

Institutions of Public Government

Wayne Johnson
NLCA Workshop

Nunavut Tunngavik Incorporated
November 25, 2009

Institutions of Public Government



- NPC, NIRB, NWB, NSRT and NWMB
- Board members are appointed by NTI and both levels of government
- Inuit can be involved in all processes
- Section 5.2.1 provided for the NWMB to be established as an IPG on the date of ratification.



ARTICLE 10

LAND AND RESOURCE MANAGEMENT INSTITUTIONS

Establishment of 4 IPGs

- Article 10 sets out the timetable and the “rules” for the establishment of the four IPGs
- NSRT – to be established within 6 mo.
- NPC, NWB, NIRB – within 2 years
- 10.2.1 “All substantive powers, functions, objectives and duties of the [above] institutions ... shall be set out in statute.”
- 10.3.1 “Legislation relating to the [above] institutions ... may provide for other matters not dealt with in Articles 11, 12, 13 and 21, and may assign additional powers, functions, objectives or duties to the said institutions.”



Legislation

Several articles have been incorporated into the *Nunavut Waters and Nunavut Surface Rights Tribunal Act (NW&NSRTA)*

- Water management (Article 13)
- Inuit water rights (Article 20)
- Nunavut Surface Rights Tribunal (Article 21, Part 8)

Legislation being developed for:

- Land use planning (Article 11)
- Development impact (Article 12)



ARTICLE II

LAND USE PLANNING



NPC

- The Nunavut Planning Commission (NPC) is responsible for land use planning and various aspects of environmental reporting and management in Nunavut.
- NPC's main role is to develop land use plans and to determine whether project proposals conform to those plans.
- Engaged in a process to develop “planning principles, policies, priorities and objectives”
- The term "land use" also includes water, wildlife and offshore areas.



Land Use Plans

Currently 2 land use plans in place:

- Keewatin Regional Land Use Plan (Kivalliq region)
- North Baffin Land Use Plan
- Establish “actions”, “recommendations” and “conformity requirements”

