August 5, 2010

National Energy Board,
444 Seventh Avenue SW,
Calgary, Alberta,
T2P 0X8

Attention: Louise Niro, Regulatory Officer

By facsimile: 1 877 288 8803

Canadian Environmental Assessment Agency,
160 Elgin Street,
Ottawa, Ontario,
K1A 0H3

Attention: Mario-Francois Therrien, Panel Manager

By facsimile: 1 613 957 0941

Dear Sirs/Madames,

Re: Northern Gateway Pipeline Project – JRP Procedural Direction

Attached please find comments from the Kitselas First Nation related to the completeness of the application by Northern Gateway Pipelines to the Joint Review Panel as requested. Also enclosed is the Panel Session Registration Form for the Prince George hearings.

If you have any questions or require further clarification, please contact Wilfred McKenzie, Director, Natural Resources at 250 635 8882 extension 238 or by email at w.mckenzie@kitselas.com

Yours truly,

<original signed by>

Glenn Bennett,
Chief Councillor

CC:  Chris Knight, Policy Advisor facsimile: 250 656 3827
     Wilfred McKenzie, Director, facsimile: 250 635 8793
Kitselas First Nation

Comments to the Joint Review Panel

Pursuant to the JRP Procedural Direction

July 2010

Enbridge Northern Gateway Proposed Project

Kitselas First Nation

August, 2010

Page 1
Introduction:

Kitselas First Nation provided preliminary comments to the Joint Review Panel (JRP) Procedural Direction with a letter and report dated July 12. This report addresses the three requests made by the JRP namely:

- The draft list of issues provided as Appendix I in the Procedural Direction
- Additional information which Enbridge Northern Gateway should be required to file, and
- Location(s) and proposed timing for the oral hearings

Acknowledgement:

The Kitselas First Nation would like to thank the Natural Resource Department project team that worked to review the application and produce this report. Team members include; Wilfred McKenzie, Director, Chris Knight, Policy Advisor, Fred McKenzie, Tech Field Supervisor, Terry Collins and Ken McDames Jr. Resource Technicians and Zina Wood, Administrative Support.

Process Disclaimer:

As pointed out in previous correspondence with CEAA and the JRP, Kitselas participation in the project review will be limited by available resources. Kitselas submitted a budget for participant funding to the CEAA Aboriginal Funding Program prior to the Application being filed. That proposal was significantly reduced by the funding Advisory Committee with

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the result that Kitselas participation may be limited to this report that has been produced pursuant to the Procedural Direction.

Kitselas has concluded that it would not be responsible to accept the reduced funding proposed by CEAA as it would marginalize our participation and further entrench the situation where First Nations are asked to participate in a major project review of this type without adequate resources. We will continue to urge government and the Applicant to address this matter so that we may participate in a meaningful manner.

**General:**

The following sections describe the Kitselas First Nation and its general relationship with the lands and resources through which the terrestrial portion of the Project is proposed to be constructed.

Kitselas First Nation is a community of approximately 600 located principally in two communities east and south of the city of Terrace. Kitselas traditional territory includes the watersheds of the Skeena and Kitimat Rivers from Lorne Creek in the east to the estuary of the Skeena and Kitimat Rivers.

The Kitselas traditional territory will be impacted by about 110 kms of the proposed twin pipeline. This represents perhaps 9 to 10% of the linear impact of the entire proposed British Columbia section of the pipeline. Not only is that significant in itself, but the territory that is proposed to be crossed consists of remote and rich wildlife habitats, important salmonid spawning rivers and technically complex geology. In addition to our
terrestrial territory, Kitselas has used the sea resources offshore of Kitimat as well as the oceans at the mouth of the Skeena River as an integral part of our economy.

