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Nunavunmi Parnaiyiit
Nunavut Planning Commission
Commission d'Aménagement du Nunavut

Nunavut Planning Commission Internal Procedure

Minor Variance

March 2015

Effective Date:

Approved Revisions:

Effective Date of Revisions	Summary of Changes

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PURPOSE

The purpose of this procedure is to identify the approach the Nunavut Planning Commission (referred to as either the NPC or the Commission) and its Executive Director and Staff will use for processing proposed minor variances.

AUTHORITY

This procedure is made in accordance with the *Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in right of Canada* (NLCA), which pursuant to section 3(1) of the *Nunavut Planning and Project Assessment Act* (NUPPAA) prevails over NUPPAA to the extent of any inconsistency or conflict between those documents.

Section 11.5.10 of the NLCA states;

The land use plan may make provision for the NPC to approve minor variances.

This procedure is also in accord with the Nunavut Planning & Project Assessment Act (NUPPAA), as may be amended, and not yet in force, including but not limited to sections: 48(3), 69, 81, 82, 177, 178, 179, 201(1)

Relevant sections of the NUPPAA¹ are reproduced in Appendix A from the version current to February 4, 2015 for ease of reference only. Reference must always be made to the current version of NUPPAA.

¹ Department of Justice Canada, Justice Laws Website, online: laws-lois.justice.gc.ca (accessed February 19, 2015)

APPLICATION

This procedure applies when the NPC determines under the *Conformity Determination Procedure* that a project proposal is not in conformity with a land use plan, but is eligible to be considered for a minor variance.

DEFINITIONS

Unless the context requires otherwise, words and phrases in this procedure have the same meaning as in the *NLCA* or *NUPPAA*.

In this procedure:

Person includes a corporation, any Inuit Organization, any institution established under the Agreement, and any unincorporated association recognized as a person by the Commission.

Planning Partner means an individual, group or organization, either public or private, interested in participating in the land use planning process and includes: both Inuit and Non-Inuit residents; not for profit community and Inuit organizations; municipalities; the business community; industry; environmental non-government organizations; Designated Inuit Organizations; territorial and federal government department and agencies; the Nunavut Impact Review Board (the NIRB); the Nunavut Water Board (the NWB); the Nunavut Wildlife Management Board (the NWMB); any other community, regional, territorial or national organization with an interest in the social, cultural, economic and environmental impacts and benefits associated with land use in Nunavut.

Proponent means a person or entity, including a federal, provincial or territorial minister, department or agency, a municipality or a designated Inuit organization, that proposes the carrying out of a project and includes any agent identified by the proponent on the *Minor Variance Supplemental Form*.

Region means the Kitikmeot region, the Kivalliq region or the Qikiqtani region as administered by the Regional Inuit Associations or as set out in the land use plan.

PROCEDURE

A flow chart outlining the following procedure is provided in Appendix B.

1 Application Requirements

- 1.1 If the Proponent has not already done so as part of a project conformity determination request, NPC staff will invite the proponent to submit the *Minor Variance Supplemental Form*, which is included in Appendix C. NPC staff may request any additional information they anticipate will be needed for the purpose of evaluating the proposed minor variance to verify whether the Commission is authorized to grant a minor variance with respect to the project.
- 1.2 NPC staff will permit the proponent to submit the *Minor Variance Supplemental Form* when submitting the *Project Proposal Application Form*.
- 1.3 NPC staff will require the proponent to submit all information in English, French, and the appropriate dialect of Inuktitut or Inuinnaqtun.
- 1.4 In a timely way, NPC staff will determine if the proponent's *Minor Variance Supplemental Form* is complete and whether any additional information requested has been provided.

If the proponent's *Minor Variance Supplemental Form* is incomplete, NPC staff will require a proponent to resubmit a complete *Minor Variance Supplemental Form*.
- 1.5 NPC staff may request that the proponent provide further additional information for the purpose of evaluating the proposed minor variance if necessary.

