Department of Justice Canada
Services juridiques AANC
Les Terrasses de la Chaudière,
10ème étage
10, rue Wellington
Gatineau QC K1A 0H1

Ministère de la Justice Canada
INAC Legal Services
Les Terrasses de la Chaudière,
10th Floor
10 Wellington Street
Gatineau,QC K1A 0H4

Phone/Téléphone: (819) 953-4165
Email/courriel: tom.isaac@justice.gc.ca

File Number: 5223932

November 15, 2016

Mr. Andrew Nakashuk, Chairperson
Nunavut Planning Commission
P.O. Box 1797
Iqaluit, Nunavut
X0A 0H0

By email c/o sehaloak@nunavut.ca
Original to follow

Dear Chairperson Nakashuk:

Re: Expert Report – The Terms "Project" in *NUPPAA* and "Project Proposal" in the *Nunavut Agreement* Have the Same Meaning

This letter is the Government of Canada's legal submission on the relationship between the term "project" as defined in the *Nunavut Planning and Project Assessment Act* and the term "project proposal" as defined in the *Nunavut Agreement*. It is provided as an expert report as that term is used by the Commission in this process. A statement of the author's qualifications is provided separately.

Brief Conclusions

- Despite the fact that the two definitions use different words, the term "project" as it is defined in the Act has the same meaning as the term "project proposal" as it is defined in the *Nunavut Agreement*.
- Accordingly, there is no conflict or inconsistency between the terms "project" as it is defined in the Act and "project proposal" as it is defined in the *Nunavut Agreement*.
- Under both the *Nunavut Agreement* and the Act, the assessment regime – meaning both land use plan conformity and impact assessment – does not apply when the carrying out of a work or the undertaking of an activity would have manifestly insignificant ecosystemic impacts.

Background

As required by the *Nunavut Agreement* (section 10.2.1) the core features of Articles 10, 11 and 12 of the *Nunavut Agreement* were rendered into legislation. The bill that eventually became the Act was developed over many years, through the collaborative efforts of a working group consisting of representatives of Nunavut Tunngavik Inc., the Government of Nunavut, the Government of Canada, the Nunavut Impact Review Board and the Nunavut Planning Commission.

Because they are different instruments with different drafting conventions, concepts from the *Nunavut Agreement* are often expressed in the Act using different words. There were also a select number of areas where the working group recommended changes to the existing arrangements in the *Nunavut Agreement*. In a few cases, these modifications required amendments to the *Nunavut Agreement*.

We are advised by federal officials who participated in the bill-development working group that the group settled on the definition of "project" that is now found in the Act. We are further advised that the primary purpose of that definition was to give effect to and carry forward the original meaning of "project

proposal" found in the *Nunavut Agreement*. However the working group did recommend narrowing the term to exclude certain activities and works within municipal boundaries. This was a substantive change that required amendment of the *Nunavut Agreement*, which was done[1] in accordance with the requirements of the *Nunavut Agreement* and the *Nunavut Land Claims Agreement Act*.

In the definition section, the *2016 Draft Nunavut Land Use Plan* contains the following definition: "**Project/Project Proposal** carry the meanings provided in the NUPPAA and the NLCA respectively" (p. 11). The draft plan then uses "Project/Project Proposal" throughout the balance of the draft.

While it is not clear from the draft plan itself why the drafters would use "Project/Project Proposal" instead of a single term "Project", it appears that an explanation can be found in a letter from the Commission's chairperson that was placed on the registry. In August 2016, Commission Chairperson Andrew Nakashuk wrote in reply to a letter from Senator Dennis Patterson:

> [T]he Nunavut Planning Commission (NPC) has been discussing with relevant stakeholders the fact that the NUPPAA conflicts with the Nunavut Land Claims Agreement (NLCA) as it was amended July 9, 2015, and as a result of those conflicts the NPC is in a position of having to implement both the NLCA and NUPPAA...[2]

This belief that there is a conflict between the *Nunavut Agreement* and the Act seems to explain why the drafters of the *2016 Draft Nunavut Land Use Plan* considered it necessary to include both the *Nunavut Agreement* term "project proposal" and the Act's term "project".