Other plans were in preparation until the process was suspended

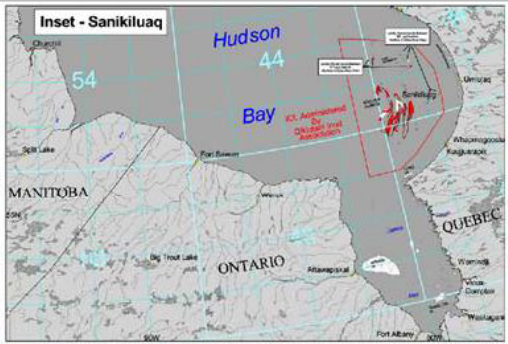
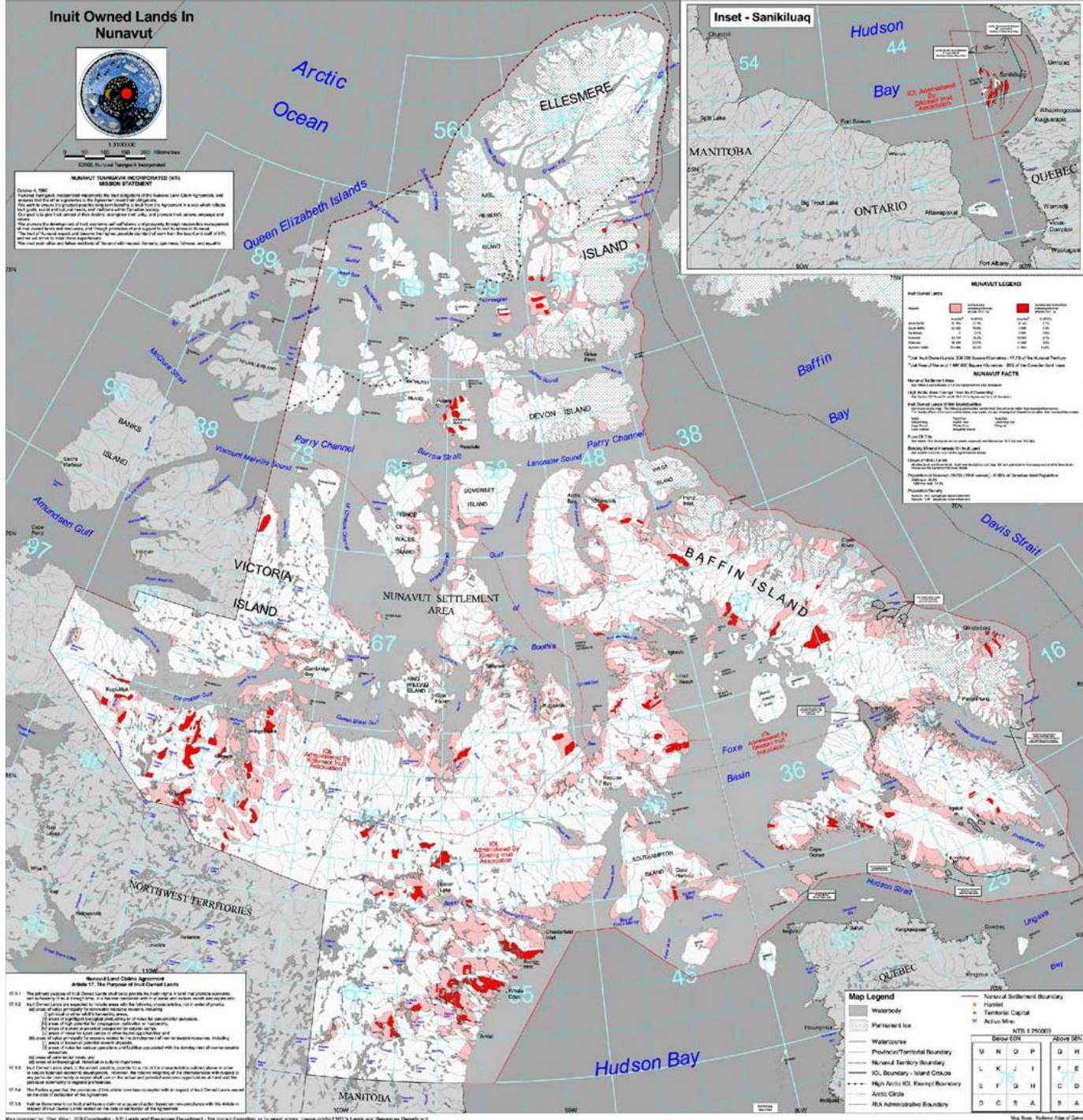
- The Nunavut Land Use Plan now being developed will replace the existing plans

Inuit Owned Lands in Nunavut



1:10,000,000
 0 50 100 200 Kilometers
 ©2000, National Geographic

NUNAVUT TUNNGAVIK INCORPORATED (NTI) MISSION STATEMENT
 October 4, 1992
 Nunavut Tunngavik Incorporated represents the Inuit majority in the Nunavut Territory and respects that it is a sovereign state. The Agreement that we signed with the Government of Canada is a historic agreement that we signed with the Government of Canada. We are committed to the development of the Territory and to the well-being of the Inuit people. We are committed to the development of the Territory and to the well-being of the Inuit people. We are committed to the development of the Territory and to the well-being of the Inuit people.



NUNAVUT LEGEND

Feature	Color/Style
Waterbody	Blue
Planned land	Light Blue
Watercourse	Blue line
Provincial/Territorial Boundary	Red dashed line
Nunavut Territory Boundary	Red solid line
ICL Boundary - Island Groups	Red dashed line
High Arctic ICL (Eisner) Boundary	Red dashed line
Arctic Circle	Red dashed line
RTA Administrative Boundary	Red dashed line
Nunavut Settlement Boundary	Red dashed line
Hatched	Red hatched
Territorial Capital	Red star
Active Mine	Red star

NUNAVUT FACTS

Total Inuit Owned Lands: 338,332 Square Kilometers (131,276 of the Nunavut Territory)
 Total Area of the Territory: 1,841,000 Square Kilometers (711,216 of the Canadian land mass)

