

# **ENVIRONMENTAL IMPACT REVIEW BOARD**

## **OPERATING PROCEDURES**

**February 5, 2004**

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## **1.0 PURPOSE OF THESE OPERATING PROCEDURES**

- 1.1 The purpose of these *Operating Procedures* is to provide guidance to developers, regulatory authorities, and the public regarding the rules of procedure which the Environmental Impact Review Board (EIRB) will follow when a development proposal is referred to it for public review.
- 1.2 The *Operating Procedures* are not intended to be a legal interpretation of the pertinent provisions of the *Inuvialuit Final Agreement* (IFA), nor do they limit the powers of the EIRB to establish and adopt by-laws and rules for its own internal management and procedures [11(23)]<sup>1</sup>. These *Operating Procedures* should be used in conjunction with the current version of the IFA, which may be amended from time to time.
- 1.3 These *Operating Procedures* set out three basic approaches which the EIRB can follow once a referral has been received. These approaches are flexible enough so that a wide range of development proposals can be accommodated.
- 1.4 The three basic approaches are the Small Scale Development (SSD) case, described in section 13.0, the Standard Public Review (SPR) case, described in section 14.0, and variation of these standard procedures when circumstances dictate, as described in section 15.0.
- 1.5 The first point of contact with the EIRB is through the Secretary:

**Secretary  
Environmental Impact Review Board  
Joint Secretariat - Inuvialuit Renewable Resource Committees  
P.O. Box 2120  
Inuvik, Northwest Territories, Canada  
X0E 0T0**

**telephone: (867) 777 - 2828  
fax: (867) 777 - 2610  
email: eirb@jointsec.nt.ca**

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<sup>1</sup> Relevant references to the IFA will be enclosed in square brackets, thus [ ].

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- 1.6 Readers are referred to the Glossary appended to these *Operating Procedures* for definitions of terms used in the document.

## **2.0 GOALS OF THE INUVIALUIT FINAL AGREEMENT**

- 2.1 The EIRB operates within the scope of the *Inuvialuit Final Agreement* to achieve the basic goals expressed in Section 1:

*To preserve the Inuvialuit cultural identity and values within a changing northern society.*

*To enable the Inuvialuit to be equal and meaningful participants in the northern and national economy and society.*

*To protect and preserve arctic wildlife, environment and biological productivity.*

## **3.0 ESTABLISHMENT OF THE EIRB**

- 3.1 The EIRB was established under the terms of the IFA [11(18)], negotiated between the Government of Canada and the Committee for Original Peoples Entitlement (COPE), representing the Inuvialuit.
- 3.2 The IFA was "approved, given effect and declared valid" by a federal statute, the *Western Arctic (Inuvialuit) Claims Settlement Act* [S.C. 32 -33 Elizabeth II, C.24.28] in June, 1984.
- 3.3 In March, 1988, Inuvialuit responsibilities for implementation of the IFA were transferred from COPE to the Inuvialuit Regional Corporation (IRC) and the Inuvialuit Game Council (IGC), and COPE formally ceased to exist.
- 3.4 The EIRB is empowered to establish its own internal *Operating Procedures*, and formulate its own by-laws [11(23)]. The EIRB adopted By-law No.1 on December 9, 1987 and revised this By-law on October 25, 1995.
- 3.5 The EIRB's principal role is to act as the review body for any proposed development referred to it pursuant to the IFA.

## **4.0 STRUCTURE OF THE EIRB**

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- 4.1 The EIRB, because of the unique requirements of the IFA, possesses a structure balanced equally between the parties to the IFA [11(18)]. It is neither a government nor an Inuvialuit organization, but must remain independent and non-partisan to be effective.
- 4.2 The IGC, representing the collective Inuvialuit interest in wildlife, renewable resources, and the natural environment, selects three of the Permanent Members of the EIRB on behalf of the Inuvialuit.
- 4.3 The Department of Indian Affairs and Northern Development (DIAND) is designated to implement the legislation on behalf of the Government of Canada. DIAND administers the appointment by Order in Council of three Permanent Members, one selected by Canada, one by the Government of Yukon, and one by the Government of the Northwest Territories. The Chair is also appointed by Order in Council, but the Inuvialuit must consent to the individual selected.
- 4.4 Individuals appointed to the EIRB are expected to contribute to the proceedings as experienced, independent citizens, not as representatives of only one jurisdiction or viewpoint.
- 4.5 EIRB operations are driven by the overriding requirements that its process be fair to all participants as well as open to public scrutiny.

## **5.0 ENVIRONMENTAL IMPACT SCREENING AND REVIEW PROCESS**

- 5.1 Section 11 of the IFA describes the operations of the Environmental Impact Screening Committee (EISC) and the EIRB, collectively known as the Environmental Impact Screening and Review Process. The two agencies work closely together.
- 5.2 Section 11(2) of the IFA distinguishes between onshore and offshore development for the purposes of environmental impact screening and review. However, in a letter dated April 10, 1987, the Inuvialuit Game Council gave formal notice under Section 11.(1)(c) that all developments in the offshore and onshore on Crown lands within the Inuvialuit Settlement Region (Figure 1) were to be submitted for screening.

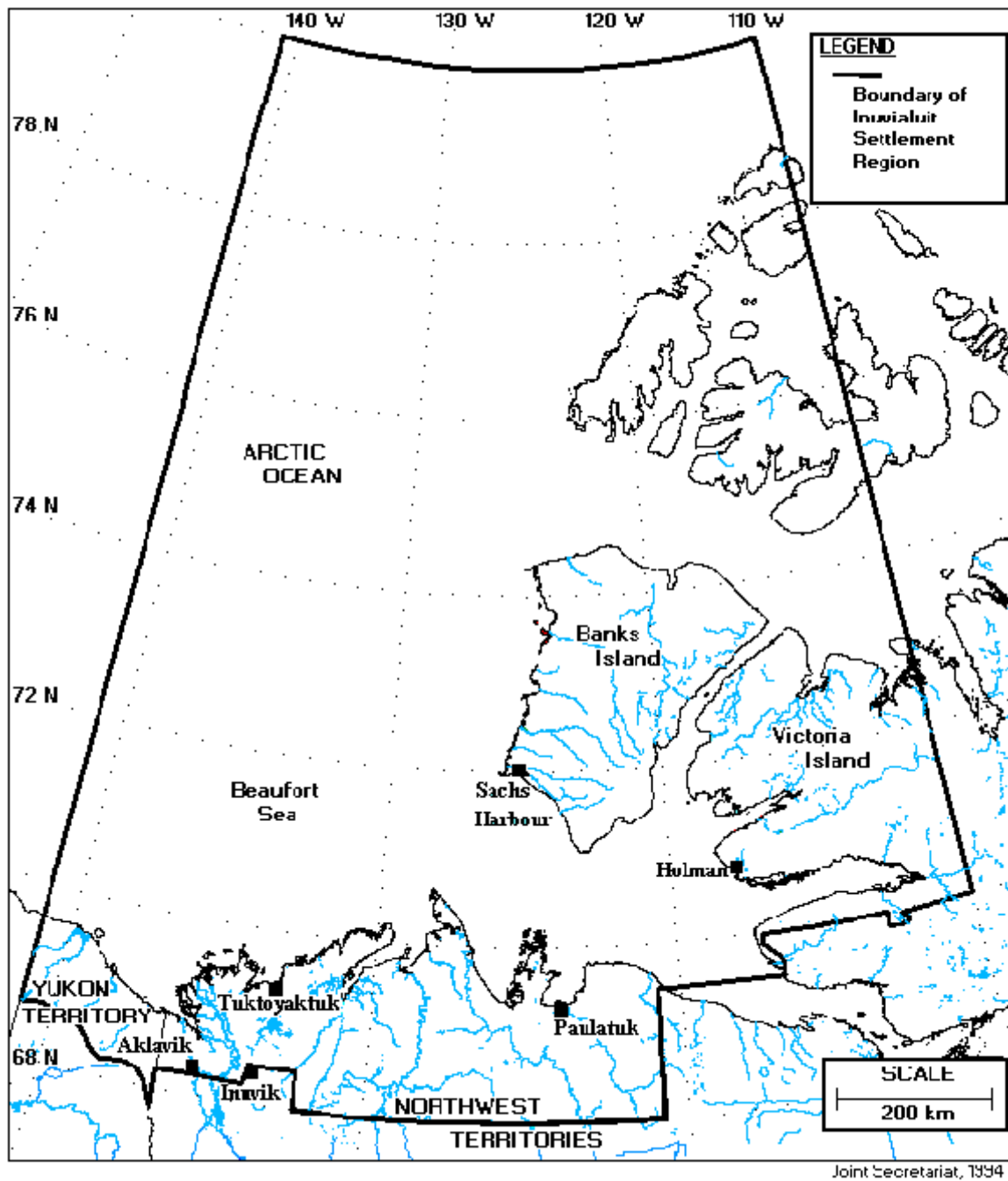


Figure 1. Map of the Inuvialuit Settlement Region. A legal description of the area is provided in the section near the back of this document titled *Relevant Excerpts from the IFA (Annex A-1)*.



