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FUNCTIONS AND PRIMARY OBJECTIVES OF NIRB

The Nunavut Impact Review Board (“NIRB” or the “Board”) was established on July 9, 1996 as an Institution of Public Government responsible for the environmental assessment of project proposals in the Nunavut Settlement Area as described in Article 12 of the Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in Right of Canada, commonly referred to as the Nunavut Land Claims Agreement (the “NLCA” or the “Agreement”).

The primary functions of NIRB are:

1. to screen project proposals in order to determine whether or not a review is required;
2. to gauge and define the extent of the regional impacts of a project;
3. to review the ecosystemic and socio-economic impacts of project proposals;
4. to determine, on the basis of its review, whether project proposals should proceed and if so, under what terms and conditions, and then report its determination to the Minister; and
5. to monitor projects in accordance with the provisions of the NLCA.

In carrying out its functions, the primary objectives of NIRB are at all times to protect and promote the existing and future well-being of the residents and communities of the Nunavut Settlement Area, and to protect the ecosystemic integrity of the Nunavut Settlement Area. NIRB is also required to take into account the well-being of residents of Canada outside the Nunavut Settlement Area.

INTRODUCTION TO RULES OF PROCEDURE

These Rules of Procedure (the “Rules”) are made pursuant to section 12.2.23 of the NLCA.

In designing its Rules of Procedure for the conduct of public hearings, NIRB is required by the NLCA to the extent consistent with the broad application of the principles of natural justice and procedural fairness, emphasize flexibility and informality, and, specifically allow, where appropriate, the admission of evidence that would not normally be admissible under strict rules of evidence, and give due regard and weight to the tradition of Inuit oral communication and decision-making.

PART I - GENERAL

1. Citation

- 1.1 These Rules may be cited as the NIRB Rules of Procedure.

2. Definitions

- 2.1 In these Rules:

“affidavit” refers to a document containing a voluntary declaration of facts sworn to by the declarant before an officer authorized to administer oaths.

“Agreement” means the entire Nunavut Land Claims Agreement, including its preamble and schedules, between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in Right of Canada, signed in Iqaluit, Northwest Territories, on May 25, 1993, as amended.

“authorizing agency” means any government agency, Designated Inuit Organization (DIO) or any other body that has the authority to issue a permit, lease, license or grant approval to a proponent to conduct some physical work or physical activity in relation to a project proposal. These authorizations may trigger the NIRB screening process.

“Board” (NIRB) means the Nunavut Impact Review Board established pursuant to Article 12 of the Agreement.

“Designated Inuit Organization” (DIO) means (a) the Tungavik, or (b) in respect of a function under the Agreement, any of the Organizations that has been designated under Section 39.1.3 as responsible for that function.

“document” includes anything in printed form, and telecommunication or electronic transmission capable of being reduced to a printed format, and video or audiotapes.

“ecosystemic” means relating to the complex of a natural community of living organisms and its environment functioning as an ecological unit in nature.

“Elder” means any member of a community recognized as such in accordance with local culture, customs and traditions or someone recognized for their experience in Inuit culture, customs and knowledge.

“Environmental Impact Statement” (EIS) termed “Impact Statement” under the Agreement, an EIS refers to a documented assessment of the environmental and socio-economic consequences and recommended mitigative actions of any project

proposal expected to have significant environmental consequences, which is prepared by the proponent in accordance with guidelines established by NIRB.

“*hearing*” includes a hearing on the screening of a project proposal, the hearing of a motion, a pre-hearing conference, or a final hearing on the review of a project proposal.

“*Hunters and Trappers Organization*” (HTO) means an organization referred to in Sections 5.7.1 to 5.7.15 of the Agreement.

“*information request*” means a written request for information or particulars made by the Board, or with the Board’s consent from one party to another.

“*intervener*” means any interested party intending to participate in a Board hearing and to play a role regarding any issues raised by the project proposal, either by questioning other parties or by bringing forward their own evidence.

“*Inuktitut*” means all forms of the Inuit language in current usage in Nunavut, including Inuinnaqtun.

“*Minister*” unless otherwise specified, means the federal or territorial Minister having the jurisdictional responsibility for authorizing a project to proceed; however, the Government of Canada and Territorial Government may, within their respective jurisdictions, designate a single Minister to be responsible for NIRB and to perform all functions assigned to “the Minister”.

“*motion*” means a request by a party for a ruling or order in a proceeding or in a pending proceeding, or a motion of the Board.

“*oral hearing*” means a hearing at which the participants attend in person before the Board.

“*panel*” refers to those Board members assigned to preside over a particular hearing.

“*party*” (parties) means the proponent, authorizing agencies including a Designated Inuit Organization, and intervener(s).

“*proceeding*” means a matter brought before the Board.

“*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 of the Agreement.

“*proponent*” in respect of a project proposal, means the person, body or government that proposes the project.

“*significance*” for the purpose of determining whether adverse effects and public concerns are significant, NIRB shall consider both the context of the project and the intensity of adverse effects, by giving particular regard to the following:

- (a) the environmental sensitivity of the geographic area likely to be affected by the project,
- (b) the historical, cultural and archeological significance of the geographic area likely to be affected by the project,
- (c) the extent of the effects of the project, including the geographical area that will be affected, the size of the affected human populations, and the size of the affected wildlife populations and related habitat,
- (d) the extent of the effects of the project on other regional human populations and wildlife populations, including the extent of the effects on Inuit Harvesting activities,
- (e) the magnitude and complexity of adverse effects,
- (f) the probability of adverse effects occurring,
- (g) the frequency and duration of adverse effects,
- (h) the reversibility or irreversibility of adverse effects,
- (i) the potential for cumulative adverse effects given past, present and future relevant events, and
- (j) any other factors NIRB considers relevant to assessing significance.

