



ENVIRONMENTAL IMPACT REVIEW BOARD

June 20, 2012

TO: Parties to the Review of the Proposed Inuvik to Tuktoyaktuk Highway Project

Re: Developer's Request for Ruling

The attached Information Release to the Parties explains the process for responding to the Developer's Request for Ruling to change the current schedule for the Review. Please note the following dates for responses.

Date for Parties to Respond: June 29th, 2012 end of business day.

Date for Developer to Respond: July 5th, 2012 end of business day.

Please contact me if you have any questions regarding this information.

Sincerely,

Eli Nasogaluak
EIR Coordinator
Environmental Impact Review Board
Phone: (867) 777-2828
Fax: (867) 777-2610
eirb@jointsec.nt.ca

The Joint Secretariat – Inuvialuit Settlement Region
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ENVIRONMENTAL IMPACT REVIEW BOARD

REQUEST FOR RULING BY THE DEVELOPER OF THE PROPOSED INUVIK to TUKTOYAKTUK HIGHWAY PROJECT

INSTRUCTIONS TO THE PARTIES

DATE OF RELEASE:	June 20, 2012
DISTRIBUTION:	All registered Parties, EIRB Electronic On-line Registry (EOR), and the Public.
PURPOSE:	The Information Release explains the Request for Ruling process and the expected role of the Parties.
REQUEST FOR RULING:	The Developer has requested a change in the Review schedule that, if accepted, would see the Technical Sessions and the Public Hearings occurring earlier than currently scheduled. This schedule change may also see the Review Panel report of the Review being completed and released earlier than currently scheduled.
REQUEST FOR RULING STEPS:	Please refer to Attachment A.
DEVELOPERS REQUEST FOR RULING:	Please refer to Attachment B.
EIRB CONTACT:	Eli Nasogaluak EIR Coordinator 107 Mackenzie Road, Suite 204 P.O. Box 2120 Inuvik, NT X0E 0T0 867-777-2828 (phone) 867-777-2610 (facsimile) eirb@jointsec.nt.ca (email) www.eirb.ca (Web site and EOR access)

Attachment A

The Request for Ruling process is described in section 1.7 and Appendix A of the Rules of Procedure (Rules) for the Environmental Impact Screening and Review processes established by the Inuvialuit Final Agreement. These Rules were adopted for use in the Review of the proposed Inuvik to Tuktoyaktuk Highway Project.

The Rules of Procedure may be viewed on the EIRB web site at:
<http://www.eirb.ca/resources/reports.html> click on Rules of Procedure.

Section 1.7 and Appendix A of the Rules

1.7 Requests for Rulings

- 1.7.1 Requests for Rulings may only be made for legal and procedural issues.
- 1.7.2 Any legal or procedural issue raised by a Party to a Proceeding that requires a Ruling from the Review Board must be brought to the EIRB's attention by way of a written Request for Ruling. The Request must include a clear, concise statement of the relevant facts, an indication of the Ruling being sought from the EIRB and the reasons why the Ruling should be granted. The Request for Ruling should be filed according to the instructions on making a Request for Ruling in Appendix A.
- 1.7.3 All Requests for Rulings must be filed with the EIRB's EIR Coordinator for Environmental Reviews. The Coordinator shall ensure that a copy of the Request for Ruling is placed on the Registry and shall notify the Parties no later than twelve (12) days before the Review Board plans to consider the Request for Ruling.
- 1.7.4 A Party wishing to respond to a Request for Ruling must provide a written response and supporting documents (justification or evidence) to the Coordinator no less than (7) days before the Request for Ruling is scheduled to be heard by the EIRB. The Coordinator shall ensure that copies of the responses are placed on the Registry established for the Proceeding for the Parties to access four (4) days before the Review Board considers the Request for Ruling.
- 1.7.5 The process used to make a decision for a Request for a Ruling shall be at the Review Board's discretion.

Appendix A: Instructions for Making a Request for Ruling

These instructions are to be used when a Party wishes to make a legal or procedural Request for Ruling by the EIRB (see Rule 1.7). A Request for a Ruling is made during a Proceeding when a legal, procedural or a jurisdictional issue arises that needs resolution so the Proceeding can move on and be completed.

The Review Board shall make the decision as a Ruling that all Parties must abide by. The Review Board may also make Rulings at any time without an application from a Party.

The following information is requested when making a Request for Ruling:

- Name of Party
- Name of Proceeding
- Explanation of the Ruling requested (state the relief sought as clearly as possible)
- The facts or information relevant to the request for a Ruling
- The authority or grounds for the Ruling (e.g., any rules or law)
- List of supporting documents (justification or evidence)
- Dated and signed application

When a Request for Ruling has been received by the EIR Coordinator the Review Board shall decide on the Request for a Ruling. Once the Ruling has been made, a copy will be placed on the Registry.