The Kitselas First Nation is organized into four hereditary clans; the Gispudwada (Killerwhale), Laxgiboo (Wolf), Laxsgiik (Eagle) and Ganhada (Raven) clans. These are historical societal methods of organization, the contemporary application of which is very limited. In the past each clan owned and controlled resource use in the clans’ territory. At present, however, the elected Kitselas First Nation Council exercises jurisdiction over the Kitselas reserve land base and also performs the intergovernmental function for the entire traditional territory, with the authority to enter into a full range of agreements with government, the private sector and non-government organizations.

The Clan system, referred to above is maintained as a cultural symbol by an elders group, the Kitselas Elders, which participates in community decision making through a variety of advisory bodies and maintains the cultural substance of feasts and festivities. The Kitselas have a defined traditional territory which reflects the area over which they exercised stewardship jurisdiction. It is bounded on the south by Haisla territory approximately eight kilometres upstream from the mouth of the Kitimat River and on the east by Lorne Creek. In addition to this traditional territory, Kitselas has traditional harvest areas on the north coast and in the lower Skeena River and Skeena estuary and in the Nass watershed. These
areas fall within the jurisdictional boundaries of other First Nations but are well known as Kitselas sites.

Kitselas has two principal residential communities, described above and a historical community primarily used at present for recreational residential purposes. The Kitselas First Nation has a Land and Resource Stewardship Policy that took effect as of January 1, 2006. It is predicated on Kitselas Aboriginal rights and title and it offers collaborative working relationships with others in their traditional territory. It describes Kitselas First Nation community objectives and it sets out both general principles and more specific policies for land, water and resource development and use. Information from this Policy document is reflected in the following sections.

**Traditional Occupation and Use of the Project Area**

The proposed Project enters Kitselas territory at approximately KP 1150 (Wedeene River valley) and leaves again at approximately KP 1077 (confluence of the Clore and Bernie Rivers).

Kitselas stewardship jurisdiction was historically centred on the Kitselas Canyon; one of the longest continuously occupied sites in north west North America. Some remnants and residuum discovered through archaeological research at Kitselas Canyon date back 10,000 years. The Kitselas have used their territory and traditional harvest areas as an economic base, for food harvesting, material harvesting and recreation. Kitselas controlled trade on the Skeena River and collected tariffs and royalties on the transport of goods until the construction of the Grand Trunk Railway.

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Historic use of the forest includes obtaining materials for construction of canoes, longhouses, totem poles, wood-crafting, basketry, cooking utensils and clothing. A wide range of forest plants and berries were also gathered, mainly for medicine and food purposes.

The Upper Kitimat River, from the Wedeene River to the headwaters has long been used by Kitselas for trapping, hunting, fishing and gathering of various foods. Trappers used their tralines each year from early September until the end of February and used the area for spring beaver trapping from March to May. Game was harvested by designated harvesters and was distributed to the community.

Current Occupation and Use of the Project Area for Traditional and Contemporary Purposes

Today, Kitselas people continue to hunt, fish, trap and gather various foods and plants in the Project area; activities are primarily carried out by those with trapline areas however the food is often distributed to elders or others in the Kitselas community. These activities occur within the general Lower Kitimat, Upper Kitimat and Clore River areas.

Kitselas members fish the Upper Kitimat and its tributaries, usually from early spring into late fall. The fish are harvest as a supplement to other harvest activities (hunting and trapping) in the Upper Kitimat area. Food fishing also occurs in the Clore River valley, for the length of the valley downstream of the proposed Project.
Kitselas members hunt ungulates in the Upper Kitimat and its tributaries. The harvested animals are distributed to Kitselas elders. Hunting for mountain goat is limited to certain areas and usually occurs between July and February. Bears are harvested in the spring months and then in September to November and harvested animals are distributed to other band members. Ungulate and bear harvesting also occur in the Lower Kitimat and parts of the Big and Little Wedeene valleys as well as in the Clore River valley portion of the proposed Project area.

Game birds are usually harvested from September to the end of November. Upland birds are usually taken along road rights of way and migratory bird harvesting occurs in the same areas frequented by water animals.

