

PUBLIC REVIEW
of
DRIFTWOOD LUMBER'S
SALVAGE PROPOSAL

IN PARTICULAR A
DRIFTWOOD LOGGING OPERATION AT KING POINT, YUKON,
AND AN ICE-ROAD FROM KING POINT TO INUVIK
IN RELATION TO A SAWMILL IN INUVIK

FINAL REPORT OF THE
ENVIRONMENTAL IMPACT REVIEW BOARD
January 1995

TABLE OF CONTENTS

1.0	THE PUBLIC REVIEW	1
1.1	Establishment of the Environmental Impact Review Board	1
1.2	Mandate of the EIRB	1
1.3	Procedures of the EIRB	2
1.4	Appointment of the Review Panel	2
1.5	Decision Making Powers of the EIRB	2
1.6	Initiating the Public Review	3
1.7	The Review Process	3
2.0	PROJECT DESCRIPTION	5
2.1	Overall Plan	5
2.2	Project Rationale	6
3.0	APPLICATION TO THE EIRB	8
4.0	JURISDICTION OF THE EIRB	9
4.1	Decision-Making Powers of the EIRB	9
4.2	Special Responsibilities of the EIRB for the Yukon North Slope	10
4.3	The EIRB's Interpretation of its Mandate	11
4.4	Assessment of Risk	12
5.0	ISSUES	13
5.1	Worse Case Scenario	13
5.2	Conservation of the North Slope	14
5.2.1	Significance of the part or parts of the Yukon North Slope proposed for development use from the standpoint of conservation and harvesting interests	14
5.2.2	Evaluation of practical alternative locations and of relative commercial and economic merits of and environmental impact on such locations compared to the part or parts of the area proposed for utilization in the application	14
5.2.3	Evaluation of the environmental and social impacts of the proposed development	15
5.2.4	Weighing of the interests of users, conservationists and harvesters in the Yukon North Slope against public convenience and necessity for development	15
5.2.5	Evaluation of the ability of the applicant to demonstrate that he has, or will acquire, the proven capability to carry you the project in accordance with established standards of performance, safeguards and other requirements and to carry out the necessary environmental mitigation and restoration	15
5.2.6	Requirements for effective machinery to ensure that the development proceeds in accordance with any established terms and conditions	15

5.3	Routine Operations	16
5.3.1	Fuel Haulage and Storage	16
5.3.2	Location of Camp	16
5.3.3	Sewage and Waste Disposal	17
5.3.4	Winter Road	17
5.3.5	Operational Constraints	17
5.3.6	Wildlife Protection Measures and Harvest Protection Measures	18
5.3.6.1	Whales	18
5.3.6.2	Polar Bears	18
5.3.6.3	Hunting and Fishing by Company Employees	18
5.3.7	Heritage Protection Measures	18
5.4	Coastal Erosion	19
6.0	THE PANEL'S DECISION	20
6.1	Terms	20
6.2	Conditions	20
6.2.1	Fuel Haulage and Storage	21
6.2.2	Location of Camp	21
6.2.3	Sewage and Waste Disposal	21
6.2.4	Winter Road	21
6.2.5	Operational Constraints	22
6.2.6	Wildlife Protection Measures and Harvest Protection Measures	22
6.2.6.1	Polar Bears	22
6.2.6.2	Hunting and Fishing by Driftwood Employees	22
6.2.7	Heritage Protection Measures	22

APPENDIX A

PUBLIC NOTICE OF REFERRAL DATED AT INUVIK, NORTHWEST TERRITORIES
8 AUGUST 1994

APPENDIX B

LIST OF REGISTERED PARTICIPANTS DRIFTWOOD LUMBER SALVAGE PROPOSAL

APPENDIX C

NOTICE OF PUBLIC MEETINGS DATED AT INUVIK, NORTHWEST TERRITORIES
OCTOBER 14, 1994

APPENDIX D

RULING BY THE ENVIRONMENTAL IMPACT REVIEW PANEL
RE: WILDLIFE COMPENSATION AND FINANCIAL RESPONSIBILITY

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1.0 THE PUBLIC REVIEW

1.1 Establishment of the Environmental Impact Review Board

The Inuvialuit Final Agreement (IFA), dated June 5, 1984, settled the land claim of the Inuvialuit in the Western Arctic Region of Canada. This Agreement was "approved, given effect and declared valid" by section 3(1) of the Western Arctic (Inuvialuit) Claims Settlement Act, being Chapter 24, 32-33, Elizabeth II of the Statutes of Canada.

The Act further provided in section 3(2) that the beneficiaries under the IFA "shall have the rights, privileges and benefits set out in the Agreement", and in section 4 that the provisions of the Act and of the IFA will prevail over any other law applying to the Territory in the event of inconsistency or conflict.

Being a land claims settlement within the meaning of section 35 of the Constitution Act, 1982, the IFA is thereby affirmed as an existing aboriginal right. In consequence of these statutory provisions, the terms of the IFA are given a preferred status over all other federal and territorial laws within the defined Inuvialuit Settlement Region (ISR) in the Western Arctic.

This Agreement is the basis of the Environmental Impact Review Board (EIRB) mandate to review the Driftwood Lumber (Driftwood) driftwood lumber salvage proposal (Development).

1.2 Mandate of the EIRB

Under the IFA the Development is a "development" within the meaning of Section 2 and, as such, was subject to screening by the Environmental Impact Screening Committee (EISC), pursuant to the provisions of sections 11 and 13 of the Agreement. Section 11(16) authorizes the EISC to refer the development to the EIRB for a public review and environmental impact assessment if the EISC determines that the Development could have significant negative environmental impact, or negative impact on present or future wildlife harvesting [IFA section 13(8)].

On August 3, 1994 the EISC Panel, constituted to screen Driftwood's Development decided that "the development could have significant negative environmental impact and is subject to assessment and review under the Inuvialuit Final Agreement". Tom Beck, Chairman of the EISC, informed Robert Hornal, Chairman of the EIRB, of the EISC Panel's decision by telephone on August 4, 1994 and confirmed the decision in a letter dated August 5, 1994.

1.3 Procedures of the EIRB

The EIRB has enacted By-Law No. 1 and published its Operating Procedures, Second Edition, June 2, 1992 pursuant to the powers given to it by Section 11(23) of the IFA to establish and adopt by-laws and rules for its internal management and procedures. Together with the IFA, these documents contain the rules and guidelines that constitute the procedures of the EIRB.

The Operating Procedures permit the EIRB, at its discretion, to determine whether the proposed development may be treated as a "Small Scale Development" or as a development requiring a "Standard Public Review". At a meeting of the EIRB held on August 22, 1994 the EIRB decided that the Driftwood Development constituted a "Small Scale Development" under its procedures.

