



Stephen M. Van Dine
Assistant Deputy Minister Northern Affairs
Indigenous & Northern Affairs Canada

Re: Review of mineral staking projects by the Nunavut Planning Commission (NPC)

I write in response to your letter regarding the Nunavut Planning Commission's (NPC) review of mineral staking projects dated September 6, 2016. It is our understanding from your letter that INAC is of the view that staking activities on Crown lands are exempt from the meaning of "project" as that term is defined in the *Nunavut Planning and Project Assessment Act* (NUPPAA). As your letter also suggests, NUPPAA excludes "manifestly insignificant" activities from the projects that must be reviewed by the NPC. However, due to conflicts and inconsistencies between the NUPPAA and the Nunavut Land Claims Agreement (NLCA) it is the NPC's understanding that proponents are required to submit all project proposals to the NPC under the NLCA, including for staking activities, notwithstanding being exempt under the NUPPAA. As you know the NPC does not itself have the ability to amend the NLCA or NUPPAA to resolve the unintended consequences that your letter identifies, and is merely following its legal obligations as have been established by the Government of Canada and Nunavut Tunngavik Incorporated through legislation and the NLCA.

It is important to understand that while a staking activity may not be a “project” as that term is defined under NUPPAA, it is still a “project proposal” under the NLCA. Both section 12.3.2. and 12.3.3 of the NLCA say that the works and activities listed in Schedule 12-1 are “project proposals”. Schedule 12-1 of the NLCA is itself entitled “Types of Project Proposals Exempt from Screening”, and lists at item number 6 “prospecting, staking or locating a mineral claim unless it requires more than a Class B permit...”. Unlike the NUPPAA, the NLCA does not exempt “manifestly insignificant” works and activities from its definition of “project proposal”. Both the NLCA and the *Nunavut Land Claims Agreement Act* prevail over the NUPPAA to the extent of any inconsistency or conflict. In this case, it is clear that the NUPPAA is inconsistent with the NLCA as it purports to exempt certain works and activities from review by the NPC that the NLCA requires the NPC to receive and review.

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The NPC provides no opinion on whether INAC's position is consistent with its obligations under the NLCA. I would however refer you to section 12.10.1 of the NLCA, which appears to preclude the issuance of any licences and approvals required to let a proposed project proceed until the NPC has determined whether a screening by the NIRB is required. The NPC also does not give any advice on the effect of a proponent failing to submit a "project proposal" to the NPC under section 11.5.9A of the NLCA, but notes that it is proponents who would bear the risk of failing to submit a project proposal to the NPC.

The NPC appreciates your proposal of a workshop following the NPC's scheduled pre-hearing conference in September. I have reviewed the correspondence of Ms. Stephanie Autut, Executive Director of the Nunavut Water Board, dated September 7, 2016, and suggest that the issues raised in that letter as well as herein should be open for discussion in that workshop. However, due to the NPC's various obligations to prepare for the public hearing on the DNLUP in late September, hold its regular Commissioner meetings in October, and to conduct community regional sessions from October to November, the earliest that the NPC's representatives can be available for such a workshop is November 9, 2016.

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Respectfully,

Schal. A

CC.:

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Mr. Bernie MacIsaac, Assistant Deputy Minister, Economic Development & Transportation,
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Mr. Paul Emingak, Executive Director, Kitikmeot Inuit Association
Mr. Gabriel Nirlungayuk, Executive Director, Kivalliq Inuit Association
Ms. Navarana Beveridge, Executive Director, Qikiqtani Inuit Association
Ms. Stephanie Autut, Executive Director, Nunavut Water Board
Mr. Gary Vivian, President, NWT & Nunavut Chamber of Mines
Dr. Janet King, President, Canadian Northern Economic Development Agency