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December 12, 2003

Via Fax (867) 766-7074

Mackenzie Valley Environmental Impact Review Board  
 200 Scotia Centre  
 P.O. Box 938  
 Yellowknife, NT X1A 2N7

Attention: **Martin Haefele**  
**Environmental Assessment Officer**

Dear Mr. Haefele;

**Re: Paramount Cameron Hills Extension EA: Request for Ruling**

We are counsel for the Ka'a'Gee Tu First Nation (the "Ka'a'Gee Tu"). We write on their behalf in response to your letter of December 5, 2003 and Mr. Vern Christensen's letters of December 5, 2003 and December 8, 2003, and as indicated in your letter, to provide to the Mackenzie Valley Environmental Impact Review Board (the "Board") additional information in response to the submissions of the parties, with regard to the request by Mr. Allan Landry, on behalf of the Ka'a'Gee Tu, for a ruling from the Board.

In Mr. Christensen's letter of December 5, 2003, he posed four questions. The answers are as follows:

1. As is indicated in his letter, Mr. Allan Landry was not present at the meeting that took place between Mr. Burlingame and Ms. Maaskant on October 30, 2003. The events, as he describes them, were relayed to him by Mr. Joe Acorn, who is working as an advisor to the Ka'a'Gee Tu.

The second event noted in the letter was the firing of Board Member Gordon Wray in October of this year. Mr. Landry was also not present at this event. However, concerns that former Indian Affairs Minister Robert Nault was "muzzling" the Board and a non-confidence motion was passed by the Board with respect to Chair Todd Burlingame were publicized by the Canadian Press in a story printed in newspapers across the country (see for example, the *Globe and Mail*, Saturday, October 11, 2003, p. A14).

2. As is indicated in his letter, the source of the information with respect to the meeting between Ms. Maaskant and Mr. Burlingame is Mr. Acorn.
3. To the best of Mr. Landry's knowledge, Mr. Acorn was not present at the meeting between Mr. Burlingame and Ms. Maaskant. Mr. Acorn did, however, speak directly

with Ms. Maaskant and Mr. Ehrlich about the meeting between Ms. Maaskant and Mr. Burlingame.

4. Mr. Landry has no other sources of information, than his conversations with Mr. Acorn, and the public reporting of the dismissal from the Board of Mr. Wray.

In Mr. Christensen's letter of December 8, 2003, he posed an additional question. The answer is as follows:

Mr. Landry is a councillor of the Ka'a'Gee Tu, and acts as the Ka'a'Gee Tu's Oil and Gas Advisor. In this capacity, he has the authority to speak on behalf of the Ka'a'Gee Tu on all issues relating to oil and gas development on the traditional territory of the Ka'a'Gee Tu. In light of the question posed by Mr. Christensen, Mr. Landry went to the Ka'a'Gee Tu to reaffirm his authority on December 10, 2003. Chief and Council affirm their support, and confirm that he is making this request for ruling on their behalf.

The Ka'a'Gee Tu, as a directly affected party in the Environmental Assessment (the "EA"), have a right to an unbiased decision-maker, according to the principles of administrative fairness. It should be emphasized that our client is not alleging actual bias on the part of Mr. Burlingame. The concern of the Ka'a'Gee Tu is that a meeting between Ms. Maaskant and Mr. Burlingame raises a reasonable apprehension of bias. The legal test is as stated by De Grandpré J. in *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 S.C.R. 369 at 394:

... the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is 'what would an informed person, viewing the matter realistically and practically -- and having thought the matter through -- conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly.'

It is a governing policy in this area of law that "it is not merely of some importance, but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly seen to be done" (*King v. Sussex Justices*, [1924] 21 K.B. 256 at 259).

The Ka'a'Gee Tu have reviewed the submission of Ms. Maaskant, and accept her account of the events at issue. She does confirm that the meeting did in fact occur, however, and that it was not a chance encounter between the parties.


In the view of the Ka'a'Gee Tu, a reasonable and informed person, viewing the matter realistically and practically, would conclude that a private meeting between a developer who is the subject of an EA and the Chair of the Board with conduct of the EA, after the commencement of the EA, raises a material risk that the Chair would be more likely than not, whether consciously or unconsciously, to decide the matter unfairly. It does not matter, in our submission, whether Ms. Maaskant and Mr. Burlingame discussed the merits of the application. The reasonable apprehension of bias arises from the fact that the Chair met in a social context with the developer, while an important and controversial assessment is in progress.

A reasonable and informed person would also consider the context in which this meeting took place. The meeting between Ms. Maaskant and Mr. Burlingame took place within three weeks of the publicity surrounding the turmoil at the MVEIRB, and the non-confidence motion raised by the Board in the Chair, Mr. Burlingame. Ms. Maaskant told Mr. Acorn that she was going to speak with Mr. Burlingame about the conduct of the EA, given the recent turmoil at the Board, and subsequently reported to him that she had done so.

The Ka'a'Gee Tu recognize the seriousness of the issue they raise. It is of extreme importance to them, that the issues before the Board in this EA are determined in an environment that is not only just and fair, but is seen by all to be just and fair.

Yours very truly,

MANDELL PINDER



Gillian Calder  
Barrister and Solicitor

GC/djg

cc: Clients