The Operating Procedures call for the Chairman to designate a Panel to conduct a public review once the proponent has submitted an Environmental Impact Statement (EIS) suitable for review under the Small Scale Development procedures. A Panel normally consists of the Chairman, two Inuvialuit Game Council (IGC) appointees to the EIRB and two appointees of Canada.

1.4 Appointment of the Review Panel

During a regular meeting of the EIRB, held September 14, 1994, the EIRB considered and accepted the EIS submitted by Driftwood. The Chairman appointed the following Members to the Review Panel for the Public Review of Driftwood's Development:

Robert Hornal	Chairman
Tom Butters	Government of Canada
Albert Elias	Inuvialuit Game Council
Nelson Green	Inuvialuit Game Council
Bill Klassen	Government of Yukon

The Panel conducts the Public Review and is the EIRB for the purposes of the Review.

1.5 Decision Making Powers of the EIRB

Under Section 11(24) of the IFA, the EIRB is required, once the Public Review has been conducted, to render expeditiously a Decision as to whether or not, on the basis of the evidence and information before it, a development may proceed.

If the EIRB decides that a development may proceed, it must make recommendations as to Terms and Conditions that should apply to the development, including mitigative and remedial measures.

The Decision containing the recommendations of the EIRB must be transmitted to the government authority competent to authorize the development [Section 11(27)]. If provisions for compensation for loss or damage to wildlife, or wildlife harvesting activities are deemed necessary, the EIRB must also provide "worst case scenario"

estimates of potential liability [Section 13(11) (b)]. If the competent government authority is unwilling or unable to accept the recommendations of the EIRB, or wishes to modify any of them, reasons must be provided in writing within 30 days of the Decision [Section 11(29)]. The Decision of the competent government authority must be sent to all interested parties and be made public.

No licence or approval shall be issued by the competent government authority permitting any proposed development to proceed unless the provisions of the Environmental Impact Screening and Review Process under the IFA have been complied with [Section 11(31)].

1.6 Initiating the Public Review

In accordance with Section 12.4 of the Operating Procedures, the Secretary to the EIRB published a Public Notice of Referral dated August 8, 1994 in regional newspapers (Appendix A). The notice announced that the EISC had referred the Driftwood Development to the EIRB and encouraged individuals and/or organizations to become Registered Participants by forwarding submissions to the Panel. A list of Registered Participants is provided in Appendix B.

1.7 The Review Process

The initial information received by the EIRB was provided in the EIS from Driftwood on September 9, 1994. The Development as described in the EIS became the focus of the Public Review which followed. Driftwood subsequently submitted supplementary filings and written answers to questions that were posed by the Panel and Registered Participants.

The Panel invited the participation of the following persons to examine material submitted by Driftwood: Don Russell of the Canadian Wildlife Service, Whitehorse, Yukon, to comment on environmental issues; Ian Stirling, of the Canadian Wildlife Service, Edmonton, to comment on the polar bear denning and, Don Forbes of the Geological Survey of Canada, Dartmouth, Nova Scotia, to comment on the possible impact of the Development on beach stability. Andrew R. Thompson and Christopher Lemon, of Ferguson Gifford, Vancouver, provided legal advice to the Panel.

The Panel's staff prepared a video presentation of the shoreline between King Point and the Mackenzie Delta for viewing by the Panel and other interested parties.

The Panel distributed all documents submitted by Driftwood and all written comments from Registered Participants and the general public to all other parties and Registered Participants.

The Panel's secretariat prepared two documents for distribution to all parties and Registered Participants. These were titled:

Report to the Environmental Impact Review Panel on Issues Raised During Review of Driftwood Lumber Company Limited Driftwood Logging Operation at King Point, Sawmill at Inuvik and Winter Road from West Channel to King Point, 1994;

and

Report to the Environmental Impact Review Panel on Value of Wildlife Harvested in the Area of Concern Regarding Driftwood Lumber Company Limited's Project Driftwood Logging Operation at King Point, Sawmill at Inuvik and Winter Road from West Channel to King Point, 1994.

The Secretary published a second Public Notice dated October 14, 1994 (Appendix C) in regional newspapers and local radio stations announcing that public meetings would be held in Aklavik and Inuvik on the 1st and 2nd of November 1994, respectively.

The purpose of the public meetings was to provide an opportunity for the public to voice concerns and provide information about the Development to the Panel.

Public meetings were held in the Sittichinli Recreational Complex in Aklavik on November 1, 1994 and in the Inuvialuit Corporate Centre in Inuvik on November 2, 1994. Minutes of these public meetings were prepared in order to provide a permanent public record of the meetings.

Immediately after the public meetings the Panel met to consider its next steps. It determined that, as a result of changes in the Development suggested by Driftwood during the public meetings, it should publicly review the mitigative measures possible to control environmental impacts.

To accomplish this, the Panel, invited Driftwood and all Registered Participants to a meeting in Aklavik on November 29, 1994. The Panel also indicated that it was not satisfied that Driftwood could identify its financial responsibility with respect to harvest loss. It requested Driftwood to enter into negotiations with the IGC to conclude a wildlife compensation agreement that would be in effect should the Development proceed. The ruling of the Panel was published in the local newspapers and a copy is reproduced in Appendix D.

The Panel adjourned its deliberations until January 10, 1995 to permit a written summary of the November 29, 1994 meeting to be circulated and to permit Driftwood and the IGC to conclude a wildlife compensation agreement.

Mr. Bill Klassen chaired the meeting in Aklavik on November 29, 1994, the minutes of which were subsequently circulated to all parties and Registered Participants.

With respect to the wildlife compensation agreement between Driftwood and the IGC, the IGC in a letter to the Panel dated December 14, 1994 sought from the Panel clarification of the scope of the wildlife compensation agreement to be negotiated and an estimate of the potential liability of Driftwood based on a worst case scenario.

The Panel met again in Inuvik on January 10 and 11, 1995 and in Vancouver on January 22 and 23, 1995 to consider the additional information the Panel had received.

All documents associated with the Public Review on the public record may be examined during business hours at the office of the Joint Secretariat 107 Mackenzie Road, Inuvik, Northwest Territories.

2.0 PROJECT DESCRIPTION

2.1 Overall Plan

The Development can be divided into three main phases:

- i) driftwood log collection and stock piling from a camp based at King Point;
- ii) hauling of logs from King Point to the sawmill in Inuvik via the proposed ice-road; and,
- iii) processing of driftwood logs at the sawmill in Inuvik.

Driftwood logs would be salvaged initially from the King Point area. A mobile camp would be set up on high ground near the beach in the King Point area. The camp would include a wash/sleeper and a kitchen/diner and would accommodate a maximum of 10 employees from late April until mid-September.

Two 12-hour shifts would be worked from May until August. Driftwood logs would be removed from the piles by either crane or grapple and winch, and then trimmed and hauled to a stock pile. Only the outer, and most recent, driftwood would be removed, to a maximum of 50% of the pile. Trim would be restacked on the remaining driftwood pile. Operating equipment would only be used on the beach. The equipment list includes: 2 cab trucks, a service vehicle, a Cat 966B Grapple Loader, a Cat D6 - Blade and winch, a truck-mounted crane, a light plant, fuel tanks, welding unit, and other miscellaneous items, such as chain saws.

