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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 (“Rules”) are made pursuant to section 12.2.23 and 12.2.24 of the NLCA:

12.2.23 NIRB, after due consultation, may make and shall publish its by-laws and rules of procedure respecting:

- (a) the calling of meetings of NIRB;
- (b) the conduct of business at meetings of NIRB including the requirements with respect to physical presence and the use of tele-conferencing or like facilities;
- (c) the establishment of special and standing committees of NIRB, and the fixing of quorums for meetings thereof;
- (d) the carrying on of the work of NIRB, the management of its internal affairs, and the duties of its officers and employees;
- (e) the procedures for making representations and complaints to NIRB;
- (f) the procedures and guidelines for collecting information and opinions;
- (g) the procedures to be used and the admission of evidence at public hearings before NIRB or NIRB panels;
- (h) the establishment of standard guidelines for preparation of impact statements; and
- (i) generally, the manner of conducting any business of or before NIRB.

12.2.24 In designing its by-laws and rules of procedure for the conduct of public hearings, NIRB shall:

- (a) to the extent consistent with the broad application of the principles of natural justice and procedural fairness, emphasize flexibility and informality, and, specifically
 - (i) allow, where appropriate, the admission of evidence that would not normally be admissible under the strict rules of evidence, and
 - (ii) give due regard and weight to the tradition of Inuit oral communication and decision-making; and
- (b) with respect to any classification of intervenors, allow full standing to a DIO.

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 or affirmed by the declarant before an officer authorized to administer oaths and affirmations.

“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 Canadian or Nunavut government department or 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.

“Board” (NIRB) means the Nunavut Impact Review Board established as an institute of public government 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 of the Agreement 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 audio recordings.

“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 a member of the community recognized as such in accordance with local culture, customs and traditions.

“Environmental Impact Statement” (EIS) termed “Impact Statement” under the Agreement, means 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.

“*hearing*” means a hearing on a project proposal, the hearing of a motion, and a pre-hearing conference, whether proceeding orally or in writing.

“*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 from one party to another.

“*intervenor*” means any person granted the status of intervenor by the Board pursuant to Rule 22.3.

“*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.

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

“*party*” (collectively “parties”) means the proponent, authorizing agencies, and intervenors.

“*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 authority that proposes the project.

“*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 conducted pursuant to the NLCA Article 12, Part 4: Screening of Project Proposals and NLCA Article 12, Part 5: Review of Project Proposals.
- 3.2 These Rules are not applicable to proceedings conducted pursuant to the NLCA Article 12, 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 Consistent with the Agreement and the broad application of the principles of natural justice and procedural fairness, the Board may liberally construe these Rules 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 directs 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:

- (a) Adjourn the proceeding until satisfied that the requirement has been complied with; or
 - (b) Take such other steps as it considers just and reasonable.
- 6.2 The Board may, with or without a hearing, dispense with compliance to any Rule at any time in order to secure a fair determination of any matter.
- 6.3 No proceeding is invalid by reason of a defect or other irregularity in form.

7. Motions

- 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 pursuant to Rule 7.1 must:
- (a) Be in writing;
 - (b) Briefly describe the decision or order sought, the grounds on which the motion is made, and the nature of any evidence sought to be presented in support of the motion;
 - (c) Be accompanied by an affidavit setting out a clear and concise statement of the facts relevant to the motion;
 - (d) Be accompanied by any documents material to the motion; and
 - (e) 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 during 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 contain the general information set out in section 5 of *NIRB Guide 3: Guide to Filing of Project Proposals and Screening Process*.
- 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 project proposal filed in accordance with these Rules, the Board shall give notice to the proponent and affected authorizing agencies that the NLCA Part 4 screening of the project proposal has commenced (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 project proposal filed in accordance with these Rules except:
 - (a) 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
 - (b) With the approval of the Minister, within a time period exceeding 45 days.
- 8.5 A Notice of Part 4 Screening shall set out the procedures to file written comments on the project proposal with the Board, including:
 - (a) 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.
 - (b) Any other interested person properly filing written comments on the project proposal with the Board shall be added to the project proposal distribution list.
 - (c) At the request of the proponent, the Board may permit the proponent to file a reply to the written comments on the project proposal with the Board.
- 8.6 The Board shall provide a Notice of Part 4 Screening to the proponent, the public and a project proposal distribution list that includes all potentially affected:
 - (a) Designated Inuit Organizations,
 - (b) Departments of the Government of Canada,
 - (c) Departments of the Government of Nunavut,
 - (d) Wildlife Management Boards,
 - (e) Local governments, and