NUNAVUT FACTS

Nunavut Settlement Area
 14,810 Square Kilometers (6,104 Square Miles)
 14,810 Square Kilometers (5,718 Square Miles)

Total Inuit Owned Lands: 338,332 Square Kilometers (131,276 of the Nunavut Territory)
 Total Area of the Territory: 1,841,000 Square Kilometers (711,216 of the Canadian land mass)

Revised Land Claims Agreement Article 17 - The Purpose of Inuit Owned Lands

17.1 The primary purpose of the Inuit Lands shall be to provide the Inuit with a land base for the exercise of their traditional rights and interests in the land and resources within the Territory.

17.2 The Inuit Lands shall be managed in a manner that respects the Inuit's traditional rights and interests in the land and resources within the Territory.

17.3 The Inuit Lands shall be managed in a manner that respects the Inuit's traditional rights and interests in the land and resources within the Territory.

17.4 The Inuit Lands shall be managed in a manner that respects the Inuit's traditional rights and interests in the land and resources within the Territory.

17.5 The Inuit Lands shall be managed in a manner that respects the Inuit's traditional rights and interests in the land and resources within the Territory.

17.6 The Inuit Lands shall be managed in a manner that respects the Inuit's traditional rights and interests in the land and resources within the Territory.

17.7 The Inuit Lands shall be managed in a manner that respects the Inuit's traditional rights and interests in the land and resources within the Territory.

17.8 The Inuit Lands shall be managed in a manner that respects the Inuit's traditional rights and interests in the land and resources within the Territory.

17.9 The Inuit Lands shall be managed in a manner that respects the Inuit's traditional rights and interests in the land and resources within the Territory.

17.10 The Inuit Lands shall be managed in a manner that respects the Inuit's traditional rights and interests in the land and resources within the Territory.

Map Legend

Feature	Color/Style
Waterbody	Blue
Planned land	Light Blue
Watercourse	Blue line
Provincial/Territorial Boundary	Red dashed line
Nunavut Territory Boundary	Red solid line
ICL Boundary - Island Groups	Red dashed line
High Arctic ICL (Eisner) Boundary	Red dashed line
Arctic Circle	Red dashed line
RTA Administrative Boundary	Red dashed line
Nunavut Settlement Boundary	Red dashed line
Hatched	Red hatched
Territorial Capital	Red star
Active Mine	Red star

Inset Grid

M	N	O	P	Q	R
L	K	J	I	F	E
E	F	G	H	C	D
D	C	B	A	B	A

NTS 1:250,000
 Above 60°N





Project Conformity Process

- The conformity review process is initiated when an authorizing agency receives a project proposal and forwards it to the NPC.
- Proposal describes a physical work or a physical activity that a person proposes to undertake.
- Commonly in the form of an application for a water licence or a Surface Right (on IOL) or Land Use Permit (Crown).
- Completed questionnaire also required
- Only applies where a land use plan is in place

Project Conformity Process



- The NPC will notify the authorizing agencies of its determination and any recommendations.
- If the project is in conformity or the NPC approves a variance, the proposal is forwarded to NIRB for screening.
- If the NPC determines that a project proposal is not in conformity with a land use plan and does not approve a variance, the proponent may apply to the Minister for an exemption from the conformity requirement.
- An exempt proposal is referred to NIRB for screening.
- A non-conforming proposal or one that is not approved pursuant to a variance or not exempted by the Minister cannot proceed.



