is still a “working draft”. However, it appears that the present draft lacks a number of the key elements contemplated by section 11.3.1 of the NLCA.

This provision of the agreement states that a land use plan “...shall be a document containing text, schedules, figures and maps for the establishment of objectives and guidelines for short-term and long-term development”. Section 11.3.1 then goes on to list nine of the various factors that the plan should take into account.

Given that the present draft does not appear to conform to the basic structure contemplated by section 11.3.1, it is not clear that it would fulfill the underlying

intent and function of a land use plan, whether as set out in the NLCA or otherwise established. By way of explanation, we understand that a fully developed land use plan would generally include:

- broad guidelines for land access, land use and the management of renewable resources, notably important species of wildlife;
- maps that define the areas that are designated for, or limited to, specific uses (or “zones”);
- a synopsis of permitted or prohibited land uses within each zone;
- a procedure explaining how a request for “minor variance” would be evaluated and either granted or denied, as contemplated, for example, by Section 11.5.10 of the NLCA;
- an indication of the extent to which more detailed planning or zoning that could affect future access or use is either underway or intended; and,
- an explanation of the role that the land use plan plays in the overall regulatory regime that applies to the exploration and development of non-renewable resources.

To better illustrate our concern, we believe an effective and workable land use plan is one that allows an applicant, before submitting a proposal, to perform a self-assessment. The goal of doing so is to determine, with a reasonable degree of certainty, whether the proposal in question is likely to conform to the requirements of the plan and therefore proceed to the next stage of review. According to the record of the meeting, your staff endorsed this concept during the May 18-19 Technical Workshop. However, we respectfully submit that the draft plan, in its present form, would not meet this test.

We also suggest that a plan that fulfills this objective would assist the Commission with discharging its duties under the NLCA and Bill C-25 more effectively and efficiently. We anticipate that such a plan would help limit the number of non-conforming development proposals that are submitted, thereby allowing the Commission to focus its resources on the proposals that have the greatest likelihood of receiving approval to proceed to the next stage of review.

2. Identification of Planning Regions and Specific Planning Objectives

Section 11.4.4 of the NLCA requires the Commission to identify “planning regions”. The draft land use plan appears to indicate that the NPC has simply delineated the required planning regions to be consistent with the areas that are respectively administered by the three Regional Inuit Associations, but does not give the rationale for doing so.

Neither the NLCA nor Bill C-25 provides a definition for the term “planning region”. However, given that Nunavut represents one-fifth of Canada’s land mass and is home to a wide variety of geographic areas and ecosystems, planning regions might be better defined, for purposes of the land use plan, on the basis of common ecological or bio-physical characteristics.

More importantly, however, the draft plan does not confirm, as paragraph 11.4.4(b) of the agreement requires, that the Commission has thus far identified the “...specific planning objectives, goals and variables that apply to planning regions” which the NLCA says must be consistent with the broader goals and objectives established under paragraph 11.4.1(a).

We recommend that the draft plan be amended to fulfill the requirements of paragraph 11.4.4(b). This may facilitate the incorporation of the information and detail that is required by section 11.3.1 of the NLCA. We also suggest that the basis for determining the proposed boundaries of the three planning regions set out in the current draft be fully explained, if consideration will not be given to any other approach to establishing these boundaries.

3. Draft Implementation Strategy

As noted on its cover page, the current version of the implementation strategy is a “working draft document...for illustrative purposes only.”

The implementation strategy is an integral element of the regulatory regime that the land use plan puts into place, as envisaged by section 11.3.3 of the NLCA. Consequently, it is difficult to undertake a comprehensive analysis of the overall system in the absence of a reasonably complete draft of the implementation strategy. We therefore recommend that completion of the implementation strategy be given a high priority, and that a fully developed version of the document be circulated for comment as soon as possible.

4. Broad Planning Policies, Objectives and Goals Under Section 11.4.1

On November 10, 2007 the Commission approved the “broad planning policies, objectives and goals” for the Nunavut Settlement Area that section 11.4.1 of the NLCA establishes as one of the Commission’s three “major responsibilities”. As outlined above, paragraph 11.4.4(b) of the agreement requires that the specific planning objectives, goals and variables that apply to planning regions be consistent with the broader goals and objectives.

In the November 10, 2007 document, the Commission states that these policies, objectives and goals will “...inform the development of a Nunavut Land Use Plan and its regional or sub-regional components.” However, it is not clear that the current draft plan fulfills this promise entirely. We would mention, in particular, the following sections of the November 10, 2007 document (emphasis added in each case):

Objective F, Goal 5

It is an objective of the Nunavut Planning Commission that Land use Planning ensures that the goals of any proposed restrictions on land use are achieved with **the least possible impact on undiscovered mineral resources**, while taking into account environmental and social objectives.