“*written hearing*” means a hearing held by means of an exchange of documents.

3. Application of Rules

- 3.1 These Rules apply to all proceedings pursuant to the NLCA Part 4: Screening of Project Proposals and NLCA Part 5: Review of Project Proposals.
- 3.2 These Rules are not applicable to proceedings pursuant to the NLCA Part 6: Review by a Federal Environmental Assessment Panel unless these Rules are specifically adopted as the applicable procedural rules by a Federal Environmental Assessment Panel.

4. Interpretation and Variation of Rules

- 4.1 These Rules may be liberally construed in order to result in the just, expeditious and fair hearing of every matter properly before the Board.
- 4.2 Where any matter of procedure is not provided for by these Rules, the Board may, at any time, issue any direction on procedure to supplement these Rules that it considers necessary for the fair determination of an issue.

- 4.3 The Board may, with or without a hearing, issue any direction on procedure to dispense with or vary any part of these Rules that it considers necessary for the fair determination of an issue.
- 4.4 The Board may on a motion from a party, issue any direction on procedure to dispense with or vary any part of these Rules that it considers necessary for the fair determination of an issue.
- 4.5 Where there is a conflict between any Rule and any direction on procedure issued by the Board, the direction on procedure prevails over the Rule.
- 4.6 Where there is a conflict between any Rule or any direction on procedure issued by the Board and the Agreement, the Agreement prevails over the Rule or the direction on procedure.

5. Form

- 5.1 Unless the Board prescribes another form, all procedural steps and motions to be dealt with in advance of a hearing shall be dealt with in writing.

6. Non-Compliance with the Rules

- 6.1 Where a party fails to comply with these Rules or a direction on procedure issued by the Board, the Board may:
 - 6.1.1 Adjourn the proceeding until satisfied that the requirement has been complied with; or
 - 6.1.2 Take such other steps as it considers just and reasonable.
- 6.2 The Board may, in order to secure a just determination of any matter, dispense with compliance to any Rule at any time.
- 6.3 No proceeding is invalid by reason of a defect or other irregularity in form.

7. Motions and Requests

- 7.1 If a matter arises in a proceeding, other than during an oral hearing, that requires a decision or order of the Board, a party may bring the matter before the Board by filing a motion with the Board and serving a copy of the motion on all other parties.
- 7.2 A motion must:
 - 7.2.1 Be in writing;

- 7.2.2 Briefly describe the decision or order sought, the grounds on which the motion is made, the nature of any evidence sought to be presented in support of the motion;
 - 7.2.3 Be accompanied by an affidavit setting out a clear and concise statement of the facts relevant to the motion;
 - 7.2.4 Be accompanied by any documents that may support the motion; and
 - 7.2.5 In the opinion of the Board, be filed in a timely manner giving consideration to when the matter arose in the proceeding.
- 7.3 A party may respond to a motion served on the party pursuant to Rule 7.1 by filing and serving, as directed by the Board, a response.
- 7.4 The party originating the motion may reply to a response to the motion by filing and serving, as directed by the Board, a reply to the response.
- 7.5 If the Board decides to hold an oral hearing of a motion brought under Rule 7.1, the Board shall give notice of the hearing in accordance with Rule 20.1.
- 7.6 If a matter arises in an oral hearing that requires a decision or order of the Board, a party may bring the matter before the Board by making a motion orally. The Board shall dispose of an oral motion in accordance with such procedures as the Board may order.

PART II – COMMENCEMENT OF PROCEEDINGS

8. Filing of a Project Proposal and Commencement of Part 4 Screening

- 8.1 A project proposal must include the following nine elements:
 - 8.1.1 Proponent information,
 - 8.1.2 Project description,
 - 8.1.3 Description of the existing environment (biophysical and socioeconomic),
 - 8.1.4 Description of the public consultation process,
 - 8.1.5 Identification of potential environmental and socioeconomic effects,
 - 8.1.6 Identification of potential cumulative effects,
 - 8.1.7 Identification of mitigation and measures and potential residual impacts,
 - 8.1.8 Non-technical project summary in English and Inuktitut/Inuinnaqtun (depending on the region), and
 - 8.1.9 Map of the project area (the Board may direct the format).
- 8.2 A project proposal must be filed in the form and in accordance with the procedures set out in the *NIRB Guide 3: Guide to Filing of Project Proposals and Screening Process*.
- 8.3 Upon receipt of a properly filed project proposal the Board shall give notice to the proponent and affected authorizing agencies that the NLCA Part 4 screening of the project proposal has commenced, and the date by which the Board's screening determination and recommendation will be issued to the Minister ("Notice of Part 4 Screening").
- 8.4 The Board's screening determination and recommendation to the Minister shall be carried out within 45 days of the receipt of a properly filed project proposal except:
 - 8.4.1 Where there is a legal requirement for a licensing authority to make a decision within a certain time period, within a time period that would allow the licensing authority to conform with that requirement; or
 - 8.4.2 With the approval of the Minister, within a time period of exceeding 45 days.
- 8.5 The Notice of Part 4 Screening shall set out the procedures for the project proposal distribution list and other interested persons and organizations to file written comments on the project proposal with the Board, including:
 - 8.5.1 The period of time to provide written comments shall be 21 days from the date of the notice, unless having regard for the nature, location and size of the project described in the project proposal and any other considerations the Board deems relevant, the Board is satisfied a shorter or longer period of time for written comments is in the public interest.

