September 9, 2015

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

Re: <u>September 6, 2016 Correspondence, NuPPAA Implementation and Mineral Claim Staking</u>

Sent via regular mail, fax and email: stephen.vandine@aadnc-aandc.gc.ca

---

Dear Mr. Van Dine;

On behalf of the Nunavut Impact Review Board (NIRB), thank you for your correspondence of September 6, 2016 in which you expressed the concerns of Indigenous and Northern Affairs Canada (INAC) with respect to the application of the *Nunavut Planning and Project Assessment Act*, S.C. 2013, c. 14 (*NuPPAA*) to mineral staking proposals. This correspondence is being provided as follow up to INAC and the other parties copied on your letter in respect of some key points in order to clarify the views of the Nunavut Impact Review Board (NIRB) and to also respond to the invitation to convene a Workshop in Iqaluit on this issue at the end of September.

At the outset, while the NIRB is generally receptive to participating in a Workshop with the parties having an interest and regulatory mandate in respect of mineral staking proposals under the Nunavut Land Claims Agreement (NLCA) and *NuPPAA* as suggested in your letter, the NIRB, as is likely the case with all parties, already has a very busy schedule in the next few months. Unfortunately, due to prior commitments and the relatively short notice, the NIRB is unable to make available the necessary personnel for the proposed Workshop in Iqaluit in late September. The NIRB would be happy to discuss possible alternative dates for the Workshop with Mr. Rochette as he undertakes the planning for this event, as the Board's current meeting schedule would make achieving the desired participation difficult prior to November.

However, in advance of such a Workshop, the NIRB wishes to convey our views on a central assumption raised in your correspondence with respect to the integrated regulatory regime applicable to mineral claim staking under the NLCA (as amended in 2015) and *NuPPAA*. In offering this comment, I note that I have had the benefit of reviewing the correspondence and attachment provided by Stephanie Autut, Executive Director of the Nunavut Water Board (NWB) on September 8. I will not reiterate the issues raised in her correspondence other than to

note that the NIRB agrees that the issues raised by the NWB also warrant further discussion at a future workshop dealing with implementation issues. I also want to note that to the extent permitted by our respective regulatory frameworks, the NWB, the Nunavut Planning Commission (Commission) and the NIRB have been and will continue to working together to respond to the implementation issues resulting from the amendments to the NLCA and *NuPPAA* as these issues are identified.

With respect to our specific comment, the NIRB wishes to respond to the following paragraph in your letter:

> *During the development of the legislation no party made representation to suggest the activity of staking mineral claims meets the definition of a "project"; in fact, it has been understood for many years that the impacts of such activities are "manifestly insignificant" and as a result are usually exempt from screening as reflected in Schedule 12(1)(6) and section 12.3.2 of the NLCA. As such, mineral staking now generally falls outside of the definition of "projects" to be submitted to the Commission under NuPPAA.*

In the NIRB's view, this summary does not fully reflect the applicable regulatory framework established under both the NLCA and *NuPPAA*. As referenced in the NWB's correspondence, under the NLCA (as amended in 2015), if mineral staking constitutes a "project proposal", Article 11, Section 11.5.9(a) requires the project proposal to be submitted to the Nunavut Planning Commission (Commission). The processing of the project proposal under the amended NLCA is required for all "project proposals" as defined under the NLCA, regardless of whether the activity is outside the definition of "project" in *NuPPAA* and would be exempt from the project assessment requirements of that Act.

So, regardless of whether *NuPPAA* does or does not apply to a project proposal, as required under the amended NLCA, upon receipt of a project proposal, the Commission makes the following determinations:

- What land use planning requirements apply to this project proposal (a conformity determination if there is a land use plan in place, or confirmation that conformity is not required as there is no land use plan in place);
- Whether, under Article 12, Section 12.3.2 and Schedule 12-1 (all items) the project proposal is a type that is exempt from screening; and
- If the project proposal is a type that is exempt from screening, whether under Article 12, Section 12.3.3 the Commission has concerns respecting the cumulative impact of that project proposal in relation to other development activities in a planning region, in which case the Commission shall forward the project proposal to the NIRB for screening notwithstanding that the project proposal would otherwise be exempt from screening.

The NIRB notes that in 2015 it may not have been the intention of the signatories to the amended NLCA to create a difference between the land use planning and project assessment requirements

for "project proposals"[1] required to be processed under the amended NLCA and project proposals with manifestly insignificant adverse ecosystem effects that are, by virtue of the definition of "project" under s. 2(1) of *NuPPAA*, excluded from the land use planning and project assessment requirements under *NuPPAA*. However, regardless of intention, the current wording has created this circumstance. This is not, as suggested in INAC's letter an issue of differences in the "interpretation" of the regulatory framework amongst project proponents, INAC, the Commission, or the NIRB, but rather a structural gap or inconsistency in the regulatory framework itself.

Consequently, it is the NIRB's view that the resolution of these issues likely requires further amendment to the regulatory framework itself. While the NIRB also sees the benefit of the parties working to develop common understandings or interpretive approaches with respect to factors and considerations that could inform the assessment of the Commission's referrals for screening based on concerns about cumulative effects, in the NIRB's view these types of discussions are adequate to fully address the situation for mineral staking or any other type of project proposal that is found to be included in the scope of the amended NLCA but excluded from the definition of "project" under *NuPPAA*.

The NIRB welcomes the opportunity to participate in the discussion and resolution of these issues going forward. If you wish to follow up with the NIRB in this regard, please contact me directly at (867) 983-4608 or via e-mail: rbarry@nirb.ca.

Sincerely,

Ryan Barry
Executive Director
Nunavut Impact Review Board

cc: David Rochette, Indigenous and Northern Affairs Canada
Sharon Ehaloak, Nunavut Planning Commission
Stephanie Autut, Nunavut Water Board
James Arreak, Nunavut Tunngavik Incorporated
Paul Emingak, Kitikmeot Inuit Association
Gabriel Nirlungayuk, Kivalliq Inuit Association
Navarana Beveridge, Qikiqtani Inuit Association
David Akeeagok, Government of Nunavut (Department of Environment)
Bernie MacIsaac, Government of Nunavut (Economic Development & Transportation)
Gary Vivian, NWT & NU Chamber of Mines
Dr. Janet King, Canadian Northern Economic Development Agency

[1] Which includes all works and undertakings that meet the definition of project proposal under the amended NLCA, regardless of the scale and scope of potential adverse ecosystemic impacts.