Chairman Nakashuk's letter expresses the Commission's belief that the term "project proposal" in the *Nunavut Agreement* is broader than the Act's term "project". The reason stated is that the Act excludes works and activities with manifestly insignificant impacts from the meaning of the term "project."

Analysis

Despite the differences in wording, we are of the opinion that there is no conflict or inconsistency between the *Nunavut Agreement* and the Act on this point. The definition of the term "project" in the Act was carefully designed to transfer the *Nunavut Agreement* concept of "project proposal" into legislative text without altering its meaning.

For ease of reference, the definitions in the two legal instruments are reprinted below:

---

[1] Order-in-Council PC 2015-851.

[2] Letter from Chairperson A. Nakashuk to Senator D. Patterson (August 18, 2016), available online at http://www nunavut.ca/files/2016-08-18%20SenPatterson%20response.pdf (no translated versions posted).

Project Proposal in section 1.1.1 of the Nunavut Agreement

"project proposal" means a physical work that a proponent proposes to construct, operate, modify, decommission, abandon or otherwise carry out, or a physical activity that a proponent proposes to undertake or otherwise carry out, such work or activity being within the Nunavut Settlement Area, except as provided in Section 12.11.1 but does not include the construction, operation or maintenance of a building or the provision of a service, within a municipality, that does not have ecosystemic impacts outside the municipality and does not involve the deposit of waste by a municipality, the bulk storage of fuel, the production of nuclear or hydro-electric power or any industrial activity.	« projet » Proposition par un promoteur visant soit la réalisation – y compris la construction, l'exploitation, la modification, la désaffectation ou la fermeture – d'un ouvrage soit le démarrage soit le démarrage ou l'exercice d'une activité concrète, ouvrage ou activité dont la réalisation ou le démarrage ou l'exercice, selon le cas, se déroulerait dans la région du Nunavut, sous réserve des dispositions de l'article 12.11.1, mais ne comprend pas les activités de construction, d'exploitation et d'entretien des bâtiments ainsi que les services, dans une municipalité, qui n'ont pas de répercussions écosystémiques à l'extérieur de la municipalité et qui n'impliquent pas le dépôt de déchets par une municipalité l'entreposage en vrac de combustible, la production d'énergie nucléaire ou d'hydroélectricité et toute activité industrielle.

Project in section 2(1) of the Act

Project means the carrying out, including the construction, operation, modification, decommissioning or abandonment, of a physical work or the undertaking or carrying out of a physical activity that involves the use of land, waters or other resources. It does not include (a) the undertaking or carrying out of a work or activity if its adverse ecosystemic impacts are manifestly insignificant, taking into account in particular the factors set out in paragraphs 90(a) to (i); (b) the undertaking or carrying out of a work or activity that is part of a class of works or activities prescribed by regulation; or (c) the construction, operation or maintenance of a building or the provision of a service, within a municipality, that does not have ecosystemic impacts outside the municipality and does not involve the deposit of waste by a municipality, the bulk storage of fuel, the production of nuclear or hydro-electric power or any industrial activities.	**projet** La réalisation — y compris la construction, l'exploitation, la modification, la désaffectation ou la fermeture — d'un ouvrage ou le démarrage ou l'exercice d'une activité concrète, qui comporte l'utilisation de terres, d'eaux ou d'autres ressources. Sont toutefois exclus : a) la réalisation d'un ouvrage ou le démarrage ou l'exercice d'une activité dont les répercussions négatives sur le plan écosystémique n'ont, de toute évidence, aucune importance, compte tenu notamment des éléments prévus aux alinéas 90a) à i); b) la réalisation d'un ouvrage ou le démarrage ou l'exercice d'une activité faisant partie d'une catégorie d'ouvrages ou d'activités prévue par règlement; c) la construction, l'exploitation et l'entretien d'un bâtiment et la fourniture d'un service, dans une municipalité, qui n'entraînent pas de répercussions écosystémiques à l'extérieur de celle-ci et qui ne comportent pas le dépôt de déchets par une municipalité, l'entreposage en vrac de combustible, la production d'énergie nucléaire ou hydroélectrique ou quelque activité industrielle.