Explanation of the Responsibilities of the Parties and the Developer

Once the Request for Ruling has been posted, the Parties will have seven (7) days to provide a written response to the Request for Ruling, if they so choose. Once received, the Developer will have three (3) days to respond to any of the written responses received from the Parties, if it so chooses.

Written responses should support, reject or suggest an alternative to, or modification of, the Request for Ruling. Any rejection or modification suggested must be supported by clear justification and/or evidence.

Explanation of the Responsibilities of the Review Board

Once the Request for Ruling response period is over, the Review Board will consider all of the written responses received from the Parties and the Developer and make its decision (Ruling). If a procedural and/or schedule change is accepted, the Review Board will post the revised procedures and/or schedule to the Registry and circulate it to all Parties.

Attachment B



June 18, 2012

VIA EMAIL

Eli Nasogaluak
Environmental Impact Review Coordinator
Environmental Impact Review Board
PO Box 2120 Inuvik, NWT, Canada X0E 0T0
eirb@jointsec.nt.ca

Dear Mr. Nasogaluak,

Re: Request for Ruling Environmental Impact Review, Inuvik to Tuktoyaktuk Highway Construction Project – EIRB FILE NO. 02/10-05

As per the Rules of Procedure for the Environmental Impact Screening and Review Process of the Inuvialuit Final Agreement – Appendix A, the following Request for Ruling is submitted on behalf of the Government of the Northwest Territories Department of Transportation, Town of Inuvik and Hamlet of Tuktoyaktuk. In summary the Developer is requesting a change **so that** the most recently issued schedule (May 25, 2012) be revised to allow for the issuance of the Review Panel Report prior to the end of 2012. A revision to the schedule is requested as the Developer is committed to providing the EIRB with all requested materials near the end of July 2012, and the schedule outlined in the May 25, 2012 letter from the EIRB puts the project at jeopardy of losing its funding **and subject to cancellation.**

Name of Proceeding:

Construction of the Inuvik to Tuktoyaktuk Highway, Northwest Territories Project Environmental Review pursuant to the Inuvialuit Final Agreement and Canadian Environmental Assessment Act

The Requested Ruling:

For the reasons explained below, the Developer requests a Ruling from the Environmental Impact Review Board that the Schedule for Review issued on May 25, 2012 be revised to provide that the Issuance of the Review Panel Report will be completed prior to the end of 2012. The Developer requests a new schedule that reflects the following:

July 2012	Technical Sessions, Inuvik
August 2012	Filing of Final Technical Submissions by the Parties
September 2012	Developer Reply to Party Final Submissions
September 2012	Public Hearings, Tuktoyaktuk and Inuvik
December 2012	Issue Review Panel Report

The Relevant Facts:

The Developer submitted its draft Environmental Impact Statement in May 2011.

Since that time, the Developer has completed and filed:

- August 2011 - A conformity response to EIRB for Category 3: Specific Critical Information Deficiencies and Category 2: Specific Non-Critical Information Deficiencies.
- August 2011 – Individual Responses to additional Conformity questions posed by Aboriginal Affairs and Northern Development Canada (AANDC), Environment Canada (EC), Health Canada (HC), Inuvialuit Land Administration (ILA), Transport Canada (TC), Tuktoyaktuk-Inuvik Working Group (TIWG), Wildlife Management Advisory Council (WMAC), Fisheries and Oceans Canada (DFO)
- October 25, 2011 – A response to EIRB detailing additional studies and outlining Developer commitments including mitigation and monitoring measures
- November 18, 2011 – The Developer filed an information letter from the GNWT describing social programming conducted by the Departments of Justice, Education Culture and Employment, Health and Social Services, NWT Housing Corporation and NWT Bureau of Statistics
- February 2012 – Response to EIRB Information Requests 1 – 70.
- March 2012 – Response to EIRB Round 2 Information Requests 90-145 from the EIRB, AANDC, DFO, EC, Infrastructure Canada (IC), HC, Natural Resources Canada (NRCan), TC, TIWG
- June 2012 – Response to EIRB Information Requests 147-152.

Other Parties have filed Responses to Round 2 Information Requests including: Fisheries Joint Management Committee (FJMC), HC, WMAC, DFO, Inuvialuit Regional Corporation (IRC), Inuvialuit Development Corporation (IDC), ILA, AANDC, Inuvialuit Game Council (IGC), Government of the Northwest Territories (GNWT), Canadian Northern Economic Development Agency (CanNor).

