



AGNICO EAGLE

Phased Development Discussion Paper

Prepared for:
the Nunavut Impact Review Board

**MAY 4, 2023
VERSION 1**

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SECTION 1. INTRODUCTION

1.1 Purpose

Agnico Eagle Mines Limited (Agnico Eagle) has prepared this Phased Development discussion paper (the Discussion Paper) to assist the Nunavut Impact Review Board (NIRB) in their development of updated guidance on phased development for approved and operating projects. This Discussion Paper is being provided further to our May 4, 2023 letter to the NIRB¹, which outlined the urgency of developing guidance to address the permitting needs of approved/operating projects and provide procedural certainty specific to phased development². This Discussion Paper is focused on issues of interest to help standardize the NIRB policy approach to post-Impact Assessment (IA) modifications of approved/operating projects.

This Discussion Paper builds on NIRB's *Guidance re: Process for Seeking Approval for Modifications to Previously-Approved Projects*³, and the principle that post-Environmental Assessment (EA) modification of projects must consider, and rely on, any assessment activities carried out in respect of the original project. It has been informed by federal, provincial, and territorial legislation and guidance on modifications to operating projects. Agnico Eagle engaged Katsky Venter (RainCoast Environmental Services Ltd.) and Anne Currie (Currie & Co. Consulting Inc.) to support the development of this Discussion Paper.

1.2 NIRB's Current Policy Framework Applicable to Evaluating Project Modifications

Table B1 in Appendix B sets out NIRB's current approach to evaluating proposed modifications to approved projects (NIRB 2018).

Project modifications currently may fall into one of six categories, including:

- Category 1 (Manifestly Insignificant);
- Category 2 (Non-Significant and not needing any NIRB assessment);
- Category 3 (Non-Significant but with potential implications to monitoring and reporting);
- Category 4 (Significant Amendment: Screening of Independent Project Proposal Required);
- Category 5 (Significant Amendment: PC Reconsideration Required); and
- Category 6 (Significant Amendment: Deemed Unacceptable by NPC).

No NIRB consideration is triggered for Category 1 (Manifestly Insignificant: No Submissions to NPC/NIRB), Category 2 (Non-Significant: NIRB Assessment not Required), or Category 6 (Significant: Deemed Unacceptable by NPC).

¹ See Appendix A.

² "Phased Development" refers to a proposed modification or change to project works or activities of an approved project.

³ NIRB 2018. *Guidance re: Process for Seeking Approval for Modifications to Previously-Approved Projects*. Issued April 6, 2018.

Three categories (the third, fourth, and fifth columns in Table B1) currently trigger additional action by NIRB or a screening or review level NIRB assessment. Of these, Category 3 (“Non-significant Screening Not Required; Implications for NIRB Monitoring Program”) does not require a NIRB screening or full review.

SECTION 2. ENHANCING PROCEDURAL CERTAINTY APPLICABLE TO POST-IMPACT ASSESSMENT PROJECT CHANGES

2.1 General Approach to Post-Impact Assessment Project Changes

Post-NIRB IA process project modifications may include one or more changes. The drivers for changes to approved projects include, but are not limited to:

- Recommendations from Elders, communities, Inuit organizations, and stakeholders (based on post EA-approval engagements and monitoring results);
- Environmental enhancements and revisions based on engineering and monitoring results (e.g., re-use of waste water);
- Changes in best practice and/or availability or new technologies (such as alternate methods of transport [e.g., airships]);
- Meeting sustainable development goals, government policy initiatives, or public interests (e.g., meeting greenhouse gas emissions targets promoting conversion to renewable energy);
- Enhancing project economics, such as extending the mine life (e.g., developing a new deposit not evaluated in the original assessment); and
- Addressing compliance requirements (e.g., changes due to revised regulatory requirement or made as a result of feedback during operations).