An estimated 45,600 litres of diesel and gasoline, 1,000 litres of lubricants/greases, and 10,000 litres of propane would be required to maintain the beach operations. Tankage on site would be sufficient to hold enough fuel for an approximate 6-week period. Initially it was proposed that supplies would be delivered either overland or by barge. During the Public Review Driftwood agreed to transport its fuel requirements over a winter road to the site.

Driftwood proposes to build and maintain an ice-road to King Point. The route, as noted in the EIS, would begin at Aklavik, follow the West Channel to Shallow Bay, and then follow the coast to King Point. During the public meeting in Aklavik, Dennis Pascal, representing Driftwood, suggested that Driftwood now preferred to begin the ice-road at Tununik where it would join the winter ice-road that runs from Inuvik to Tuktoyaktuk, pass through the delta's channels to Shallow Bay, and then proceed to King Point, keeping the road one mile off-shore. The road would facilitate the transport of equipment and supplies to the site in the spring, and the transfer of driftwood to Inuvik during the winter. The ice-road would be maintained by Driftwood, as required, using a D6 and a snow plough attachment on one of the trucks.

Harvested logs would be hauled from the beach site to the sawmill during the winter using either Driftwood's equipment and employees or independent truck haulers.

Driftwood proposes to set up the sawmill operation in Inuvik. Although the exact location has not been determined, an area large enough to accommodate 20,000 logs each approximately 10 metres long would be required. A similar sized area to handle the finished product would also be required. Waste from the mill would consist of slabs and sawdust. The slabs could be sold for firewood and the sawdust as insulating material or made into fuel briquettes. Driftwood would avoid burning waste material.

Production is estimated to be up to 15,000 cubic metres, the maximum quantity of lumber permitted to be cut under the timber harvesting permit held by Driftwood.

Driftwood suggests that driftwood logs could be salvaged from the King Point area indefinitely and the logging operation/sawmill could become a permanent industry of the Aklavik-Inuvik area. However, Driftwood has not completed any in-depth surveys to determine the quantity or quality of the resource.

2.2 Project Rationale

The two principal partners of Driftwood state in the EIS that they familiar with the characteristics of the proposed area for the Development and the driftwood resources. Both have practical experience operating stationary and mobile machinery in a variety of locations.

Driftwood believes that the driftwood resource is accumulating over time along approximately 120 kilometres of the shoreline from west of the Mackenzie River estuary to the eastern boundaries of Ivvavik National Park.

In recent years no attempt has been made to salvage the driftwood, except to the extent that local people have used the wood locally to build log houses and for other traditional uses.

Driftwood, after consulting with the Aklavik Hunters and Trappers Committee, chose to centre their activities on the King Point area so as to not disturb harvesting activities at Shingle Point and Running River or bird habitat at Escape Reef.

Driftwood proposes to set up a sawmill operation at Inuvik since this town is the only one offering support services for maintaining and servicing the sawmill equipment. Inuvik will also provide a base for commercial truckers to house themselves and maintain their equipment while they are hauling usable logs from the beach to the sawmill at Inuvik, or logs and dimensional commercial lumber from the sawmill to other communities. Driftwood logs collected by this operation could be cut and used for log homes which would be an alternative to the standard framed house presently being built.

The Development will employ a number of local people to work as equipment and crane operators, cooks, labourers, and watchmen.

Figure 1 shows the area of the Development.

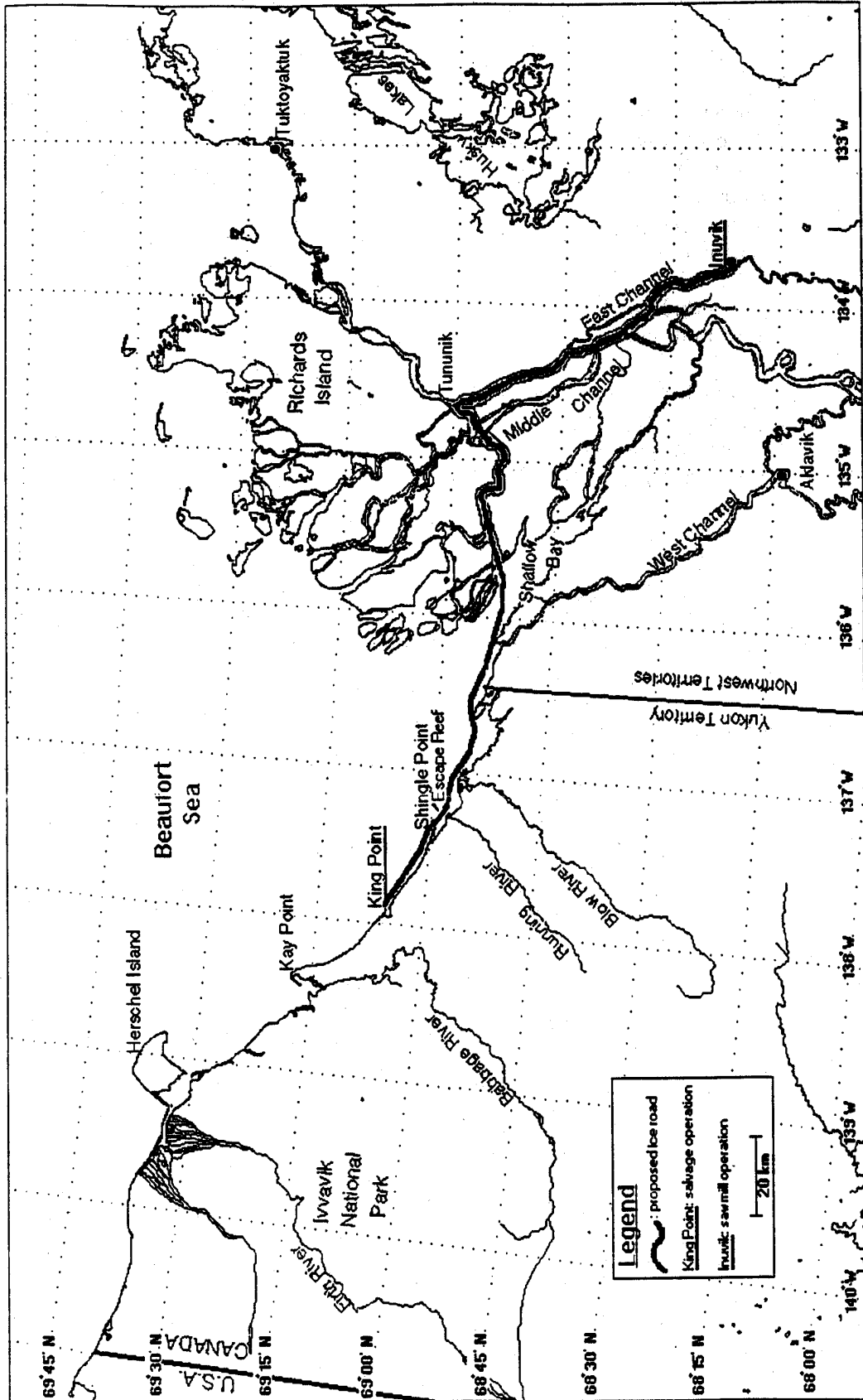


Figure 1: Geographic Area of Driftwood Lumber's Salvage Proposal

3.0 APPLICATION TO THE EIRB

The application before the EIRB is for approval of Driftwood's Development for a driftwood salvage logging operation at King Point, Yukon Territory and an ice-road from Inuvik to King Point in support of a sawmill to be located at or near Inuvik. This is the third application to be referred to the EIRB for public review since it was established in 1985.