In order to comply with conformity comments from the EIRB and federal/territorial departments, the Developer committed to and has completed and filed:

- Final fish and fish habitat assessments in May 2011 and February 2012 in consultation with Department of Fisheries and Oceans
- Final Archaeological Impact Assessment [in confidence] on December?? 2011 in consultation with Prince of Wales Northern Heritage Centre
- Final terrain evaluation on March 14, 2012;
- Preliminary vegetation report on April 30, 2012
- Preliminary wildlife prediction report on June 15, 2012 in consultation with Environment Canada

On May 25, 2011, the EIRB provided the Developer with additional Information Requests and highlighted a September 7, 2012 submission date for all requested material. The EIRB also provided the Developer with 8 directives to be completed by September 7, 2012.

- Directive #1 The Developer will submit copies according to the attached schedule.
- Directive #2 The Developer expects to respond by July 2012
- Directive #3 The Developer will respond by June 30, 2012
- Directive #4 The Developer filed responses to EIRB Information Requests 147 – 152 on June 12, 2012.
- Directive #5 The Developer filed responses from the Government of the Northwest Territories on June 7, 2012 and Inuvialuit Regional Corporation on June 8, 2012. Both parties confirmed no updates to the socio-economic baseline or impacts were required.
- Directive #6 The Developer will file a response by July, 2012. The Draft Traditional Knowledge and Traditional Land Use Study is undergoing participant review and prior to filing[in confidence]
- Directive #7 The Developer will file a response by June 30, 2012
- Directive #8 The Developer will file a response by June 30, 2012

To ensure federal and territorial departments receive an adequate understanding of the project and effects including clarification of mitigations or follow-up (i.e. monitoring), the Developer and its consultants have met and continue to meet with these parties. As the Inuvialuit Final Agreement requires particular attention to wildlife resources, the Developer has continued to

work with the GNWT Department of Environment and Natural Resources since late 2010 in assessing effects on wildlife and determining mitigations and follow-up monitoring. Another recent example is the June 14, 2012 meeting with Environment Canada and the Canadian Wildlife Service on upcoming field habitat verification studies and mapping.

The Developer is of the opinion that developing and maintaining close cooperation with federal and territorial departments is important to ensuring adequacy of field work to provide sufficient information for the assessment of the project under CEAA Section 16 and other legislation as well as to prepare sufficient information for all regulatory authorizations.

The Developer is of the opinion the most expedient means of ensuring participation of federal and territorial departments and the public is to examine the growing body of information through Technical Sessions.

The Developer is of the opinion that relevant field work, mitigation commitments and follow-up monitoring have been provided to the public registry in sufficient detail to allow for “timely and meaningful public participation” as required under the EIRB – Canada Agreement.

The Developer is of the opinion that ongoing field work **to be completed and reported on after July and** appended to this motion is more pertinent for engineering and regulatory applications rather than project assessment and that the review process need not be delayed for the completion of this ongoing field work.

On May 25, 2012 the EIRB issued a revised schedule as:

September 7, 2012	May EIRB IR responses due
October 3, 2012	List of outstanding issues due
October 16-18, 2012	Inuvik Tech Session
November 9, 2012	Party Tech Reports and slideshow due
November 16, 2012	Developer Tech Reports and slideshow due
November 29 – 30, 2012	Hearings in Tuktoyaktuk
December 3-4, 2012	Hearings in Inuvik
December 14, 2012	Party Final Submissions
December 21, 2012	Developer Final Submission
March 22, 2013	Review Panel Report

The proposed Inuvik to Tuktoyaktuk Highway Project is a public infrastructure project intended to improve the lives of the Inuvialuit and general public. The project is to be undertaken by a territorial department that is subject to meeting legislative requirements and policy direction and decisions by Parliament and the Legislative Assembly. The Developer is aware that extension

of the date for the issuance of the Review Panel Report beyond the end of 2012 could jeopardize federal funding for the Project and likely cause its cancellation.

The Developer is of the opinion that an amendment to the Review Board review schedule issued on May 25, 2012 to undertake Technical Sessions in **July** 2012 would allow the completion of Public Hearings in a timely manner and would both preserve federal funding and allow limited construction work to commence on existing portions of road that are not within the scope of this project.

The Proponents remain committed to working diligently and cooperating fully with the EIRB to assist in the achievement of such a revised schedule.

The Authority or Grounds for the Ruling

The Inuvialuit Final Agreement 11(29) states "*The Review Board shall expeditiously review all projects referred to it ...*."