Proponents are encouraged to consolidate all planned post-NIRB approval project changes into a single notice where possible. It is understood that this is meant to prevent a piece-meal approach which is undesirable. However, although each individual change might not require screening or review-level consideration or even require any further action at all on the part of NIRB, this “bundling” approach can inadvertently draw individually minor modifications into a larger screening or even review level reconsideration assessment. In effect, bundling notice of a number of small changes together can result in all changes being assessed by the NIRB with the same level of scrutiny and within the same lengthy timeframe applicable to the most consequential change(s) in a Greenfields application (e.g., full NIRB reviews).

To reduce the regulatory burden on all parties while supporting timely and appropriate NIRB processes where applicable, it is recommended that proponent modification notices identify applicable NIRB process for each individual project change included in the notice, which reflect (based on NIRB policy guidance) where no further steps are required by NIRB, updates to monitoring programs are required, a screening, or a review level reconsideration assessment NIRB is required.

It is recognized that NIRB review-level assessments will continue to be required for some larger types of project changes. However, minor items that normally would not trigger further process steps could be screened out of the scope of NIRB screening or review at the outset.

This approach has at least two substantial benefits:

- *Timely Consideration and Implementation of Each Proposed Project Change:* During its consideration of the proponent's notice of project changes, the NIRB would confirm whether the NIRB process steps applicable to each proposed change included in the notice has been appropriately categorized by the proponent. This would decouple minor changes from longer timelines applicable to more consequential changes and allow timely implementation of minor modifications that may be critical to respond to Inuit feedback, project operation, viability, and/or impact reduction.
- *Focusing of Effort of Community and Other NIRB Process Participants on Changes with Potential for Larger Environmental or Socioeconomic Consequences:* Categorizing each change and allowing minor changes below environmental assessment thresholds to proceed while larger NIRB processes are ongoing reflects the level of potential consequence of minor changes and allows the parties to focus their review on the larger proposed changes.

2.2 Proposed Approach to Assigning the NIRB Process Category for Individual Project Changes

All parties who participate in the NIRB's process benefit from having clarity and certainty on the level of NIRB process to be applied to a post-EA modification or a change of an approved project.