Driftwood's majority owners are, or have been, residents of the ISR and have a commitment to the ISR and the well-being of its inhabitants. The Development is, relative to the two previous developments reviewed by the EIRB, small in scale. Since the Development is proposed to take place on the Yukon's North Slope, the IFA dictates that it receive close scrutiny.

The sawmill operation was not considered in detail by the Panel because information as to the exact location and nature of the mill has yet to be provided by Driftwood. The Panel is confident that the mill site and its operation will be carefully scrutinized by the appropriate responsible authorities.

The Development's referral to the EIRB was made at an early stage in the Development's history. Driftwood has sought environmental clearance while the project is in its early stages to enable Driftwood to obtain advice on avoiding environmentally sensitive areas and on identifying any necessary mitigative measures. As Driftwood does not have a demonstrated financial history, the Panel has had to consider what financial guarantees would have to be put in place in the event of environmental damage were the Development to proceed.

4.0 JURISDICTION OF THE EIRB

Sections 4.1, 4.3 and 4.4 which follow are adopted from the EIRB's decision in its Public Review of the Gulf Canada Resources Limited Kulluk Drilling Program 1990-1992.

4.1 Decision-Making Powers of the EIRB

In reaching its decision on any proposal properly brought before it, the matters which the EIRB must decide are set out in the IFA. Section 13(11) says:

"Where, pursuant to sub-section (10), a proposal is referred to the Review Board, it shall, on the basis of the evidence and information before it, recommend to the government authority empowered to approve the proposed development:

- (a) terms and conditions relating to the mitigative and remedial measures that it considers necessary to minimize any negative impact on wildlife harvesting; and
- (b) an estimate of the potential liability of the developer, determined on a worst case scenario, taking into consideration the balance between economic factors, including the ability of the developer to pay, and environmental factors."

Liability for damage is defined in Section 13 (15) which in part reads:

"Where it is established that actual wildlife harvest loss or future harvest loss was caused by development, the liability of the developer shall be absolute and he shall be liable without proof of fault or negligence for compensation to the Inuvialuit and for the cost of mitigative and remedial measures..."

Where "actual wildlife harvest loss" means:

"provable loss or diminution of wildlife harvesting, or damage to property used in harvesting wildlife, or both" , and

"future harvest loss" means:

"provable damage to habitat or disruption of harvestable wildlife having a foreseeable negative impact on future wildlife harvesting" [IFA Section 13(8)].

At the conclusion of any public review, the alternative decisions which are open to the EIRB are prescribed by Section 11(24), which reads:

"The Review Board shall expeditiously review all projects referred to it and on the basis of the evidence and information before it shall recommend whether or not the development should proceed and, if it

should, on what terms and conditions, including mitigative and remedial measures. The Review Board may also recommend that the development should be subject to further assessment and review and, if so, the data or information required."

To clarify the EIRB's decision-making powers - the EIRB *recommends* whether or not the development should proceed. However, the final decision always rests with the appropriate governmental authority. In certain cases, more than one such authority may be involved.

If the competent government authority is unwilling or unable to accept the recommendations of the EIRB, or wishes to modify any of them, reasons must be made public in writing within 30 days of the Decision [Section 11(29)]. Nevertheless the IFA provides that no licence or approval shall be issued by a government authority that would permit any proposed development to proceed unless the provisions of the Environmental Impact Screening and Review Process under the IFA have been complied with [Section 11(31)].

4.2 Special Responsibilities of the EIRB for the Yukon North Slope

The Inuvialuit Final Agreement defines the Yukon North Slope as:

"... all those lands between the jurisdictional boundaries of Alaska and the Yukon Territory and the Northwest Territories, north of the height of land dividing the watersheds of the Porcupine River and the Beaufort Sea, and including adjacent nearshore and offshore waters and islands." [Section 12(1)]

and declares that

"The Yukon North Slope shall fall under a special conservation regime whose dominant purpose is the conservation of wildlife, habitat and traditional native use." [Section 12(2)]

Section 12(23) of the IFA requires any Panel set up to review a development activity to:

"... take into account the following criteria in its consideration of any development proposal:

- (a) analysis of the significance of the part or parts of the Yukon North Slope proposed for development use from the standpoint of conservation and harvesting interests;
- (b) evaluation of practical alternative locations and of the relative commercial and economic merits of and environmental impact on such locations compared to the part or parts of the area proposed for utilization in the application;

- (c) evaluation of the environmental and social impacts of the proposed development;
- (d) weighing of the interests of users, conservationists and harvesters in the Yukon North Slope against public convenience and necessity for development;
- (e) evaluation of the ability of the applicant to demonstrate that he has, or will acquire, the proven capability to carry out the project in accordance with established standards of performance, safeguards and other requirements and to carry out the necessary environmental mitigation and restoration; and
- (f) requirements for effective machinery to ensure that the development proceeds in accordance with any established terms and conditions."

4.3 The EIRB's Interpretation of its Mandate

Section 4.1 of this document describes the decision-making powers of the EIRB. They require that the EIRB approve or reject the development and, if approval is given, prescribe terms and conditions on which it may proceed.

In particular, Section 13(11)(a) requires the EIRB to specify terms and conditions that it considers necessary to minimize any negative impacts on wildlife harvesting and Section 13(11)(b) requires it to provide an estimate of the potential liability of the developer.

These requirements are intended to fulfil the objectives set forth in Section 13(1), namely:

- (a) to prevent damage to wildlife and its habitat and to avoid disruption of Inuvialuit harvesting activities by reason of development; and
- (b) if damage occurs, to restore wildlife and its habitat as far as it is practicable to its original state and to compensate Inuvialuit hunters, trappers and fishermen for the loss of their subsistence or commercial harvesting opportunities.