The Developer believes the Terms of Reference contained in the Agreement to Establish a Substituted Panel including Part II paragraphs 2, 3 and 4 require a timely review of the project.

List of Supporting Documents

- August 4, 2010 - EIRB Letter to Ministers Strahl and Prentice confirming decision to proceed with a Standard Public Review as set out in its operating procedures of February 5, 2004.
- March 2, 2011 – Agreement to Establish a Substituted Panel for the Inuvik to Tuktoyaktuk Highway Project Between the Government of Canada as presented by the Minister of the Environment, Canada and the Environmental Impact Review Board.

Respectfully Submitted

A handwritten signature in dark ink, appearing to read 'Jim Stevens', with a long horizontal flourish extending to the right.

Jim Stevens

On behalf of the Proponents

June 18, 2012

- c. Merven Gruben, Mayor of Tuktoyaktuk
Denny Rodgers, Mayor of Inuvik
Russell Neudorf, Deputy Minister of Transportation

INUVIK TO TUKTOYAKTUK HIGHWAY BASELINE DATA COLLECTION PROGRAMS SCHEDULE & STATUS

Program	Activity	Proposed Program Timing	Responsible	Status	Application in Project EA/Design/Planning/Regulatory Applications
Aerial Photography	1:10,000 scale photos Final Digital prints	August 31, 2011	DOT	Completed	Used in LSA mapping for vegetation and design
	Ortho-Photo Mosaic	September 2011	DOT	Completed	Used in engineering design and a variety of field surveys
LiDAR	LiDAR Survey	August 2011		Completed	n/a
	LiDAR Analysis	November 2011	DOT	Completed	Used in detailed engineering and terrain baseline mapping Used in field survey planning for wildlife and wildlife habitat
Fisheries	Fish Habitat Assessment	August 22 – September 23, 2011	IMG-Golder	Completed	Used in report preparation
	Draft Report	October 28, 2011	IMG-Golder	Completed	
	Final Report	January 31, 2012	IMG-Golder	Completed	Provides, in conjunction with 2010 surveys, site specific baseline for refined effects assessment Supports development of Fish and Fish Habitat Protection Plan Supports HADD application if necessary Supports TC Navigable Waters application Supports Water Licence application
Archaeology Impact Assessment	Field Survey	August 22 – September 23, 2011	IMG-Golder	Completed	Provides adequate baseline for Project EA assessment including site specific mitigation
	Draft Report	October 28, 2011	IMG-Golder	Completed	Provides, in conjunction with 2009 surveys, site specific baseline for refined effects assessment
	Final Report	December 20, 2011	IMG-Golder	Completed	Supports Archaeological Impact Assessment including defining site-specific mitigations Supports Archaeological Protection Plan development

Program	Activity	Proposed Program Timing	Responsible	Status	Application in Project EA/Design/Planning/Regulatory Applications
	Post-impact AIA and AIA at borrow sources	July 2012	KAVIK-STANTEC	Underway	
Potential Borrow Source Reconnaissance	Drilling and assessment of suitability of potential borrow sources	July – August 2011	E Grubens Transport	Field Work Completed Report due August 31	Supports pit development plans for Quarry Permits
Terrain and Geotechnical	Draft Surficial Geology Map of LSA and borrow sites at 1:20,000 including delineation and classification of surficial geology Mapping from digital imagery and High Definition and Mapping and Applications system	March 1, 2012	KAVIK-STANTEC	Completed	Supports detailed route alignment and costing Supports design of geotechnical program for site investigations of landforms, terrain stability, permafrost conditions, presence of waterbodies, identification of winter access road stream crossings, and hydrological factors affecting access or borrow extraction activities Supports planning of borrow source geotechnical investigations Supports vegetation land cover mapping Supports identification of potential wildlife habitat. Supports mitigation design and planning
	Draft Terrain Constraints Map of LSA and potential borrow sites at 1:20,000 including delineation and classification of ice-rich deposits and terrain related geohazards	March 1, 2012	KAVIK-STANTEC	Completed	Supports detailed route alignment and engineering Supports planning of borrow source geotechnical investigations Supports mitigation planning
	Final Terrain and Geotechnical Constraints report including identification, delineation and classification of surficial geology, ice-rich deposits and terrain constraints at a representative	March 31, 2012	KAVIK-STANTEC	Completed	Assists with detailed engineering and design Supports wildlife habitat mapping and field survey planning Supports Sediment and Erosion Plan development Supports LUP and WL applications