2 Notice of receipt

- 2.1 NPC staff will inform the proponent by letter, to be sent by facsimile, electronic mail or registered mail, of the date the Commission has received the completed *Minor Variance Supplemental Form* and any information requested under 1.5 of this procedure.
- 2.2 NPC staff will include the following on the NPC's public registry:
 - (a) the proponent's *Minor Variance Supplemental Form*; and
 - (b) any information submitted by the proponent under 1.5 of this procedure.

3 Time limit for consideration

- 3.1 Within 20 days of the issuance of a notice of receipt under 2.1, the Commission will determine if the proposed minor variance meets the conditions for granting a minor variance identified in the land use plan, unless time has been extended in accordance with sections 83(3), 84, or 81(6) of NUPPAA and as provided in this procedure by a need for further information from the proponent, by a public review, or by the granting an extension of time.
- 3.2 If more time is needed for the Commission to make a decision, the 20 day period referred to in 3.1 may be extended by up to 10 days.
- 3.3 In accordance with section 83(3) of the NUPPAA, any time required to conduct a public review will not count as part of the period referred to in 3.1 and 3.2.

4 Internal Consideration of Application

- 4.1 Within 5 business days of either the receipt of a completed *Minor Variance Supplemental Form* (under 2.1) or from the date of a negative conformity determination where a completed *Minor Variance Supplemental Form* was submitted with the *Project Proposal Application Form*, the Executive Director will determine if the proposed minor variance meets the conditions identified in the land use plan subject to which a minor variance may be granted.
- 4.2 The Executive Director will prepare a report regarding the proposed minor variance, which will include:
 - (a) a statement identifying the proponent and the Project Proposal location;
 - (b) the description of the Project Proposal submitted by the proponent;
 - (c) a statement identifying the provisions of the Plan that make the Project Proposal eligible for a minor variance, if any; and
 - (d) an analysis of whether the minor variance conditions identified in the land use plan are or are not met.
- 4.3 If the Executive Director is of the opinion that any of the minor variance conditions identified in the land use plan are not met, the proposed minor variance will not be considered.
- 4.4 If the Executive Director is of the opinion that all of the minor variance conditions identified in the land use plan are met, an opportunity will be provided

for public examination of the proposed minor variance.

5 Public consideration of application

5.1 If the minor variance conditions identified in the land use plan are met, NPC staff will post a notice of the proposed minor variance in the electronic and paper versions of a newspaper with territorial distribution.

This notice will be posted in English, French, Inuktitut and Inuinnaqtun and will consist of:

- (a) a statement identifying the proponent and the Project Proposal location;
- (b) a description of the project;
- (c) a statement that interested persons may view the following on the NPC's Public Registry and in person at the Commission's regional offices:
 - (i) the proponent's *Project Proposal Application Form and Minor Variance Supplemental Form*;
 - (ii) the proponent's Project Proposal site plan;
 - (iii) all other information submitted by the proponent in regard to the proposed minor variance and conformity determination; and
 - (iv) the report prepared under 4.2.
- (d) an invitation for interested persons to indicate to the Commission in writing by a specified date, to be within 10 days (calculated by excluding the first day the notice appears and including the last day) of the date the notice will appear in a newspaper with territorial distribution that the proposed minor variance should not be granted on the basis of the factors listed in s. 81(4) of the NUPPAA, reproduced for ease of reference below:
 - (i) the land use plan does not authorize the granting of the minor variance;
 - (ii) conditions subject to which a minor variance may be granted are not met; or
 - (iii) the minor variance is not appropriate, in their opinion, for any other reason that they specify;

- (e) a statement that the Commission may hold a public review on the proposed minor variance if it considers it appropriate to do so, only if the Commission receives written comments from any interested person(s) that, in the opinion of the Executive Director, address the criteria referred to in 5.1(d); and
- (f) a statement that written comments received from any interested person(s) will be included on the NPC's public registry.
- (g) If a member of the public, especially an Elder, requires assistance in preparing a written statement, NPC translation staff may assist them as is deemed appropriate.

5.2 The Commission will not consider, or include on the NPC's public registry, written comments received from any interested person(s) that, in the opinion of the Executive Director, do not address the criteria referred to in 5.1(d).