- 8.5.2 Any other interested persons and organizations properly filing written comments on the project proposal with the Board shall be added to the project proposal distribution list.
 - 8.5.3 The proponent shall be given an opportunity to file a reply to the written comments on the project proposal with the Board.
- 8.6 The Board shall give Notice of Part 4 Screening to a project proposal distribution list that includes all affected:
- 8.6.1 Designated Inuit Organizations,
 - 8.6.2 Departments of the Government of Canada,
 - 8.6.3 Departments of the Government of Nunavut,
 - 8.6.4 Wildlife Management Boards, and
 - 8.6.5 Local governments.
- 8.7 Having regard for the nature, location and size of the project described in the project proposal, the Board may give Notice of the Part 4 Screening to any of the following by adding the person or organization to the project proposal distribution list:
- 8.7.1 Hunters and Trappers Organizations,
 - 8.7.2 Any Nunavut resident, and
 - 8.7.3 Any other potentially affected person or organization.
- 8.8 Upon receipt of a properly filed project proposal the Board shall place the project proposal and the Notice of Part 4 Screening on the NIRB public registry.
- 8.9 The Board shall place all properly filed documents related to the NLCA Part 4 screening of a project proposal on the NIRB public registry and make available for public inspection at the NIRB Office during regular business hours a copy of the public registry for every project proposal.
- 8.10 Where a party on the project proposal distribution list has provided the Board with an e-mail address, the Board will notify the party, at that e-mail address and within a reasonable period of time, that a new document related to the project proposal has been placed on the NIRB public registry.
- 8.11 The Board may hold a hearing in connection with the NLCA Part 4 screening of a project proposal and any matter relating to its objects when the Board is satisfied it is in the public interest to do so.

9. Filing of an Environmental Impact Statement (EIS) and Commencement of Part 5 Review

- 9.1 Where the Board determines, and the Minister agrees, that the project proposal must undergo review in accordance with Part 5 of the NLCA the Board shall give notice to the proponent and the project proposal distribution list developed during the screening of the project proposal that the review is required (“Notice of Part 5 Review”).
- 9.2 The Notice of the Part 5 Review shall set out the procedures for the scoping of the project and the development of project specific EIS guidelines, including the procedures for the project proposal distribution list and other interested persons and organizations to file written comments, recommendations and guidance on the scoping and development of the project-specific EIS guidelines with the Board, and the date by which the Board will issue the project-specific EIS guidelines.
- 9.3 The Board shall place the Notice of Part 5 Review on the public registry.
- 9.4 The Board shall place all properly filed documents related to the NLCA Part 5 review of a project proposal on the NIRB public registry and make available for public inspection at the NIRB Office during regular business hours a copy of the public registry for every project proposal.
- 9.5 Where a party on the project proposal distribution list has provided the Board with an e-mail address, the Board will notify the party, at that e-mail address and within a reasonable period of time, that a new document related to the project proposal has been placed on the NIRB public registry.
- 9.6 The Board may hold a hearing in connection with the NLCA Part 5 review of a project proposal and on any matter relating to its objects when the Board is satisfied it is in the public interest to do so.
- 9.7 An EIS must include the information required in project-specific EIS guidelines issued by the Board and the following minimum EIS requirements:
 - 9.7.1 *Statement of Consultation Principles and Practices*

Pre-project consultations with locally affected persons must meet or exceed usual consultation practices in Canada. When at all possible, information about the project must be distributed and comments collected with a view to resolving any differences. Discussions should include, but not be limited to, land uses, policies, resource uses, archaeological areas, infrastructure, and terrain sensitivities. Inuit cultural concerns must be highlighted throughout. All comments from the public must be summarized, documented, and presented in the EIS.

9.7.2 *Definition of Project*

A definition of the project must include a discussion of any connected or down the-road related projects in order to reveal the primary purpose and better understand complex or multi-staged related proposals.

9.7.3 *Statement of Project's Purpose*

Based on the concepts of the precautionary principle and sustainable development, an EIS must contain a statement explaining the need for, and the purpose of the project. Where further economic development is needed for a given area, the Board expects the deficiencies in the economic status quo to be stated.

9.7.4 *Anticipated Impacts Analysis*

A comprehensive impact assessment must be carried out which includes, but is not limited to, environmental effects that are likely to result from the project in combination with other projects or activities that have been, or will be, carried out. Anticipated impacts include short and long-term, direct and indirect, positive and negative, cumulative, socio-economic, archaeological and cultural impacts. This element of the EIS must include a mitigation analysis that explains how the impacts could be avoided, minimized, cured, eliminated, or compensated.

9.7.5 *Cumulative Effects Analysis (CEA)*

Cumulative effects must be analyzed for all Part 5 Reviews. A project proposal causes a cumulative effect if, when added to other projects in the region, or projects reasonably foreseeable in the region, will cause an additive effect. A comprehensive examination of all cumulative effects must be included in an EIS.

9.7.6 *Significant Effects Analysis*

The Board must be advised of the significant impacts of the project. This should be based upon:

- a) the project setting, taking into account the location's unique ecosystemic characteristics, and
- b) the severity of the impacts, taking into account public health, land use plans, protected areas, habitat, or species, public concern, etc.

Ultimately, the Board will decide which effects are significant and report to the Minister accordingly.

9.7.7 *Project Alternatives*

This requirement includes, but goes well beyond, alternative means of carrying out the project that might be economically and technically feasible and the environmental effects of those alternative means. This assessment must include the "no-go" or "no-build" alternative, as well as

the “preferred” alternative. The “no-go” alternative is not only a potentially stand-alone option; it also serves as a baseline for comparison with other development alternatives that might reasonably be proposed in the circumstances.