Program	Activity	Proposed Program Timing	Responsible	Status	Application in Project EA/Design/Planning/Regulatory Applications
	scale of 1:10,000				
Traditional Knowledge/ Traditional Land Use	Literature Review	September 2011	KAVIK-STANTEC	Completed	Used in TK Workshop preparation
	TK/TLU workshop material preparations	November 31, 2011	KAVIK-STANTEC	Completed	Used in conducting workshops
	Workshop - Inuvik	Week of January 21, 2012	KAVIK-STANTEC	Completed	Confirms understanding of site specific traditional knowledge and site specific traditional land use activities Provides adequate baseline for Project EA assessment including site specific mitigation Supports planning of geotechnical investigations
	Workshop - Tuktoyaktuk	Week of January 21, 2012	KAVIK-STANTEC lead	Completed	Confirms understanding of site specific traditional knowledge and site specific traditional land use activities Provides adequate baseline for Project EA assessment including site specific mitigation Supports planning of geotechnical investigations
	Analysis and community review	January/ February 2012	KAVIK-STANTEC	Draft Complete	Used in mitigation confirmation and construction phase Wildlife Mitigation and Monitoring Plan
	Final Report	June 29	KAVIK-STANTEC	Revised Schedule	Assists with detailed engineering and design Used in mitigation confirmation and construction phase Wildlife Mitigation and Monitoring Plan Supports TC Navigable Waters application
Vegetation Baseline	Preliminary LSA vegetation cover map and rare plant literature review	March 31, 2012	KAVIK-STANTEC	Complete	Used in field survey planning Used to confirm impact predictions Informs habitat potential mapping and wildlife field surveys
	Vegetation cover and Rare Plant Field Surveys and Sampling	July 16 – 20, 2012	KAVIK-STANTEC	Scheduled	Used to confirm preliminary vegetation mapping and rare plant potential Used in final design and mitigation

Program	Activity	Proposed Program Timing	Responsible	Status	Application in Project EA/Design/Planning/Regulatory Applications
					determination
	Draft Report including vegetation cover map at 1:10,000 and rare plant occurrences	August 15, 2012	KAVIK-STANTEC	Underway	Used in final design and mitigation implementation Used in wildlife habitat mapping
	Final Baseline Report including vegetation cover map at 1:10,000	August 31, 2012	KAVIK-STANTEC	August 31, 2012	Used in final design and mitigation implementation Used in mitigation / compliance monitoring
Wildlife and Wildlife Habitat	Draft LSA Bird Habitat Potential Map	May31, 2012	KAVIK-STANTEC	Complete	Used in refining construction phase Wildlife Mitigation and Monitoring Plan Used in design and implementation of habitat mitigations
	Waterbird / SARA bird habitat verification surveys	July2012	KAVIK-STANTEC in consultation with EC	Underway	Used in refining construction phase Wildlife Mitigation and Monitoring Plan Used in design and implementation of habitat mitigations
	Draft Report including bird and grizzly bear , habitat potential and observations map at 1:20,000	August 15, 2012	KAVIK-STANTEC	Underway	Used in design and implementation of species mitigations Used in refining Construction Wildlife Mitigation and Monitoring Plan
	Final Waterbird & SARA and grizzly denning potential Habitat Report and Map	August 31, 2012	KAVIK-STANTEC	Underway due August 31	Used in refining construction phase Wildlife Mitigation and Monitoring Plan Used in mitigation / compliance monitoring
	Grizzly Bear Den Survey	October 12, 2011 October 2012	ENR - Inuvik	Conducted October 12	Used in implementation of den mitigations prior to subsequent winter geotechnical investigations and construction
Engineering	Right-of-Way Surveys	July – August 2012	DOT	Pending	Used in implementation of mitigations
	Bridge Design	July 2012	DOT	Pending	Design and implementation of habitat mitigations
Hydrological Assessments	freshet overview survey	June 2012	KAVIK-STANTEC	Completed Interim report July 31	Support bridge crossing design and engineering Supports Water Licence application and DFO approvals Support Navigable Water permit

Program	Activity	Proposed Program Timing	Responsible	Status	Application in Project EA/Design/Planning/Regulatory Applications
					applications
	Desktop hydrological studies	June-July 2012	KAVIK-STANTEC	Underway	
	Hydrological field surveys	August 2012	KAVIK-STANTEC	August 2012	
	Hydrotechnical assessment and preliminary crossing design	September 2012	KAVIK-STANTEC	September 15	
Water Source Studies	Bathymetric Mapping of proposed water sources	August 2012	IMG-Golder	Pending	Supports Water Licence application Supports construction planning
	Assessment of allowable withdrawal quantities per source	August 2012	IMG-Golder	Pending	Supports Water Licence application Supports construction planning