Paragraph (a) of the definition of "project" contains an explicit narrowing of the opening words of the definition. This paragraph excludes works and undertakings with "manifestly insignificant" adverse ecosystemic impacts. There is no parallel text in the *Nunavut Agreement* that explicitly excludes the same things. However in our view, a purposive and contextual reading of the *Nunavut Agreement* demonstrates the same exclusion was already implicit in the *Nunavut Agreement*. What follows is the analysis in support of this conclusion.

On its face, the *Nunavut Agreement* definition of "project proposal" is clearly very broad; indeed, aside from geography, it is nearly unlimited in its breadth. While the definition explicitly excludes some activities inside municipal boundaries, almost every single physical activity and almost any act in relation to almost every single physical work (*i.e.*, tool, machine, structure, *etc.*) in the Nunavut Settlement Area would be caught by a literal reading of this definition.

In determining whether the literal meaning of the provision is the true meaning of the provision, the implications of the literal meaning must be considered. Taking the text strictly literally, almost everything one does in Nunavut would fall within the definition, and therefore would require a conformity determination. A conformity determination would be required before getting out of bed; before starting a car; before pitching a tent; before eating a snack; before organising or attending a meeting. All of these things include physical activities, and some are both physical activites and the operation of a physical work.

However a contextual and purposive reading of the *Nunavut Agreement* makes clear that Articles 10, 11, 12 and 13 do not concern themselves with actions that have no discernable risk of adverse ecosystemic impact. This is consistent with the principle that the law does not concern itself with trivial matters, sometimes stated in the Latin maxim *de minimis non curat lex*.

Indeed, it is impossible to conceive of a Nunavut regulatory system in which the *Nunavut Agreement* definition is read literally – this would require advance clearance from the Commission for almost everything done in Nunavut. In our opinion, this interpretation of the *Nunavut Agreement* is absurd in the legal sense, meaning that it is a result that could not possibly have been intended by the negotiators or drafters of the *Nunavut Agreement* at the time of its development.

Instead it must be recognized that there is an implicit, or subtextual, exclusion from "project proposal" of things with no discernable risk of adverse ecosystemic impact. It is true that this exclusion does not expressly appear in the text of the *Nunavut Agreement*. But statutory interpretation sometimes presents challenges that can only be resolved by resort to subtext. In statutory interpretation, subtext refers to words that do not appear on the page, but must have been assumed by the drafters at the time of drafting.[3] The proper legal interpretation of the definition of "project proposal" requires recognition that despite the absence of words that narrow the opening part of the definition, the definition is nonetheless narrowed by necessary implication of the scheme as a whole.

It is for this reason that the Act's definition of "project" explicitly excludes acts with no discernable risk of significant adverse ecosystemic impact. Parliament, using the words developed by the multi-party working group, is giving voice to a silent feature that was always present in the *Nunavut Agreement* – the exclusion of things with manifestly insignificant adverse ecosystemic impacts.

On this basis, it becomes clear that:

- there is no conflict or inconsistency between the *Nunavut Agreement* term "project proposal" and the Act's term "project";
- the assessment regime – both land use plan conformity and impact assessment – apply only to those acts that might reasonably be expected to have a significant adverse ecosystemic impact; and
- determining whether a given physical activity or action in relation to a physical work is a project within the meaning of the Act requires the exercise of judgment, taking into account the factors identified by the Act in paragraphs 90(a) to (i).

Yours truly,

Tom Isaac
Senior Counsel

[3] For an excellent discussion of this element of statutory interpretation, please refer to Randal N. Graham, *Statutory Interpretation: Theory and Practice* (Toronto: Emond Montgomery, 2001). Problems of subtext are discussed in chapter 5.

www.tunngavik.com

NTI Comments on the application of the *Nunavut Planning and Project Assessment Act*

Nunavut Tunngavik Incorporated
November 29, 2016

Nunavut Tunngavik Incorporated (NTI) has prepared this paper as a reply to the Department of Justice Canada's expert report submitted on November 15, 2016 on the terms "project" and "project proposal" and in response to related comments made by the Nunavut Water Board (NWB) in materials dated December 7, 2015 and September 7, 2016 and by the Nunavut Impact Review Board (NIRB) and Nunavut Planning Commission (NPC) in letters dated September 9, 2016.