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- 5.3 The EISC publishes *Operating Guidelines and Procedures* that describe how screening is done. For further information, contact:

**Secretary  
Environmental Impact Screening Committee  
Joint Secretariat - Inuvialuit Renewable Resource Committees  
P.O. Box 2120  
Inuvik, Northwest Territories, Canada  
X0E 0T0**

**telephone: (867) 777 - 2828**

**fax: (867) 777 - 2610**

**email: [eisc@jointsec.nt.ca](mailto:eisc@jointsec.nt.ca)**

- 5.4 If the EISC decides that a proposed development could have significant negative environmental impact, or significant negative impact on present or future wildlife harvesting, it shall refer that proposed development for further environmental impact review and assessment [11(16) and 13(7)].
- 5.5 Where a proposed development is or may be subject to a governmental development or environmental impact review process, and in the opinion of the EISC that review process adequately encompasses or will encompass the assessment and review function, the EISC shall refer the proposal to the body carrying out that review process [11(15)].
- 5.6 If, in the opinion of the EISC the review process referred to in section 11(15) does not or will not adequately encompass the assessment and review function, or if the review body declines to carry out such functions, the proposal shall be referred to the EIRB for a public review [11(16)].
- 5.7 If the EISC decides to refer a proposed development to the EIRB, it will forward to the EIRB a formal referral package containing:
- a. a letter of referral detailing the decision of the Screening Panel and any reasons for the decision that the EISC believes would be pertinent to further environmental impact review and assessment;
  - b. one copy of the development description that was screened, including any supplements provided by the proponent; and

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- c. one copy of the minutes of the EISC meeting at which the decision to refer the development proposal was made.
- 5.8 The EISC will inform the proponent and all of the appropriate regulatory agencies of its decision, and of the IFA requirement that no permits or approvals be issued by any approval authority that would allow the proposed development to proceed pending the outcome of the EIRB public review [11(31)].
- 5.9 Sections 11 and 13 of the IFA provide the EIRB with the specific authority to conduct public reviews and make recommendations.
- 5.10 When a proposed development is referred to the EIRB, subsequent proceedings shall be conducted as a public review [11(16)].
- 5.11 The EIRB is required to expeditiously review all proposed developments referred to it, and on the basis of the evidence and information before it recommend whether the development should proceed [11(24)].
- 5.12 Should the EIRB wish to substitute its process for that set out in the *Canadian Environmental Assessment Act*, the EIRB will immediately following a referral from the EISC notify the Minister of Environment and the Canadian Environmental Assessment Agency of the referral. According to the Memorandum of Understanding between the EIRB and the Minister of Environment dated December 10, 1999:
  - a the Minister will acknowledge receipt in writing of the referral within 30 days of receipt by the Minister and will indicate in this acknowledgment either that additional information is required to determine if substitution of the EIRB's Public Review Process for that of the Act should be approved or that the substitution of the EIRB's Public Review Process is approved or denied and
  - b. the Minister, within 14 days of receiving any additional information requested, will advise the EIRB whether or not substitution of the EIRB's Public Review Process for that of the Act is approved.

Whether or not the Minister agrees to the substitution of the EIRB's Public Review Process for that of the Act, the EIRB will follow its procedures as outlined in this document.

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- 5.13 A Review Panel selected by the Chair of the EIRB from amongst the Permanent Members conducts the public review.<sup>2</sup> The Review Panel is considered to be the same as the EIRB for the purpose of the public review; therefore a decision of the Review Panel is a decision of the EIRB.
- 5.14 If the Review Panel recommends that a proposed development should proceed, it shall recommend any terms and conditions that should be applied, including mitigative and remedial measures, and shall provide an estimate of the potential liability of the developer, determined on a worst case scenario [11(24) and 13(11)].
- 5.15 The Review Panel may also recommend that the proposed development be subject to further assessment and review, and may specify the additional information required [11(24)].
- 5.16 Decisions of the Review Panel are made by a majority vote of the Review Panel Members. The Chair of the Review Panel will vote only in the event of a deadlock [11(25)].
- 5.17 Decisions of the EIRB are transmitted to the regulatory authority or authorities competent to authorize the development by means of a decision report with accompanying reasons. Both parties to the IFA, the proponent, the registered participants and the public must also be informed of the decision.
- 5.18 The regulatory authority must consider the decision of the EIRB when deciding if the proposed development may proceed, especially when attaching terms and conditions, and specifying mitigative and remedial measures. The ultimate decision of the regulatory authority must be consistent with the IFA, particularly section 11 [11(27)].
- 5.19 If the regulatory authority is unwilling or unable to accept, or wishes to modify, any of the recommendations contained in the decision of the EIRB, it must provide written reasons within thirty (30) days [11(29)].

**NOTE:** The EIRB has interpreted section 11(29) to mean that the thirty (30) day response restriction applies only when the competent regulatory authority decides to reject or modify any of the recommendations in the EIRB decision. That thirty (30) day period begins

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<sup>2</sup>

For further details on Review Panel selection, refer to section 11 of these *Operating Procedures*.

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when the EIRB decision is delivered to the regulatory authority. This interpretation does not mean that the final government decision to approve or reject the proposed development must occur within the thirty (30) day limit.

- 5.20 The decision of the regulatory authority to accept, reject, or modify the recommendations of the EIRB must be communicated in writing to all of the interested parties, and be made public [11(30)].

## **6.0 WILDLIFE COMPENSATION**

- 6.1 The provisions of IFA section 13 are intended to prevent loss or damage to wildlife and its habitat, and to avoid disruption of wildlife harvesting activities caused by development. If damage does occur, it provides for restoration of wildlife and its habitat, as well as compensation to the Inuvialuit for lost harvesting opportunities.
- 6.2 If there is a possibility that damage to wildlife or its habitat may occur, the EIRB must recommend terms and conditions relating to mitigative and remedial measures that are necessary to minimize the negative impact of a proposed development on wildlife harvesting [13(11)(a)].
- 6.3 The EIRB is also required to estimate the developer's potential liability based on a worst case scenario, taking into consideration the balance between economic factors, including the ability of the developer to pay, and environmental factors [13(11)(b)].

## **7.0 SPECIAL DUTIES OF THE EIRB**

- 7.1 The EIRB is given specific duties under section 8 and Annex D of the IFA to set environmental standards in the Husky Lakes and Cape Bathurst areas.
- 7.2 The EIRB recognizes that section 12 of the IFA establishes a special conservation regime for the Yukon North Slope, which includes a National Park, a Yukon Territorial Park, and limited industrial use in certain specific areas such as Stokes Point.

## **8.0 INUVIALUIT PRIVATE LANDS**

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- 8.1 Inuvialuit Private Lands are administered by the Inuvialuit Land Administration (ILA) and are subject to current ILA *Rules and Procedures* [7(1)(a) and 7(1)(b)]. These procedures include an ILA screening process to deal with proposed activities solely affecting Inuvialuit Private Lands.
- 8.2 Decisions about land use on Inuvialuit Private Lands are made by the Inuvialuit Land Administration Commission (ILAC) and administered by the Inuvialuit Land Administration (ILA). The ILA does, upon occasion, refer developments on Private Lands to the EISC for screening. For up to date information, contact:

**Land Administrator  
Inuvialuit Land Administration  
P.O. Box 290  
Tuktoyaktuk, Northwest Territories, Canada  
X0E 1C0**

**telephone: (867) 977 - 2202**

**fax: (867) 977 - 2467**

## **9.0 ROLE OF GOVERNMENT**

- 9.1 The EIRB displays many of the same characteristics as any traditional government agency: its operational funding is administered by DIAND under Treasury Board guidelines, the Chair and those Permanent Members selected by Canada are all Order-in-Council appointments, and the EIRB was given a statutory foundation by the federal statute authorizing the IFA.
- 9.2 The EIRB expects government agencies and officials to participate actively in any public reviews that may be established by the EIRB. Since EIRB proceedings are conducted in public, the role of any government agency in the regulation, administration, or assessment of any given development proposal should be examined in the public forum.
- 9.3 The appropriate government employees are expected to appear at the public review and submit written comments when requested to do so. Failure to provide essential information may limit the ability of the Review Panel to carry out its function.

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- 9.4 The EIRB will provide government representatives with the same information, rights and privileges that are provided to all Registered Participants.
- 9.5 It is the responsibility of the Government of Canada to specifically identify the "government authority competent to authorize the development" [11(27)] for each development proposal being reviewed by the EIRB. In addition, each relevant government department will be asked to designate one contact person to coordinate with the EIRB staff their department's participation in the public review.

## **10.0 INFORMATION REQUIREMENTS**

### **10.1 General Requirements**

- 10.1.1 The proponent will be expected to supply adequate documentation, including the written description of the proposed development and an Environmental Impact Statement (EIS), to each Member of the EIRB and its staff.
- 10.1.2 At least three (3) additional copies of each document must be provided to the Joint Secretariat Library in Inuvik for the use of the public [11(26)]. The EIRB may require that additional copies of documents be provided to other persons, including all of the Registered Participants in the public review.
- 10.1.3 Information that is considered confidential or proprietary should not be forwarded to the EIRB, since all information received must be placed on the public record.

### **10.2 Environmental Impact Statement**

- 10.2.1 In general the environmental impact statement (EIS) should include information on
  - a. the purpose to be served by the development,
  - b. the comparative environmental and other advantages and disadvantages of reasonable alternative means of achieving this purpose,

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- c. the nature, significance, and uncertainties concerning the potential environmental effects of the alternatives (including cumulative effects),
- d. the rationale for choosing the proposed undertaking as the preferred alternative,
- e. a description of mitigation measures to be carried out including feasibility, effectiveness and implications,
- f. a description of the realistic "worst case scenario or scenarios" if environmental impact predictions prove erroneous, and environmental protection measures fail,
- g. a summary of environmental protection commitments and follow-up monitoring commitments,
- h. a remediation and abandonment plan, and
- i. a report on the nature and results of pre-submission consultations with the communities most likely to be affected by the proposal, with appropriate government authorities and with other relevant parties,
- j. identification and description of those elements of the communities and environment likely to be affected by the proposed development,
- k. quantification of any potential losses or damage to the habitat, fauna, flora or cultural sites after practical mitigation.

