

COUNCIL OF YUKON FIRST NATIONS

Office of the Grand Chief

January 9, 2013

The Honourable John Duncan, MP
Minister of Aboriginal Affairs and
Northern Development Canada
Government of Canada
Ottawa

Dear Minister Duncan:

Re: YESAA 5-year Review and Proposed Amendments

The Council of Yukon First Nations (the "CYFN") is in receipt of both the November 2 and 8, 2012, letters from Minister Duncan in respect of proposed legislative amendments to Canada's Northern Regulatory Regimes. In addition, representatives of the CYFN participated in the information session hosted by Aboriginal Affairs and Northern Development Canada (AANDC) on December 13, 2012, in respect of proposed revisions to the *Yukon Environmental and Socio-economic Act* (the "YESAA"). To that end, I would like now to put forward my initial thoughts and concerns on both the process and the product concerning potential amendments to YESAA.

I understand that the proposed amendments to the YESAA are based on recommendations contained in the YESAA Five-year Review Draft Review Report – Interim (the "Draft Interim Report") flowing from the Five-year Review. To be sure and as expressed to Minister Duncan in my letter of October 26, 2012, the CYFN is of the position that the Five-year Review remains incomplete since the Draft Interim Report does not satisfy the requirements of the 5-year Review pursuant to its Terms of Reference (April 2008). Moreover, I request clarification as to exactly what criteria is in place by which AANDC officials are selecting recommendations from the Draft Interim Report and moving them ahead as proposed amendments to the YESAA. In our view, it is both unacceptable and inappropriate for this kind of decision-making to be taking place in isolation of all Parties to the 5-year Review process.

The status of the Draft Interim Report notwithstanding for the purposes of this letter, I would like to focus attention on the following four points. First, as you know, the legislative drafting process that was undertaken by the Parties to the Umbrella Final Agreement (UFA) that resulted in the establishment of the YESAA and its regulations was done in a manner consistent with article 12.3 of the UFA. In other words, the YESAA was a product of collaboration and cooperation between the Parties. In our view, the CYFN and Yukon First Nations need to be involved, at the drafting stage and all reasonable subsequent stages, of any proposed amendment to the YESAA. This is consistent with Chapter 12 of the UFA.

Second, Canada's 2010 Action Plan specifies that the proposed legislative action for Yukon is to conduct a tripartite review of the YESAA. That plan acknowledges that legislative amendments may be required, pending the outcomes of the review. It follows that any improvements contemplated to Yukon's environmental regulatory regime need to be linked to the Final Report of the 5-year Review. To that end, I urge you to continue discussions with CYFN and Yukon

Government with a view to resolving the outstanding issues flowing from the 5-year Review so that all parties can finalize the report in good faith.

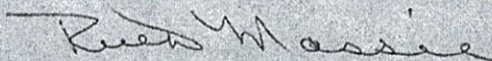
Third, the YESAA was engineered as a Yukon-centric statute. In this way, it takes into account the specific and unique features and characteristics of the political, environmental and socio-economic circumstances that exist exclusively in Yukon. With that in mind, it is entirely inappropriate to re-forge the YESAA into a national environmental assessment mold that does not take these attributes into consideration. While it is understood that regulatory efficiency is the objective, it should not be attained to the detriment of existing treaties and relationships between the Crown and Yukon First Nations.

Finally, I understand that AANDC is in receipt of a letter from Yukon government in respect of the proposed amendments to YESAA. At the meeting on December 13, 2012 AANDC officials agreed to share all the information it has on-hand in relation to its discussions with Yukon government about the YESAA amendments with CYFN. With that in mind, I request a copy of that letter and all relevant information forthwith. I am concerned for there appears to be important engagements between AANDC and the Yukon government where YESAA is discussed and such discussions appear to be leading to some important decisions in the absence of any involvement of the CYFN. This approach appears to be contrary to the intent of the Final Agreements, and the commitments provided by Canada's officials throughout the Five-year Review.

In closing, I would like to acknowledge Minister Duncan's comments in his letter to me and Premier Pasloski of October 4, 2012, wherein he states that the YESAA and the environmental assessment process that flows from it continue to be an effective, efficient and inclusive environmental-socio economic assessment process designed and supported by all Yukoners. And, as Yukoners, the CYFN and its member nations expect meaningful involvement in a process that directly affects us. With that in mind, I look forward to working with Yukon government and Canada in discussing and developing proposed amendments in accordance with the agreed-upon recommendations from the *draft interim report*.

If you have any further questions or comments, please do not hesitate to contact my office.

Sincerely,



Ruth Massie
Grand Chief