- (f) Local organizations.
- 8.7 Having regard for the nature, location and size of the project described in the project proposal, the Board may provide a Notice of the Part 4 Screening to any of the following by adding the person or organization to the project proposal distribution list:
- (a) Hunters and Trappers Organizations,
 - (b) Any Nunavut resident, and
 - (c) Any other potentially affected person or organization.
- 8.8 Upon receipt of a project proposal filed in accordance with these Rules, 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 documents related to a NLCA Part 4 Screening of a project proposal filed in accordance with these Rules 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.
- 8.10 Where a party or person on the project proposal distribution list has provided the Board with an e-mail address, the Board shall provide notification, 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. Filing of an Environmental Impact Statement (EIS) and Commencement of Part 5 Review

- 9.1 Where the Minister refers a project proposal for a review pursuant to Article 12, 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 has commenced (“Notice of Part 5 Review”).
- 9.2 A Notice of Part 5 Review shall set out the procedures for the scoping of the project and the development of project specific EIS guidelines, including:
- (a) The procedure for filing of written comments, recommendations and guidance on the scoping and development of the project-specific EIS guidelines; and
 - (b) The procedure for requesting intervenor status.
- 9.3 The Board shall place a Notice of Part 5 Review on the public registry.
- 9.4 The Board shall place all documents related to a Part 5 Review and filed in accordance with these Rules 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.
- 9.5 Where a party on the project proposal distribution list has provided the Board with an e-mail address, the Board shall 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 a NLCA Part 5 Review of a project proposal and on any matter relating to its primary functions and objectives when the Board is satisfied it is in the public interest to do so.
- 9.7 An EIS must include the Minimum EIS Requirements set out in *NIRB Guide 7: Guide to the Preparation of Environmental Impact Statements*, and information required in project-specific EIS guidelines that may be issued by the Board.
- 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 a NLCA Part 4 screening as a draft EIS. The application must be in writing, signed by the proponent or their agent, and filed with the Board.
- 9.10 If the Board is satisfied that 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 an EIS filed in accordance with these Rules.
- 9.10.1 In determining whether a project proposal contains the information required for an EIS, the Board may consult with the parties on the distribution list.
- 9.11 Upon receipt of an EIS filed in accordance with these Rules, the Board shall notify the proponent and the project proposal distribution list of the commencement of the technical review of the EIS (Notice of Commencement of Part 5 Review).
- 9.12 A Notice of Commencement of 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, or project proposal filed pursuant to Rule 9.9, 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. 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 Rule does not apply to documents filed by a person not acting on behalf of an organization.

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 party, or by any other means as directed by the Board.
- 11.2 In addition to the means of service in Rule 11.1, a document may be served by electronic means if the party 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 local time at the location being served, 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 Where a Notice of Commencement of Part 5 Review has been issued pursuant to Rule 9.11, any person who does not wish to intervene in the proceeding but who

wishes to make comments to the Board regarding the proceeding shall file with the Board on or before the date set by the Board, a letter of comment that:

- (a) Comments on the project proposal;
 - (b) Describes the nature of the person's interest in the proceeding; and
 - (c) Provides any relevant information that the person considers will explain or support the person's comments.
- 12.2 In special circumstances where an Elder or other resident of Nunavut cannot provide a letter of comment, the Board may permit that person to file a submission orally. A designated NIRB staff member shall make a record of the conversation and transcribe a written submission from the person. To ensure accuracy, the written statement shall be read back to the person prior to being filed with the Board. The submission must be made on or before the date set by the Board.
- 12.3 The Board shall provide all parties with a copy of any comments filed pursuant to Rule 12.1 or 12.2. A party may, within 15 days after receipt of a comments filed pursuant to Rule 12.1 or 12.2, serve a reply on the person who has filed the comments and shall file with the Board and serve on all other parties a copy of the reply.
- 12.4 A person who files comments pursuant to Rule 12.1 or 12.2 does not thereby acquire status as an intervenor, loses intervenor status if previously held, and is not entitled to any further notice in the proceeding.

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 motion with the Board requesting information in a document be kept confidential. In addition to the requirements of Rule 7.2, a motion for a request for confidentiality must:
- (a) Contain a statement describing the nature of information in the document;
 - (b) Briefly describe the reasons for the request, including the specific harm that would result if the document were placed on the public registry; and
 - (c) 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, after the hearing of the motion, grant a request for confidentiality on any terms that it considers appropriate.

- 13.4 Where a request for confidentiality is granted by the Board and the document is filed with the Board, the document or part of the document to which confidentiality is granted shall not be placed on the public registry. 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 of EIS

- 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 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 intervenor is not satisfied that it has the technical information necessary to proceed to a hearing, the party may submit to the Board in writing a request for the proponent to provide additional information.
- 17.2 If the Board determines that the information request pursuant to Rule 17.1 is relevant and material to the review process, 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 pursuant to Rule 17.1.

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 direct NIRB staff to hold a meeting of the parties' technical experts, either in writing, by teleconference, or in person. A meeting of technical experts is not a hearing.
- 18.2 The Board shall give notice of a meeting of technical experts to the proponent and the project proposal distribution list at least 60 days before a meeting of technical experts.