5.3 NPC staff will include the notice in 5.1 on the NPC's public registry.

5.4 NPC staff will send the notice in 5.1 by facsimile, electronic mail or regular mail to:

- (a) the proponent;
- (b) the Hunters and Trappers Organizations, municipalities, and Regional Inuit Associations in the region of the project location;
- (c) the Nunavut Impact Review Board (NIRB);
- (d) the Nunavut Water Board (NWB);
- (e) the Nunavut Wildlife Management Board (NWMB);
- (f) Nunavut Tunngavik Incorporated;
- (g) the regulatory authorities identified by the proponent on the proponent's *Conformity Determination Application Form*;
- (h) the Makivik Corporation when a project proposal is located in an Area of Equal Use and Occupancy;
- (i) the Athabasca Denesuline when a project proposal is located in the Athabasca Denesuline Area of Asserted Title Claim under the Benoaine Litigation;
- (j) the Manitoba Denesuline when a project proposal is located in the Manitoba

Denesuline Area of Asserted Title Claim under Samuel/Thorassie Litigation; and

- (k) any other Planning Partner that the Executive Director decides to notify at his or her discretion.

6 Actions If No Written Comments Received

- 6.1 If the NPC does not receive written comments from any interested person(s) that, in the opinion of the Executive Director, address the criteria referred to in 5.1(d) of this procedure, the minor variance will be granted.
- 6.2 The Executive Director will prepare a written report that includes:
 - (a) the items in 4.2;
 - (b) the public notice produced under 5.1 of this directive;
 - (c) a statement that no comments were received and that the minor variance will be granted.

7 Actions If Written Comments Received

- 7.1 The Commission may conduct a public review of a proposed minor variance only if the Commission receives written comments from any interested person(s) that, in the opinion of the Executive Director, address the criteria in 5.1(d) of this procedure.
- 7.2 In accordance with section 83(3) of the NUPPAA, any time required to conduct a public review will not count as part of the period referred to in 3.1 and 3.2.
- 7.3 The public review will be conducted in accordance with the *Rules of Procedure for Public Hearings and Public Reviews*, as may be amended from time to time.
- 7.4 Following the receipt of comments from interested members of the public and any public review if one was conducted, the Executive Director will prepare a written report that will include:
 - (a) the items in 4.2;
 - (b) a summary of comments received under 5.1(d);
 - (c) a summary of comments received during the public review; and

- (d) an analysis of the available information and a decision to grant or refuse the proposed minor variance.

8 Communication of Decision

- 8.1 The Executive Director will communicate the decision by sending the written reasons, by facsimile, electronic mail or registered mail, to:
 - (a) the proponent;
 - (b) the NIRB; and
 - (c) the regulatory authorities identified by the proponent on the proponent's *Project Proposal Application Form*.
- 8.2 As soon as practicable after the decision, NPC staff will include the written reasons on the NPC's Public Registry.

9 Process After Decision

- 9.1 If the decision is to grant the proposed minor variance, then NPC staff will determine if the project is exempt from screening by the NIRB under the *Conformity Determination Procedure*.
- 9.2 If the decision is to refuse to grant the proposed minor variance, the Executive Director will advise the proponent that the proponent may:
 - (a) apply to the federal Minister and / or territorial Minister for an exemption from the land use plan in accordance with the NUPPAA;
 - (b) amend the project proposal to comply with the land use plan and resubmit the project proposal under the *Conformity Determination Procedure*;
 - (c) apply to the Commission to amend the land use plan in accordance with the *Plan Amendment Procedure*; or
 - (d) re-evaluate the project proposal.

APPENDIX A: RELEVANT SECTIONS OF NUPPAA²

"48.

Minor Variances

(3) A land use plan may authorize the Commission to grant minor variances and may set out the conditions subject to which they may be considered and granted.

69. Duty — licences, etc.

(1) Each regulatory authority must, to the extent of its authority to do so, ensure that any licence, permit or other authorization that it issues implements any applicable requirements of any applicable land use plan, including those identified under subsection 48(4).