10.2.2 The contents of the EIS remains the responsibility of the proponent. EIRB staff may assist the proponent to define the scope of the EIS, as detailed in sections 13, 14 and 15 of these procedures.

10.2.3 The proponent is encouraged to consult with the residents of the communities most likely to be affected by the proposal. It may also be beneficial to discuss the proposed development with other agencies

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likely to be interested. The result of this consultation must be included in the EIS.

- 10.2.4 The proponent must identify the government agencies and other organizations involved in the regulation, monitoring, or management of activities associated with the proposed development. EIRB staff must ensure that the appropriate agencies are aware of the circumstances of the referral and the expectations of the EIRB.
- 10.2.5 The EIS will become the basis for the public review. The EIS should be made as complete as possible before it is provided to the EIRB, in order to reduce the time required to address deficiencies. The adequacy of the information base provided by the proponent will, to a certain extent, control the time required to prepare for and conduct the public review.
- 10.2.6 Supplementary documentation necessary to support statements made in the EIS or assist in the evaluation of potential negative impacts must be provided with the EIS. A list of references used within the EIS is mandatory. Any document listed as a reference can be requested as evidence.
- 10.2.7 As described in more detail in section 13, 14 and 15 of these procedures, the EIRB, its technical advisors and, often, the registered participants will examine the EIS and its supporting documentation at the time of submission to determine if it is adequate for the purposes of the public review.

## **11.0 REVIEW PANEL**

- 11.1 Once the EIS is accepted by the EIRB, the Chair will designate a Review Panel to carry out the public review. The By-laws of the EIRB describe in detail the function of the Review Panel.
- 11.2 A Review Panel will normally consist of four (4) Permanent Members (two selected from among those appointed by Canada and two selected from those appointed by the Inuvialuit), plus the Chair of the EIRB, for any given Public Review.



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### **11.3 Additional Members from Eligible Native Organizations**

- 11.3.1 Upon receipt of a referral, the EIRB will notify any eligible native organizations recognized for an adjacent comprehensive land claims settlement. Eligibility to participate is determined in accordance with sections 11(8) and 11(9) of the IFA, as well as section 5 of By-law No. 1.
- 11.3.2 The eligible native organization will normally be given thirty (30) days to indicate whether they wish to designate an Additional Review Panel Member.

### **11.4 Additional Members from Government of Canada**

- 11.4.1 If one or more eligible native organizations chooses to appoint an Additional Member to a Review Panel, Canada is then entitled to designate an equal number of Additional Members in order to maintain the numerical balance [11(8)]. Canada will also be given thirty (30) days to respond.
- 11.4.2 The procedures for notification and appointment of Additional Members are further detailed in By-law No. 1.

## **12.0 INITIATING THE PUBLIC REVIEW**

- 12.1 The EIRB has created three basic approaches to public review within the framework of the IFA that are designed to be flexible enough to accommodate a wide variety of proposed developments. The three basic approaches are the Small Scale Development (SSD) case, described in section 13.0, the Standard Public Review (SPR) case, described in section 14.0, and variation of these standard procedures when circumstances dictate, as described in section 15.0. Certain elements are common to these approaches, and will be discussed first.
- 12.2 Once a referral is made to the EIRB, the EIRB Secretary will forward a copy of these *Operating Procedures* to the proponent to help him or her begin to prepare for the public review.
- 12.3 The EIRB staff will meet with the proponent to explain these procedures and answer questions. Further meetings between the EIRB staff and the proponent will be held as

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circumstances dictate. It will not be possible for the Chair or EIRB Members to meet with the proponent or any of the participants once the referral has been received. A mutually acceptable schedule for the preparation of materials will be developed.

- 12.4 The Secretary will publish a Public Notice of Referral as soon as possible following receipt of the referral. The Public Notice of Referral will notify the public whether or not this review will substitute for a review under the Canadian Environmental Assessment Act. The Public Notice of Referral will invite organizations and individuals to register their interest in participating in the public review. Individuals and organizations who register within the time limits stated in the Public Notice of Referral will become Registered Participants.
- 12.5 Registered Participants and representatives of government agencies will be placed on a mailing list, and thereafter will regularly receive all documents designated for distribution to them, including the proponent's EIS, subsequent notices and procedural rulings, and other written submissions. Registered Participants can take part in the public review via written submission or by sending a delegation to the public forum.
- 12.6 Any individual or organization that does not register an intention to participate will not be placed on the distribution list, and will be permitted to take part in the public forum only after Registered Participants and government representatives have had an opportunity to do so.
- 12.7 The EIRB secretary will hire any technical advisors required by the Review Panel, and request the assistance of specific government agencies. Government agencies will be expected to identify the specific individuals who will represent them at the public forum, if one is held. Assistance may also be requested from inter-governmental agencies, or joint management agencies established under land claim legislation.
- 12.8 EIRB staff will be available to assist all parties to the review.
- 12.9 The EIRB will meet in thirty (30) days of receipt of a referral from the EISC. Preliminary decisions required to continue with the public review process will be made. One of the procedural rulings must be whether to direct the proposed development into the SSD or the SPR path, or to vary those procedures.
- 12.10 Should a review be a substitution for a review under the Canadian Environmental Assessment Act the EIRB will elect to direct the proposed development to a SPR.

### **13.0 SMALL SCALE DEVELOPMENT PROCEDURES**

- 13.1 The EIRB, in its discretion, will determine whether a proposed development should be directed into the Small Scale Development (SSD) procedure after considering the following criteria:

- 13.1.1 Limited Spatial Extent
- 13.1.2 Short Term Impact
- 13.1.3 Limited Community Effects
- 13.1.4 Insignificant Cumulative Effects
- 13.1.5 Existing Class Assessment (refer to Section 15.4.3)
- 13.1.6 Previous Review

- 13.2 If the proposed development is designated for review as an SSD, the following procedures will apply:

- 13.2.1 EIRB staff will assist the proponent to tailor the EIS for the SSD proceedings.
- 13.2.2 The proponent will submit an EIS to the EIRB according to the schedule established as described in section 12.3 of these procedures.
- 13.2.3 The EIRB will accept or reject the EIS as suitable for use during the SSD procedures. If the EIS is not accepted, the proponent may be permitted to re-submit within a time limit established by the EIRB. The proponent may elect to withdraw the proposal and submit a new development description to the EISC.
- 13.2.4 If the EIS is accepted by the EIRB, the Chair will select the Review Panel.
- 13.2.5 Once the Review Panel is formally established, there will be a minimum of thirty (30) days allocated by the EIRB for preparation. During this preparation period, the Review Panel, its advisors, Registered

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Participants, and government representatives may submit written questions to the proponent.

13.2.6 To ensure that all questions and answers become part of the public record, and that duplication is minimized, Registered Participants and government representatives must submit any questions they have about the proposed development through the EIRB staff.

13.2.7 After a minimum of thirty (30) days has elapsed, the Review Panel may:

- a. hold a public meeting to summarize the information before it and render a decision; or
- b. appoint an EIRB Permanent Member, staff member, or technical advisor to hold a public meeting to investigate one or more outstanding issues<sup>3</sup>; or
- c. without holding a public meeting, render a decision based on the EIS and any other exchanges of information or opinion, including written submissions, provided that the proponent and all participants have been given a fair opportunity to be heard. All of the information so utilized must be placed on the public record.

After holding a public meeting, the person so appointed will report his/her findings to the Review Panel, which will place the report on the public record as evidence. The Review Panel will then review all of the evidence before it and render a decision with or without further public meetings as it sees fit.

13.2.8 Every review by a Review Panel shall include the consideration of the following factors

- a. the purpose of the development;

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<sup>3</sup> A person so appointed must meet the requirements of EIRB By-laws.

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- b. alternative means of carrying out the development that are technically and economically feasible and the environmental effects of any such alternative means;
- c. the need for, and the requirements of, any follow-up program in respect of the development;
- d. the capacity of renewable resources and non-renewable cultural resources that are likely to be significantly affected by the development to meet the needs of the present and those of the future;
- e. the environmental effects of the development, including the environmental effects of malfunctions or accidents that may occur in connection with the development and any cumulative environmental effects that are likely to result from the development in combination with other developments or activities that have been or will be carried out;
- f. the significance of the effects referred to in paragraph (e);
- g. comments from the public that are received in accordance with these procedures;
- h. measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the development.

13.2.9 The Review Panel will forward its decision with its reasons in writing to the regulatory authority competent to approve the proposed development, to the proponent, to all of the Registered Participants, and government representatives.

13.2.10 If the Review Panel recommends that the proposed development should proceed, it shall also recommend terms and conditions that should be applied by the appropriate regulatory authority, including mitigative and remedial measures, appropriate monitoring requirements, and must include an estimate of the potential liability of the proponent.