ARTICLE 12
DEVELOPMENT IMPACT

NIRB



- The Nunavut Impact Review Board is responsible for identifying and monitoring the ecosystemic and socio-economic impacts of development projects within Nunavut.
- NIRB screens project proposals and, where necessary, carries out Part 5 reviews or participates in Part 6 reviews.
- It recommends terms and conditions to be attached to permits, licences and other authorizations.
- It monitors projects



NIRB's Jurisdiction

- Established in July 9, 1996 as an institution of public government by the Nunavut Land Claims Agreement
 - Article 12: Development Impact
- Federal legislation to implement Articles 11 & 12 is currently pending
 - Nunavut Planning and Project Assessment Act
- Canadian Environmental Assessment Act
 - No longer applies to the Nunavut Settlement Area
 - June 12, 2008 NCLA amendment



NIRB's Jurisdiction

NLCA 12.12.2

- This Article shall apply to both land and marine areas within the Nunavut Settlement Area and to the Outer Land Fast Ice Zone. Shipping associated with project proposals in the Nunavut Settlement Area shall be subject to this Article...

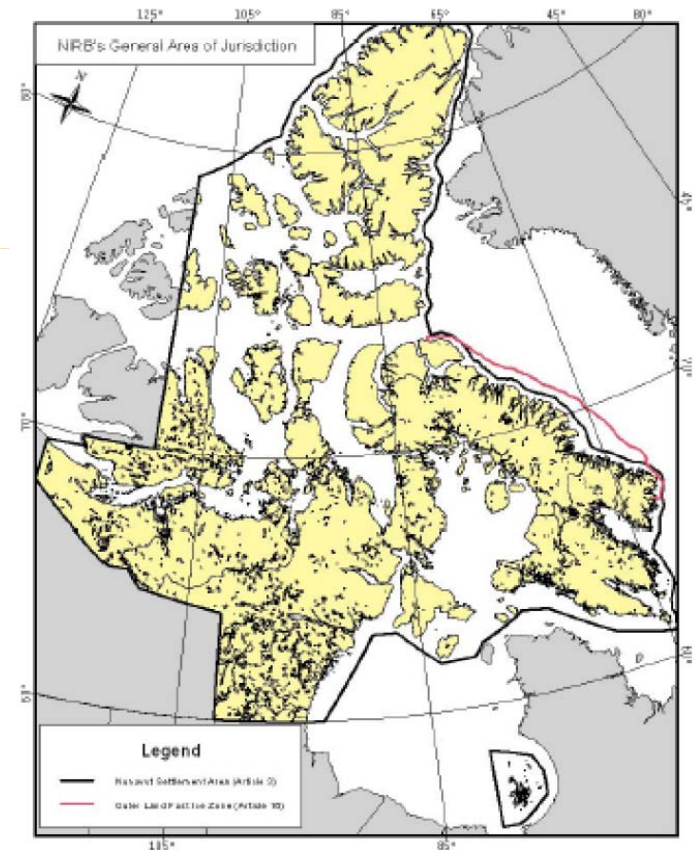
NLCA 12.11.1

- NIRB may upon request by Government or, with the consent of Government, upon request by a DIO, review a project proposal located outside of the Nunavut Settlement Area which may have significant adverse impacts or socio-economic effects on the Nunavut Settlement Area