19. Public Consultation

- 19.1 The Board may direct a member of the NIRB staff or an expert hired by the Board to hold community meetings or such other procedures as it deems appropriate, having regard to the nature of the project and the range of potential impacts, to inform the public about the NIRB process. Notice of a community meeting or other procedures shall be given in accordance with Rule 20.1.1 and a record of such community meetings or other procedures shall be filed with the Board in accordance with Rule 12.3.

PART III - HEARINGS

20. Notice of Hearing

- 20.1 The Board shall give notice of a hearing to the proponent and the project proposal distribution list at least:
- (a) 25 days before a community meeting, hearing of a motion, or other pre-hearing matter;
 - (b) 60 days before a pre-hearing conference; and
 - (c) 60 days before a hearing of a project proposal.
- 20.2 A notice of hearing shall:
- (a) Briefly describe the subject matter of the hearing;
 - (b) In the case of an oral hearing the date, time and place of the hearing;
 - (c) Contain a schedule showing the time limits for filing and serving any of the following:
 - i. Requests for intervenor status,
 - ii. Written submissions by all parties,
 - iii. Responses to written submissions,
 - iv. Reply to responses to written submissions by proponent,
 - v. Filing of documentary evidence,
 - vi. Written arguments, and
 - vii. Any other procedural step the Board considers necessary.
 - (d) Contain the requirements for the content and form of written submissions and the form of written argument.
 - (e) 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
 - (f) Contain any other information the Board considers necessary.
- 20.3 In communicating with the parties regarding the location and schedule of an oral hearing on a project proposal, the Board shall attempt to reach as many people affected by the project proposal as possible in Inuktitut and any other languages deemed necessary by the Board. The Board may 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. The pre-hearing conference may be held in writing or orally, by teleconference or in person, and deal with any of the following matters:
- (a) Prepare a clear statement of issues in question;

- (b) Confirm the participation of authorizing agencies in the hearing;
- (c) Identify and register intervenors;
- (d) Determine the positions of the parties;
- (e) Determine the witness list;
- (f) Determine whether the parties may benefit from a mediation meeting to discuss the issues;
- (g) Set a timetable for the exchange of documents and information requests prior to the hearing;
- (h) Finalize procedures to be followed in the hearing; and
- (i) Decide any other matters that may aid in the simplification of the hearing.

22. Public Participation and Request for Intervenor Status

- 22.1 The Board shall, without request, allow full standing to the proponent and authorizing agencies.
- 22.2 A request for intervenor status must be filed in writing with the Board within the time period set out in the notice of hearing. The request for intervenor status must contain the following:
- (a) A brief summary of the reasons for the intervenor's interest in the hearing;
 - (b) A concise statement indicating the nature and scope of the intervenor's intended participation, including whether the intervenor intends to make a written submission and/or appear at an oral hearing, whether the intervenor will be represented by counsel or an agent, and the language in which the person wishes to be heard; and
 - (c) The name, address, telephone number and, if available, fax number and e-mail address of the intervenor and, if applicable, of the authorized representative.
- 22.3 The Board shall on receiving and examining a request for intervenor status, do one or more of the following:
- (a) Direct the intervenor 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;
 - (b) Direct the intervenor to provide more information to the Board or otherwise revise the request in any manner the Board considers necessary;
 - (c) Decide that the intervention will not be heard because the submission is frivolous, vexatious or of little merit; and
 - (d) Decide that the intervention will be heard and notify the parties that the intervention will be heard.
- 22.4 Any person who does not wish to intervene in an oral hearing but who wishes to make their views known may make an oral presentation during that portion of the hearing that has been set aside to hear the views of the public.

23. Mediation Meeting

23.1 In order to facilitate the hearing process, the Board may schedule a mediation meeting with the parties to simplify and clarify issues, and to resolve conflicts where possible. The Board shall set the terms of reference for the mediation in advance and assign a Board member and staff or third-party mediator 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. A Board member assigned to a mediation shall not participate in any further hearing of the matter.

24. Formulation of Issues

24.1 Subject to Section 12.5.5 of the Agreement, the Board shall decide the issues to be considered in a hearing.

24.2 In deciding the issues to be considered in a hearing, the Board may request from information from any party.

25. Written Questions on Hearing Issues

25.1 The Board may direct written questions to the proponent on any issue to be considered at a hearing and shall provide a copy of the questions to other parties.

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 written questions pursuant to Rules 25.1 and 25.2 and the filing of the proponent's response to the information required pursuant to Rules 25.1 and 25.2.