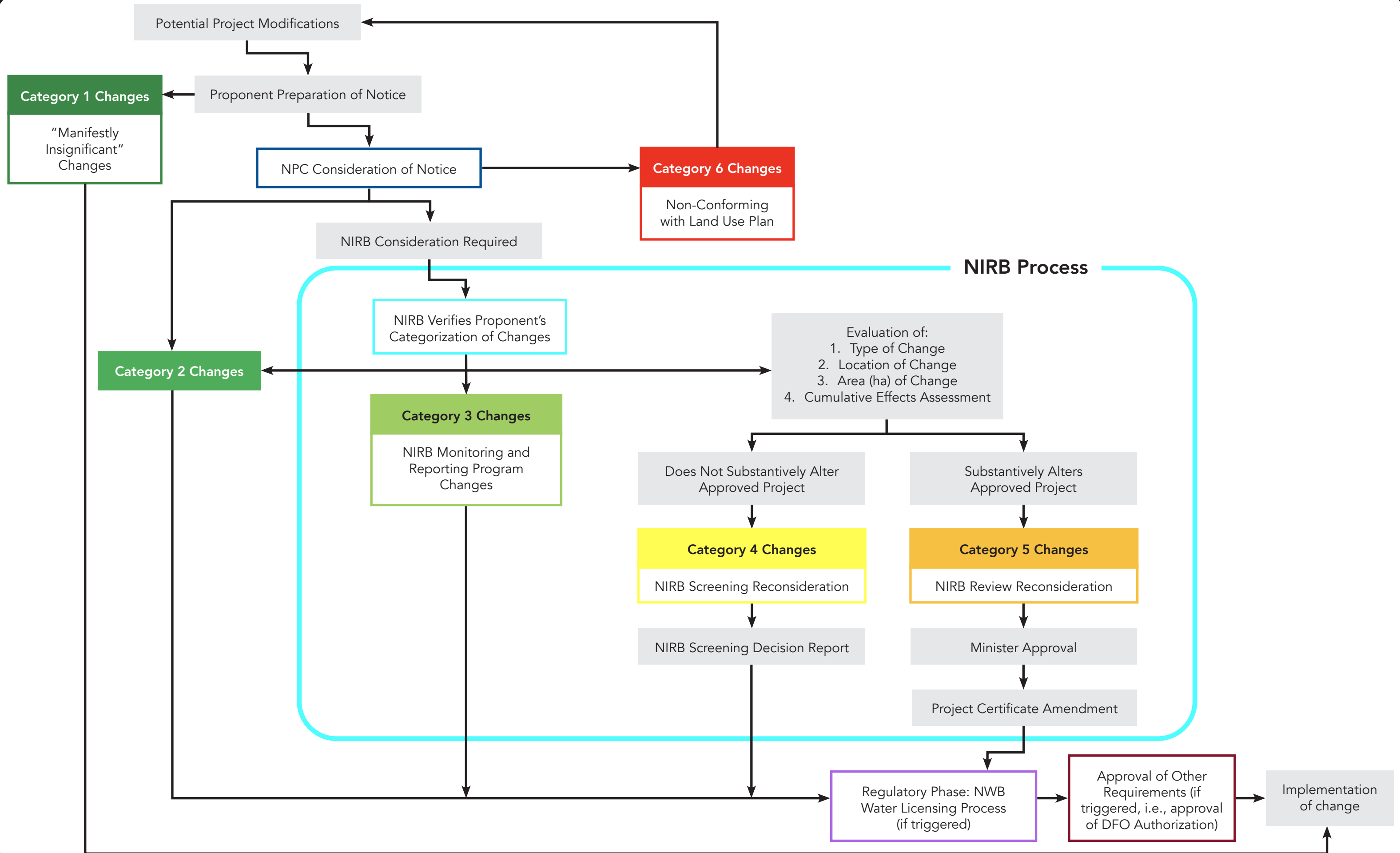
Guidance is already provided in NIRB 2018 with respect to proposed modifications or changes that are Category 1 (Manifestly Insignificant), Category 2 (Non-Significant), Category 3 (Non-significant Amendment: Screening Not Required; Implications for NIRB Monitoring Program), or Category 6 (Significant Amendment: Deemed Unacceptable by NPC). No further definition of these four categories is recommended. The recommendations in this Discussion Paper are focused on clarifications to the other current categories as follows.

More potentially consequential project modifications or changes be categorized as Category 4 (screening level NIRB environmental assessment) or Category 5 (full NIRB review environmental assessment). Proponents could identify whether individual project changes fall into Category 4 and Category 5 by considering the following criteria in their self-assessment:

1. Whether the modification or change is a new type of work or activity compared to the permitted works and activities;
2. Whether the modification or change (whether work or activity) is outside of the location previously assessed;
3. Whether the change represents a large expansion to the permitted project area; and
4. Whether the remaining cumulative changes are likely to substantively alter the residual impact predictions previously assessed in the NIRB approval process.

These evaluation criteria are expanded upon in Section 3 and a flow chart illustrating the process discussed in this Paper is provided in Figure 2-1.

Phased Development



SECTION 3. EVALUATION OF INDIVIDUAL PROPOSED PROJECT MODIFICATIONS

As outlined in Section 2, each proposed modification or change included in a notice to NIRB would be individually evaluated by the proponent to determine the degree of potential environmental and/or social consequence the change represents and identify the associated level of NIRB process set out in NIRB guidance.

The proponent should provide a brief justification for the categorization of Category 1 (if included), 2, and 3 changes made for each project change in its notice of self-assessment. Where individual changes are categorized as falling into Category 3, the proponent should additionally include any recommended changes to monitoring and reporting program necessary to address the project change.

To identify the level of NIRB assessment applicable to individual proposed modifications or changes that have potentially significant effects (i.e., Category 4 or Category 5), the proponent would undertake a stepwise evaluation of each change as outlined in the following subsections.