Minor variances and ministerial exemptions

(2) If a minor variance or a ministerial exemption has been granted in respect of a project under paragraph 81(2)(a) or 82(2)(a), as the case may be, subsection (1) does not apply in respect of the requirements for that project in respect of which the variance or exemption was granted.

81. Minor variance

(1) If the Commission determines that the project is not in conformity with an applicable land use plan, it must verify whether that land use plan authorizes it to grant a minor variance with respect to such a project and whether the conditions set out under subsection 48(3), if any, are met.

Minor variance authorized

(2) If the land use plan authorizes the granting of minor variances and if the conditions, if any, are met, the Commission may, within 20 days after its determination that the project is not in conformity with the plan,

- (a) grant a minor variance, in which case it must verify whether the project is exempt from screening and comply with the requirements of section 79 or 80, as the case may be; or
- (b) refuse to grant a minor variance.

Publication

(3) Before granting a minor variance under paragraph (2)(a), the Commission must make the proposed minor variance public and must do so in a manner designed to promote participation in its examination by the public.

Objection

(4) Any interested person may, within 10 days after the proposed minor variance is made public, indicate to the Commission in writing that the proposed minor variance should not be granted because

- (a) the land use plan does not authorize the granting of the minor variance;

- (b) the conditions subject to which a minor variance may be granted are not met; or
- (c) the minor variance is not appropriate, in their opinion, for any other reason that they specify.

Reasons taken into account and public review

(5) The Commission may only grant a minor variance under paragraph (2)(a) after taking into account any reasons for which an interested person has indicated, under subsection (4), that it should not be granted and, if it considers it appropriate to do so, conducting a public review in accordance with the by-laws and rules made under section 17 and taking into account any submissions made during that review.

Extension of time limit

(6) If the Commission is of the opinion that more time is needed to make a decision under subsection (2), it may extend the period referred to in that subsection by up to 10 days and must notify the proponent of the extension in writing.

The following provision is not in force.

Request for ministerial exemption

82. (1) If the Commission determines that the project is not in conformity with an applicable land use plan, the proponent may request an exemption from the federal Minister or the territorial Minister, or both, taking into account their respective jurisdictions, within 60 days after

- (a) that determination, if the land use plan does not authorize the granting of a minor variance or if it does and the conditions are not met; or
- (b) the Commission's decision to refuse to grant a minor variance.

Ministerial decision

(2) The Minister or Ministers, as the case may be, must, within 120 days after receiving a request under subsection (1) either

- (a) grant the exemption, in which case the Commission must make the decision public, verify whether the project is exempt from screening and comply with the requirements of section 79 or 80, as the case may be; or
- (b) refuse the exemption.

Consultation

(3) An exemption may only be granted after consultation with the Commission and the relevant regulatory authorities and relevant departments or agencies that are not regulatory authorities.

Extension of time limit

² Department of Justice Canada, Justice Laws Website, online: laws-lois.justice.gc.ca (accessed February 19, 2015),

reproduced for ease of reference only. Reference must always be made to the official version in force.

(4) If a Minister who has received a request is of the opinion that more time is needed to make a decision, that Minister may extend the period referred to in subsection (2) by up to 60 days and must notify the proponent and the Commission of the extension in writing.

Limitation

(5) For greater certainty, the Commission is not authorized to send the project proposal to the Board under section 79 or subsection 80(1) if it has determined, under section 77, that the project is not in conformity with any applicable land use plan and no minor variance or ministerial exemption has been granted in respect of the project under paragraph 81(2)(a) or 82(2)(a), as the case may be.

177. Initiative not in conformity with plan

(1) If the Commission determines that the initiative is not in conformity with an applicable land use plan, it must verify whether that land use plan authorizes it to grant a minor variance with respect to that initiative and whether the conditions set out in accordance with subsection 48(3), if any, are met.

Minor variance permitted

(2) If the land use plan authorizes the granting of a minor variance and if the conditions, if any, are met, the Commission may, within 20 days after its determination that the initiative is not in conformity with the plan,

- (a) grant the variance, in which case it must send the proposal relating to the initiative to the Board in order for the Board to conduct a screening; or
- (b) refuse to grant the variance.