The EIRB notes the order in which these objectives are stated. Clearly the intention is that priority be given to preventing damage and avoiding disruption of harvesting. Paragraph (b) is intended to apply to provide compensation only if mitigative and remedial measures fail to prevent damage and disruption. This sequence of avoidance, mitigation, restoration and, as a last resort, compensation, is consistent with resource management principles as reflected in the Fisheries Habitat Policy published by the Department of Fisheries and Oceans.

The EIRB interprets its mandate to mean that its first responsibility is to assess whether the potential adverse impacts of a development on wildlife and its habitat are within acceptable limits of risk. If the EIRB concludes that such risks are not acceptable, it must reject the application. If it considers that the risks are acceptable, the EIRB must specify

terms and conditions that, so far as practicable, will mitigate and remedy the damage and disruption. Finally, as a last resort, compensation may be payable for cleanup and restoration costs and for loss of wildlife harvesting by reason of the legal liability provisions of Section 13(15) of the IFA. In this event, the EIRB is required to estimate the potential liability of the developer.

4.4 Assessment of Risk

In deciding whether the risks associated with a development are acceptable, the EIRB must apply some standard or test, the results of which the EIRB can use to approve or reject the development. With respect to the estimate of potential liability, the IFA says that the test by which liability should be measured should be a "worst case scenario" [Section 13(11)(b)]. However, as to the more fundamental question of approval or rejection of the development proposal, the IFA is silent as to what test should be applied.

In the Kulluk review, the EIRB considered a *probable scenario* as a legitimate test by which to judge whether negative impacts can be minimized to acceptable levels by mitigative and remedial measures. When considering a *probable scenario* the EIRB starts with the worst case scenario and then applies probability analysis along with its assessment of the effectiveness of mitigative and remedial measures. The result is a less stringent test than the worst case scenario and this approach is adopted by the Panel for the purpose of this review.

The explanation for the two standards would be that development risks should be acceptable where the more probable scenario establishes that negative impacts can be minimized to acceptable levels. Just to be sure, should the worst case scenario occur, there would be in place a guarantee of financial responsibility to ensure that everything possible would be done to mitigate losses to, and to restore wildlife and wildlife habitat.

5.0 ISSUES

5.1 Worst Case Scenario

According to Driftwood, with proper mitigative measures, the risk of environmental damage from its operation is nil.

The EIRB believes that there is the possibility of some wildlife loss as a result of Driftwood's operations. Although it is difficult to determine a definitive worst case scenario for the Development, the EIRB has identified the threat to denning polar bears as the most probable serious negative impact. During the public meeting in Aklavik, the Driftwood representative confirmed the need for Driftwood to consult with the Aklavik Hunters and Trappers Committee about nuisance bear kills that could take place as a result of Driftwood's operations. Intervenors at the Inuvik public meeting and in writing expressed concerns about the impact of polar bear kills on the North Slope on the polar bear quotas of all the Mackenzie Delta communities and, possibly, Inupiat communities in Alaska. The EIRB accepts the argument that polar bear losses could impact on the Inuvialuit harvesting throughout the South Beaufort Sea.

Section 18 of the IFA provides for arbitration proceedings with respect to disputes concerning compensation for wildlife loss [section 18(35)(h)]. In the past developers appearing before the EIRB have agreed to enter into wildlife compensation agreements with the IGC. Driftwood has expressed a willingness to enter into such a wildlife compensation agreement. The Panel recommends that Driftwood seek to enter into such an agreement with the IGC.

Even with proper mitigative measures there remains a possibility that the worst case scenario would occur and there will be polar bear losses caused by the Development. It is the Panel's opinion that the loss of three polar bears, a female and two cubs, is a reasonable estimate of the maximum extent of polar bear losses. The Panel believes that the loss of each polar bear can represent a loss of up to \$20,000 to Inuvialuit hunters. This is based on the value of a sport hunt to these hunters. The Panel, therefore, recommends that Driftwood maintain a \$60,000 letter of credit in favour of the IGC as security for present and future wildlife harvest losses, to be utilized in accordance with the wildlife compensation agreement to be entered into between the IGC and Driftwood.

The Panel further recommends that the Department of Indian Affairs and Northern Development (DIAND) require Driftwood to post a letter of credit, a guarantee or an indemnity bond in the amount of \$100,000 as a condition of its land use permit to cover land restoration costs that may arise as a result of the Development.

The Board recognizes that the IFA contains a backstop provision in section 13(16) that requires Canada to assume Driftwood's liability in the event that the terms and conditions as set out in this Decision are not complied with and in the event that the \$100,000 maximum security permitted under the Land Use Permit is insufficient to fund all necessary mitigative and remedial measures for the Development.

5.2 Conservation of the North Slope

The EIRB is charged under Section 12 (23) of the IFA with taking into account six criteria in the consideration of any development proposal.

5.2.1 Significance of the part or parts of the Yukon North Slope proposed for development use from the standpoint of conservation and harvesting interests.

The Panel through its public meetings and written submissions has learned that the King Point area where the Development is to commence has charr in the nearshore in August, is adjacent to the migration routes for beluga and bowhead whales, is a possible denning area for polar bears in the period November to April, and is a potential nesting and rearing area for birds from May to August. The Porcupine caribou herd often passes this area during the early spring on its way to its calving grounds further west.

Driftwood, in an attempt to minimize the impact of the Development on wildlife, has agreed not to operate heavy machinery in the water, including the ocean and stream beds, and on the tundra during the summer months, not use barges for resupply of fuel and to leave 50% of the driftwood in each pile undisturbed.

Some Aklavik residents hunt and fish occasionally in the King Point area but the area is not as well used as the area around Shingle Point and the Running River.

The Aklavik Hunters and Trappers Committee has expressed support for the Development, although the Inuvik Hunters and Trappers Committee has reservations about the Development.

The Panel has considered all of these comments and has concluded that an operation along the beach in the King Point area during the spring and summer months should not seriously impact on the conservation and harvesting interests of the Inuvialuit. The construction and use of a winter road offshore of the North Slope during the winter months need not impact on the North Slope. The Panel has recommended special provisions for loading logs along the coast during the winter to prevent bear/man interactions (see section 5.3.6.2).

5.2.2 Evaluation of practical alternative locations and of the relative commercial and economic merits of and environmental impact on such locations compared to the part or parts of the area proposed for utilisation in the application.

The Panel believes that Driftwood has in part met this criteria. Driftwood had originally planned to collect logs in the Shingle Point area of the North Slope but at the request of the people of Aklavik, Driftwood has confirmed that it will confine its camp location to King Point and Driftwood undertook not to collect logs on Shingle Point, Escape Reef and at the mouth of the Running River.

The Panel viewed recent videos of the coast line from Kay Point to Mackenzie Delta and from these videos is satisfied that the most practical place for the Development to commence is King Point.

