



Stephen M. Van Dine
Assistant Deputy Minister
Indigenous and Northern Affairs Canada
Northern Affairs Organization
10th Floor, 15 Eddy Street
Gatineau, QB K1A 0H4

Re: Response to Correspondence from the Signatories to the *Nunavut Agreement* Regarding Consistency Between the term “Project” under NuPPAA and the term “Project Proposal” under the *Nunavut Agreement*

It is therefore our understanding that the reliance on the term “project” as it is defined in the Act [the Nunavut Planning and Project Assessment Act] as it is defined in the Act enables the full implementation of the assessment regime in the Nunavut Agreement.

The attachments to that letter shared with the Commission and the Boards the rationale for coming to this understanding as expressed by Indigenous and Northern Affairs Canada (INAC) and Nunavut Tunngavik Inc. The Nunavut Impact Review Board and Nunavut Water Board appreciate you sharing this guidance with us.

In response, while the Boards recognize the central view expressed that the law does not concern itself with trifles, the Boards also note that in the absence of a clear *de minimus* threshold being adopted in both the *Nunavut Agreement* and the *Nunavut Planning and Project Assessment Act* (NuPPAA) there is, if not inconsistency, at the very least uncertainty created when analogous *de minimus* thresholds are not referenced in both instruments.

While the Boards have found it very helpful to know the signatories' common understanding that it is expected that the same *de minimus* threshold should be read into *Nunavut Agreement*, the Boards continue to be concerned that for the regulated community, the Institutions of Public Government responsible for implementation and the parties relying on the express wording of the *Nunavut Agreement* and the NuPPAA, in the absence of an amendment or formal binding guidance, it is unclear whether the silence under the *Nunavut Agreement* as to the inclusion of any form of *de minimus* threshold for activities meeting the broad definition of project proposal under the *Nunavut Agreement* when compared to the express *de minimus* standard included in the definition of project adopted under the *Nunavut Planning and Project Assessment Act* is intended to denote that a broader category of project proposals were intended to be processed under the *Nunavut Agreement* than would be the case for projects under NuPPAA.

In contemplating the effect of reading in the *de minimus* threshold adopted under NuPPAA into the *Nunavut Agreement*, as appears to reflect the understanding of the signatories, the Boards note that this approach may create some further uncertainty in implementation when the current wording of Article 12, Schedule 12-1 of the *Nunavut Agreement* is considered in context. The heading of Schedule 12-1 is "Types of Project Proposals Exempt from Screening". The Boards can see that there is an argument that all activities described on this Schedule are activities that, by definition are deemed to meet the definition of "Project Proposal" adopted under the *Nunavut Agreement*. Arguably there is a *de minimus* threshold built into the Schedule already and the effect of that threshold is ensuring that Project Proposals below the threshold in the Schedule are to be exempted only from screening (unless there are cumulative effects concerns) and assessment by the Nunavut Impact Review Board, but are not intended to be exempted from the determination of conformity by the Nunavut Planning Commission at the initiation of the regulatory process.

While it may be that the signatories would view a guidance document as an appropriate means of not only addressing uncertainty created by silence in the *Nunavut Agreement*, but also uncertainty created by the express wording chosen in Schedule 12-1 of the *Nunavut Agreement*, the Boards have reservations about the extent to which interpretive guidance documents can modify, in a substantive way, the express wording of Schedule 12-1. We look forward to further discussions of this topic and other implementation issues at the upcoming Workshop and appreciate the candid discussion of these issues as we work with all our partners to implement

the *Nunavut Agreement* and NuPPAA as intended and ensure integrity, clarity and consistency in all our practices going forward.

We look forward to discussing these issues with you in greater detail at this week's workshop. Should you have any questions or wish to discuss any items prior to the workshop, please contact the undersigned directly via e-mail at rbarry@nirb.ca and stephanie.autut@nwb-oen.ca.

Sincerely,

Sincerely,

A handwritten signature in black ink that reads "Ryan Barry". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Ryan Barry
Executive Director
Nunavut Impact Review Board

A handwritten signature in black ink that reads "Stephanie Autut". The signature is cursive and compact, with the first and last names clearly distinguishable.

Stephanie Autut
Executive Director
Nunavut Water Board

cc: Sharon Ehloak, Nunavut Planning Commission
Distribution List Re NuPPAA/NLCA Workshop (Yellowknife, May 25 and 26)