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Thank you for your comments on the Commission's Draft Rules for Public Proceedings (**Draft Rules**) received September 24, 2019. The Commissioners have considered your comments of the Draft Rules, as well as the comments of others received within the 60-day period for public comment, and as a result of those comments will be making revisions to the Draft Rules. Please be advised that pursuant to section 38(4) of the *Nunavut Planning and Project Assessment Act* (Canada) (**NuPPAA**), the Commission will not be publishing any further notices before enacting amended Rules for Public Proceedings.

Please note that the Commission anticipates some rules will be renumbered due to the comments received, and this response addresses the comments made based on the original numbering of the draft rules released for public comment on July 26, 2019.

The Commission considered your comments and provides the following responses:

- In response to the request for clarity on whether the Draft Rules are applicable to the conformity determination process, the Commission received multiple comments on this issue and will be amending rule 2(2) of the Draft Rules to expressly exempt conformity determinations.
- In response to the request that the Draft Rules simplify the definition of "Commission", the Commissioners may of necessity delegate some tasks to staff but decision-making functions under the Draft Rules are reserved to the Commissioners which implicitly excludes staff, and consequently the Commission will not be amending the definition of "Commission" in rule 3 as suggested. On review of the definition of the term "Commission" in the *NuPPAA* and Article 10 of the Agreement, the Commission will be amending the defined term to change the word "institute" to "institution" in the rules.
- In response to the comment the definition of "Evidence" should be simplified, the Commission received multiple comments on this issue and will be amending this definition in rule 3 of the Draft Rules and providing more detail about the types of evidence the Commission may receive, and how, in rule 15.
- In response to the request that the Draft Rules simplify the definition of a "Hearing" and include an option for written hearings, the Commission will be amending this definition to provide for both written and oral Hearings, and will make other amendments based on other comments received, but will not exclude the option of using a round-table discussion in a Hearing as suggested.

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- In response to the request that the Draft Rules simplify the definition of "minor variance", the Commission received multiple comments on this definition and will be amending this definition in rule 3 in light of those comments.
- In response to the request that the Draft Rules simplify the definition of "Public Review", the Commission will be amending this definition in rule 3.
- In response to the request that the Draft Rules adopt definitions of Inuit Qaujimajatuqangit and Traditional Knowledge that are consistent with other Institutions of Public Government in Nunavut (IPGs), the Commission will be amending and enacting the rules based on the comments received, and takes note of the recommendation that it engage in a collaboration with other IPGs to consider a future amendment to the rules.
- In response to the comments that the Commission's discretion under these rules and under Rule 4(2) is very broad and reduces procedural certainty for participants and the proponent, and that Rule 4(2) be removed in its entirety and the Draft Rules include criteria that gives better guidance on circumstances where it might exercise its discretion, the Commission will be implementing the recommended changes to rule 4 in part, by requiring the NPC to give notice to participants of decisions, requiring persons to be Participants to file Motions, and by ensuring decisions are made in a manner consistent with the stated purpose of the rules.
- In response to the comment that the Commission should give consideration to referencing other relevant sections of Article 11 of the Nunavut Agreement in rule 6, such as section 11.2.3, the Commission notes that the *NuPPAA* specifically directs the Commission to follow section 11.2.1 of the Nunavut Agreement, but will not be including a longer list of sections of the Nunavut Agreement in the Amended Rules, as they apply independent of whether they are repeated in these rules.
- In response to the comment that a Proponent or Amendment Applicant be given a fair opportunity to respond to comments received late should be built into the process, the Commission will be amending rule 9 by adding subrule (2) to provide an opportunity to respond to any comments by non-Participants.
- In response to the comment that the Commission should establish email distribution lists and circulate electronic notices to the email distribution lists whenever new documents are posted, the Commission considers this a reasonable suggestion and notes other participants made similar comments; however, at present the documents section of the Commission's public registry does not allow users to sign up to receive automatic notifications whenever new documents are posted and the Commission will not be amending rule 12 as suggested. The Commission has made a note of the requests that it develop email distribution lists and provide more frequent notifications and will consider adding this functionality to its public registry.
- In response to the recommendation that any motion made by a party to a proceeding should be made public, the Commission will be amending rule 13 to implement the recommendation, by adding a new rule to provide that Motions shall be included in the public registry, retaining to the Commissioners the discretion to order a Motion not be made public if the circumstances so require, for example if the Motion itself contains confidential information.
- In response to the comment that Commission should disclose any issues the Commission is considering in advance of making decisions so that the proponent or amendment applicant has the opportunity to provide the Commission with relevant information on those issues, the Commission will be amending rule 15(2) to remove the express reference to a list of issues, and the Commission will communicate the issues to be considered to participants in advance of making a decision through a number of other means including but not limited to Notices, participant meetings, Information Requests, and the placement of Participants' materials in the public registry, as well as with reference to the applicable land use plans.
- In response to the comment that Commission as an impartial decision maker should avoid the perception that the Commission chooses evidence, the Commission has multiple roles as both an advisor and as a regulator, and is required by the *NuPPAA* and the Nunavut Agreement to solicit comments in certain circumstances. The rules will reflect the fact that the Commission must solicit comments elsewhere, but in respect of rule 15, the

Commission will be amending rule 15(3) to use the suggested term “encourage” so as to indicate that the Commission is not attempting to choose the evidence that is submitted to it.