1. The operating relationship between the *Nunavut Agreement*, the *Nunavut Planning and Project Assessment Act*, and amendments made to the *Nunavut Agreement* in 2015

The Nunavut Agreement

The *Nunavut Agreement* (Agreement) calls for the NPC, NIRB, and NWB to be established by statute (sections 10.1.1, 10.2.1, 10.10.1, Agreement). Provisionally, the Agreement gives the members of these institutions all the powers and duties described in Articles 11, 12 and 13 respectively if the required implementation statute is delayed (sections 10.10.1- 10.10.3). Because the statutes implementing their Agreement mandates were delayed, the three institutions were established provisionally in 1996.

Once the implementation statutes required are in force, the Agreement does not provide for the NPC, NIRB, or NWB to have any powers or duties different from those set out in the implementation legislation except to the extent that the implementation legislation might be inconsistent or in conflict with the Agreement (section 2.12.2, Agreement).

It follows that all of the powers and duties of the NPC, NIRB and the NWB derived from the Agreement are set out in the *Nunavut Planning and Project Assessment Act (*NuPPAA) and the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* (NWNSRTA), except to any extent that either statute is inconsistent or in conflict with the Agreement.

The NuPPAA

It also follows from the Agreement's requirement of implementing statutes that NuPPAA itself must be interpreted as reflecting Parliament's intention to set out in this statute "the substantive powers, functions, duties and objectives" of the NPC and NIRB described in the Agreement. NuPPAA states that intention in its preamble.

The 2015 amendments to the Nunavut Agreement

Neither the Agreement nor NuPPAA contemplate amending the Agreement on the coming into force of NuPPAA. The 2015 amendments made to the Agreement thus reflect the choice of the two parties, the Inuit of Nunavut represented by NTI and Her Majesty the Queen represented by the GoC. (By contrast, NTI and the GoC did not choose to amend the Agreement when the NWNSRTA came into force in 2002.)

In NTI's view, it is readily apparent from a reading of the 2015 amendments together that these amendments are intended to remove a mutually identified set of potential inconsistencies between the Agreement and NuPPAA from the Agreement so that the core content of the NuPPAA provisions may not be rendered inoperative by the paramountcy of the Agreement. For example, NuPPAA exempts certain emergency and military works and activities from assessment, subject to conditions (sections 151-152, NuPPAA), whereas the original Agreement did not. The 2015 amendments evidently aim to ensure that the substance of these exemptions operates.

There is of course no representation or warranty in the 2015 Agreement amendments that all potential inconsistencies with NuPPAA have been removed. Indeed, NTI stated on the Parliamentary record that NTI cannot warrant that NuPPAA complies with the Agreement in every respect.[1] So, for example, while NTI and the GoC chose to amend the definition of "project proposal" in the Agreement to exclude a set of municipal activities akin to those excluded by NuPPAA, the parties did not choose to make a corresponding amendment for the *de minimis* exclusion in NuPPAA (see subsection 2(1), NuPPAA, definition of "project"[2]). Accordingly, nothing in the 2015 amendments shelters the *de minimis* exclusion in NuPPAA from the paramountcy of the Agreement. If the *de minimis* exclusion in NuPPAA is consistent with the Agreement definition of "project proposal", the NPC and NIRB do not have the power or duty to assess works or activities that fall below the stated threshold; if the exclusion is not consistent with the Agreement, the GoC is in breach of its Agreement duty to provide the corresponding function in implementation legislation and the exclusion is inoperative to the extent of the inconsistency.

2. Project

In NTI's view, the physical activity of mineral claim staking per se (i.e. the driving of small stakes into the ground to mark out areas claimed by prospectors) will in many cases fall within the *de minimis* exclusion set out in NuPPAA and therefore not require NuPPAA assessment.

The NWB and NIRB appear to agree with that view. Their concern appears to be that the *de minimis* exclusion made in the NuPPAA definition of "project" is not made in the Agreement definition of "project proposal". (See the NWB's 2015 paper and 2016 letter, pages 3 and 1-2 respectively, and NIRB's letter, pages 2-3.)