Publication

(3) Before granting a minor variance under paragraph (2)(a), the Commission must make the proposed minor variance public and must do so in a manner designed to promote participation in its examination by the public.

Objection

(4) Any interested person may, within 10 days after the proposed minor variance is made public, indicate to the Commission, in writing, that the proposed minor variance should not be granted because

- (a) the land use plan does not authorize the granting of the minor variance;
- (b) the conditions subject to which a minor variance may be granted are not met; or
- (c) the minor variance is not appropriate, in their opinion, for any other reason that they specify.

Reasons taken into account and public review

(5) The Commission may only grant a minor variance under paragraph (2)(a) after taking into account any reasons for which an interested person has indicated, under subsection (4), that it should not be granted and, if it considers it appropriate to do so, conducting a

public review in accordance with the by-laws and rules made under section 17 and taking into account any submissions made during that review.

Extension of time limit

(6) If the Commission is of the opinion that more time is needed to make a decision under subsection (2), it may extend the period referred to in that subsection by up to 10 days and must notify the department or agency of the extension in writing.
The following provision is not in force.

Request for ministerial exemption

178. (1) If the Commission determines that the initiative is not in conformity with an applicable land use plan, the department or agency may request an exemption from the federal Minister or the territorial Minister, or both, taking into account their respective jurisdictions, within 60 days after

- (a) that determination, if the land use plan does not authorize the granting of a minor variance or if it does and the conditions are not met; or
- (b) the Commission's decision to refuse to grant a minor variance.

Ministerial decision

(2) The Minister or Ministers, as the case may be, must, within 120 days after the day on which they receive a request under subsection (1), either

- (a) grant the exemption, in which case the Commission must make the decision public and send the proposal relating to the initiative to the Board in order for the Board to conduct a screening; or
- (b) refuse the exemption.

Consultation

(3) An exemption may only be granted after consultation with the Commission, the relevant regulatory authorities and the relevant departments or agencies that are not regulatory authorities.

Extension of time limit

(4) If any Minister referred to in subsection (1) is of the opinion that more time is needed to make a decision, that Minister may extend the period referred to in subsection (2) by up to 60 days and must notify the department or agency and the Commission of the extension in writing.

179. Time limit

(1) The Commission must exercise its powers and perform its duties and functions under sections 175 and 176 within 45 days after the day on which it receives the proposal in respect of the initiative.

Time not counted

(2) If the Commission determines that an initiative is not in conformity with an applicable land use plan, any time required for the exercise of powers or the performance

of duties and functions relating to minor variances and ministerial exemptions does not count as part of the period referred to in subsection (1).

Time not counted — public review

(3) If the Commission conducts a public review under subsection 177(5), any time required to conduct it does not count as part of the period referred to in subsection 177(2).

