



Mr. Ryan Barry  
Executive Director  
Nunavut Impact Review Board  
PO Box 1360  
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SEP 14 2018

Dear Mr. Barry:

Thank you for your letter of August 31, 2018, regarding the Nunavut Impact Review Board's comments on the proposed amendments to Schedule 3 of the *Nunavut Planning and Project Assessment Act (NuPPAA)*.

Schedule 12 of the Nunavut Agreement list types of project proposals exempt from screening. Specifically 12-1#7 states that "Such other categories of activities and projects as may be agreed upon by Nunavut Impact Review Board (NIRB) and the appropriate Minister". Such categories of activities and projects identified in these Exemption Agreements would be exempted from the screening requirement of Chapter 12. It is our interpretation that the Schedule's most likely intent was to create a non-discretionary and clear "list" of activities or projects that are to be exempted and not to include details of elaborate agreements with multiple exceptions. The non-inclusion of specific sections of these agreements does not affect the validity of the signed agreements between the NIRB and the Government of Nunavut.

Speaking specifically to concerns raised by the Government of Nunavut that you have indicated are shared by the NIRB, I offer the following comments to address your concerns.

## **NIRB – Department of Culture and Heritage Exemption Agreement**

### *2.2 Cumulative Effects*

Section 11.5.9A of the Nunavut Agreement and section 76(1) of the NuPPAA state that all project proposals are to be sent to the Nunavut Planning Commission (NPC). The NPC must determine among other things if a project is exempt from a NIRB screening. Two of the things the NPC must decide in making this determination are, if a project proposal falls within Schedule 12-1 of the Nunavut Agreement and whether or not they have cumulative impact concerns. Even if a project is exempt from screening because it is listed on Schedule 12-1, the NPC can send the project to NIRB for screening if the NPC has cumulative impact concerns. Therefore, NPC has a mandate and a requirement to determine whether it has cumulative impact concerns before it

determines that a project is exempt from screening. If the NPC determines that a project is exempt from screening, the proponent can then proceed to obtain regulatory approvals to begin their project. There is no authority provided in either the Nunavut Agreement or the NuPPAA that gives the Government of Nunavut the ability to assess cumulative impacts and send the project back to the NPC to forward onto the NIRB for screening. CIRNAC has concerns that both the Government of Nunavut determining cumulative effects as part of a determination that a project is not exempt and giving direction to the NPC to refer a project to NIRB for screening may be overstepping the Government of Nunavut's authority under the Nunavut Agreement. Or, at least it seems to be something unintended by the Nunavut Agreement and is a process which lacks any certainty as to an exemption list as each project would have to be assessed with respect to cumulative impacts not by the NPC or the NIRB but by a Government of Nunavut Department. For this reason it was decided that it would best to leave this section out of the Schedule.

### *2.3 Public Concern*

Similar to CIRNAC's concerns related to cumulative impact we are not sure how public concern would be determined and whether the GN determining public concern and giving direction to the NPC may be overstepping their authority under the Nunavut Agreement and thus it was decided to leave this section out of the Schedule.

#### *2.4.1 Research Performed as Part of a Bona Fide Development Project*

The term "Bona Fide Development Project" is not a one which can be easily translated into legal text that would be suitable to use in statute. Also, once again the department has concerns as to whether the Government of Nunavut giving direction to the NPC is overstepping their authority under the Nunavut Agreement and for these reason it was decide to leave this section out of the Schedule.

#### *2.4.2 The Requirement for Authorizations Other than Class 1 or Class 2 Permits under the Regulations.*

Section 78(2) of NuPPAA states:

A project is exempt from screening if each work or activity that comprises the project belongs to a class of exempt works or activities set out in items 1-6 of Schedule 12-1 to the Agreement or in Schedule 3 of NuPPAA and does not belong to a class of non-exempt works or activities prescribed by regulations.

This section reaffirms the content of section 2.4.2 of the agreement and therefore it is not necessary to repeat in the Schedule.

## **NIRB – Department of Environment Exemption Agreement**

### *2.2 Cumulative Effects*

Please see comments under the NIRB – Culture and Heritage Exemption Agreement.

### *2.3 Public Concern*

Please see comments under the NIRB – Culture and Heritage Exemption Agreement.

In relation to the Parks Canada Agreement, subsection 168(1) of the NuPPAA gives Parks Canada the authority to forward on exempted projects, carried out in whole or in part within a park or a historic place, to the NIRB if they have cumulative impact concerns and thus was included in the Schedule.

With the areas of the agreements that CIRNAC has concerns related to the Government of Nunavut potentially overstepping their authority as laid out in the Nunavut Agreement, we will be reaching out to Nunavut Tunngavik Incorporated and the Nunavut Planning Commission to seek their views on this matter.

Finally, I want to thank the NIRB for their ongoing assistance in the populating of Schedule 3 of NuPPAA and look forward to continue this relationship as we move forward.

Sincerely,



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