

Nunavut Planning and Project Assessment Act – Joint letter
Box Decision by the Assistant Deputy Minister

DATE: Feb 16, 2017

SUMMARY

- In September 2016 you wrote to the Nunavut Planning Commission expressing concerns regarding the interpretation of the *Nunavut Planning and Project Assessment Act* (NuPPAA) that have resulted in referrals of mineral staking proposals to the Nunavut Planning Commission.
- Subsequent discussions have revealed a foundational misinterpretation shared by the several Institutions of Public Government (Nunavut Impact Review Board, Nunavut Water Board and Nunavut Planning Commission) regarding the definition of "project" under the NuPPAA and "project proposal" under the Nunavut Agreement. Their interpretation highlights an inconsistency between NuPPAA and the Nunavut Agreement which does not allow for "de minimis" activities to occur without assessment.
- INAC, Nunavut Tunngavik Incorporated, the Government of Nunavut see this as a misinterpretation, as NuPPAA was created to be an extension of the Nunavut Agreement and therefore complimentary, thus allowing for "de minimis" threshold before assessment would be required.
- The attached joint letter from INAC, Nunavut Tunngavik Incorporated, and the Government of Nunavut is intended to inform the Institutions of Public Government of our position on how NuPPAA should be interpreted.
- The letter will be followed up with discussions with the Institutions of Public Government to align interpretations. This work will lead to a workshop to identify the "de minimis" thresholds and other potential concerns.

RECOMMENDATION

- That you sign the joint letter attached, along with representatives of Nunavut Tunngavik and Government of Nunavut, to inform the Institutions of Public Government of our position.



I concur



I do not concur



I wish to discuss further

Assistant
Deputy Minister:


Stephen M. Van Dine

Date:

02/19/17

ANNEXES

Annex A: Joint Letter – NTI – GN - INAC

Annex B: Submission by legal counsels – Department of Justice and Nunavut Tunngavik Incorporated

February 15, 2017

Ms. Sharon Ehaloak, Executive Director
Nunavut Planning Commission
Iqaluit, Nunavut.

Mr. Ryan Barry, Executive Director
Nunavut Impact Review Board
Cambridge Bay, Nunavut

Ms. Stephanie Autut, Executive Director
Nunavut Water Board
Gjoa Haven, Nunavut

Dear Executive Directors:

Re: Consistency of the term "Project" with the Nunavut Agreement

The purpose of this letter is to confirm the senders' respective organisations' shared understanding that the term "project" in the Nunavut Planning and Project Assessment Act is consistent with the term "project proposal" in the Nunavut Agreement.

Nunavut Tunngavik Inc., the Government of Nunavut and the Government of Canada share the view that the term "project proposal" in the Nunavut Agreement, when read purposively in its context, includes a *de minimis* threshold below which the assessment regime in the Nunavut Agreement does not reach.

The Nunavut Planning and Project Assessment Act reflects the *de minimis* threshold in the Agreement by excluding from the defined term "project" the undertaking or carrying out of a work or activity if its adverse ecosystemic impacts are manifestly insignificant, taking into account the factors set out in paragraphs 90(a)-(i) of the Act.

It is therefore our understanding that reliance on the term "project" as it is defined in the Act enables the full implementation of the assessment regime in the Nunavut Agreement. Two of the undersigned organisations have shared written explanations of their bases for these conclusions. They are attached for your convenience.

We recognize that the practical or operational implications of the *de minimis* threshold will need to be clarified over the near future, through some combination of more detailed discussions, guidance documents and the development of a body of experience as the Act's processes operate over time.

We would appreciate it if you could put this matter before your respective tribunal members, and are hopeful that this letter is sufficient to resolve any concerns around the consistency of a *de minimis* threshold with the Nunavut Agreement. If additional discussion or other measures are required to address this, we would be pleased to engage with you further.

Yours truly,

Nunavut Tunngavik Inc.



Yours truly,

David Akeeagok
Deputy Minister
Department of
Environment
Government of Nunavut



Yours truly,

Stephen Van Dine
Assistant Deputy Minister
Indigenous and Northern
Affairs Canada
Government of Canada

Canada

2 Enclosures