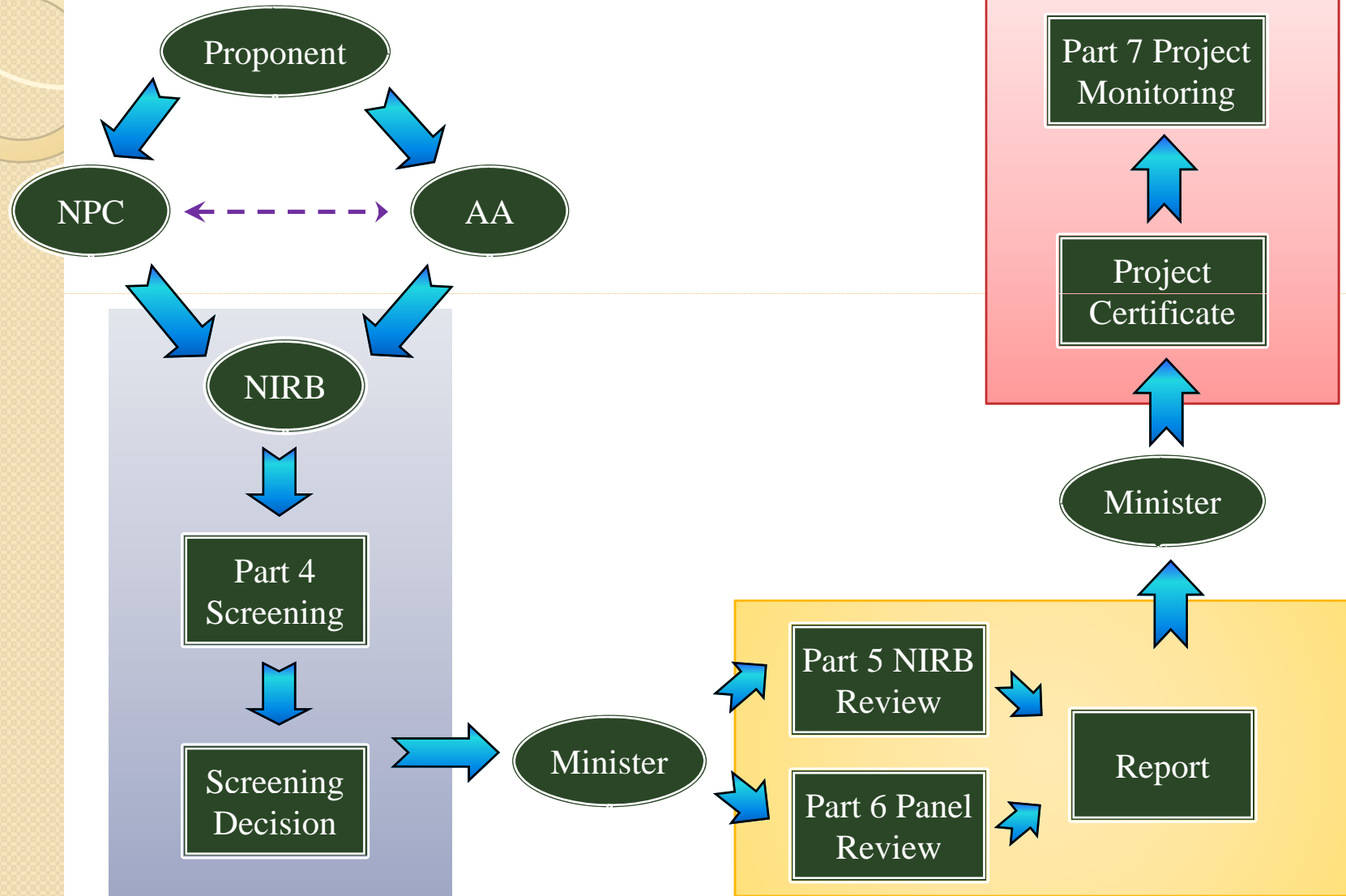
NIRB's Jurisdiction



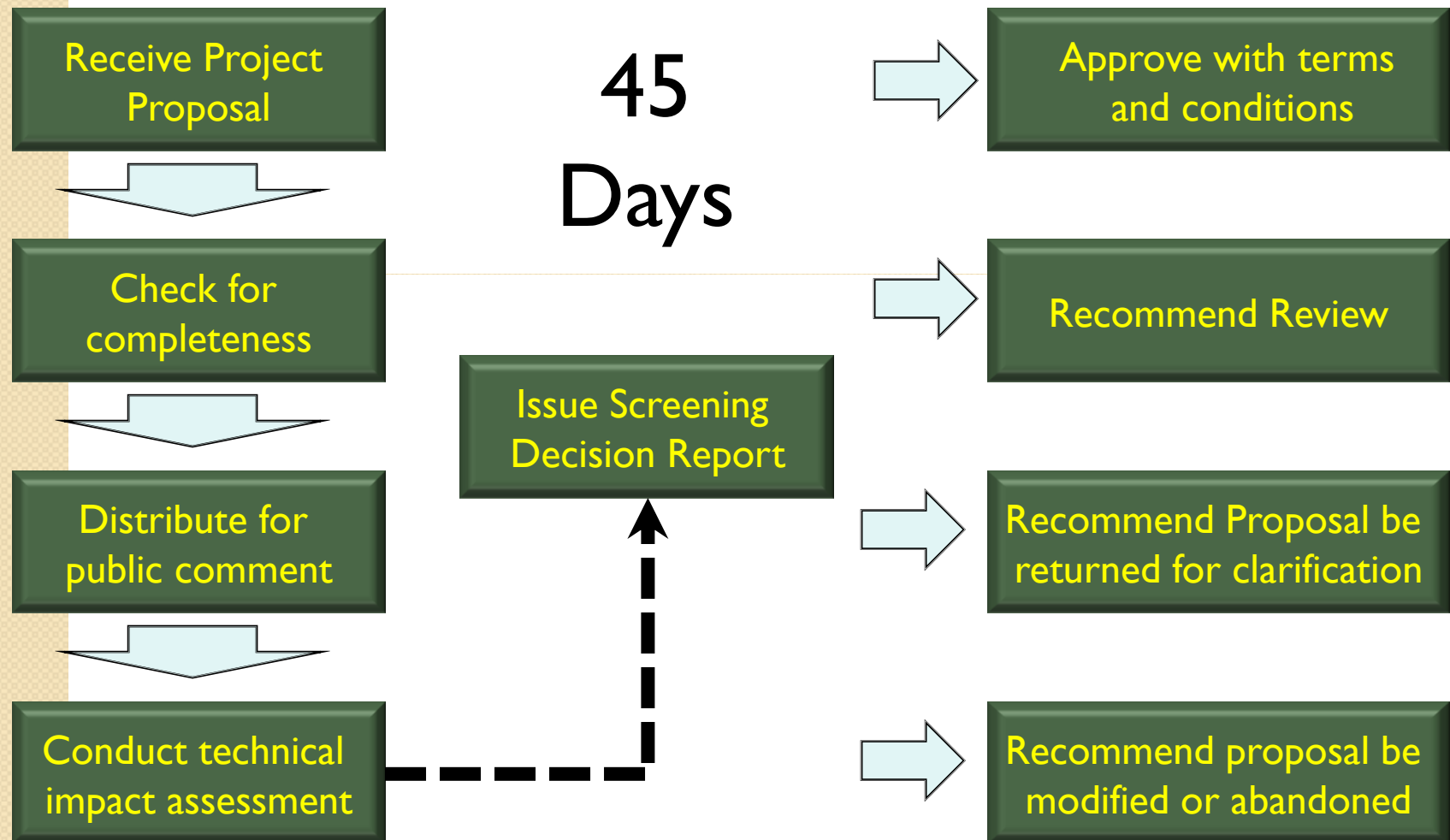
- Nunavut Settlement Area (NSA)
- Outer Land Fast Ice Zone – East Baffin Coast (Schedule 16-1 NLCA)
- Transboundary Impacts (Section 12.11.1 NLCA)



Overview of NIRB Process



Screening Process Overview





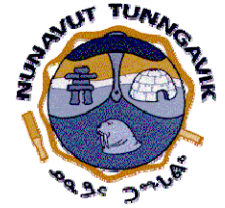
A review is required for...

- Significant adverse effects on ecosystem, wildlife habitat or Inuit harvesting activities,
- Significant adverse socio-economic effects on northerners,
- Significant public concern, or
- Technological innovations for which effects are unknown

