

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**THE ENVIRONMENTAL REVIEW  
BOARD**

**AND**

**THE MINISTER OF ENVIRONMENT**

**CONCERNING  
APPROVALS FOR SUBSTITUTION OF PROCESS**

WHEREAS, the Environmental Impact Review Board (the "Board") has statutory responsibility for administering public reviews of proposed Developments pursuant to the Inuvialuit final Agreement (the IFA) as ratified by the Western Arctic (Inuvialuit) Claims Settlement Act (the Act);

WHEREAS, the federal Minister of the Environment has statutory responsibilities for approving substitutions for a Review Panel Pursuant to the Canadian Environmental Assessment Act (the Act);

WHEREAS, the board is mandated to conduct environmental assessments of Developments which the Environmental Impact Screening Committee determines could have a significant environmental impact;

WHEREAS, the federal Minister of the Environment and the Board which to ensure that Projects subject to and environmental assessment and review by the Board pursuant to the IFA and subject to a Review Panel pursuant to the Act are assessed in a manner to avoid unnecessary duplication or delay of process;

WHEREAS, section 43 of the Act allows for the substitution of the environmental impact review process under the IFA for and environmental assessment by a Review Panel under the Act;

THEREFORE, the parties agree as follows:

#### 1. DEFINITIONS

"Act" means the Canadian Environmental Assessment Act;

"Agency" has the same meaning as set out in section 2 of the Canadian Environmental Assessment Act;

"Board" means the Environmental Impact Review Board established pursuant to subsection 11(18) of the IFA;

"Board's Public Review Process" means the Board's standard public review under the section 14 of the Operating Procedures;

"Development" has the same meaning as set out in section 2 of the IFA;

"Environmental Impact Screening Committee" means the screening committee established pursuant to subsection 11(3) of the IFA;

"IFA" means the Inuvialuit Final Agreement;

"Inuvialuit Game Council" means for the purposes of this agreement the Inuvialuit Game council established pursuant to subsection 14(73) of the IFA;

"Jurisdiction" has the same meaning as set out in paragraph 40(1)(d) of the Act;

"Minister" means the federal Minister of the Environment;

"Operating Procedures" means the rules of procedure adopted by the Board on October 30, 1997 for the conduct of its review;

"Parties" means collectively the board and the Minister of the Environment;

"Project: has the same meaning as set out in section 2 of the Act;

“proponent” has the same meaning as set out in section 2 of the Act;

“Regulatory Authority” means, under the IFA, the individual or body competent to authorize the Development;

“Responsible Authority” has the same meaning as set out in section 2 of the Act;

“Review Panel: means a panel, other than a Joint Review Panel, appointed to undertake an environmental assessment as permitted or required under the Act or under the IFA;

“Substituted Process” means the Board; Public Review Process approved by the Minister;

“Substituted Panel: means a Review Panel established according to subsection 11(19) of the IFA which has been approved by the Minister to substitute for a Review Panel under the Act;

## 2. GENERAL

- 2.1 Requirements for Substitution – When a Development is subject to an environmental assessment and reviewed by the Board and is also a Project subject to a review by a Review Panel under the Act, the Board and the Agency will work together to determine whether the Development should be subject to substitution.
- 2.2 Public Registries – In cases of a review under the Substituted Process, the Board will set up and maintain public registries according to the requirements set out in section 11.26 of the IFA and will provide full assistance to the Agency in order to ensure that the public registry requirements contained in section 55 of the Act are met.

## 3. SUBSTITUTED PROCESS

- 3.1 Substituted Process – As the Parties wish to promote efficiency, effectiveness and the harmonization of assessment procedures, when appropriate and agreed to by the Parties, they agree that a Substituted Process may be established when a Project has been referred to the board pursuant to the IFA and to the Minister for a Review Panel pursuant to the Act. The Parties will develop a project-specific agreement in relation to each Project for which the Minister approves a substitution.
- 3.2 Projects subject to the Substituted Process – A Project that would otherwise be referred to a Review Panel under the Act may be subject to the Substituted Process if:
- a) it is also a Development subject to the Board’s Public Review Process;
  - b) no mediator or joint review panel has been appointed or established under the Act; and
  - c) the Minister is satisfied that the referral and approval criteria set out in article 4 are met.

#### 4. REFERRAL AND APPROVAL

##### 4.1 Board requests Substitution of Process

- a) When a development is subject to the board's Public Review Process and to an environmental assessment and review by a Review Panel under the Act; the Board may request in writing that the Minister approve a substitution pursuant to section 43 of the Act.
- b) The Board will include a justification for the request, including identifying the provisions of the Act under which a Review Panel is required or permitted.
- c) The Board will attach to its request for substitution a copy of the referral of the Environmental Impact Screening Committee to the Board, a summary of the proposed Development and such further and other information as the Minister may request.

4.2 Acknowledgement of receipt – The Minister will acknowledge receipt in writing of the Board's request pursuant to article 4.1 within 30 days of receipt by the Minister and indicate in this acknowledgement either that additional information is required to determine if substitution of the Board's Public Review Process should be approved or that the substitution of the Board's Public Review Process is approved or denied.