5.2.3 Evaluation of the environmental and social impacts of the proposed development.

The Panel heard evidence at the public meetings of the need for employment in Aklavik and the intent of Driftwood to hire staff from Aklavik and Inuvik. The EIRB also heard evidence related to the environmental impacts of the Development. It believes that the environmental impacts can be successfully mitigated through the stringent operating procedures recommended by the Panel and that the social impacts of the Development will be positive.

5.2.4 Weighing of the interests of users, conservationists and harvesters in the Yukon North Slope against public convenience and necessity for development.

The Panel, when reviewing these matters, considered the comments made at the public meetings and the written submissions it received. The Aklavik Inuvialuit Community Conservation Plan and the 1994 draft Yukon North Slope Wildlife Conservation and Management Plan were also consulted.

The Panel is of the opinion that the Development can be conducted so as to have very little impact on the other users of the North Slope and, if it is proven to be economically viable, could contribute to the employment base in the Mackenzie Delta communities.

5.2.5 Evaluation of the ability of the applicant to demonstrate that he has, or will acquire, the proven capability to carry out the project in accordance with established standards of performance, safeguards and other requirements and to carry out the necessary environmental mitigation and restoration.

In order to carry out this evaluation, the Panel sought financial information from Driftwood. Driftwood was not prepared to share financial information with the Panel. The Panel has no authority to compel this disclosure but may make inferences concerning financial ability because of it. Driftwood has undertaken in writing to the Panel and verbally at the public meetings to adhere to all environmental standards and to meet whatever financial security was required of Driftwood by government.

Because of the uncertainty as to the financial ability of Driftwood, the Panel believes that it is essential for Driftwood to post a bond with DIAND to guarantee that the Development will be conducted according to the conditions of the land use permit issued for the Development.

5.2.6 Requirements for effective machinery to ensure that the development proceeds in accordance with any established terms and conditions.

The Panel sought information from the DIAND concerning its usual inspection practices on the Yukon North Slope. DIAND advised the Panel that, normally, one inspection

would be carried out per year unless the land use engineer received complaints concerning an operation.

The Panel, because of the sensitivity of the North Slope and because of the unique nature of this Development is not satisfied that one inspection a year is adequate.

The Panel, as a condition of approving the Development, recommends DIAND conduct inspections at six week intervals during the spring and summer portion of the Development, and at least once during the winter log hauling segment of the Development.

5.3 Routine Operations

Many of the interventions from Registered Participants and the public received by the Panel expressed concerns about the proposed day-to-day operations of the Development and the lack of information concerning these operations in the EIS. In order to deal with these matters, the Panel sponsored a meeting in Aklavik between Driftwood, the Registered Participants and the public to determine appropriate standards and conditions for the Development. The conclusions of this meeting as they relate to routine operations have been endorsed by the Panel and are summarized below.

5.3.1 Fuel Haulage and Storage

Driftwood has given undertakings that all fuel delivery will occur in the winter over a winter road, that the storage of the fuel will conform to government standards, and that all fuel will be stored away from the water.

The Panel recommends that:

1. the fuel haul to the Development site be done by truck;
2. fuel spills in winter be burned off to keep the fuel out of the marine environment;
3. fuel be stored in a lined berm;
4. fuel be stored at least 30 m from the high water mark; and
5. Driftwood display a Spill Contingency Plan that has been approved by DIAND in a conspicuous place in the camp.

5.3.2 Location of Camp

Driftwood has as yet not selected an exact location for the camp. The camp would likely be placed at the south end of King Point since the north side of the lagoon has several historic sites. After the driftwood inventory is complete and the location of driftwood concentrations is known, Driftwood plans to use topographic maps to select a general area. They would then conduct an on-site inspection to pinpoint the exact camp location, taking into consideration such factors as soil type, topography, and distance above the beach. The trailers would be blocked as appropriate. It is possible the camp would be moved once a year, if required.

The Panel recommends that:

1. camp buildings be placed on a well drained site; and
2. if Driftwood moves its camp away from King Point, DIAND submit the request for amendment of the land use permit to the EISC.

5.3.3 Sewage and Waste Disposal

Driftwood had originally proposed to use a septic tank system to dispose of sewage at the camp. However, after consultations with the Yukon Territorial Government, Driftwood decided to use the sewage system now used to dispose of sewage on Herschel Island. Driftwood had no specific plans for the disposal of "grey" water.

The Panel recommends that:

1. the camp use the type of sanitation system now used by the Territorial Government on Herschel Island;
2. grey water be disposed of in a sump; and
3. sludge produced from the sanitation system or the grey water pit should be buried or brought to Inuvik.

5.3.4 Winter Road

Registered Participants expressed some concern that if the winter road was built too close to shore along the North Slope, there would be an impact on denning polar bears. However, as a practical consideration, most agreed that the near shore area was the most difficult area to construct a road.

The Panel recommends that:

1. the ice-road be built parallel to the shore and at least 1 km off-shore; and
2. access roads to the shore approach the shore at right angles.

5.3.5 Operational Constraints

As a result of interventions from Registered Participants and the public and the undertakings made by Driftwood, the Panel recommends that:

1. log collection activities remain 0.5 km distance from any traditional hunting and fishing camp; and
2. all spring and summer operations be restricted to the beach area.

5.3.6 Wildlife Protection Measures and Harvest Protection Measures

5.3.6.1 Whales

Several intervenors expressed concerns that the noises from the operation would impact on Aklavik's bowhead hunt. Driftwood has undertaken to shut down the operation during the bowhead hunt if requested to do so by the hunters.

5.3.6.2 Polar Bears

The Panel has received professional advice from polar bear biologists that the coast from King Point to Kay Point and beyond has the potential to serve as a polar bear denning area during the period November 1 to April 15. The areas of the coast with potential polar bear denning can be identified and zoned by Canadian Wildlife Service polar bear biologists.

The Panel recommends that in order to avoid disturbing polar bears in their dens:

1. operations not take place from November 1 to April 15 in areas identified each year by wildlife authorities as Polar Bear Denning zones.
2. during all operations on the North Slope a bear monitor be employed; and
3. Driftwood sponsor the Aklavik Hunters and Trappers Committee to conduct a survey by snowmobile each year along the North Slope from Shingle Point to Kay Point to identify new polar bear denning sites.

5.3.6.3 Hunting and Fishing by Company Employees

Registered Participants have raised the concern that increased access for Driftwood employees may deplete wildlife and fish stocks, especially the charr populations that frequent King Point during certain times of the year. Driftwood has indicated it will not rely on local resources to feed its employees.

The Panel recommends that:

1. it be made a condition of employment by Driftwood that its employees and subcontractors and their employees refrain from hunting and fishing during the period they are working for Driftwood on the North Slope.

5.3.7 Heritage Protection Measures

The Panel was advised that the area had significant potential for historic and archaeological sites and that it was probable that unmarked sites existed in the King Point area.