9.7.8 *Sustainability Analysis*

The EIS must contain an analysis of the ability of renewable resources affected by the project to sustain current and future generations in Nunavut and Canada.

9.7.9 *Monitoring or Post-Project Analysis (PPA)*

The purposes of a PPA are to:

- a) measure the relevant effects of projects on the ecosystemic and socioeconomic environments of the Nunavut Settlement Area;
- b) determine whether and to what extent the land or resource use in question is carried out within the predetermined terms and conditions;
- c) provide the information base necessary for agencies to enforce terms and conditions of land or resource use approvals; and
- d) assess the accuracy of the predictions contained in the project impact statements.

9.7.10 *Trans-Boundary Effects Analysis*

Where relevant, an EIS must include an assessment of all significant adverse ecosystemic or socio-economic trans-boundary effects.

9.7.11 *Any Other Matter Deemed Necessary*

NIRB will always review each project proposal on a case-by-case basis including instructions from the Minister, and may add other requirements as per s. 12.5.2(j) of the NLCA.

- 9.8 An EIS must be filed in the form and in accordance with the procedures set out in *NIRB Guide 7: Guide to the Preparation of Environmental Impact Statements*.
- 9.9 The proponent may apply to have the Board accept the project proposal submitted for NLCA Part 4 screening instead of requiring the preparation of an EIS. The application must be in writing, signed by the proponent or their agent, filed with the Board and served on the project proposal distribution list.
- 9.10 Upon the Minister’s referral of a project proposal to a Part 5 review, if the Board is satisfied a project proposal that is the subject of an application filed pursuant to Rule 9.9 contains the information required for an EIS, the Board may deem the project proposal a properly filed EIS.

- 9.10.1 In determining whether a project proposal contains the information required for an EIS, the Board may consult with the project proposal distribution list.
- 9.11 Upon receipt of a properly filed EIS the Board shall notify the proponent and the project proposal distribution list of the commencement of the NLCA Part 5 review of the project proposal and the Board shall set a tentative schedule for the pre-hearing procedures and the final hearing.
- 9.12 The notice of the commencement of the NLCA Part 5 review of the project proposal shall be placed on the NIRB public registry.

10. Filing of Documents

- 10.1 Subject to Rule 10.1.1, a document may be filed at the NIRB Office by personal delivery, ordinary mail, electronic transmission, or by any other means as directed by the Board.
- 10.1.1 An EIS, including related addendums and supplements, may not be filed by electronic transmission.
- 10.2 A document filed with the Board is deemed to have been filed when it is received by the Board unless it is received after the Board's regular business hours, in which case the document is deemed to have been filed on the next business day of the Board.
- 10.3 A party who wishes to file a document after the time limit set out by the Board may request of the Board leave to file the document after the time limit set out by the Board. The Board may grant such leave on any terms the Board considers appropriate.
- 10.4 The Board may require a set number of printed copies of a document be delivered to the NIRB Office by the filing date.
- 10.5 The Board may require that all or any part of a document filed be verified by affidavit.
- 10.6 The Board may direct that an executive summary of a document filed with the Board be translated into Inuktitut or any other language deemed necessary by the Board by the party filing the document within a time period set out by the Board. This requirement does not apply to private citizens.

11. Service of Documents to Parties

- 11.1 A document required to be served under these Rules or by the Board may be served by personal delivery, courier service, or ordinary mail to the address given by the person, or by any other means as directed by the Board.
- 11.2 A document may be served by electronic means if the person being served has the information technology, equipment, software and processes for receiving or retrieving the document.
- 11.3 The date of service of a document is the day on which the person being served receives the document unless it is received after 5:00 o'clock in the afternoon Mountain Standard Time, in which case the date of service is deemed to be the next business day.
- 11.4 The Board may require a person to file an affidavit of service setting out on whom a document was served and the means taken to affect service.
- 11.5 Any document required to be served on a party may be served on the party's representative.

12. Public Submissions

- 12.1 An Elder, and on application to the Board any other resident of Nunavut when the Board determines it is necessary to allow the resident to participate in the proceedings, may file a submission on a screening of a project proposal or a review of a project proposal with the Board by telephone by calling the NIRB Office. A designated NIRB staff member will make a record of the conversation and transcribe a written submission from the person. To ensure accuracy, the written statement will be read back to the person prior to being filed as a submission. The submission must be telephoned into the NIRB Office within the time frame established by the Board. The Board will assume responsibility for any requirement to distribute copies of the filed written statement to the parties.

13. Public Record

- 13.1 Subject to Rule 13.2 and Rule 13.3, all documents filed in respect of a screening or review proceeding are public documents and shall be placed on the public registry.
- 13.2 If a party wishes to keep confidential any information in a document, a party may, before filing the document file a request for confidentiality with the Board and serve a copy of the request on the other parties. The request for confidentiality must:
 - 13.2.1 Be in writing;

- 13.2.2 Contain a statement describing the nature of information in the document;
 - 13.2.3 Briefly describing the reasons for the request, including the specific harm that would result if the document were placed on the public registry; and
 - 13.2.4 Indicate whether all or only part of the document is the subject of the request.
- 13.3 If the Board determines that the harm that would result if the document were placed on the public registry outweighs the public interest in the disclosure of the document, the Board may, with or without a hearing, grant a request for confidentiality on any terms that it considers appropriate.
- 13.4 Where a request for confidentiality is granted by the Board the document or part of the document to which confidentiality is granted shall not be placed on the public registry and a party shall only receive a copy of the document or part of the document as the case may be if the party files an undertaking stating that the party will hold the document in confidence and use it only for the purpose of the proceeding with the Board.
- 13.5 Nothing in Rules 13.1 to 13.4 limits the operation of any statutory provision that protects the confidentiality of information or documents.