In NTI's view, the NuPPAA exclusion is consistent with the Agreement definition of project proposal, because the Agreement definition itself, read in the context of the Agreement's related provisions, implies a *de minimis* threshold. Considering the operating relationship between the Agreement and NuPPAA, described above, this means that the NPC and NIRB do not have the power or duty to assess *de minimis* works or activities.

NTI gave much thought to the meaning of "project proposal" in the Agreement when NuPPAA was developed, and this issue attracted much discussion in the legislative working group, of which the NPC and NIRB were members. It is not necessary in this paper to give a complete account of the reasons why NTI accepts that the Agreement does not require the assessment of *de minimis* works or activities. Those reasons include that the ordinary meaning of the Agreement term "project" connotes some threshold of significance: one would not ordinarily describe the intention to go for a walk as a "project", notwithstanding that walking is clearly a physical activity. Of similar import is the term "proposal": declaring one's intention to go on a canoe trip would not ordinarily be understood to be a "proposal" unless a third party's response were expected, in which case we would presume a potential cause for third party concern. Article 11's original assumption that the NPC will receive "applications" for project proposals points in the same direction (see section 11.5.10, Agreement).

The Agreement does not lay down the boundaries of "project proposal" precisely. The matter is not settled simply by tracking independent requirements for regulatory authorizations of works and activities because (among other reasons) Schedule 12 -1(1), exempting certain works and activities from the requirement of NIRB review, implies that some types of project proposal, assessed by the Commission, do not require a regulatory authorization.

In NTI's view, the Agreement definition of "project proposal" should be interpreted with the understanding that the drafters relied on implementation legislation to provide further precision. Professor Barry Barton correctly emphasized this feature of Article 10-based Agreement powers in his 2001 opinion on the effect of an approved land use plan on mining, commissioned and distributed by the NPC.[3]

If, having considered this explanation, the NWB and NIRB have the view that the *de minimis* exclusion in NuPPAA excludes some works or activities that necessarily fall into the Agreement definition of project proposal, NTI invites the NWB and NIRB to identify such works and activities and indicate their reasons for holding that view.

With respect to mineral claim staking, in particular, NTI notes that NTI developed its current view with the benefit of the sixteen years of assessment experience gained in the provisional implementation of Articles 11 and 12 before the NuPPA Bill was introduced. To NTI's knowledge, the NPC and NIRB did not assess proposed mineral staking per se - absent associated applications for regulatory authorizations, which may indicate potential for ecosystemically significant impacts - in that period. During those years, the authority of the NPC and NIRB to assess proposed projects was governed solely by the definition of "project proposal" in the Agreement.

3. Transitional provisions and the 2015 Agreement amendments

The NuPPAA contains exceptional rules for the assessment of projects that were proposed or approved when Articles 11 and 12 were being implemented provisionally, before NuPPAA came into force (section 235). The basic rule is that the assessment of such projects, and the implementation and enforcement of the results of approval, continue to be governed by Articles 11 and 12 without the aid of NuPPAA (paragraphs 235(1)(a) and (d)).

As noted above, neither the Agreement nor NuPPAA require that any Agreement amendments be made when the implementation statute comes into effect. For its part, NTI did not see any need to consider making transitional amendments to the Agreement when NuPPAA was enacted, and does not see such a need at present.

In NTI's view, it is sufficient that the implementation statute provides reasonably, and in keeping with the spirit and intent of the Agreement, for the assessment of projects caught in midstream when the assessment regime is changing from provisional to statutory. The Agreement does not contain equivalent provisions because, once NuPPAA came into force, the provisional role of Articles 11 and 12 ended to the extent that NuPPAA is consistent with those Articles.

4. 2015 amendments to Article 13 of the Agreement

The NWB expresses concern that "[t]he amendments to Article 13 of the NLCA now require that all project proposals involving 'an application' to the NWB must be provided to the Commission. This broad wording includes *de minimis* water uses or waste deposits that can be approved by the Board without the grant of a licence under the Nunavut Waters Regulations" (page 2, NWB's 2015 paper). The NWB predicts delays in its approvals if assessment by the Commission is required (pages 5-7, NWB's 2015 paper).