Policy F.1, Goal 5

It is a policy of the Nunavut Planning Commission that Land Use Planning will, **before any restriction on land use is created**, review and assess the available data and research, broad planning goals and objectives, legislation, policies, priorities and values of residents and other planning partners, and programs relating to conservation, land use planning, wildlife management and parks **to determine whether the restriction is warranted.**

Policy F.2, Goal 5

It is a policy of the Nunavut Planning Commission that Land Use Planning provides clear direction and guidance regarding the conservation, development and use of land **to provide certainty to land users, encourage investment, minimize risk and costs, and streamline the regulatory process to ensure Nunavut resources can compete in a global market place.**

In our view, the objectives and policies cited above reflect a sound approach to land use planning and are consistent with the overarching goals set out in Articles 11 and 12 of the NLCA. We therefore recommend that, along with the other elements of the November 10, 2007 document, the objectives and policies quoted above be carried forward through the further development and amendment of the proposed land use plan.

5. Relationship of the Draft Plan to Bill C-25

In their joint submission to the Northern Regulatory Improvement Initiative dated February 28, 2008, the NWT & Nunavut Chamber of Mines, the Mining Association of Canada and the PDAC referred to the lengthy delays that have ensued in the passage of the federal legislation contemplated by Article 10 of the NLCA to establish the four principal “institutions of public government”. The PDAC therefore welcomed the progress that preceded First Reading of Bill C-25 on May 12 of this year. In turn, the association intends to sustain its efforts to contribute to the development of the legislation as the proposed enactment undergoes further Parliamentary review.

While Bill C-25 is not yet law, we would have expected that the draft land use plan would have taken its principal provisions more closely into account, given that the key requirements under the proposed legislation are derived from the corresponding provisions of the NLCA. Notable examples include those related to the granting of minor variances (subsection 48(3)), and those that pertain to the “...specific planning objectives and planning variables regarding the conservation, development, management and use of land” within a planning region (subsection 42(1)).

It is also important to take note of section 43 of Bill C-25, which will require the Commission to “...seek the opinions of affected municipalities, interested corporations and organizations, residents and other interested persons regarding specific objectives and land use planning options for the region.” This provision stresses the importance of ensuring, as a requirement of law, that all interested parties will have a meaningful opportunity to contribute to the development of the specific planning objectives and

planning variables that will apply on a regional basis. On behalf of the mineral exploration sector, we welcome that opportunity and look forward to participating fully in the consultation process.

We appreciate that the Commission will be eager to fully assume its responsibilities under Bill C-25, once the legislation comes into force, notably the responsibilities for the review of project proposals that will be invoked as soon as an approved land use plan is in place. On the other hand, we also maintain that, once proclaimed into force, the provisions of Bill C-25 have a strong potential to ensure the development of a land use plan that will balance economic, environmental, social and cultural objectives.

In our view, a plan that meets this goal will ensure the greatest benefit for Nunavummiut and other residents of the territory, while taking into account the interests of all Canadians. The PDAC believes that the timely development and implementation of the land use plan has the potential to increase certainty and reduce the risks that are inherent in the mineral exploration process. In order to achieve these objectives, the plan must be properly developed, adequately detailed, and sufficiently adaptive to fulfill its pivotal role in allocating land access and promoting sound and balanced land use decisions that will serve the long-term interests of Nunavut.

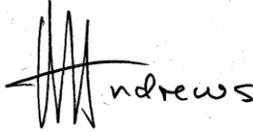
We therefore encourage the Commission to continue its important efforts to advance the development of the draft plan, with the objective of being fully prepared to assume the responsibilities outlined under Part 2 of Bill C-25, once the legislation comes into force. By doing so, we anticipate that the Commission will be well positioned to develop the specific planning objectives and planning variables for the planning regions that are contemplated by section 42, and then proceed to the development of a final land use plan pursuant to section 46 and the provisions of the proposed enactment that follow.

As evidenced by the industry's participation in the May 18-19 Technical Workshop, the mineral exploration community is eager to support the continued development and implementation of a land use plan for Nunavut. We believe that, together with Nunavummiut and other residents of the territory, we share the common goal of implementing a land use plan that will fully deliver on the vision for Nunavut established under the NLCA.

The mineral exploration sector employs many individuals who have knowledge, experience and insights that can bring additional value to this process. The PDAC would therefore be pleased to collaborate with the Commission in convening another workshop to enable these individuals to enhance the dialogue that they have already initiated with your staff, and to allow us to explain our views, concerns and recommendations more fully. If you would like to explore this proposal in greater detail, please contact me.

In the interim, thank you for the opportunity to make this submission. We would be glad to respond to any questions that you, your staff or the members of the Commission may have, or to provide any further information.

Yours truly,

A handwritten signature in black ink, consisting of a stylized, scribbled name that reads "Andrews".

Tony Andrews
Executive Director
Prospectors and Developers Association of Canada

c.c. Mr. John Kearney, President
Northwest Territories & Nunavut Chamber of Mines
Yellowknife

Mr. Rick Meyers, Vice President Diamond Affairs
The Mining Association of Canada
Ottawa

Mr. Adrian Boyd
Director, Policy
Nunavut Planning Commission
(by facsimile)