



August 31, 2018

Troy MacKay
Policy Advisor
Natural Resources and Environment Branch
Crown-Indigenous Relations and Northern Affairs Canada

Re: Nunavut Impact Review Board Comments Regarding Proposed Amendments to Schedule 3 of the Nunavut Planning and Project Assessment Act

Sent via email: troy.mackay@canada.ca

Dear Troy MacKay:

On behalf of the Nunavut Impact Review Board (NIRB or the Board) I am providing the Board's response to the email request from Gilles Binda, received by the Board on May 29, 2018 to provide comments on the proposal of Crown-Indigenous Relations and Northern Affairs Canada to amend Schedule 3 of the *Nunavut Planning and Project Assessment Act*, S.C. 2013, c. 14, s. 2 (*NuPPAA*) (Schedule 3) to reflect the current Exemption Agreements under Schedule 12-1 (Item 7) of the *Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in right of Canada (Nunavut Agreement)*, between the NIRB and Parks Canada (PC), the NIRB and the Government of Nunavut, Department of Culture and Heritage (GN CH) and the NIRB and the Government of Nunavut, Department of Environment (GN DOE) (the Exemption Agreements). During the preparation of this correspondence, I note that the NIRB has had the benefit of discussions with the Government of Nunavut (GN) regarding their comments, and also recently reviewed the comments provided by Chris Spencer in the GN's correspondence to you dated August 28.

The NIRB shares the concerns of GN that the current proposed wording for Schedule 3 should be revised to accurately reflect the limits on the scope of the activities exempted from NIRB screening under the GN's two Exemption Agreements. As outlined in detail in the GN's correspondence (and so not repeated in this correspondence), the Exemption Agreements have preserved the discretion of the GN DOE and GN CH to refer activities that would otherwise be exempted if certain triggers for screening exist (such as public concern or cumulative effects). In addition, there is a clear category of activities (research being conducted as part of a Development Project) to which the GN CH Exemption Agreement does not apply.

Similarly, the PC Exemption Agreement also preserves the discretion of PC to refer activities to the NIRB that would otherwise be exempt from screening under the Exemption Agreement if PC has concerns about cumulative impacts and/or where public concern has been noted. As currently

worded, Schedule 3 contains no reference back to these limits to the scope of activities to which the Exemption Agreements apply, and would therefore represent broader categories of exemptions from screening than was intended by the NIRB and PC and the NIRB and the GN.

Accordingly, the NIRB requests that the proposed wording in Schedule 3 be amended to either preface the descriptions of the categories of activities with a reference to the limits on scope of the exemptions and discretion of the parties as further described in the Exemption Agreements or add to the descriptions of the categories of activities exempted from screening the express wording used in the Exemption Agreements to define the limits on the scope of exempted activities.

The NIRB notes that ensuring that these limits to the scope of categories of activities exempted from screening are clearly set out in the wording of Schedule 3 also addresses the concerns of parties expressed to the NIRB during comments on the Exemption Agreements. As you may recall, comment submissions from Nunavut Tunngavik Inc. noted the importance of regulatory authorities bound by such Exemption Agreements, such as PC and the GN, having the discretion to refer activities for screening by the NIRB where public concerns are noted in respect of a proposed activity that would otherwise be exempt from screening under an Exemption Agreement. Consequently, preserving this discretion is a key feature of the Exemption Agreements negotiated by the NIRB to date and should be preserved in the wording chosen for Schedule 3.

In closing, the NIRB appreciates being given the opportunity to comment on the proposed wording of these important additions to Schedule 3, and the NIRB will continue to work with Crown-Indigenous Relations and Northern Affairs Canada to ensure that the wording accurately reflects the scope of the Exemption Agreements. If you have any further questions regarding the Board's views in this regard, please feel free to contact me at my direct line (867) 983-4608 or via e-mail rbarry@nirb.ca.

Sincerely,



Ryan Barry
Executive Director
Nunavut Impact Review Board

cc: Laurie Pelly, Nunavut Tunngavik Inc.
Giles Binda, Crown-Indigenous Relations and Northern Affairs Canada
Chris Spencer, Government of Nunavut
Emily Stockley, Government of Nunavut
Allison Stoddart, Parks Canada