26. Submissions of Board Experts

26.1 If, in the opinion of the Board, it is necessary or appropriate in the circumstances for an expert hired by the Board to participate in the hearing, the hired expert, may, in accordance with these Rules, do the following:

- (a) File a written submission, in accordance with deadlines established in the notice of hearing,
- (b) Present evidence,
- (c) Be available for cross-examination by or on behalf of a party, and
- (d) Be available for examination by the Board.

27. Site Visit

- 27.1 Prior to proceeding to a hearing, or during a hearing, the Board may, on its own initiative or on a motion by a party, schedule a site visit. The Board shall set the terms of reference for the site visit in advance and notify the parties in writing of the site visit and the terms of reference. The Board may request that representatives from a community and any other person accompany the Board on a site visit.

28. Withdrawal of a Project Proposal

- 28.1 A proponent may file with the Board a written application to withdraw the project proposal. 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 hearing of a project proposal commences, by filing a notice of withdrawal of a document with the Board and serving a copy of the notice to withdraw on the other parties. The Board shall strike the withdrawn document from the record and remove the withdrawn document from the public registry.
- 29.2 A party may, following the commencement of a hearing of a project proposal and prior to the closing of the record, file a motion with the Board requesting to withdraw a document.

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 hears 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 may allow the admission of evidence that would not normally be admissible under the strict rules of evidence.
- 33.2 A person giving evidence shall do so under oath or affirmation, to be administered by a person authorized by law to administer oaths.
- 33.3 The Board 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 Board may, however, exclude evidence if any of the following substantially outweigh its value:
- (a) The danger of unfair prejudice;
 - (b) Confusion of the issues;
 - (c) Considerations of waste of time;
 - (d) Duplication; and
 - (e) Presentation of repetitious evidence.

34. Written Hearings

- 34.1 Where the Board holds a written hearing, it may:
- (a) Dispose of the proceeding on the basis of the documents filed by the parties;
 - (b) Require additional information from the parties before disposing of the proceeding; or
 - (c) Determine at any time during a written hearing that the proceeding shall 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 direct two types of hearing venues as part of an oral hearing:
- (a) The informal hearing venue is an open forum community meeting which is held primarily to allow interested persons and Elders the opportunity to communicate their views about the project proposal in an informal environment; and
 - (b) 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 at an informal hearing venue and a formal hearing venue 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 registry 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 registry 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 shall 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 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 of a technical nature must be accompanied by a statement setting out the technical 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 unable to file all 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 or able 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 or able to do so.
- 38.5 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.
- 38.6 Where an oral hearing is in progress, a party entering a document as an exhibit shall provide copies of the document to the Board and all other parties.
- 38.7 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.

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, to a witness attending 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 shall 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. The request shall be filed 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 shall 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 Board, in keeping with the *Charter of Rights and Freedoms*, and relevant law 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 Board determines that specific information in documents containing classified, confidential, privileged or other sensitive matters should be received, the Board 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 Board may hear and enter into the record direct testimony of a witness made by a sworn written statement or audio or visual recording, rather than by oral presentation at the hearing. A witness whose testimony is presented by a sworn written statement or audio or visual 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.

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 project proposal and the issues formulated in accordance with Rule 24.1. Questioning will be permitted to the extent necessary for full and true disclosure of the facts. The Board may permit inquiry into additional matters if helpful to the Board in reaching its decision.

45. Evidence: Cross Examination

- 45.1 Cross-examination of a witness or panel of witnesses by another party shall be limited to the scope of the direct evidence in question and to clarify the direct

evidence, and, subject to the discretion of the Board, shall be limited to witnesses whose testimony is adverse to the party desiring to cross-examine.

- 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, the Board may direct any party at the proceeding 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 Board directs otherwise. Once the record is closed, no additional evidence shall be heard unless a written application is filed with the Board and the Board decides, following notification and submissions by the parties, that the evidence is material and that there was good cause for the failure to produce it in a timely fashion.

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:
- (a) Opening Prayer;
 - (b) Opening remarks by the Chairperson, which shall include the purpose of the hearing and the scope of matters to be considered by the Board;
 - (c) Introduction of the Board Members and staff;
 - (d) Identification and introduction of the parties;
 - (e) Introduction of the Elders and their role in the hearing;
 - (f) Identification of any motions or objections;
 - (g) Presentation by the proponent;
 - (h) Questioning of the proponent by parties opposite in interest;
 - (i) Presentation by authorizing agencies and intervenors;
 - (j) Questioning of authorizing agencies and intervenors by parties opposite in interest;
 - (k) Reply by proponent;
 - (l) Final closing statements by all parties;
 - (m) Closing remarks by the Chairperson; and

(n) 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 intervenor 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 project 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.

51. Effective Date

- 51.1 These Rules of Procedure apply to a project proposal filed with the Board on or after September 1, 2009.

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.nirb.ca>

- 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 – Guide to NIRB’s Monitoring Program
- NIRB Rules of Procedure

How can I contact NIRB?

NIRB’s contact information:

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