## **14.0 STANDARD PUBLIC REVIEW PROCEDURES**

- 14.1 If it is clear to the EIRB that a proposed development should not be directed into the Small Scale Development (SSD) procedure, the following standard procedures will be applied in accordance with a schedule established by the EIRB:
- 14.1.1 The proponent will be asked to submit an outline of its EIS to the EIRB staff.
  - 14.1.2 The EIRB staff will circulate the EIS outline to EIRB Members and technical advisors for comment.
  - 14.1.3 As each Registered Participant and government representative is identified, a copy of the EIS outline will be provided to them. Written comments from the Registered Participants and government representatives on the proposed contents of the EIS will be collected within a period of time set by the EIRB.
  - 14.1.4 If there are sufficient comments received to warrant it, a scoping session to help the proponent improve the EIS outline will be convened by the EIRB staff.
  - 14.1.5 The scoping session may be held by exchange of written comments, by convening a public meeting of the Registered Participants and government representatives, or both.
  - 14.1.6 The EIRB staff will prepare a written summary of the comments it has received about the proposed contents of the EIS, based on the scoping session and any written submissions received. This written summary will be forwarded to the proponent so that suggested changes can be incorporated into the EIS.
  - 14.1.7 The proponent will prepare and submit a DRAFT EIS to the EIRB staff.
  - 14.1.8 The DRAFT EIS will be circulated by the EIRB staff to the Registered Participants and government representatives for further comment. The EIRB will set a period for receiving comments on the DRAFT EIS.

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- 14.1.9 Registered Participants and government representatives will forward any comments on the DRAFT EIS to the proponent through the EIRB staff to facilitate circulation and ensure inclusion on the public record.
- 14.1.10 The proponent will revise the DRAFT EIS in light of the comments it has received from the Registered Participants, government representatives and the EIRB staff. The REVISED EIS will be submitted to the EIRB.
- 14.1.11 The EIRB will accept or reject the REVISED EIS as suitable for the purposes of the public review.
- 14.1.12 If the REVISED EIS is rejected as unsuitable for the purposes of the public review, the EIRB may issue a deficiency statement giving direction about re-submission of the EIS.
- 14.1.13 The proponent may choose to withdraw the proposal from consideration by the EIRB, or may elect to re-submit the document under a revised schedule established by the EIRB after consultation with the Registered Participants and government representatives.
- 14.1.14 Once it is accepted by the EIRB, the REVISED EIS will become the FINAL EIS. This FINAL EIS can be amended only in exceptional circumstances with the express written approval of the EIRB. The EIRB may allow Registered Participants and government representatives to make written submissions giving reasons for or against allowing any proposed amendment.
- 14.1.15 Once a FINAL EIS has been produced, the Chair of the EIRB will appoint a Review Panel.
- 14.1.16 The EIRB staff will propose a preliminary schedule of events and agenda of issues for discussion purposes. Any anticipated procedural variations will be discussed.
- 14.1.17 The Chair of the Review Panel will notify the proponent, government representatives, and all Registered Participants if a Pre-Hearing Conference will be held to discuss procedural matters. Such a

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conference would be convened by the Chair or EIRB staff, and would not involve the Review Panel Members.

- 14.1.18 Having considered submissions to the Pre-Hearing Conference, the EIRB Chair will issue a Hearing Order. The Hearing Order will include:
- a. dates and locations of public hearing;
  - b. a schedule for exchanging written evidence;
  - c. a schedule for questions of clarification;
  - d. procedural rulings;
  - e. order of appearance;
  - f. rules, format and protocol for participants; and
  - g. issue identification and order of address.
- 14.1.19 There will be a preparation period of at least sixty (60) days following publication of the Hearing Order, during which the proponent, Registered Participants, government representatives, the Review Panel, and its staff will prepare for the public forum.
- 14.1.20 The Review Panel may forward written questions to the proponent and require a response within time limits set in the Hearing Order.
- 14.1.21 Registered Participants may forward written questions to the proponent through the EIRB, which will require a response within time limits set in the Hearing Order. The Review Panel may modify the time originally made available in the Hearing Order to address questions.
- 14.1.22 At the end of the preparation period established by the Hearing Order, the Review Panel will decide whether to commence the public review as scheduled or to extend the preparation period to deal with new or unforeseen circumstances.



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### 14.2 Public Hearing

- 14.2.1 The public hearing will proceed as follows, or as modified in the Hearing Order.
- 14.2.2 The Chair's opening remarks will address the following:
  - a. the purpose of the public hearing;
  - b. the mandate of the EIRB;
  - c. introduction of Review Panel, staff and advisors;
  - d. introduction of proponent and staff;
  - e. introduction of Registered Participants;
  - f. an acknowledgment of the written submissions filed;
  - g. introduction of government representatives; and
  - h. a review of the agenda.
- 14.2.3 A discussion of procedural matters, including any clarification of, or challenge to, the proceedings.
- 14.2.4 Proponent's Presentation:
  - a. description of proposed development as submitted in FINAL EIS
  - b. proponent may then be questioned by Registered Participants, government representatives, the EIRB staff and advisors, Review Panel Members, and then the general public in attendance.
- 14.2.5 Opening Statements:

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- a. opening statements or presentations can be made by Registered Participants. This segment includes any opening statements or presentations by government representatives.
- b. the Review Panel may request that copies of opening statements or presentations be filed with the EIRB prior to the public hearing.

14.2.6 Issues identified over the course of the public review will be addressed one by one. The list of issues identified may be expanded at the public hearing. Each issue will be addressed in the following order.

- a. Review of Issue by Proponent:
  - i. The proponent may then be questioned by Registered Participants, government representatives, the EIRB staff and advisors, Review Panel Members, and then the general public in attendance.
- b. Review of Issue by Registered Participants and Government Representatives:
  - i. Registered Participants and government representatives may then be questioned by the proponent, other Registered Participants, other government representatives, the EIRB staff and advisor(s), Review Panel Members, and then the general public in attendance.
- c. Review of Issue by EIRB Technical Advisor(s):
  - i. technical topics related to each issue may be presented for the benefit of those in attendance.
  - ii. the EIRB technical advisor(s) may be questioned by the proponent, Registered Participants, government representatives, the Review Panel Members, and then the general public in attendance.

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- d. Review of Issue by the General Public:
  - i. members of the general public will be permitted to make statements from the floor of the hall related to each issue. The Chair will rule on the relevance of each request if necessary.

### 14.2.7 Closing Remarks:

- a. Proponent
- b. Registered Participants
- c. Government Representatives
- d. EIRB Technical Advisors
- e. Review Panel Members
- f. Review Panel Chair

## 14.3 Decision

14.3.1 After the close of the proceedings, the Review Panel will retire to expeditiously render a final decision.

14.3.2 Every review by a Review Panel shall include the consideration of the following factors;

- a. the purpose of the development;
- b. alternative means of carrying out the development that are technically and economically feasible and the environmental effects of any such alternative means;
- c. the need for, and the requirements of, any follow-up program in respect of the development;

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- d. the capacity of renewable resources and non-renewable cultural resources that are likely to be significantly affected by the development to meet the needs of the present and those of the future;
- e. the environmental effects of the development, including the environmental effects of malfunctions or accidents that may occur in connection with the development and any cumulative environmental effects that are likely to result from the development in combination with other developments or activities that have been or will be carried out;
- f. the significance of the effects referred to in paragraph (e);
- g. comments from the public that are received in accordance with these procedures;
- h. measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the development; and
- i. should the review be a substitution for a review under the Canadian Environmental Assessment Act, the Review Panel may consider any other matter relevant to the assessment, that the Minister, after consulting with the EIRB and the regulatory authority, may require to be considered.

14.3.3 The final decision will recommend whether the proposed development should proceed as described in the FINAL EIS. Changes in the proposal discussed during the public review will be taken into consideration. If the Review Panel recommends that the proposed development should proceed, it shall also recommend terms and conditions that should be applied by the appropriate regulatory authority, including mitigative and remedial measures, appropriate monitoring requirements, and must include an estimate of the potential liability of the proponent.

14.3.4 The Review Panel will forward its decision with its reasons in writing to the regulatory authority competent to approve the proposed

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development, to the proponent, to all of the Registered Participants, and government representatives and, if required by the *Canadian Environmental Assessment Act*, to the Minister of the Environment.

- 14.3.5 The decision of the Review Panel will be made public via a press release.

## **15.0 VARIATION OF PROCEDURES**

- 15.1 The proponent or a registered participant may apply to the EIRB to have these procedures varied for a given development proposal. Request for variation will have to be justified.
- 15.2 The EIRB may choose to vary these procedures on its own motion.
- 15.3 Should there be a request to vary these procedures, the EIRB will provide the proponent and registered participants with notice and the opportunity to comment.
- 15.4 The following variations may be considered:
  - 15.4.1 Time requirements may be abridged or extended.
  - 15.4.2 The scoping process may be modified or eliminated.
  - 15.4.3 The EIRB may, on its own motion, call for a general assessment of a class of developments prior to initiating these procedures for a specific development proposal. A class assessment should be conducted when the EIRB believes it would be advantageous to establish general policies about similar developments. These general policies would then be applied to any specific development proposal that, in the opinion of the EIRB, falls within that class.
  - 15.4.4 The Review Panel may, either upon application from the proponent or on its own motion, call for a workshop to be held in order to assist the proponent and other participants to achieve consensus on some or all of the issues before the Review Panel. A report on the results of such a workshop may be received as evidence by the Review Panel.

