



February 14, 2018

Nunavut Wide Distribution List

Sent via email

Re: Process for Seeking Approval for Modifications to Previously-Approved Projects

Dear Parties:

As many proponents of previously-approved projects are preparing for a new season of field work, staff members of the Nunavut Impact Review Board (NIRB or Board) have been receiving numerous queries requesting guidance on how best to address proposed modifications to projects that have been previously assessed and approved to proceed under the *Nunavut Planning and Project Assessment Act (NuPPAA)*. Sections 146(1) and 235(2) of the *NuPPAA* require that significant modifications to previously-approved projects undergo further assessment by the Nunavut Planning Commission and, in some cases, also the NIRB; these requirements must be satisfied before any licences, permits, and other approvals required to carry out the activities can be granted by the respective regulatory authority.

Modifications to projects may be required for many reasons, including unforeseen circumstances or as part of phased approaches to development. Questions typically revolve around when to apply, who to apply to, and what information should be included in applications for modifications to previously-approved projects, both those projects approved with terms and conditions following screening by the NIRB and those major developments with NIRB Project Certificates in place following completion of a full environmental Review by the Board.

Recently, the NIRB has issued guidance to several proponents of major development projects regarding the process for seeking approval for modifications to their approved projects (Appendix A). By copy of this correspondence, the Board is providing this general guidance for the information of all interested parties. All proponents are encouraged to review this guidance when contemplating modifications to previously-approved projects moving forward to ensure a complete application is submitted to the appropriate parties when determined necessary, for the most efficient processing possible.

Should you have any questions or require clarification regarding the NIRB's recommended approach to modification requests generally, please contact the undersigned directly at (867) 983-4619 or via e-mail at kgillard@nirb.ca.

Sincerely,



Kelli Gillard B.Sc., P.Ag.
Acting Director, Technical Services
Nunavut Impact Review Board

cc: Brian Aglukark, Nunavut Planning Commission
Jonathon Savoy, Nunavut Planning Commission
Karen Kharatyan, Nunavut Water Board
Geoff Clark, Kitikmeot Inuit Association
Wynter Kuliktana, Kitikmeot Inuit Association
Luis Manzo, Kivalliq Inuit Association
Maria Serra, Kivalliq Inuit Association
Stephen Williamson Bathory, Qikiqtani Inuit Association
Salamonie Shoo, Qikiqtani Inuit Association
Robert Chapple, Government of Nunavut-Community and Government Services
Kevin Niptanatiak, Government of Nunavut-Community and Government Services
Ralph Ruediger, Community and Government Services
Darren Flynn, Community and Government Services
Randy Mercer, Community and Government Services
Alexander Stubbing, Government of Nunavut-Department of Culture and Heritage
Sylvie LeBlanc, Government of Nunavut-Department of Culture and Heritage
Amy Robinson, Government of Nunavut-Department of Environment
Lynda Orman, Government of Nunavut-Department of Environment
Jody Kusugak, Government of Nunavut-Nunavut Airport Division
Mosha Cote, Nunavut Research Institute
Lisa Pirie-Dominix, Canadian Wildlife Services
Georgina Williston, Environment and Climate Change Canada
Tracey McCaie, Indigenous and Northern Affairs Canada
Jane Chisolm, Parks Canada
Veronique D'Amours-Guthier, Fisheries and Oceans Canada
Mark D'Aguiar, Fisheries and Oceans Canada
Rob Johnstone, Natural Resources Canada
Rachelle Besner, Natural Resources Canada
Transport Canada

Attached: Appendix A - Process for Seeking Approval for Modifications to Previously-Approved Projects

APPENDIX A:
PROCESS FOR SEEKING APPROVAL FOR MODIFICATIONS TO PREVIOUSLY-APPROVED PROJECTS

Where a proponent has determined that a modification to project works or activities is required due to unforeseen circumstances or as part of the phased development of a previously approved Project, the NIRB recommends the following:

Self-Assessment

1. The proponent undertakes a self-assessment to determine whether the proposed modification constitutes a “significant modification” to the project as previously considered by the Nunavut Planning Commission (NPC) for conformity, assessed by the NIRB, and/or licenced by the Nunavut Water Board (NWB);
 - a. At a minimum, the proponent’s self-assessment should include:
 - i. a sufficiently detailed scope of project components and activities to be undertaken during the proposed modification, contrasted with the scope of the original project as previously considered by the NPC, the NIRB and/or the NWB;
 - ii. information demonstrating the proponent has considered the significance of the potential impacts associated with the proposed modification using the factors for determining significance as set out in s. 90 of the *NuPPAA* reflecting any other guidance or information requirements of the NPC, the NIRB and/or the NWB to evaluate the significance of the proposed modification;
 - b. The proponent should also identify whether any new or modified permits, licences or other approvals are anticipated to be necessary for the proposed works or activities;
 - c. For proposed modifications to approved projects with a NIRB Project Certificate, information should also be provided as to whether the grounds for a reconsideration of the existing Project Certificate terms and conditions have been met (see *Nunavut Agreement* s. 12.8.2 and *NuPPAA* s. 112).
2. If the proponent is unsure as to whether the modification is a significant modification, the proponent should provide a sufficiently detailed project proposal document with the information noted above to the NPC with a direct request for the NPC to provide guidance regarding whether, in the NPC’s view, the modification constitutes a significant modification;

Application Submission

3. **If the proponent and/or the NPC identify that the modification constitutes a significant modification**, the proponent should submit the modification project proposal to the NPC for consideration. In addition, the proponent is encouraged to:
 - a. At the time of submission of the modification project proposal to the NPC, provide the NIRB with the appropriate supporting project proposal documentation required to assess the modification request; and provide the NWB with any associated water licence amendment application materials that are required by the NWB to consider any requested amendments to the water licence.

- b. Where an Environmental Impact Statement (EIS) had been developed for the assessment of the original project, documentation submitted to the NIRB for consideration of a proposed modification should clearly link back to the EIS predictions, identifying any changes to the significance of those predicted impacts, and further referencing new or modified mitigation plans and required changes to the existing monitoring program for the approved project as result of the proposed modification. The justification or rationale for the proposed modification must be described in sufficient detail to be understood and thoroughly assessed.
- c. Where the original project is governed by an existing NIRB Project Certificate, proponents should include reference to the specific terms and conditions that are understood to be applicable to the scope of the proposed modification, with commentary regarding planned compliance and/or identifying the terms and conditions that may require formal reconsideration.

Consideration of Modification Requests

4. The NIRB and the NWB are not able to commence formal processing of a proponent's modification request until the NPC's land use planning requirements have been satisfied, and in the case of the NWB, the NIRB's assessment requirements associated with the proponent's modification request have been completed. However, early engagement at this stage with the NIRB and NWB is strongly encouraged to ensure that all parties have reviewed the scope and content of the proposed modifications being considered by the NPC at the early stages of the regulatory process.
 - a. When a proponent's significant modification request has met the applicable land use planning requirements and the NPC issues a positive conformity determination where required, the NIRB will then undertake any assessment of the project that may be required.
 - b. If assessment by the NIRB is not required, or upon the NIRB issuing a positive decision that the project can proceed to the permitting stage, the NWB would then be able to consider any water licence amendments associated with the modification request.
5. **If the proponent's self-assessment and/or NPC guidance conclude that the modification request does not constitute a significant modification**, a proponent can submit the application materials supporting the modification request to the appropriate permitting agencies (such as a water licence amendment application to the NWB). A proponent's submission to permitting agencies should also include, for the permitting agencies' consideration, the materials supporting the proponent's self-assessment or the NPC's confirmation that the modification request is not a significant modification.
 - a. While non-significant modifications may not necessitate changes to the permits, licences, or a project certificate, such changes may still have implications for the monitoring responsibilities associated with the approved project. As such, proponents are encouraged to provide the NIRB with a copy of the materials provided in support of the proposed modification for information, and to support the Board's ongoing monitoring of the approved project.