14. Contents of Filed Documents

- 14.1 A filed document containing a technical report or material of a technical nature must indicate the technical qualifications of the person signing or taking responsibility for the report or material. If the filed document is a compilation of contributions from technical experts, a list of the experts, their qualifications and the nature of their contribution to the technical report or material must be submitted.
- 14.2 Where there is a material change to a filed document or significant new information relating to a filed document becomes available before a determination is made in a proceeding, and the information is necessary for determining an issue in the proceeding, the party filing the document shall file a revised document with the Board clearly indicating the part of the document that is revised, the date of the revision, and the reason for the revision.
- 14.3 The Board may direct the proponent or any other party to file such further information as the Board considers necessary to permit a full and satisfactory understanding of an issue in a proceeding.

15. Affidavits

- 15.1 An affidavit intended for use in a proceeding must be confined to those facts within the knowledge of the person making the affidavit or based on the information and belief of the person making the affidavit.

- 15.2 If a statement is made in an affidavit on information and belief, the source of the information and the grounds on which the belief is based must be set out in the affidavit.
- 15.3 If an affidavit refers to an exhibit, the exhibit must be marked as such by the person making the affidavit and attached to the affidavit.

16. Conformity Review Information Requests

- 16.1 If the Board is not satisfied that the EIS has the information necessary to proceed to a hearing, the Board, on its own initiative or in consultation with the parties, shall advise the proponent in writing of the additional information to be filed with the Board before proceeding to a hearing.
- 16.2 For scheduling purposes, the proponent shall inform the Board in writing of the proponent's schedule for filing the additional information required pursuant to Rule 16.1.

17. Technical Information Requests

- 17.1 After receipt of additional information pursuant to Rule 16.1, if an authorizing agency or an intervener is not satisfied that it has the technical information necessary to proceed to a hearing, the party may submit to the Board a request for the proponent to provide additional information before proceeding to a hearing.
- 17.2 If the Board determines that the information request pursuant to Rule 17.1 is relevant to the review process and necessary to proceed to a hearing, the Board shall advise the proponent in writing of the additional information required.
- 17.3 The Board may establish a schedule for the filing of information requests pursuant to Rule 17.1 and the filing of the proponent's response to the information required.

18. Meeting of Technical Experts

- 18.1 In order for the Board to be satisfied that the EIS contains the information necessary to proceed to a hearing, the Board may hold a meeting of the parties' technical experts, either in writing, by teleconference, or in person.
- 18.2 The Board shall give written notice of a meeting of technical experts to the proponent and the project distribution list at least 60 days before a meeting of technical experts.

- 18.3 The Board strongly encourages and expects the parties' technical experts to meet on their own initiative before the hearing on a review of a project proposal. NIRB staff will be available to assist technical experts with arranging a joint meeting, and in providing any relevant information in the Board's possession. In order for a meeting between technical experts to be considered by the Board in the review process, a record of the meeting documenting any agreement reached and commitments undertaken must be filed with the Board.

19. Public Consultation

- 19.1 When screening a project proposal, the Board will consult with, and expects that the proponent will consult with, the people or representatives of the people, most affected by the proposal.
- 19.2 When scoping a project proposal, the Board may solicit any advice it considers appropriate by means of written submissions or community meetings.
- 19.3 When reviewing a project proposal, the Board may hold community meetings or such other procedures as it deems appropriate, having regard to the nature of the project and the range of impacts.

PART III - HEARINGS

20. Notice of Hearing

- 20.1 The Board shall give written notice of a hearing to the proponent and the project proposal distribution list at least:
- 20.1.1 15 days before a community meeting, hearing of a motion, or other pre-hearing matter;
 - 20.1.2 30 days before any hearing on the screening of a project proposal;
 - 20.1.3 60 days before any pre-hearing conference; and
 - 20.1.4 90 days before a final hearing on a review of a project proposal.
- 20.2 A notice of hearing shall:
- 20.2.1 Briefly describe the subject matter of the hearing;
 - 20.2.2 In the case of an oral hearing the date, time and place of the hearing;
 - 20.2.3 Contain a schedule showing the time limits for filing and serving any of the following:
 - i. requests for intervener status,
 - ii. written submissions,
 - iii. responses to written submissions,
 - iv. replies to responses to written submissions,
 - v. information requests,
 - vi. responses to information requests,
 - vii. filing of documentary evidence,
 - viii. written arguments, and
 - ix. any other procedural step the Board considers necessary.
 - 20.2.4 Contain the requirements for the contents and form of written submissions and the form of written argument;
 - 20.2.5 Indicate the address of the location(s) where the documents filed in relation to the project proposal may be publicly viewed or otherwise obtained; and
 - 20.2.6 Contain any other information the Board considers necessary.
- 20.3 In communicating with the parties regarding the location and schedule of an oral final hearing on a review of a project proposal, the Board will make its best efforts to reach as many people affected by the project activity as possible in Inuktitut and any other languages deemed necessary by the Board. The Board will use various methods to distribute information to potentially affected persons and organizations, having regard for the nature, location and size of the project, and the affected community.