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- 15.4.5 A Pre-Hearing Conference may be eliminated, at the discretion of the EIRB, when, for example:
- a. there are very few issues raised or likely to be raised during the preparation period;
  - b. a class assessment on a similar development has already been held;
  - c. very few, if any, participants have registered their interest in the proceedings.

- 15.4.6 The EIRB Chair may appoint any qualified person, including officers or Regular Members of the EIRB, to conduct a special investigation into relevant issues and report to the Review Panel.<sup>4</sup> A person so appointed will have all of the powers of the Review Panel for the purpose of conducting the special investigation. The report on the results of the special investigation may be received as evidence by the Review Panel.

- 15.5 Should the review be a substitution for a review under the Canadian Environmental Assessment Act, the EIRB will not make variations in its procedures that conflict with the intent of the Canadian Environmental Assessment Act.

## **16.0 QUESTIONS ?**

- 16.1 The Environmental Impact Screening and Review Process is evolving as the implementation of the IFA continues in the midst of legislative and procedural changes. Please contact the Secretary of the EIRB should you have any questions about these procedures, or wish to learn more about the Environmental Impact Screening and Review Process [refer to section 1.5 for the address].

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<sup>4</sup> In the appropriate circumstances, and in accordance with EIRB By-laws.

GLOSSARY

*The terms listed in this glossary are not to be considered as legal definitions of the terms used in the Inuvialuit Final Agreement. Wherever possible, the definitions have been taken directly from the IFA itself. Other terms are included to illustrate their usage by the EIRB in this document.*

<b>Canada</b>	Government of Canada.
<b>COPE</b>	Committee for Original Peoples' Entitlement, a society incorporated under the Societies Ordinance of the Northwest Territories.
<b>decision</b>	EIRB determination of whether a specific development proposal should proceed as outlined by the proponent.
<b>developer</b>	a person, the government or any other legal entity owning, operating or causing to be operated any development in whole or in part in the Inuvialuit Settlement Region, and includes any co-contractant of such owner or operator. For greater certainty, "developer" includes any Inuvialuit developer.
<b>development:</b>	<ul style="list-style-type: none"><li>(a) any commercial or industrial undertaking or venture, including support and transportation facilities related to the extraction of non-renewable resources from the Beaufort Sea, other than commercial wildlife harvesting; or</li><li>(b) any government development, undertaking or construction whether federal, territorial, provincial, municipal, local or by any Crown agency or corporation, except government developments within the limits of Inuvialuit communities not directly affecting</li></ul>

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wildlife resources outside those limits and except government wildlife enhancement projects.

**DIAND**

Department of Indian Affairs and Northern Development.

**EIRB**

Environmental Impact Review Board.

**EIRB Staff**

the secretary to the EIRB and other employees of the Joint Secretariat, technical advisors, and legal counsel retained by the EIRB.

**EIS**

Environmental Impact Statement.

**EISC**

Environmental Impact Screening Committee.

**Eligible Native Organizations**

any neighboring native claimant group eligible for participation in the Environmental Impact Screening and Review Process under section 11(8) and 11(9) of the IFA.

**environment**

means the components of the Earth, and includes  
a) land, water and air, including all layers of the atmosphere,  
b) all organic and inorganic matter and living organisms, including humans, and  
c) the interacting natural systems that include components referred to in paragraphs a) and b).

**environmental effect**

means, in respect of a development,



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a) any change that the development may cause in the environment, including any effect of any such change on health and socio-economic conditions, on physical and cultural heritage, on the current use of lands and resources for traditional purposes by aboriginal persons, or on any structure, site or thing that is of historical, archaeological, paleontological or architectural significance, and

b) any change to the development that may be caused by the environment, whether any such change occurs within or outside the Inuvialuit Settlement Region.

### **exclusive right to harvest**

the sole right to harvest the wildlife referred to in paragraphs 12(24)(b) and (c) and 14(6)(b) to (d), to be allocated the total allowable harvest and to permit non-Inuvialuit to harvest any such wildlife.

### **general public**

those individuals or organizations that attend the public hearing that are not Review Panel Members, EIRB staff, Registered Participants, government representatives, or members of the media.

### **Hearing Order**

formal written notification of the details of a specific public hearing.

### **Inuvialuit**

those people known as Inuvialuit, Inuit or Eskimo who are beneficiaries under this Agreement by reason of the settlement of their claim to traditional use and occupancy of the land in the Inuvialuit Settlement Region and, where the context requires, includes the Inuvialuit Regional Corporation, the Inuvialuit Land Corporation, the Inuvialuit Development Corporation, the Inuvialuit Investment Corporation, the Inuvialuit community corporations and any other corporations,

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	trusts or organizations controlled by the Inuvialuit that may be established by or pursuant to this Agreement.
<b>Inuvialuk</b>	an individual member of the Inuvialuit.
<b>IFA</b>	Inuvialuit Final Agreement.
<b>IGC</b>	Inuvialuit Game Council.
<b>ILA</b>	Inuvialuit Land Administration.
<b>ILAC</b>	Inuvialuit Land Administration Commission.
<b>Inuvialuit Private Lands</b>	those lands described by sections 7(1)(a) and 7(1)(b) of the IFA as belonging to the Inuvialuit.
<b>IRC</b>	Inuvialuit Regional Corporation.
<b>Inuvialuit Settlement Region</b>	that portion of the Northwest Territories, Yukon Territory and adjacent offshore area shown in Annex A and described in Annex A-1 of the IFA. Includes Crown lands, Commissioners' Lands, Municipal Lands, and Inuvialuit Private Lands.
<b>Joint Secretariat (JS)</b>	an organization established to provide technical and administrative support to co-management agencies established under the IFA.

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<b>Pre-Hearing Conference</b>	a conference held in advance of the public review to discuss procedural matters amongst the participants.
<b>proponent</b>	an individual, corporation, or government agency that proposes a development.
<b>Public Notice of Referral</b>	a formal notice of the initiation of the EIRB process by the EISC or other appropriate initiator.
<b>Registered Participants</b>	individuals or organizations that formally declare their intention to participate in EIRB public review proceedings within the time limits set by the EIRB.
<b>Review Panel</b>	a sub-set of the EIRB established for the purposes of a specific public review.
<b>scoping</b>	the act of defining the range of issues and concerns that are likely to be addressed during the public review.
<b>Secretary</b>	duly appointed official of the EISC and/or EIRB, hired by the Joint Secretariat and responsible for all administrative support tasks.
<b>SSD</b>	Small Scale Development.
<b>SPR</b>	Standard Public Review.

GENERAL CRITERIA USED BY THE ENVIRONMENTAL IMPACT REVIEW BOARD  
TO GUIDE ITS DECISION MAKING

1. Community values and land use practices recommended in the Community Conservation Plans prepared by the communities of Aklavik, Holman, Inuvik, Paulatuk, Sachs Harbour, and Tuktoyaktuk.
2. Severity of potential impacts
  - a) Effects associated with a development disturbance not likely to change the reproduction or survival rate of individuals or the productive capacity of habitat will be considered insignificant.
  - b) Effects associated with a development disturbance that are likely to impact the reproduction of a population for a period but, in the long term, would permit recovery of the population are considered significant.
  - c) Effects associated with a development disturbance that are likely to permanently impact the reproduction of a population are unacceptable.
3. Impacts which exceed federal or territorial air and water standards are unacceptable.
4. The existence of current wildlife compensation plans between a developer and the Inuvialuit of a community of the Inuvialuit Settlement Region assist the EIRB in judging the sincerity of a developer to deal with unexpected wildlife losses.
5. The adequacy of the relevant regulatory agency's ability to ensure compliance with commitments and approval conditions.
6. The degree of certainty there is in the prediction of the impacts and the irreversibility of those impacts.

RELEVANT EXCERPTS FROM THE INUVIALUIT FINAL AGREEMENT

*These sections are duplicated here, not in their entirety, for reference purposes only and are not to be considered to substitute for the complete Inuvialuit Final Agreement or its amendments. Any subsequent amendments to the IFA will be taken into account in due course by the Environmental Impact Review Board.*

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SECTION 11

**ENVIRONMENTAL IMPACT SCREENING AND REVIEW PROCESS**

- 11.(1) The developments subject to environmental impact screening include:
- (a) developments described in subsection 13(7);
  - (b) developments in the Yukon North Slope region described in section 12;
  - (c) developments in the Inuvialuit Settlement Region in respect of which the Inuvialuit request environmental impact screening; and
  - (d) subject to any agreement between the Inuvialuit and the Dene/Metis, developments in areas including the Aklavik land selections where the traditional harvest of the Dene/Metis may be adversely affected, on request by the Dene/Metis or by the Inuvialuit.
- 11.(2) Each development subject to screening shall be dealt with in accordance with the procedures, principles, criteria and provisions applicable under this Agreement. Except for screening and review for the purposes of wildlife compensation, the process described in this section applies only to onshore development. There shall be a similar process in the Yukon Territory in the area south of the watershed and north of the Porcupine and Bell Rivers, in which native and government representation shall be equal.
- 11.(3) There is hereby established the Environmental Impact Screening Committee, to be made up of seven (7) permanent members. Canada and the Inuvialuit shall each appoint three (3) permanent members. Of the three permanent members appointed by Canada, each of the Governments of the Northwest Territories and the Yukon Territory shall designate one (1). Additional members may be designated from time to time pursuant to subsection (8).
- As amended January 15, 1987
- 11.(4) A Chairman shall be appointed by Canada, with the consent of the Inuvialuit. Where the parties cannot agree on a Chairman, the Chief Justice of either of the Territories may appoint a Chairman at the request of one of the parties.
- 11.(5) The permanent members shall be appointed, remunerated and replaced by the respective appointing parties. The term of office of all permanent members, including the Chairman, shall be three (3) years and they are eligible to be re-appointed on the expiration of the term.
- As amended January 15, 1987

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- 11.(6) Each screening shall be carried out by a panel of five (5) of the permanent members, two (2) appointees of Canada, two (2) appointees of the Inuvialuit, and the Chairman, plus, if applicable, additional members designated pursuant to subsection (8). Of the two permanent members appointed by Canada, one shall be designated by the Territorial Government in whose jurisdiction the development being screened is to be located. The representation of the Government of the Yukon Territory for matters north of the watershed and of the Government of the Northwest Territories for matters in the Western Arctic Region shall increase as their respective jurisdictions increase and shall form a majority of the appointees of Canada for matters exclusively within their respective jurisdictions.