The Panel recommends that:

1. once sites suitable for driftwood harvesting have been identified by Driftwood, Driftwood contract an archaeologist to visit the area and identify sites of archaeological or historic interest. These sites are to be marked on maps and copies of these maps provided to Driftwood, the Yukon Government's Heritage Branch and the community of Aklavik; and
2. the Aklavik Elder's Council should be asked to examine the map produced by the archaeologist to see if they can identify any further areas of significance.

5.4 Coastal Erosion

Concerns were expressed to the Panel that the removal of driftwood from the beach along the North Slope would result in accelerated erosion of the beach. The Panel was provided anecdotal evidence supported by historical records and photos indicating that the North Slope has a rapidly changing coastline due to natural forces. Driftwood has undertaken to leave 50% of the driftwood in each pile undisturbed. The Panel is satisfied that the Development with this restriction will not appreciably increase the amount of beach erosion.

6.0 THE PANEL'S DECISION

The Panel is satisfied that it can approve the Development subject to the following terms and conditions.

6.1 Terms

1. The Development must proceed within two years of this decision. If Driftwood is unable to proceed in this period, the Development should be again brought before the EISC.
2. Driftwood be required to maintain:
 - (a) a letter of credit in favour of the IGC in the amount of \$60,000 to cover potential wildlife losses. This letter of credit can be accessed as provided for in the wildlife compensation agreement between Driftwood and the IGC, and
 - (b) a letter of credit, a guarantee or an indemnity bond in the amount of \$100,000 in favour of DIAND to cover land restoration costs.
3. DIAND undertake to monitor the Development for the duration of the land use permit at six week intervals during the summer and at least once during the winter to ensure:
 - (a) that after an area is logged, the beach is left, as far as is practicable, in its original state;
 - (b) that Driftwood is conforming to the terms of the permit;
 - (c) Driftwood honours its undertakings:
 - (i) to not use a barge for fuel resupply;
 - (ii) to restrict its operations to the beach;
 - (iii) to shut down during the bowhead harvesting period if requested to do so by the hunt captain; and
 - (iv) to refrain from harvesting logs in the vicinity of Shingle Point, Escape Reef and the mouth of the Running River.

6.2 Conditions

DIAND should not issue the necessary land use permit until the Minister has received a copy of the wildlife compensation agreement between Driftwood and the IGC duly executed by the parties, and is satisfied that the following mitigative measures will be followed.

6.2.1 Fuel Haulage and Storage

The Panel recommends that:

1. the fuel haul to Development site be done by truck;
2. fuel spills in winter be burned off to keep the fuel out of the marine environment;
3. fuel be stored in a lined berm;
4. fuel be stored at least 30 m from the high water mark; and
5. Driftwood display a Spill Contingency Plan that has been approved by DIAND in a conspicuous place in the camp.

6.2.2 Location of Camp

The Panel recommends that:

1. camp buildings be placed on a well drained site; and
2. if Driftwood moves its camp away from King Point, DIAND submit the request for amendment of the land use permit to the EISC.

6.2.3 Sewage and Waste Disposal

The Panel recommends that:

1. the camp use the type of sanitation system now used by the Territorial Government on Herschel Island;
2. grey water be disposed of in a sump; and
3. sludge produced from the sanitation system or the grey water pit be buried or brought to Inuvik.

6.2.4 Winter Road

The Panel recommends that:

1. the ice-road be built parallel to the shore and at least 1 km off-shore; and
2. access roads to the shore should approach the shore at right angles.

6.2.5 Operational Constraints

The Panel recommends that:

1. log collection activities remain 0.5 km distance from any traditional hunting and fishing camp; and
2. all spring and summer operations be restricted to the beach area.

6.2.6 Wildlife Protection Measures and Harvest Protection Measures

6.2.6.1 Polar Bears

The Panel recommends that in order to avoid disturbing polar bears in their dens:

1. operations not take place from November 1 to April 15 in areas identified each year by wildlife authorities as Polar Bear Denning zones;
2. during all operations on the North Slope a bear monitor be employed; and
3. the company sponsor the Aklavik Hunters and Trappers Committee to conduct a survey by snowmobile each year along the North Slope from Shingle Point to Kay Point to identify new polar bear denning sites.

6.2.6.2 Hunting and Fishing by Driftwood Employees

The Panel recommends that:

1. it be made a condition of employment by Driftwood that its employees and subcontractors and their employees refrain from hunting and fishing during the period they are working for Driftwood on the North Slope.

6.2.7 Heritage Protection Measures

The Panel recommends that:

1. once sites suitable for driftwood harvesting have been identified by Driftwood, Driftwood contract an archaeologist to visit the area and identify sites of archaeological or historic interest. These sites are to be marked on maps and copies of these maps provided to Driftwood, the Yukon Government's Heritage Branch and the community of Aklavik; and
2. the Aklavik Elder's Council should be asked to examine the map produced by the archaeologist to see if they can identify any further areas of significance.

The undersigned, members of the Panel as selected by the Chairman of the Environmental Impact Review Board, respectfully submit the decision and recommendations contained herein.

Robert Hornal
Chairman

Tom Butters
Member

Albert Elias
Member

Nelson Green
Member

Bill Klassen
Member

January 25, 1995

APPENDIX A

PUBLIC NOTICE OF REFERRAL DATED AT INUVIK, NORTHWEST TERRITORIES 8 AUGUST 1994

On 3 August 1994 the Environmental Impact Screening Committee referred the development proposal known as Driftwood Lumber Salvage Proposal (Land Use Permit Application YA3X596, Process Driftwood, Winter Road, Fuel Haul, Sawmill and Campsite, King Point, Yukon) to the Environmental Impact Review Board for Public Review. This Public Review is being held pursuant to the Inuvialuit Final Agreement (IFA) which has been approved, given effect and declared valid by the Western Arctic (Inuvialuit) Claims Settlement Act, being Chapter 24 of the Statutes of Canada 32-33, Elizabeth II (1984).

The purpose of this review is to assess the potential environmental effects of the proposed operation and for the Environmental Impact Review Board to recommend whether or not the development should proceed and, if it should, on what terms and conditions, including mitigative and remedial measures. The Review Board may also recommend that the development should be subject to further assessment and review and, if so, the data or information required.[IFA 11.(24)]

The Environmental Impact Review Board invites organizations, government agencies, and members of the public to participate in the review and to make submissions to the Review Board concerning these matters.

Individuals and/or organizations that intend to make submissions should register by letter with the Secretary of the Environmental Impact Review Board.

Registered Participants will be placed on a mailing list, and thereafter will receive all documents designated for distribution, including the proponent's environmental impact statement (EIS), subsequent notices, procedural rulings, and other written submissions.

Registered Participants may take part in the public review via their written submission or, in the event of a public forum, by sending a delegation. If a public forum is held, individuals and organizations that do not register an intention to participate may make oral submissions after Registered Participants have been heard.