21. Pre-hearing Conference

- 21.1 In order to facilitate the hearing process, the Board may hold a pre-hearing conference with the parties either before or after the date of a hearing is set, be held either in writing, by teleconference, or in person, and deal with any of the following matters:
 - 21.1.1 To prepare a clear statement of issues in question;
 - 21.1.2 To confirm the participation of authorizing agencies in the hearing;
 - 21.1.3 To identify and register interveners;
 - 21.1.4 To determine the positions of the parties;
 - 21.1.5 To determine the witness list;
 - 21.1.6 To determine whether the parties may benefit from a mediation meeting to discuss the issues;
 - 21.1.7 To set a timetable for the exchange of documents and information requests prior to the hearing;
 - 21.1.8 To finalize procedures to be followed in the hearing; and
 - 21.1.9 To decide any other matters that may aid in the simplification of the hearing.

22. Public Participation and Request for Intervener Status

- 22.1 Hearings are held to encourage the full and open participation of people living in, or adjacent to, the area potentially affected by a proposal.
- 22.2 A person who wishes to intervene in a hearing shall file a written or audio or video taped request for intervener status with the Board within the time period set out in the notice of hearing. The request for intervener status must contain the following:
 - 22.2.1 A brief summary of the reasons for the intervener's interest in the hearing;
 - 22.2.2 A concise statement indicating the nature and scope of the intervener's intended participation, including whether the intervener intends to make a written submission and/or appear at an oral hearing, whether the intervener will be represented by counsel or an agent, and the language in which the person wishes to be heard; and
 - 22.2.3 The name, address, telephone number and, if available, fax number and e-mail address of the intervener and, if applicable, of the authorized representative.
- 22.3 The Board may, on receiving and examining a request for intervener status, do one or more of the following:
 - 22.3.1 Direct the intervener to serve a copy of the request on the proponent and such other persons as the Board specifies, and solicit the views of the proponent and parties on the request;

- 22.3.2 Direct the intervener to provide more information to the Board or otherwise revise the request in any manner the Board considers necessary;
 - 22.3.3 Decide that the intervention will not be heard because the submission is frivolous, vexatious or of little merit; and
 - 22.3.4 Decide that the intervention will be heard and notify the parties that the intervention will be heard.
- 22.4 The Board shall allow full standing to a Designated Inuit Organization (DIO).

23. Mediation Meeting

- 23.1 In order to facilitate the hearing process, the Board may schedule a mediation meeting to simplify and clarify issues, and to resolve conflicts where possible. The Board will set the terms of reference for the mediation in advance and will assign a Board member and staff to assist parties. In order to resolve procedural issues and to agree on procedural requirements for the public hearing, parties may make representations to this end. Mediation meetings are open to the public.

24. Formulation of Issues

- 24.1 The Board may decide which issues it shall consider in a hearing.
- 24.2 The Board may request from any party information in deciding which issues should be included in the hearing.

25. Written Questions on Hearing Issues

- 25.1 The Board may direct written questions to the proponent on any issue to be considered at an oral hearing.
- 25.2 Subsequent to receipt of the Board's written questions, any party may direct a written question to the proponent on any issue relevant to the hearing and shall provide a copy of the question to the Board and other parties.
- 25.3 The Board may disallow any written question that, in its opinion, is frivolous or vexatious.
- 25.4 The Board may establish a schedule for the filing of information requests pursuant to Rules 25.1 and 25.2 and the filing of the proponent's response to the information required.

26. Submissions of Board Staff

- 26.1 If, in the opinion of the Board, it is necessary or appropriate in the circumstances for a member of the Board staff or an expert hired by the Board to participate in the hearing, the member of the Board staff or hired expert as the case may be, may, in accordance with these Rules, do one or more of the following:
- 26.1.1 file a written submission,
 - 26.1.2 present evidence,
 - 26.1.3 cross-examine witnesses,
 - 26.1.4 submit argument,
 - 26.1.5 be cross-examined by or on behalf of a party, and
 - 26.1.6 be examined by the Board or another member of the Board staff.

27. Site Visit

- 27.1 Prior to proceeding to a hearing, or during a hearing, the Board may, at the request of a party or on its own motion, schedule a site visit. The Board will set the terms of reference for the site visit in advance and will notify all parties in writing of the site visit and terms of reference for it. The Board may request that representatives from a community accompany the NIRB Panel on a site visit in order to gain a better understanding of the project.

28. Withdrawal of a Project Proposal

- 28.1 A proponent may withdraw a project proposal before a screening determination is made by the Board or a final hearing of a review of a project proposal commences by filing an application to withdraw the project proposal with the Board. The Board may, with or without a hearing, grant an application to withdraw a project proposal on any terms that it considers appropriate.

29. Withdrawal of a Document

- 29.1 A party may withdraw a document, including a written submission, before a screening determination is made by the Board or a final hearing of a review of a project proposal commences by filing a written notice to withdraw a document with the Board and serving a copy of the notice to withdraw on the other parties.

30. Proceeding in the Absence of a Party

- 30.1 Where the Board in accordance with these Rules has given notice of a hearing and a party does not participate in the proceeding, the Board may proceed in that party's absence and that party may not be entitled to any further notice of that portion of the hearing.
- 30.2 Unless excused by the Board for good cause shown, failure of a party to attend an oral hearing after being served with notice of the time and place in accordance

with these Rules shall constitute a waiver of all objections to the agreements, orders or rulings reached in the proceeding.

31. Adjournment

- 31.1 The Board may, on its own initiative or on a motion by a party, adjourn a hearing on any terms that the Board considers appropriate.

32 Evidence: Burden of Proof

- 32.1 In cases where the Board accepts evidence, any party offering such evidence shall have the burden of introducing appropriate evidence to support its position. Where there is conflicting evidence, the Board will decide which evidence to accept and will generally act on a balancing of the evidence.