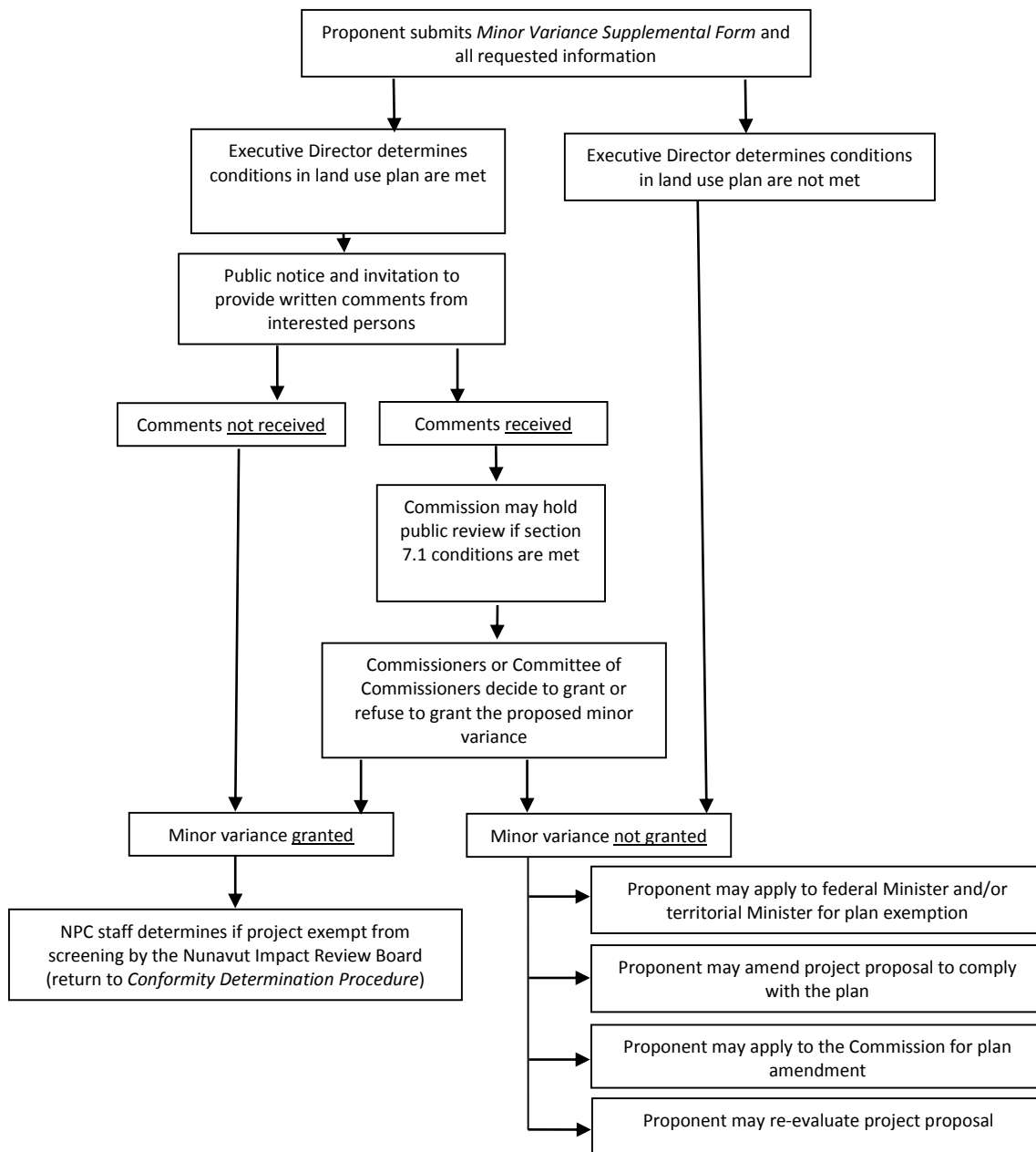
Public registry — Commission

201. (1) The Commission must maintain a public registry that is made accessible to the public via the Internet,

and the Commission must include, as soon as practicable, the following in that registry:

(k) proposed minor variances referred to in subsection 81(3);”

APPENDIX B: FLOW CHART FOR PROCESSING PROPOSED MINOR VARIANCES



APPENDIX C: MINOR VARIANCE APPLICATION FORM

1. Conformity Determination File Number: _____

2. Proponent Information

Full Name (no initials or abbreviations) and Mailing Address:	Telephone:
	Fax:
	Email:

3. Agent Information (if applicable)

Full Name (no initials or abbreviations) and Mailing Address:	Telephone:
	Fax:
	Email:

4. Project Information

Reason for Minor Variance: (Provide an explanation of why the project requires the proposed minor variance)
Existing Uses: (Describe the existing uses of the project location and the abutting lands)

5. Decision Criteria

The Proponent / Agent must provide statements in support of the criteria below. The Commission's decision to grant or refuse to grant a proposed minor variance is based on these criteria and your information will be used in the Commission's decision-making process. The Proponent / Agent may attach additional sheets if necessary.

a.) Explain how the proposed minor variance is necessitated by unique physical features or limitations of the project location, such as those related to topography and vegetation.
b.) Explain how the granting of the proposed minor variance will not cause the project to detract from, or interfere with, existing uses or interests.

5. Signature

_____ Signature	_____ Title	_____ Date
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For Staff Use Only
Application filed on _____ 20__

Return to: Nunavut Planning Commission, [email address].