In addition to the procedural evaluation described below, proponents would continue to be advised to include in their notices of self-assessment standard information in accordance with NuPPAA s. 90 and current NIRB guidance.

3.1 Nature of Modification

If the approved project includes an analogous activity or work, the proposed change would not be a new ‘type’ of impact for the purposes of this evaluation. In this case, mitigation, management, and monitoring measures have already been developed and implemented to address potential effects of this nature and can be easily expanded to encompass the proposed change. Monitoring data would continue to be used to assess the effectiveness of mitigation and management measures. This change should fall into Category 4.

However, if the proposed change is “novel” (i.e., has never been applied before in the Canadian North or internationally in Arctic conditions) it may be more likely to fall into Category 5.

3.2 Modification Location

The specific location of a proposed modification or change would be reviewed to determine if it is in an area previously assessed. The proponent would identify (with justification) which Regional Study Area (RSA) is applicable for this evaluation based on the potential effects associated with the change.

Changes within a previously assessed area would fall into Category 4 and changes outside of the previously assessed area would likely be considered a Category 5 change.

3.3 Change in Project Area

An evaluation of whether a proposed work is a large increase in overall project area would be presented by the proponent based on the area previously assessed and approved for direct habitat loss. The area of direct habitat loss associated with the change would be added to the area of the permitted project to determine whether the sum of these areas represents a large expansion. If previous project proposals utilized a “Potential Development Area” (PDA) to represent direct habitat loss, the area (in hectares) of the PDA would be used to evaluate whether the cumulative revised project area would exceed what was assessed. For projects assessed based on a more refined project footprint rather than a PDA (or equivalent), criteria should be established for the amount of increase to approved mine footprint which would constitute a material increase.

From this evaluation step, changes determined to represent a large increase in project area would likely be considered a Category 5 change while those which do not would fall into Category 4.

3.4 Potential Cumulative Effects

After evaluating the changes (Section 3.1 through 3.3), changes not assigned to Category 5 would be evaluated to determine whether their combined residual effects, when added to the approved project’s predicted effects, may result in a cumulative change overall predicted effects. The proponent’s self-evaluation of whether these combined changes would substantively modify the approved project’s effects must be explained and supported.

From this final evaluation step, all changes included in this cumulative assessment would be categorized as Category 5 if the self-evaluation determines they, in combination, would represent a substantive change to residual impact predictions. If not, all these remaining changes would be categorized as Category 4.

APPENDIX A. AGNICO EAGLE LETTER TO NIRB, MAY 4, 2023



May 4, 2023

Karen Costello
Executive Director
Nunavut Impact Review Board
P.O. Box 1360 (29 Mitik)
Cambridge Bay, NU X0B 0C0

Re: Need for Development of NIRB Guidance Focused on Operating Projects / Phased Development

Dear Ms. Costello,

Agnico Eagle Mines Limited (Agnico Eagle) has been active in the Nunavut Impact Review Board (NIRB)'s initiative (underway since 2018) to update the NIRB's Rules of Procedure and to develop standardized NIRB Guidelines for Environmental Impact Statements. We will continue to participate in that process.

However, we are concerned that both documents are focused almost entirely on new projects and are not meeting the permitting needs of Nunavut's operating projects. In recent years, the majority of NIRB's major applications processed have been related to adaptive management, phased development, new infrastructure, and relatively minor changes to operating mines. Applying policy and guidelines developed for new projects to operating project modifications also increases the risk of review overlap and requirements to "re-assess" components that have already been approved and permitted. Based on current guidance, relatively minor changes to operating projects are often being drawn into lengthy NIRB processes which can confuse communities with respect to what has already been approved and can significantly delay implementation of important measures that can improve environmental protection. Participation in extensive review of these applications also comes with significant financial and non-financial costs for all parties, including Nunavut's communities.

Agnico Eagle is providing this letter to the NIRB to outline the relevance and value of providing NIRB guidance and policy addressing the unique permitting needs of operating mines and on reducing procedural uncertainty specific to phased development. To provide the benefits outlined in this letter, guidance for operating mines must be directly integrated into the NIRB's Rules of Procedure and Impact Statement guidelines; these concepts must be developed in parallel, not in sequence, as seems to be the NIRB's intent based on responses to proponent comments received to date¹.