33. Evidence: General

- 33.1 The Board is not bound by the technical rules of evidence.
- 33.2 A party giving evidence shall do so under oath or affirmation, to be administered by a person authorized by law to administer oaths.
- 33.3 The Chair shall admit any relevant oral and, subject to filing in accordance with these Rules, any documentary evidence that is not protected by law from disclosure. Relevant evidence means evidence having any tendency to prove or disprove a fact in issue. The fact that the Board deems evidence admissible does not mean that it will determine any fact in issue. The Chair may, however, exclude evidence if any of the following substantially outweigh its value:
- 33.3.1 The danger of unfair prejudice;
 - 33.3.3 Confusion of the issues;
 - 33.3.3 Considerations of waste of time;
 - 33.3.4 Duplication; and
 - 33.3.5 Presentation of repetitious evidence.

34. Written Hearings

- 34.1 Where the Board holds a written hearing, it may:
- 34.1.1 Dispose of the proceedings on the basis of the documents filed by the parties;
 - 34.1.2 Require additional information from the parties before disposing of the proceedings; or
 - 34.1.3 Determine at any time during a written hearing that the proceeding must be disposed of by means of an oral hearing.

PART IV - ORAL HEARINGS

35. Venue and Schedule

- 35.1 The Board shall determine the location or locations and scheduling of an oral hearing, giving consideration to fairness to the parties, the location of the project proposal in question, the promotion of public awareness and participation at the hearing, and the convenience to the parties.

36. Informal and Formal Hearing Venues

- 36.1 The primary purpose of an oral hearing is to present information to the Board. The Board may choose two types of hearing venues as part of the oral hearing process:
 - 36.1.1 The informal hearing venue is an open forum community meeting which is held primarily to allow residents and Elders the opportunity to communicate their concerns about the project proposal in an informal environment; and
 - 36.1.2 The formal hearing venue is a public meeting held primarily to allow the parties to present technical evidence to the Board.
- 36.2 All information presented to the Board in informal hearing venues and formal hearing venues may be considered by the Board in its determination of the matter.
- 36.3 At least 10 days prior to the commencement of an oral hearing, the Board shall make reasonable efforts to provide a copy of the public register for the project proposal that is the subject of the hearing for public review in each community where an oral hearing is to take place
- 36.4 The Board shall maintain and make available for public review through the course of an oral hearing a complete copy of the public register for the project proposal that is the subject of the hearing.

37. Change of Venue

- 37.1 If a change of venue becomes necessary, the Board will make every effort to re-schedule the hearing in the best alternative location and with reasonable notice to the parties.

38. Relying on documents

- 38.1 Unless the Board directs otherwise, a party wishing to rely on documentary evidence at an oral hearing, or when directed to do so by the Board, shall file the documentary evidence with the Board and serve a copy of it on the other parties at least 15 days before the date of the hearing.

- 38.2 Documentary evidence filed with the Board must be accompanied by a statement setting out the qualifications of the person who prepared the documentary evidence or under whose direction or control the evidence was prepared. If the filed document is a compilation of contributions from technical experts, a list of the experts, their qualifications and the nature of their contribution to the technical report or material must be submitted.
- 38.3 If a party is not able to file all of the party's documentary evidence 15 days before the oral hearing takes place, the party shall file with the Board and serve on the other parties such documentary evidence that is available at that time and a statement identifying the balance of the documentary evidence to be filed and served and stating when the balance of the documentary evidence will be filed and served.
- 38.4 If a party is not willing to file documentary evidence when directed to do so by the Board pursuant to Rule 38.1, the party shall file a statement setting out the reasons why the party is not willing to do so.
- 38.5 Unless the Board otherwise directs, no documentary evidence may be presented at an oral hearing unless the evidence is filed and served in accordance with these Rules.
- 38.6 A witness of a party presenting evidence at an oral hearing shall confirm on oath or affirmation that the documentary evidence was prepared by the witness or under the witness's direction and control, and is accurate to the best of the witness's knowledge and belief.
- 38.7 Where an oral hearing is in progress, a party entering a document as an exhibit shall provide copies of the document to the Board, the Board staff attending the hearing and all other parties.

39. Summoning of Witnesses

- 39.1 The Board may, on its own initiative or at the request of a party, serve a person with a summons or a notice to attend an oral hearing as witness at the time and place stated in the summons or notice, and to produce the documents or other things in the person's possession, control or power as set out in the summons or notice.
- 39.2 A witness summoned by the Board shall be paid conduct and witness fees as required by the applicable law. The Board may on its own initiative increase the amount payable to an expert witness or in special circumstances where a witness attends a hearing as a result of a notice to attend.

40. Transcripts and Record of Proceedings

- 40.1 The Board may at its discretion direct that written transcripts of an oral hearing be prepared. Where the Board directs such transcripts be prepared the Board will make the transcripts available to the parties and the public on a cost recovery basis.
- 40.2 A party requiring a written transcript of an oral hearing not available pursuant to Rule 40.1 shall file a request for the preparation of written transcripts at the party's own expense with the Board as early as possible.
- 40.3 The Board shall make available a copy of the record of its proceedings for public review at the NIRB Office during regular business hours.

41. Translation

- 41.1 The Board shall conduct its oral hearings in Canada's official languages as required by legislation or policy. Upon request of any member of the Board or a party, the Board will arrange for interpretation and/or translation services in Inuktitut or any other languages deemed necessary by the Board.