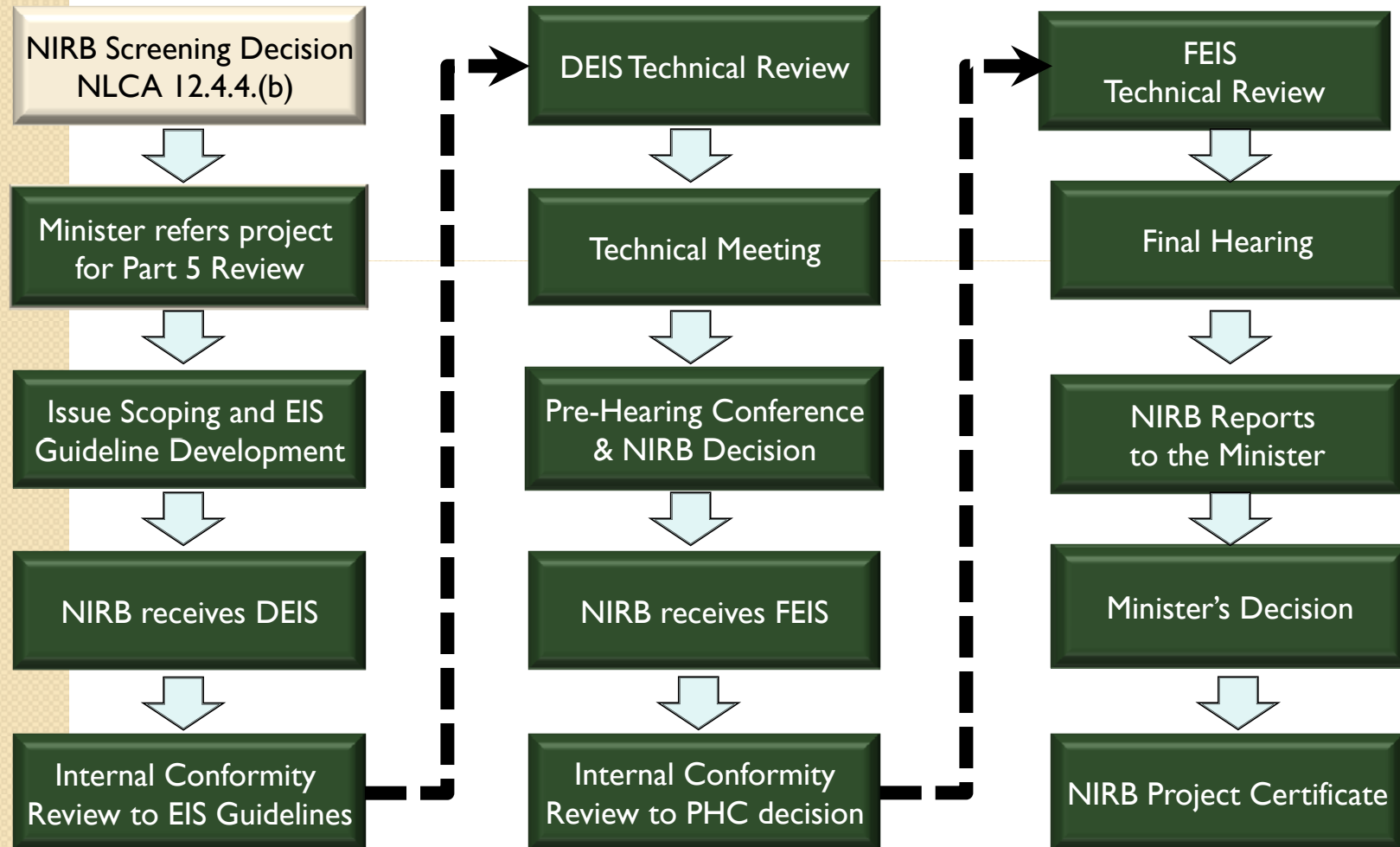
Review of Project Proposals



- NLCA Section 12.4.7 (as amended) provides Minister with two choices of review type:
 - Part 5 Review (NIRB Review)
 - Part 6 Review (Panel Review)
- Part 6 (Panel) Review when “a proposal involves a matter of important national interest”
 - “shall only occur on an exceptional basis”
 - Determination to be made within 90-180 days
 - Determination only to be made after consulting with federal and territorial Ministers of Environment and NIRB
- Part 6 (Panel) Review when a project is to be carried out partly within and partly outside the Nunavut Settlement Area
 - unless it is agreed that the proposal is to be reviewed pursuant to Part 5 (NIRB Review)