1 Mine Development

Mines are financed and built based on proven mineral reserves. Companies continue to explore for new mineral reserves during mine operations in nearby areas to extend the mine life. The use of existing mine infrastructure requires less capital investment to exploit new mineral reserves with minimal environmental footprint as new mine facilities do not need to be developed (e.g., ore processing facilities, tailings management facilities, waste rock storage areas, administrative and equipment maintenance facilities).

¹ NIRB 2023. *NIRB Draft ROP (November 2018 version): Summary of Written Comments and the Board's Responses*. Issued March 30, 2023.

Expansion of waste management facilities (tailing and rock storage) may also occur as the life of mine is extended and mine closure and reclamation plans are iteratively updated.

Mining companies continually evaluate their mine plan to achieve higher levels of operational excellence. Technology may also change over the life of mine, for example inclusion of robotics, metal recovery and water treatment technology, and energy supply. Thus mining companies regularly propose changes to regulators and communities for these improvements. In mining it is important to learn from experience, and some optimizations cannot be identified until on the ground experience is obtained. As mining of an ore deposit progresses, the geological conditions may change necessitating changes in mineral processing. Certain aspects of geology cannot be fully understood until mining begins. As the mine progresses and conditions and engineering needs change, or new ore reserves are found nearby and brought into production, mining companies continue to adapt and invest in capital improvements. These improvements are the result of detailed and costly engineering studies, which lead to investment decisions, permitting, and procurement of new infrastructure.

Exploration and acquisition of new mineral tenures in Nunavut has sharply dropped in recent years, based on evidence shared by Canada as part of the draft Nunavut Land Use Plan (NLUP) development process. If the current draft NLUP is adopted, it would effectively prohibit (either directly, or indirectly due to prohibited activities or periods of operation) mine development across much of Nunavut, outside of existing 'grandparented' projects. This will place significant additional pressure on mine expansion through phased development of existing projects rather than greenfield areas. It is noted that, despite the observed decline in new mineral tenures, mining has displaced government as the largest contributor to Nunavut's Gross Domestic Product in the past two years, and has the potential to remain a major driver of Nunavut's growth and prosperity. However, continuing uncertainty and extended timelines to permit modifications to operating projects will seriously impact the ability of proponents to achieve optimal project design, deliver optimal benefits to Inuit and governments, signifies risk to potential investors, and forestalls capital investment.

2 Procedural Certainty

As acknowledged by NIRB, assessments applicable to already approved projects are a different type of assessment requiring their own guidance to provide clarity to all parties and investors. This guidance would build on NIRB's *Guidance re: Process for Seeking Approval for Modifications to Previously-Approved Projects*², and give full weight to the principle that modified projects must consider, and rely on, any assessment activities carried out in respect of the original project.

Extensive review requires substantial contributions from all stakeholders, intervenors, and communities and can result in consultation fatigue, resource depletion, and significant financial costs to those involved. Adoption of processes specific to operating mines and phased development can ensure these efforts are focused where they are needed, and to the extent they are needed, when adding to already assessed activities, areas, and mine components.

Reviews of modifications to approved projects typically result in some amount of re-assessment of already permitted components and activities. This can add time, result in term and condition amendments with little direct relevance to the changes being proposed, and means there is less capacity of Inuit and indigenous groups, communities, NIRB staff, and regulators to focus on other applications moving through the NIRB

² NIRB 2018. *Guidance re: Process for Seeking Approval for Modifications to Previously-Approved Projects*. Issued April 6, 2018.

process. The modification process should not be used as a substitute for, or to supersede, the NIRB's ongoing monitoring activities.