42. Oral Evidence Generally

- 42.1 The Chair of the Board, in keeping with the *Charter of Rights and Freedoms*, and relevant legislation dealing with evidence and privilege, may at an oral hearing limit introduction of evidence or issue such protective or other orders deemed necessary to prevent undue disclosure of classified, confidential or sensitive matters. Such matters include, but are not limited to, matters of national security, business or personal matters, or those of a proprietary nature. Where the Chair determines that specific information in documents containing classified, confidential or sensitive matters should be received, the Chair may direct the party to prepare an unclassified or non-sensitive summary or extract of the original. The summary or extract may be admitted as evidence in the record.
- 42.2 The Chair may accept and enter into the record direct testimony of a witness made by a sworn written statement or verified tape recording, rather than by oral presentation at the hearing. A witness whose testimony is presented by a sworn written statement or verified recording shall be available for cross-examination.

43. Evidence: Inuit Traditional Knowledge

- 43.1 The Board shall give due regard to Inuit traditional knowledge in all of its proceedings. The Board may, in an oral hearing, receive oral evidence from Elders, and shall give them the opportunity to speak at the beginning of a hearing, during a hearing, or at the conclusion of a hearing

- 43.2 Prior to an oral hearing, the Board staff may meet with any Elder or other persons respected for their knowledge of Inuit culture, customs and knowledge, for the purpose of giving due regard and weight to the tradition of Inuit oral communication and decision-making, both in the hearing and in the general review process. A record of such Board staff meetings shall be filed in accordance with Rule 26.
- 43.3 The Board may dispense with, or vary any procedural rule at the request of an Elder.

44. Evidence: Examination in Chief

- 44.1 Examination in chief of a witness or a panel of witnesses by a party shall be limited to the scope of the direct evidence. Questioning will be permitted to the extent necessary for full and true disclosure of the facts. The Chair may permit inquiry into additional matters if helpful to the Board in reaching its decision.

45. Evidence: Cross Examination

- 45.1 Cross-examination of witness or panel of witnesses by another party shall be limited to the scope of the direct evidence and, subject to the discretion of the Chair, shall be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. The Chair will permit open and direct cross-examination to the extent necessary for full and true disclosure of the facts.
- 45.2 If a witness or panel of witnesses is unable to respond to a question raised at the hearing, the Board may direct that written submissions, and replies to those written submissions, be filed with the Board by a specific date.

46. Evidence: Expert Witnesses

- 46.1 An expert witness with technical and scientific, Inuit, or ecological knowledge shall file a summary of the expert's background, including qualifications and/or experience where appropriate, with the Board at least 15 days prior to giving evidence at an oral hearing. At the Board's direction, parties may be required to qualify expert witnesses at the hearing. This Rule does not apply to Elders.

47. Closing Arguments and Briefs

- 47.1 At the close of an oral hearing and upon such terms as the Board directs, any party to the proceedings is entitled to file a written brief, to propose findings of fact and conclusions of law, or to do both.

48. Closing of the Record

- 48.1 At the conclusion of an oral hearing, the record shall be closed unless the Chair directs otherwise. Once the record is closed, no additional evidence shall be

accepted unless the Board decides the evidence is material and that there was good cause for the failure to produce it in a timely fashion. The Chair shall reflect in the record, however, any correction to the transcript approved by the Board.

49. Order of Events at an Oral Hearing

- 49.1 Unless otherwise directed by the Board, the order of events at an oral hearing are:
 - 49.1.1 Opening Prayer;
 - 49.1.2 Opening remarks by the Chairperson, which shall include the purpose of the hearing and the scope of matters to be considered by the Board;
 - 49.1.3 Introduction of the Board Members and staff;
 - 49.1.4 Identification and introduction of the parties;
 - 49.1.5 Introduction of the Elders and their role in the hearing;
 - 49.1.6 Identification of any motions or any objections;
 - 49.1.7 Presentation by the proponent;
 - 49.1.8 Questioning of the proponent by parties opposite in interest;
 - 49.1.9 Presentation by authorizing agencies and interveners;
 - 49.1.10 Questioning of authorizing agencies and interveners by parties opposite in interest;
 - 49.1.11 Reply by proponent;
 - 49.1.12 Final closing statements by all parties;
 - 49.1.13 Closing remarks by the Chairperson; and
 - 49.1.14 Closing Prayer.

50. Funding

- 50.1 Unless the Minister directs otherwise, the Board will not fund a proponent to prepare a project proposal or an EIS, or any party to prepare a submission or a reply related to the screening or review of a project proposal.
- 50.2 Unless the Minister directs otherwise, costs incurred by a proponent or intervener to attend an oral hearing shall be borne by that party.
- 50.3 Notwithstanding Rule 50.2, the Board may arrange for citizens from a community close to the location or affected by a proposal to attend an oral hearing when, in the Board's opinion, it is necessary to give due regard and weight to the tradition of Inuit oral communication and decision-making.

What additional information regarding the NIRB review process is available?

A series of guides have been produced to provide information about NIRB and the NIRB process. They are available at <http://ftp.nunavut.ca/nirb>

- Guide 1 – The Nunavut Impact Review Board
- Guide 2 - Terminology and Definitions
- Guide 3 - Filing Project Proposals and the Screening Process
- Guide 4 - Projects Exempt from Screening
- Guide 5 - The NIRB Review Process
- Guide 6a – NIRB’s Public Awareness and Participation Programs : The Review Process
- Guide 6b – A Proponent’s Guide to Conducting Public Consultation for the NIRB Environmental Assessment Process
- Guide 7 - Preparation of Environmental Impact Statements
- Guide 8 – *Draft* Guide to NIRB’s Monitoring Program
- NIRB Rules of Procedure

How Can I contact NIRB?

NIRB’s contact information:

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