Part 5 Review Process





Part 6 Review Process

- Selection of a Panel
 - Appointed by Minister of Environment
 - 1/4 nominated by DIO (+ aboriginal groups), 1/4 by GN
 - NIRB members may be nominated
- Panel coordinates and conducts review
 - NIRB has separate, discrete role
- Panel issues guidelines, reviews EIS, holds hearings, reports to Minister
- Minister forwards Panel's report to NIRB for 60 day review
- NIRB returns report to Minister, who has several options
- Minister approves project
- NIRB issues Project Certificate



NIRB Relationships

- Coordination with the Nunavut Water Board (NWB)
- Joint review with Nunavut Planning Commission (NPC) for transportation corridors
- Previous experiences coordinating with CEAA during the review of the High Lake project
- Consultation and cooperation with neighbouring jurisdictions
- Recent meeting and discussions with NEB



 **ARTICLE 13**
WATER MANAGEMENT



Article 13: Water Management

- Establishes water licensing requirements and the powers and responsibilities of the Nunavut Water Board (NWB)
- Regulates the use of water and the deposit of waste in water in Nunavut
- Applies only to inland waters, not to marine waters
- The NWB is responsible for the regulation of fresh-water resources and water use in Nunavut.
- One of the NWB's main roles is to issue water licences



Water Licence Requirement

- The requirements relating to water use derive from Article 13 of the NLCA as well as legislation enacted to implement it.
- With the exception of domestic or emergency use, any use of water or deposit of waste in water in Nunavut, whether on IOL or Crown land, requires a water licence from the NWB.



Water Licence

- There are two types of water licence – type A and type B – the criteria for which are set out in section 8 of the Northwest Territories Waters Regulations.
- To apply for a water licence, an operator must complete an application form.
- Further, for any exploration and mining activity, the application must include a completed questionnaire.
- Licensing process may include public hearing



Security Deposit

- The NWB may require security with respect to a water licence.
- Security is held by the INAC Minister.
- May be used to compensate an RIA or any other party that is entitled to compensation for loss or damage.
- It may also be used to reimburse the Government for costs it incurred to “prevent, counteract, mitigate or remedy” the adverse effects.



Legislation

- The *Nunavut Waters and Nunavut Surface Rights Tribunal Act* (NW&NSRTA), adopted in 2002, gives further definition to these powers and responsibilities and provides for regulations.
- The *Northwest Territories Water Regulations* (SOR/93-303) will apply in Nunavut until new regulations for Nunavut have been developed.
- However, section 5 of these regulations, which permits some water use and waste deposit activities without a licence, does not apply in Nunavut.
- Nunavut regulations are being developed



 **ARTICLE 20**
INUIT WATER RIGHTS



Inuit Water rights

- 20.2.2 Subject to the Agreement and any exception identified in the property descriptions of Inuit Owned Lands, the DIO shall have the exclusive right to the use of water on, in, or flowing through Inuit Owned Lands.
- 20.2.3 Notwithstanding Section 20.2.2, any use of water on, in, or flowing through Inuit Owned Lands must comply with the terms of Article 13.
- 20.2.4 Subject to Section 20.5.1, the DIO shall have the right to have water flow through Inuit Owned Lands substantially unaffected in quality and quantity and flow.
- The RIAs are the DIO under this article
- The RIAs grant authorization and charge a fee for the use of this water



Compensation

- If there is a possibility that any project or activity may substantially affect the quality, quantity or flow of water – through either the use of water or the deposit of waste – the operator must enter into a compensation agreement with the RIA.
- The NWB will not licence the water use unless the operator has entered into such an agreement.
- If the operator and the RIA are unable to reach an agreement on the amount of compensation, either may refer the matter to the NWB, who will determine the compensation



**ARTICLE 21, PART 8.
NUNAVUT SURFACE
RIGHTS TRIBUNAL**



Article 21 (part 8) – NSRT

- The Nunavut Surface Rights Tribunal (NSRT) is responsible for settling disputes over access to lands, compensation payable to the surface titleholder for access, wildlife compensation claims, and rights to carving stone or specified substances in Nunavut.
- Now established in legislation



THANK YOU