As amended January 15, 1987

- 11.(7) Where any of the parties fails to nominate a sufficient number of persons within a reasonable time, the Committee may discharge its responsibilities with such members as have been appointed.

As amended January 15, 1987

- 11.(8) Where an organization recognized for an adjacent comprehensive land claims settlement considers that a development being screened is capable of having a negative environmental impact to the detriment of native persons using or occupying the Inuvialuit Settlement Region and the organization represents those native persons, it shall have the right, at its expense, to designate one (1) additional member, or more than one if so agreed by way of agreement between the Inuvialuit and the duly authorized organization representing the native group in question. Canada shall have the right to designate additional members sufficient to attain representation on the panel equivalent to that of the natives.

- 11.(9) As adjacent land claims are settled, the representation on panels available to other native organizations by virtue of subsection (8) shall cease unless like representation is available to the Inuvialuit on like panels dealing with adjacent land areas used or occupied by the Inuvialuit.

- 11.(10) All members of the Screening Committee shall have one vote except the Chairman who shall vote only in the case of a deadlock.

- 11.(11) The Screening Committee may establish and adopt by-laws and rules for its internal management and procedures in order to ensure reasonable and expeditious consideration of applications.

- 11.(12) The proponents of a development required to be screened shall submit a project description to the Screening Committee during the preliminary planning stage containing the following information:

- (a) the purpose of the project;
- (b) the nature and extent of the proposed development;
- (c) the rationale for the site selection; and
- (d) information and technical data in sufficient detail to permit an adequate preliminary assessment of the project and its environmental impact.

- 11.(13) On receipt of a project description, the Screening Committee shall expeditiously determine if the proposed development could have a significant negative environmental impact and shall indicate in writing to the governmental authority competent to authorize the development that, in its view:

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- (a) the development will have no such significant negative impact and may proceed without environmental impact assessment and review under this Agreement;
  - (b) the development could have significant negative impact and is subject to assessment and review under this Agreement; or
  - (c) the development proposal has deficiencies of a nature that warrant a termination of its consideration and the submission of another project description.
- 11.(14) For the purposes of paragraph 13(a), the Screening Committee shall take into account any prior governmental development or environmental impact review process that, in its opinion, adequately encompassed the assessment and review function.
- 11.(15) Where a proposed development is or may be subject to a governmental development or environmental impact review process, and in the opinion of the Screening Committee that review process adequately encompasses or will encompass the assessment and review function, the Screening Committee shall refer the proposal to the body carrying out that review process.
- 11.(16) If, in the opinion of the Screening Committee, the review process referred to in subsection (15) does not or will not adequately encompass the assessment and review function, or if the review body declines to carry out such functions, the proposal shall be referred to the Review Board for a public review.  
As amended January 15, 1987
- 11.(17) Decisions of the Screening Committee shall be made by majority vote of the panel appointed, shall be in writing and shall be signed by all panel members.
- 11.(18) The Environmental Impact Review Board is hereby established to be the review body for any development referred to it pursuant to this Agreement. The Review Board shall have seven (7) permanent members, three (3) appointed by Canada, three (3) appointed by the Inuvialuit and a Chairman appointed by Canada, with the consent of the Inuvialuit. Of the three (3) permanent members appointed by Canada, each of the Governments of the Northwest Territories and the Yukon shall designate one (1). The representation of the Government of the Yukon Territory for matters north of the watershed and of the Government of the Northwest Territories for matters in the Western Arctic Region shall increase as their respective jurisdictions increase and shall form a majority of appointees for matters exclusively within their respective jurisdictions. The membership of the Review Board may be increased or decreased from time to time at the discretion of Canada, but the same proportion of representation for Canada and the natives shall be maintained.  
As amended January 15, 1987
- 11.(19) The Review Board shall deal with each development subject to environmental assessment and review in accordance with the applicable provisions of this Agreement. For greater certainty, subsections (6) to (10) apply to the constitution of the Review Board panels, with such modifications as the circumstances require.  
As amended January 15, 1987
- 11.(20) The permanent members of the Review Board shall be appointed, remunerated and replaced by the respective appointing parties. The term of office of all permanent members, including the Chairman, shall be three (3) years and they are eligible to be re-appointed on the expiration of the term.

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- 11.(21) Where any of the parties fails to nominate a sufficient number of persons within a reasonable time, the Review Board may discharge its responsibilities with such members as have been appointed.  
As amended January 15, 1987
- 11.(22) A person may be a member of both the Screening Committee and the Review Board.
- 11.(23) Canada shall provide to the Review Board the staff required to enable it to fulfil its functions. The Review Board may establish and adopt by-laws and rules for its internal management and its procedures.
- 11.(24) 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.
- 11.(25) Decisions of the Review Board shall be made by majority vote of the panel appointed, shall be in writing and shall be signed by all panel members.
- 11.(26) A register shall be kept of all decisions of the Review Board. The data used by the Review Board shall be retained and made available to the public on request.
- 11.(27) The decisions containing the recommendations of the Review Board shall be transmitted to the governmental authority competent to authorize the development. That authority, consistent with the provisions of this section and after considering, among other factors, the recommendations of the Review Board, shall decide whether or not, on the basis of environmental impact considerations, the development should proceed and, if so, on what terms and conditions, including mitigative and remedial measures.
- 11.(28) If, pursuant to subsection (27), the competent governmental authority decides that further impact assessment and review is required, the proposed development shall be subject to further impact assessment and review based on the same or different information, requirements or specifications as the governmental authority considers appropriate.
- 11.(29) If the competent governmental authority is unwilling or unable to accept any recommendations of the Review Board or wishes to modify any such recommendations, it shall give reasons in writing within thirty (30) days, stating why it has not accepted the recommendations.  
As amended January 15, 1987
- 11.(30) The decision of the competent governmental authority shall be transmitted to the interested parties and made public.
- 11.(31) No licence or approval shall be issued that would have the effect of permitting any proposed development to proceed unless the provisions of this section have been complied with.
- 11.(32) For greater certainty, nothing in this section restricts the power or obligation of the Government to carry out environmental impact assessment and review under the laws and policies of Canada.

## SECTION 12



## **EIRB Operating Procedures - February 5, 2004**

### **YUKON NORTH SLOPE**

- 12.(1) For the purposes of this section, "Yukon North Slope" means 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.

### **PRINCIPLES**

- 12.(2) The Yukon North Slope shall fall under a special conservation regime whose dominant purpose is the conservation of wildlife, habitat and traditional native use.
- 12.(3) Subject to subsections (5) to (15):
- (a) all development proposals relating to the Yukon North Slope shall be screened to determine whether they could have a significant negative impact on the wildlife, habitat or ability of the natives to harvest wildlife;
  - (b) other uses within the Yukon North Slope shall be considered and may be permitted if it is shown that there would be no significant negative impact on wildlife, habitat or native harvesting;
  - (c) other uses within the Yukon North Slope that may have a significant negative impact on wildlife, habitat or native harvesting shall be permitted if it is decided that public convenience and necessity outweigh conservation or native harvesting interests in the area; and  
As amended January 15, 1987
  - (d) development proposals relating to the Yukon North Slope that may have a significant negative impact shall be subject to a public environmental impact assessment and review process.

### **DISPOSAL OF LAND**

- 12.(4) Subject to this section, the withdrawal from disposal under the Territorial Lands Act of certain lands described in the Prohibition and Withdrawal of Certain Lands from Disposal Order (SOR/80-198, 27 March, 1980, as set out in Annex E-1), within the Yukon North Slope shall be maintained.  
As amended January 15, 1987

### **NATIONAL PARK**

- 12.(5) Canada agrees to establish, under the National Parks Act, the Settlement Legislation or such other legislation as may be appropriate or necessary, a National Park comprising the western portion of the Yukon North Slope shown in Annex E and more particularly described as the area bounded to the south by the height of land being the watershed and to the east by the eastern shoreline of the Babbage River.
- 12.(6) The planning for the National Park and the management thereof shall have as their objects to protect the wilderness characteristics of the area, maintaining its present undeveloped state to the greatest extent possible, and to protect and manage the wildlife populations and the wildlife habitat within the area.