In response, NTI notes that the 2015 change in wording from "a water application" to "a project proposal requiring an application to the NWB" did not purport to expand the types of water use or waste deposit that trigger Commission assessment. In NTI's view the original language, which is to be read prospectively, covered any application for Water Board approvals required by law, including the approvals without licences introduced by the 2013 *Nunavut Waters Regulations*. In NTI's view, if there were any exclusion from this requirement, it would have to

be found in the *de minimis* exclusion from the NuPPAA definition of "project". However, in NTI's view, the requirement of NWB approval for the types of water use and waste deposit in question, provided in the *Nunavut Waters Regulations*, clearly takes these uses and deposits out of the category of "manifestly insignificant" works or activities excluded from the NuPPAA definition of "project".

NTI would be interested in hearing the views of the NPC and the GoC on this issue. If NTI were persuaded that the current NuPPAA requirement of Commission assessment of proposed projects requiring water authorizations undermines the purposes of Articles 11 and 12 of the Agreement, NTI would be prepared to discuss with the GoC and affected parties a suitably tailored regulation to be made under paragraph 228(2)(a) of NuPPAA. Any such regulation would require NTI's consent. In such discussions NTI also would be prepared to consider whether or not to support an Agreement amendment removing any potential inconsistency.

5. Assessment of works or activities requiring amendments to existing water licences

A related NWB concern is that Commission assessment of any work or activity requiring a water licence amendment could also cause unwarranted delays and introduce the risk that the Commission will assess the proposal with a different understanding of its nature than the Water Board has when it considers the licence amendment (pages 3-5, NWB's 2015 paper).

In response, NTI notes that the NWNSRTA requirement of an amendment to a Type B water licence clearly would place the work or activity in question outside the scope of "manifestly insignificant" works or activities excluded from Commission or NIRB assessment by the NuPPAA definition of "project". Similarly, the NWNSRTA requirement leaves no real doubt that any such work or activity would be considered a "significant modification" to any project already approved under NuPPAA and so would require a fresh assessment (see subsections 141(2) and 146(1), NuPPAA).

NuPPAA does not stipulate how any regulatory authority may coordinate its review of applications with the NPC's and NIRB's assessment of project proposals. Accordingly, NTI is not persuaded that NuPPAA slows the process by which, prior to 2015, the NWB and the Commission assessed proposed works and activities in a preliminary fashion before the Commission function was completed.

NTI agrees that there is some real risk that the NWB can find, when reviewing an application for water licence amendment, that the proposed works or activities actually differ significantly from those that the Commission has assessed, and so will require further Commission assessment. NTI views this risk as built-in to the NuPPAA requirement that project proposals go directly to the Commission rather than from regulatory agencies to the Commission (or NIRB) as contemplated in the original Agreement. The GoC expressed faith in the working group that proponents will take the responsibility to minimize this risk. NTI went on record in Parliament as proposing that NuPPAA require proponents to be more proactive and give the NPC and NIRB a stronger mandate to supervise this issue than the enacted version does expressly.[4] It should be

recognized, however, that the basic regime change introduced by NuPPAA in this respect was strongly supported by the NPC and NIRB in the working group process. The current NuPPAA provisions reflect the stated preference of the NPC and NIRB in the working group that these institutions be freed from a clutter of regulatory applications and enabled, instead, to focus on project descriptions that address their planning and impact review mandates respectively.

If the NPC, NIRB and NWB were to identify a statutory amendment or regulatory provision that is workable, stands to reduce the risk in question, and would not undermine the spirit and intent of the Agreement, NTI would consider supporting it. In the meantime, NTI looks forward to the NPC and NIRB maintaining their close working relationships with the main regulatory authorities involved and monitoring this issue closely.