4.3 The Minister, within 14 days of receiving any additional information requested according to article 4.2, will advise the Board whether or not substitution of the Board's Public Review Process for that of the Act is approved.

4.4 Project Specific Agreement – If the Minister is of the view that the conditions listed in articles 3.2 and 4.1 have been met and considers a Substituted Process appropriate, the Minister will request the Board and the Agency to develop a project-specific agreement referred to in article 3.1.

4.5 If the Minister is of the view that the conditions listed in articles 3.2 and 4.1 have not been met or does not consider a Substituted Process appropriate, the Minister will advise the Board that the Project shall not be subject to the Substituted Process. The Minister acknowledges that in such a situation the Board will proceed with its environmental assessment and review pursuant to the IFA.

4.6 Notification to the Board – Where the referral of a Project to a Review Panel is required or permitted by the Act and the Project is also a Development, the Minister will seek confirmation from the Board that the Development is subject to the Board's Public Review Process and, in cases where such confirmation can be provided, invite the Board to make a request for a Substituted Process.

#### 5. PROCEDURE FOR SUBSTITUTED PROCESS

##### 5.1 Substituted Panel Composition and Appointment

- a) All members of the Substituted Panel shall be unbiased and free from any conflict of interest relative to the Project.
- b) At least one member of the Substituted Panel shall have knowledge or experience relevant to the anticipated environmental effects of the Project.
- c) At least one member of the Substituted Panel will be a member appointed by Canada under subsection 11(18) of the IFA.
- d) At least two members of the Substituted Panel will be members of the Board appointed by the Inuvialuit Game Council. These Members qualify under 5.1(a) and 5.1(b).

## 5.2 Substituted Process

- a) Where project-specific terms of reference are issued for the public environmental assessment and review under article 3.1, the Substituted Process shall provide all parties including the public and Proponent of the Project an opportunity to submit written comments on these terms of reference,
- b) The Substituted Process for the public review shall provide that:
  - i. the Substituted Process will include a consideration of the factors required to be considered under subsection 16(1) and 16(2) of the Act.
  - ii. the public has the opportunity to appear before the Substituted Panel at a public hearing;
  - iii. information on the scope of the Project to be assessed is publicly available;
  - iv. the public has the opportunity to participate in the scoping of the issues to be assessed in the environmental assessment and review;
  - v. an outline of the procedures to be followed under the Substituted Process is publicly available;
  - vi. the public has a minimum of 60 days to review the environmental assessment documentation submitted by the Proponent;
  - vii. the public has a minimum of 60 days notice of the public hearings;
  - viii. hearings shall not proceed until the Substituted Panel has determined that all factors to be assessed have been adequately addressed in the environmental assessment documentation;
  - ix. the public has an opportunity to review and comment on any additional information submitted to the Substituted Panel by the Proponent;
  - x. on completion of the environmental assessment and review the report of the Substituted Panel is submitted to the Minister and to the relevant Regulatory Authority under the IFA;
  - xi. that the report submitted to the Minister shall set out the rationale, findings, conclusions and recommendations of the Substituted Panel, including any

mitigation measures and follow-up programs that should be implemented with respect to the Project;

- xii. the report shall be published; and
- xiii. in making recommendations on whether a Project is likely to cause significant adverse environmental effects or whether such effects are justified in the circumstances, the Substituted Panel shall consider any criteria that may have been developed pursuant to section 58(1)(a) of the Act.

5.3 Participant Funding – Participant funding will be arranged by the federal Government for a Substituted Process.

5.4 Decision Making – The findings of the Substituted Panel will be conveyed to the Responsible Authorities and Regulatory Authorities as recommendations only. No regulatory or Responsible Authority will exercise power, duty or function in relation to the Development/Project prior to taking into account the results of the environmental assessment and consulting with the other Responsible or Regulatory Authorities.

## 6. PROCEDURES IN OTHER CASES

6.1 In cases where the Substituted Process is not applicable, the Minister and the Inuvialuit Game Council may enter into a specific agreement with respect to the establishment of a Joint Review Panel and the procedures to be used in the conduct of the assessment by that panel.

## 7. AMENDMENTS AND TERMINATION

7.1 This agreement may be amended from time to time upon mutual consent of the Minister and the Board.

7.2 The Minister or the Board may terminate this agreement upon providing a written notice to that effect. If the agreement is terminated in the course of a Project being assessed pursuant to a Substituted Process, the Parties agree that the information collected up until the termination date will be shared in order to enable completion of the assessment requirements found in the IFA and the Act.

## 8. CONFLICT

8.1 This Memorandum of Understanding is not intended to add, derogate from, or alter any statutory duties, obligations or responsibilities of the Board under the IFA or the Minister under the Act and where this Memorandum of Understanding conflicts with either the IFA or the Act, the IFA and the Act shall prevail.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

\_\_\_\_\_  
Environmental Impact Review Board

\_\_\_\_\_  
The Honourable David Anderson  
Minister of the Environment