- In response to the comment that Rule 15(4) should clarify that traditional knowledge be treated equally with scientific knowledge, the Commission will amend the Draft Rules to clarify that these will be treated equally and that they may at times conflict, but will not be prescribing for Commissioners how such conflicts must be resolved.
- In response to the comment that advance notice of more than seven days is required for Meetings of Technical & Traditional Knowledge Experts under rule 16, the Commission will be amending the rule to include a notice period of 21 days.
- In response to the comment that the proponent or applicant should be given the opportunity to attend information sessions or participant meetings in order to answer questions from participants, and to hear first-hand any community comments or knowledge that is shared at such meetings, the Commission will be amending rule 17 to give an Amendment Applicant or Proponent seeking a Minor Variance the right to attend an Information Session or a meeting relating to that Proceeding held under the rule so that it is aware of community comments and knowledge provided, but will not amend the rules to either require a Proponent or Amendment Applicant to answer questions at such a session or meeting, or to give a Proponent or Amendment Applicant a right to answer questions posed at such sessions or meetings. All Participants will instead be given an opportunity to file materials to include in the record within 14 days of the Information Session or meeting.
- In response to the comment that the Commission should consider adopting the procedure used by the NIRB for motions for confidentiality, the Commission will be amending the Draft Rules to include additional direction on what a Participant applying for a confidentiality order must provide to help the Commission make a decision.
- In response to the comment that parties who wish to be granted participant status should be required to provide additional justification for their participation than is currently provided in Form 1, the Commission will be amending the rules to clarify when Commissioners will exercise their discretion to register a person as a Participant, and an additional line in Form 1 will require a person filling out the form to indicate what issues they will be speaking to, but not require a person to demonstrate a substantial and direct impact in order to be heard.
- In response to the comment that the Draft Rules should clarify “adjourning the Proceeding” means temporarily suspending the proceedings or extending timelines, rather than terminating the Proceeding altogether, and that Proponents be given a fair opportunity to provide their views on whether an adjournment is appropriate in the circumstances in advance of any such decision by the Commission:
 - The Commission will be amending the rule to distinguish extending timelines and adjourning the proceedings from making a decision on the basis of the materials submitted; and
 - If an Amendment Applicant or Proponent seeking a Minor Variance receives an Information Request, knowing that a refusal to provide necessary information may result in a time extension, adjournment, or a final decision being made in the absence of that information, they have an opportunity to provide the requested information, or to “explain why that information will not be provided”. The Commission anticipates any refusal to provide information would also say why the information is not necessary to the Commission’s final decision, and the Commission will not be amending the rules to provide an Amendment Applicant or Proponent seeking a Minor Variance a further opportunity to make the same comments again. If a time extension or adjournment is issued, the Amendment Applicant or Proponent seeking a Minor Variance would be able to file the requested information, file a Motion asking the Commissioners to resume the process or render a final decision without the information, or could withdraw their application thereby terminating the Proceeding.
- In response to the comment that rule 25 provided too much discretion to the Commissioners at the expense of certainty as to the overall timeline for conclusion of a public review, the Commission will be amending the

rule based on comments by others to provide several factors the Commissioners will consider if contemplating an extension or reopening of the record, including availability of the Evidence, diligence, and the public interest, but will not remove the rule in its entirety.

- In response to the comment that the Chairperson should have the power to determine whether a Participant or Commission staff be required to answer questions, the Commission's processes are not adversarial and the Commission does not have the power to subpoena witnesses, compel answers, or to require testimony under oath, and cannot require any witness to answer any question. As employees of the Commission, staff are present at a Hearing to assist the Commissioners and Participants with confirming facts in the record or clarifying ambiguities in materials, and must answer questions to the best of their ability if directed to do so by the Chairperson, but are not opposed in interest to any Participant. The rules will not be amended to enable the Chairperson to compel answers, or to provide for questioning of staff by Participants.
- In response to the comments on Draft Rule 29 that the Commission should not delegate decision-making authority to staff, that only Commissioners appointed in accordance with *NuPPAA* and the Nunavut Agreement will preside over Hearings, and that written directions on procedure should be given prior to the hearing wherever possible, the Commission will amend the Draft Rules to make it clearer that where one or more Commissioners are delegated to hold a Hearing where a quorum is not present the final decisions is reserved to a quorum of Commissioners, and that only Commissioners (or a committee thereof) preside over Hearings. The Commission will not be amending the rules to require directions on procedure be issued prior to a Hearing, recognizing that if a direction on procedure is issued at a Hearing Participants may ask for an adjournment.
- In response to the comment that the Commission should not revise the rules so that they are applied retrospectively to any ongoing Proceedings before the Commission, the Commission notes that procedural changes are presumptively retrospective. The Commission will not be making the requested amendment.

On behalf of the Commission, I want to thank you again for your input. The Commission will publish the notices required by section 38(5) of the *NuPPAA* when it makes the Rules amended based on the comments received. If you also provided comments on the Commission's Draft Rules for Project Description, the Commission will be considering and responding to those comments separately in due course.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Nakashuk', written in a cursive style.

Andrew Nakashuk
Chairperson
Nunavut Planning Commission