Procedural certainty will provide many benefits, including:

- Aligning all parties on the review process, information requirements and the scope of the impact assessment.
- Focusing the review on material differences, taking into account existing mitigations and monitoring plans and regulatory approvals such as project certificates and water licences.
- Streamlining review timelines and increasing predictability of the NIRB's modification processes.
- Building confidence that the NIRB monitoring process is effective and adaptive.

3 Sustainable Development

The NIRB has recently received multiple applications related to windfarm development. A shift to wind power generation supports Canada's climate policy initiatives, aligns with project certificate requirements to minimize greenhouse gas (GHG) emissions, and advances the sustainable development goals of mining companies to reduce GHG emissions. Climate change is also a major concern of Inuit, with the Arctic currently warming at twice the global average. Sustainable development initiatives, which are beneficial to all, but particularly in Canada's north where the effects of climate change are most acute, should be supported with a timely and clear process.

4 Timing

Due to the immediate relevancy and significant benefits outlined above, full consideration of operating projects should be integrated into the current development of the ROP and IS Guidelines. This could occur in parallel with the development of the supplementary guidelines scheduled to be issued in October.

5 Closure

We urge the NIRB to incorporate full consideration of operating mine development into the ROP and IS guidance materials.

To facilitate this, Agnico Eagle is providing a Phased Development Discussion Paper to the NIRB by the May 5th deadline. This framework will identify key guidance components which should be considered. We ask that the NIRB focus its efforts and bring together stakeholders to advance work in parallel with their development of the ROP, IS guideline development, as these materials will need to inform each other to realize the benefits outlined above.

If you require any further information, please contact the undersigned.

Sincerely,



Jamie Quesnel
Director, Permitting & Regulatory Affairs
Agnico Eagle Mines Limited

CC: Heather Rasmussen, NIRB Senior Policy Advisor

APPENDIX B. CURRENT NIRB POLICY GUIDANCE APPLICABLE TO PROJECT MODIFICATIONS

Table B1. Approaches to Assessment of Proposed Amendments to Approved Projects (NIRB 2018)

Manifestly Insignificant:	Non-significant Amendment:	Non-significant Amendment:	Significant Amendment:	Significant Amendment:	Significant Amendment:
No submissions to NPC/NIRB Required	NIRB Assessment Not Required	Screening Not Required; Implications for NIRB Monitoring Program	Screening of Independent Project Proposal Required	PC Reconsideration Required	Deemed Unacceptable by NPC
Proposed amendment does not meet the definition of project under the <i>Nunavut Planning and Project Assessment Act (NuPPAA)</i> and is not required to be submitted to the NPC or NIRB.	Minor project amendment proposed and additional authorizations or amendments to authorizations are below the threshold for NIRB Screening and/or reconsideration of Project Certificate terms and conditions. Submission to NPC only required.	Proposed amendment not a significant modification to original project; however, changes may have implications for the NIRB's monitoring program and required reporting. NIRB may invite comments to confirm whether reconsideration of Project Certificate terms and conditions necessary.	Proposed amendment is a significant modification to the original project, <u>but</u> the proposed modification is not integrally linked to the original project as assessed by the NIRB, and should be assessed as an independent project proposal.	Proposed project amendment is significant <u>and</u> is integrally linked to original project as assessed by the NIRB; assessment of the proposed modification as an independent project proposal is inappropriate; modification assessed via a reconsideration of the Project Certificate.	Proposed amendment is a significant modification to the original project and the NPC determines that the modification is not in conformity with an approved land use plan. Proposal will <u>not</u> be forwarded to the NIRB for further assessment until land use planning requirements are met.
Example: Routine maintenance or replacement of storage buildings at an approved mine site.	Example: Archaeological field program for an approved mining development.	Example: Crown Pillar Recovery amendment to the Doris North Project (NIRB File No. 05MN047).	Example: Whale Tail Pit Project Proposal (NIRB File No. 16MN056). Many screening files annually.	Example: Mary River Phase 2 Proposal (NIRB File No. 08MN053).	Example: Amendment to Mary River Phase 2 Proposal (NIRB File No. 08MN053) proposing winter shipping and ice-breaking.