---

[1] *NTI's Oral Remarks to the Senate Standing Committee on Energy, the Environment and National Resources re Part 1 of Bill C-47, the proposed Nunavut Planning and Project Assessment Act*, delivered by President Cathy Towtongie, May 2, 2013:

> "It is our job as representatives of Inuit, as we believe it is yours as legislators, to ensure that Bill C-47 fully respects and implements the treaty promises made by the Crown to Inuit.
>
> ...
>
> The *Nunavut Agreement* requires that legislation set forth the powers and functions of the Nunavut resource management boards. The 2002 *Nunavut Waters and Surface Rights Tribunal Act* is intended to fulfill this requirement for the Nunavut Water Board and Surface Rights Tribunal.
>
> Bill C-47 is meant to do the same for the Nunavut Impact Review Board and the Nunavut Planning Commission.
>
> ...
>
> The core features of Bill C-47 are a result of the consensus-based process by which it was developed, and in which the Department of Indian Affairs, NTI, the Government of Nunavut, the Nunavut Planning Commission and the Nunavut Impact Review Board all participated.
>
> At the same time, NTI did not draft this Bill, nor did it directly instruct the legislative drafters.
>
> Therefore, NTI cannot warrant that the Bill complies in all respects with the *Nunavut Agreement*.
>
> As provided in the A*greement*, in the event of any conflict, the *Nunavut Agreement* will prevail."

[2] **2(1)** .... **Project** .... does not include
(a) the undertaking or carrying out of a work or activity if its adverse ecosystemic impacts are manifestly insignificant, taking into account in particular the factors set out in paragraphs 90(a) to (i).

[3] "The Powers of the Nunavut Planning Commission to Regulate Land Use in Relation to the Use of Land for Mineral Purposes", Report prepared for the Nunavut Planning Commission by Barry Barton, Associate Professor School of Law, University of Waikato, 4 December 2001, at page 10:

> **"2.9 The Way that Language is Used in the NLCA**
>
> The NLCA uses language differently from statutes. It came out of specific circumstances - the land claim negotiations. Various commentators have observed that land claim negotiations on an agreement are attempting to lay down, in detailed articles, sections and subsections, a way of life for a people, and for a transition in their way of life. And the Agreement is trying to lay it down for decades to come. Thus there is not the precision and detail in all of its provisions that one might find in a statute. More attention is given to statements of values and aspirations, and to rights generally expressed, than to the details of agency jurisdiction and powers. In addition, the Agreement is uneven in the amount of detail that it displays; it was negotiated by varying teams of people over a period of years.
>
> The NLCA is therefore not self-contained as a legal framework. That more needs to be done to establish such a framework is evident in the provisions of the NLCA that concern implementing legislation. Implementing legislation is not required to provide authority (the NLCA and the NLCA Act provide that), but to provide detail and comprehensiveness. ...
>
> From this characteristic of the NLCA I argue that one should not scrutinize its provisions concerning the NPC for exact statements of jurisdiction and authority to regulate land use, to prevent land use inconsistent with a Plan, to include certain things in a plan, to regulate certain land uses such as mining, or to relate to mining in a particular way. There is greater reason than usual to be willing to imply such statements. This is necessary if one is to read the instrument as a whole and to construe particular provisions according to its overall tenor.
>
> Indeed, the example of a provincial or territorial planning statute shows how long a fully-fledged legal regime for land use planning would have to be, coping with all kinds of procedural eventualities, the content of plans, existing use rights, powers of entry and inspection, monitoring, and the like. The negotiators of the NLCA never sought to provide all this detail. It would be unreasonable to read their agreement as if they did. Their agreement recognizes that more work on detail is to come."

[4] *NTI Written Submission to Senate Standing Committee on Energy, the Environment and Natural Resources, Recommended Amendments to Bill C-47, Part 1, the Nunavut Planning and Project Assessment Act,* April, 2013, part A (summary):

> 3. Section 141 and related provisions, Reporting of possible significant modifications during and after assessments.....8
>
> *Recommendations:*
> *(i) that the proponent be required to notify the Commission of a modification which is or may be significant (rather than requiring the Commission to notify the proponent of a significant modification of the proponent's project and giving the proponent 30 days to notify the Commission of same);*
> *(ii) that the Commission or Board's determination of a significant modification result in termination of the assessment;*
> *(iii) that a regulator be required to provide the Commission or Board with a copy*

of any application for modifications to the project that it receives; and
(iv) that the Commission be required to provide a copy of project proposals to regulatory authorities.

(The detailed submission on this issue is at pages 8-12.)