Anyone wishing further information concerning this public review, or who would like a copy of the Environmental Impact Review Board's Operating Procedures should contact:

Secretary, Environmental Impact Review Board
P.O. Box 2120,
Inuvik, Northwest Territories
X0E 0T0
Telephone: (403) 979-2828
Telecopier: (403) 979-2610

APPENDIX B

LIST OF REGISTERED PARTICIPANTS DRIFTWOOD LUMBER SALVAGE PROPOSAL

A/Area Manager, Western Region, Dept. of Fisheries and Oceans, Inuvik, NT

A/Executive Director, Inuvialuit Regional Corporation, Inuvik, NT

Ken Anderson, Senior Administrative Officer, Town of Inuvik Office, Inuvik, NT

Don Arey, Student, Renewable Resources Technology Program, Arctic College, Inuvik, NT

John Bailey, Wildlife Management Advisory Council (NWT), Inuvik, NT

Tom Beck, Environmental Impact Screening Committee, Inuvik, NT

Bob Bell, Fisheries Joint Management Committee, Inuvik, NT

Robert Bruce, Chief, Old Crow Indian Band, Old Crow, Yukon

Steven Charlie, Environmental Protection Office, Environment Canada, Inuvik, NT

Rudy Cockney, District Manager, Indian & Northern Affairs Canada, Inuvik, NT

Roger Connelly, Regional Director, Government of the NWT, Inuvik, NT

Joan Eamer, Environment Canada, Whitehorse, Yukon

Don Forbes, Geological Survey of Canada, Dartmouth, Nova Scotia

Keith Hickling, Assistant Superintendent, GNWT Dept. of Renewable Resources, Inuvik, NT

Manfred Hoefs, Chief of Habitat, Dept. of Renewable Resources, YTG, Whitehorse, Yukon

Jeff Hunston, Director, Heritage Branch, Dept. of Tourism, YTG, Whitehorse, Yukon

Laura Johnson, Manager, Environmental Protection Service, NWT District, Environment Canada, Yellowknife, NT

Warren Johnson, Regional Director General, Indian and Northern Affairs Canada, Yellowknife, NT

John Nagy, Supervisor, Wildlife Management, GNWT Dept. of Renewable Resources, Inuvik

Albert Peter, Porcupine Caribou Management Board, Whitehorse, Yukon

Floyd Roland, Chairman, Inuvik Hunters & Trappers Committee, Inuvik, NT

Don Russell, Canadian Wildlife Service, Whitehorse, Yukon

Vicky Sahanatien, Canadian Heritage, Parks Canada, Inuvik, NT

Lindsay Staples, Wildlife Management Advisory Council (North Slope), Whitehorse,
Yukon

Mary Ann Stewart, Chairperson, Aklavik Hunters & Trappers Committee, Aklavik, NT

Mark Zrum, Head, Land Use, Indian & Northern Affairs Canada, Whitehorse, Yukon

APPENDIX C

NOTICE OF PUBLIC MEETINGS DATED AT INUVIK, NORTHWEST TERRITORIES OCTOBER 14, 1994

A Public review of DRIFTWOOD LUMBER COMPANY'S DRIFTWOOD LOGGING OPERATION AT KING POINT, SAWMILL AT INUVIK, AND WINTER ROAD BETWEEN THE TWO OPERATIONS has been initiated by the Environmental Impact Review Board. This Public Review is being held pursuant to the Inuvialuit Final Agreement which has been approved, given effect and declared valid by the Western Arctic (Inuvialuit) Claims Settlement Act, being Chapter 24 of the Statutes of Canada 32-33, Elizabeth II (1984).

A public meeting will be held at the Sittichinli Recreational Complex in Aklavik, Northwest Territories, beginning at 6:00 p.m. local time on the 1st of November 1994 and continuing thereafter as may be necessary. A second public meeting will be held in the Public Meeting Room, located on the first floor of the Inuvialuit Corporate Centre, 107 Mackenzie Road in INUVIK, Northwest Territories, beginning at 6:00 p.m. local time on the 2nd of November 1994 and continuing thereafter as may be necessary.

The public meetings are part of the review process to assess the potential environmental effects of the proposed operation and to determine whether or not the Environmental Impact Review Board should recommend that the development proceed and, if it should, on what terms and conditions, including mitigative and remedial measures. The Review Board may also recommend that the development should be subject to further assessment and review and, if so, the data or information required.[IFA 11.(24)]

Should the Environmental Impact Review Board approve the proposal following the public meeting, it will, on the basis of the evidence and information before it, make recommendations to the government authorities empowered to approve the proposal concerning:

terms and Conditions relating to the mitigative and remedial measures that it considers necessary to minimize any negative impact on wildlife harvesting; and

an estimate of the potential liability of the developer, determined on a worst case scenario, and taking into consideration the balance between economic factors including the ability of the developer to pay, and environmental factors.

The Environmental Impact Review Board invites members of the public to attend the public meetings to make oral submissions to the Review Board concerning these matters and to clarify community concerns, if any, for the proposed operation.

Copies of the Driftwood Lumber Company's submission, which describes the proposed project are available for examination during normal business hours at the office of the Joint Secretariat, 107 Mackenzie Road, Inuvik, Northwest Territories, and at the office of the Aklavik Hunters and Trappers Committee, in the Office Complex, Aklavik, Northwest Territories.

Anyone wishing further information concerning this public review, or who would like a copy of the Environmental Impact Review Board's Operating Procedures should contact:

Secretary, Environmental Impact Review Board
P.O. Box 2120,
Inuvik, Northwest Territories
X0E 0T0
Telephone: (403) 979-2828
Telecopier: (403) 979-2610

APPENDIX D

RULING BY THE ENVIRONMENTAL IMPACT REVIEW PANEL RE: WILDLIFE COMPENSATION AND FINANCIAL RESPONSIBILITY

The Panel has reviewed the predicted environmental impacts of the Driftwood Lumber Company's proposal for a driftwood logging operation at King Point, a winter road to Inuvik, and a sawmill in Inuvik and would like to be assured that any negative impacts can be successfully avoided through appropriate mitigative measures. Therefore, the Panel seeks a meeting between the proponent and the interested parties to discuss the most appropriate mitigative measures of the project. It invites all interested parties and the proponent to a meeting in Aklavik on November 29, 1994. The meeting will be chaired by Bill Klassen, Member of the Review Panel.

The Panel is not satisfied at this time that the proponent can identify its financial responsibility with respect to potential harvest loss. The proponent has also indicated a willingness to resolve conflicts with local harvesters. The Panel requests that the proponent enter into negotiations with the Inuvialuit Game Council to conclude a Wildlife Compensation Agreement that would be in effect should the project proceed.

The Panel therefore adjourns its deliberations until January 10, 1995 to permit a written summary of the November 29, 1994 meeting to be circulated and for the proponent and the Inuvialuit Game Council to conclude a Wildlife Compensation Agreement.

Dodie Malegana, Secretary
4 November 1994