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- 12.(7) Except as provided in subsection (14), the National Park shall be zoned and managed as a wilderness oriented park.
- 12.(8) Development activities inconsistent with the purposes of the National Park shall be prohibited, and any change in the character of the National Park shall require the consent of the Inuvialuit.
- 12.(9) The Wildlife Management Advisory Council established by subsection (46) shall advise the appropriate minister on park planning and management. The Council shall recommend a management plan for the National Park.
- As amended January 15, 1987
- 12.(10) No lands forming part of the National Park shall be removed from National Park status without the consent of the Inuvialuit.
- 12.(11) Canada agrees that prior to the establishment of the National Park, the lands comprising it shall be maintained in a manner that recognizes their future use and protects the land and its habitat for this purpose.
- 12.(12) Nothing inconsistent with the provisions of this Agreement shall be permitted between the date of the execution of this Agreement and the coming into force of appropriate legislation creating the Park.
- 12.(13) The rights provided to the Inuvialuit under this Agreement in respect of the National Park shall take effect as of the date of the coming into force of the Settlement Legislation. For greater certainty, the Government of the Yukon Territory shall retain its present jurisdiction until the creation of the National Park.
- 12.(14) If it is determined pursuant to section 11 that an area identified in Annex E as Stokes Point is required for limited scale use and temporary use purposes in support of hydrocarbon development, the use shall be permitted on the following conditions:
- (a) the land to be used does not exceed forty (40) acres and any additional land that is required to satisfy the licencing requirements of the Yukon Territorial Water Board;  
As amended January 15, 1987
  - (b) the use of the land is such as not to prevent its restoration to the state it was in prior to such use; and
  - (c) the activity must not be on a scale and of a nature as to significantly derogate from the quality and character of the adjacent Park lands.
- 12.(15) In subsection (14),
- (a) "limited scale use" includes the storage of fuel and supplies, emergency repairs and maintenance facilities, transshipment depots, caches and similar uses; and
  - (b) "temporary use" means a period of active occupation that, in the aggregate, does not exceed six (6) years.
- As amended January 15, 1987

## **TERRITORIAL PARK**

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- 12.(16) The parties agree that Herschel Island is to be established as the Herschel Island Territorial park and, in establishing that Park, the Government of the Yukon Territory will consult the Inuvialuit.
- 12.(17) Except for the lands adjacent to Pauline Cove, the park regime on Herschel Island shall be no less stringent than that of the National Park pursuant to subsections (5) to (13).

As amended January 15, 1987

- 12.(18) Within the lands adjacent to Pauline Cove, the historic resources shall be protected in a manner no less stringent than that of the regime of a National Historic Park as set out in the National Parks Act.

- 12.(19) Any development activity proposed within the lands adjacent to Pauline Cove shall be subject to:

- (a) the screening and review process set out in section 11; and
- (b) the criteria set out in subsection (23) shall apply; and
- (c) the terms and conditions governing such development shall be no less stringent than those under the Territorial Land Use Regulations in force at the time.

Subsection as amended January 15, 1987

### **AREA EAST OF THE BABBAGE RIVER**

- 12.(20) The parties agree that the area east of the Babbage River extending to the jurisdictional boundary between the Yukon Territory and the Northwest Territories, but not including the adjacent nearshore and offshore waters, shall be designated as an area in which controlled development may take place, subject to the provisions of this Agreement and to laws of general application.
- 12.(21) Any development activity proposed for the area referred to in subsection (20) shall be subject to the screening and review process set out in section 11.
- 12.(22) Any development activity proposed for the adjacent nearshore and offshore waters shall be subject to the normal government process and the wildlife compensation provisions of section 13.
- 12.(23) The appropriate review board shall 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 utilisation 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;

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- (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.

### **SECTION 13**

#### **WILDLIFE COMPENSATION**

13.(1) The objectives of this section are:

- (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 is practicable to its original state and to compensate Inuvialuit hunters, trappers and fishermen for the loss of their subsistence or commercial harvesting opportunities.

#### **DEFINITIONS AND GENERAL PRINCIPLES**

13.(2) In this section,

"actual wildlife harvest loss" means provable loss or diminution of wildlife harvesting or damage to property used in harvesting wildlife, or both;

"future harvest loss" means provable damage to habitat or disruption of harvestable wildlife having a foreseeable negative impact on future wildlife harvesting.

- 13.(3) Subject to this section, the Inuvialuit shall be compensated for actual wildlife harvest loss resulting from development in the Inuvialuit Settlement Region.
- 13.(4) Subject to this section, the Inuvialuit shall benefit from environmental protection measures designed to reduce future harvest loss resulting from development in the Inuvialuit Settlement Region.
- 13.(5) The provisions of this section do not apply to development activities on lands owned by the Inuvialuit under paragraph 7(1)(a) except developments proposed for lands presently the subject of outstanding leases or other existing rights.
- 13.(6) Where, in accordance with section 10, Participation Agreements are entered into that by voluntary agreement establish mitigative and remedial obligations for developers, subsection (16) does not apply.

#### **WILDLIFE IMPACT ASSESSMENT**

## **EIRB Operating Procedures - February 5, 2004**

- 13.(7) Every proposed development of consequence to the Inuvialuit Settlement Region that is likely to cause a negative environmental impact shall be screened by the Screening Committee to determine whether the development could have a significant negative impact on present or future wildlife harvesting.
- 13.(8) If the Screening Committee determines that a proposed development could have a significant negative impact on present or future wildlife harvesting, it shall refer the proposal for an environmental impact assessment and review in the manner provided by subsections (9) and (10).
- 13.(9) Where a proposed development is subject to environmental impact review that, in the opinion of the Screening Committee, adequately encompasses or will encompass the assessment and review function and includes or will include in its evaluation adequate terms and conditions of development and limits of liability, the Screening Committee shall refer the proposal to the body carrying out the environmental impact review.
- 13.(10) If, in the opinion of the Screening Committee, the review body does not or will not adequately incorporate within its review each element of the process set out in subsection (9), or if the review body declines to do so, the proposal shall be referred to the Review Board.
- 13.(11) Where, pursuant to subsection (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.
- 13.(12) The Government agrees that every proposed development of consequence to the Inuvialuit Settlement Region that is within its jurisdiction and that could have a significant negative impact on wildlife habitat or on present or future wildlife harvesting will be authorized only after due scrutiny of and attention to all environmental concerns and subject to reasonable mitigative and remedial provisions being imposed.

### **FINANCIAL RESPONSIBILITY**

- 13.(13) Every developer, other than a government but including a Crown corporation, shall be required to prove financial responsibility before being authorized to undertake any development in the Inuvialuit Settlement Region.
- 13.(14) The government authority empowered to permit the development and set the terms and conditions thereof may require a developer to provide for and ensure financial responsibility with respect to the obligations and undertakings provided in this section in the form of a letter of credit, guarantee or indemnity bond or any other form satisfactory to the government authority.

### **LIABILITY FOR DAMAGE**

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- 13.(15) 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 as follows:
- (a) where the loss was caused by one developer, that developer shall be liable;
  - (b) where the loss was caused by more than one developer, those developers shall be jointly and severally liable; and
  - (c) where the loss was caused by development generally, but is not attributable to any specific developer, the developers whose activities were of such nature and extent that they could reasonably be implicated in the loss shall be jointly and severally liable.
- 13.(16) Subject to subsections (5) and (6), if any developer who has caused actual wildlife harvest loss or future harvest loss is unable or fails to meet his responsibilities therefor, Canada acknowledges that, where it was involved in establishing terms and conditions for the development, it has a responsibility to assume the developer's liability for mitigative and remedial measures to the extent practicable.
- 13.(17) No recourse pursuant to subsection (18) may be taken against a developer unless a claim is made under subsection (19) within three years from the time when the loss in respect of which the recourse is exercised occurred or first occurred, as the case may be, or could reasonably be expected to have become known to those affected thereby.

### **ANNEX A-1**

#### **DESCRIPTION OF THE INUVIALUIT SETTLEMENT REGION**

Commencing at the point of intersection between the Yukon Territory/Alaska boundary and the shore of the Beaufort Sea;

thence southerly along said boundary to its intersection with the line of the watershed separating the streams flowing into the Porcupine River from those flowing into the Mackenzie River and the Beaufort Sea, said intersection being at approximate 68°33'25";

thence easterly and southerly along said line of watershed to a point on the Yukon Territory/Northwest Territories boundary on the trail across the portage in McDougall Pass between Rat and Bells Rivers at approximate latitude 67°42'48" and approximate longitude 136°27'16";

thence north along the Yukon/Northwest Territories boundary to its intersection with latitude 68°13';

thence easterly along said parallel to the west shoreline of the East Channel of the Mackenzie River at approximate longitude 133°46'06"W;

thence northerly along the west shoreline to its intersection with latitude 68°25'N;

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thence easterly along said parallel to its intersection with longitude 132°00'W;

thence southerly along said longitude to its intersection with latitude 68°00'N;

thence easterly along said parallel to its intersection with approximate longitude 120°40'51"W, such longitude being determined by the intersection of the shoreline of Amundsen Gulf with the mouth of Outwash River being the eastern portion of the Paulatuk 7(1)(b) land selections;

thence north along said longitude to its intersection with the shoreline of Amundsen Gulf;

thence easterly in a straight line to the point of intersection of the northerly bank of Kugalak River at the shoreline of Penny Bay in Amundsen Gulf;

thence generally easterly following said northerly bank to its intersection with longitude 116°38'10" at approximate latitude 69°38';

thence northwesterly in a straight line to the intersection of latitude 69°53'20" and longitude 117°08'40";

thence northerly in a straight line to the intersection of latitude 70°00' and longitude 117°07';

thence easterly along latitude 70°00' to its intersection with longitude 112°53';

thence southerly in a straight line to its intersection with latitude 69°50';

thence easterly along latitude 69°50' to its intersection with longitude 112°39';

thence northerly along longitude 112°39' to a point of intersection of longitude 112°39' at the shoreline of Quunnguq Lake at approximate latitude 69°51';

thence easterly, northerly and westerly following the sinuosities of the shoreline of said Lake to a point of intersection of longitude 112°30' at approximate latitude 69°54'50";

thence northerly along longitude 112°30' to its intersection with latitude 70°00';

thence easterly along said parallel to its intersection with longitude 110°00'W;

thence northerly along said longitude to its intersection with latitude 80°00'N;

thence westerly along said parallel to its intersection with longitude 141°;

thence southerly along said meridian of longitude to the point of commencement, without prejudice, however, to any negotiations or to any positions that have been or may be adopted by Canada respecting the limits of maritime jurisdiction in this area.

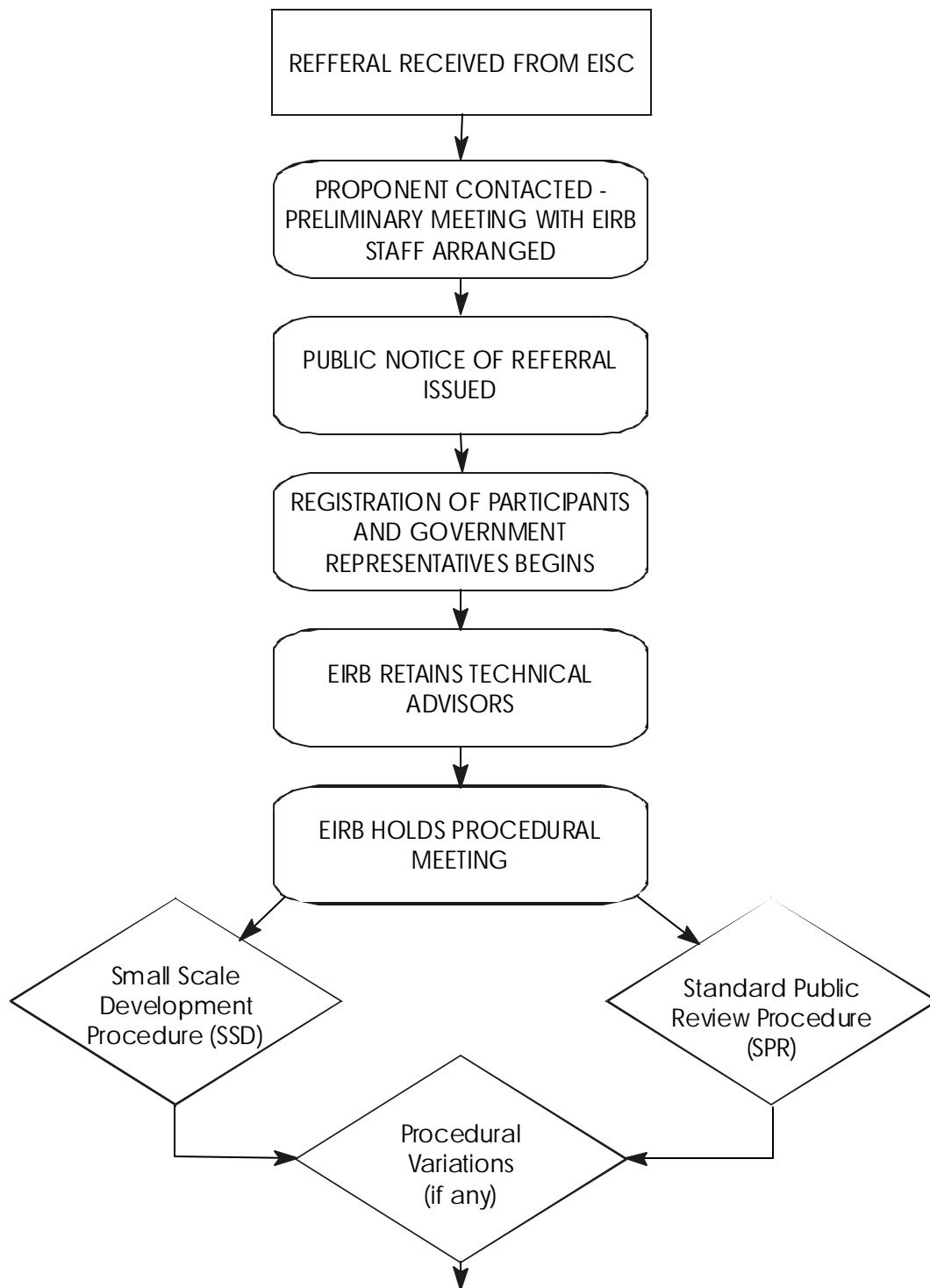
Pursuant to the TFN/COPE Agreement dated May 19, 1984, in the event that TFN has not concluded a Final Settlement with Canada containing the Inuvialuit rights referred to in that Agreement within ten years from the proclamation of the legislation giving effect to the Inuvialuit Final Agreement, the Inuvialuit Settlement Region boundary shall, unless agreed otherwise, revert to the "original boundary" as shown in Annex A and described in Annex A-2.

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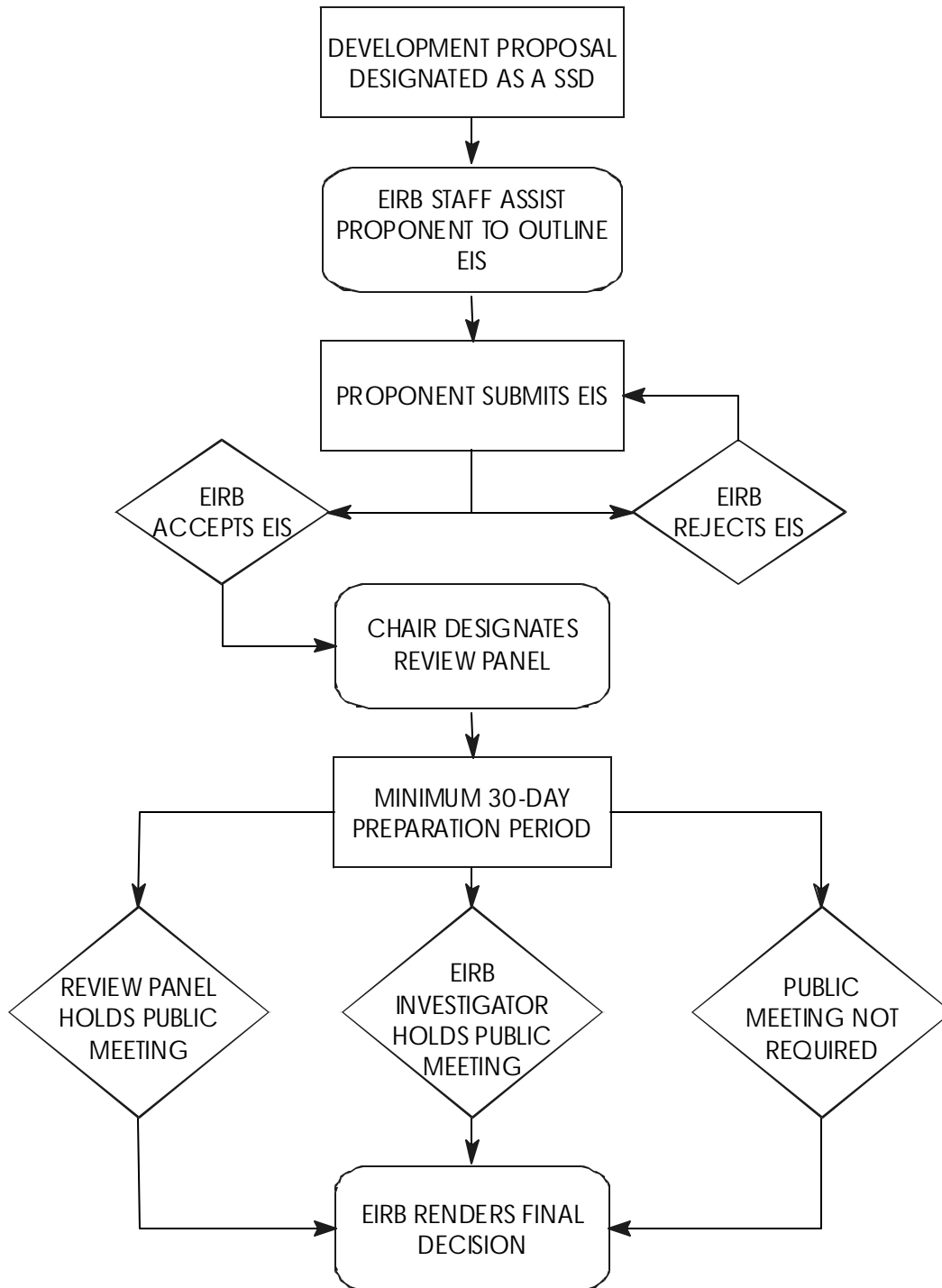
See Figure 1 for map of Inuvialuit Settlement Region.



**FIGURE 2: INITIATING THE PUBLIC REVIEW PROCESS**



**FIGURE 3: SMALL SCALE DEVELOPMENT (SSD) PROCEDURE**



**FIGURE 4: STANDARD PUBLIC REVIEW (SPR) PROCEDURE**