Trapping of fur bearing animals provides both a source of food and forms part of the First Nations economy. Several Kitselas members actively trap and the Kitimat River and its tributaries is the main harvest area, with four distinct trapping areas in the upper Kitimat area. There are trapline cabins in the valleys of Chist Creek, Bolton Creek, North Kitimat River and upper Kitimat River. Most of the harvest for fur bearing animals takes place within 200 metres of roads, in treed areas bordering rivers and streams.

Gathering of forest plants and berries usually runs from June to October in the Upper Kitimat River and tributary valleys, usually in lower elevations adjacent to wetted areas.

In addition to these uses, this area forms part of the informal chart area for the Kitselas forest licenses. Kitselas operates a successful land
management and forest harvesting business that has harvested 400k m³ of timber over the past 5 years.

**Question 1 - Draft List of Issues**

**Need for the project**

- Is there a need for the Project as proposed by the applicant?

  *Kitselas believes that the Proponent has not met a reasonable standard of justification for the Project. Their reference to “investment” in pre-development activities lacks detail and substantiation and does not appear as compelling evidence, as would firm contracts from shippers, that the Project has a demonstrable commercial base.*

- What is the economic feasibility of the proposed facilities?

  *In the absence of support in the form of secure contracts from shippers, it is difficult to determine economic feasibility. Construction costs may vary widely from existing estimates. Terrain challenges and the costs of appropriate environmental mitigation will have a significant effect on the revenue projections contained in the application.*

- What is the balance between the potential for environmental disasters of the scale of the recent British Petroleum undersea well blowout incident and Enbridge’s own Michigan pipeline
failure and the questionable economic benefits stated in the application by the Proponent?

Kitselas views this as a key issue for the JRP to address. It also points to a serious deficiency in the application in terms of marine resource and socio-economic matters and the absence of substantive emergency measures planning and capacity.

Potential impacts of the Proposed Project

- What are the potential impacts on:
  - Aboriginal interests;
  - Commercial interests; and
  - Landowners and land use?

The definition of these areas of evaluation needs to be read more broadly. In fact, this is a question of whether or not the north coast of British Columbia should be opened to large scale tanker traffic of crude oil and condensate through an environment that must rate as one of the most sensitive and valuable in all of North America. The JRP must engage on this larger question of risk and potential benefit as the key organizing theme of its review.

- What are the cumulative socio-economic impacts of this project when considered in the context of development to date together with other proposed energy projects and port development?
Kitselas believes that the present scope of review and the Application do not adequately address the issue of cumulative socio-economic impacts. What is required is a process that will establish a baseline of First Nation socio-economic data, the selection of appropriate and relevant socio-economic indicators and a commitment to track changes to these indicators over time.

Environmental effects

- What are the potential effects on environment and socio-economic matters?

The issue, as framed in Appendix I is too general to be of much use in responding to what issues the JRP should consider and evaluate. The socio-economic impacts on the Kitselas traditional territory can best be described as “short term benefits associated with construction activities” against the significant impacts of the proposed construction approach, particularly the effects of the proposed drilling of the two tunnels through sensitive and challenging terrain in the Kitselas territory and the long term potential for environmental disaster from a pipeline failure or a marine accident. The bulk of the economic benefits will accrue to petroleum producers and the owners of the pipeline. The environmental damages will be directly felt by Kitselas, the communities along the pipeline route and the maritime communities and First Nations in the transportation corridors.
Financial regulation

- Is the proposed differential tolling structure and tolling methodology appropriate?

- Is the proposed method of financing appropriate?

As discussed above, it appears, in Kitselas' view, that the Applicant is relying upon a successful outcome in the regulatory review process as the key component for project equity participation and subsequent debt financing. We do not believe that this approach is consistent with the intent of the NEB legislation and policy and will have a detrimental impact on First Nations and stakeholders.

Design, construction and operation

- Is the general route of the pipeline, location of the proposed facilities and the siting of the marine terminal appropriate?

There is not enough information in the application, as it concerns the Kitselas traditional territory to conclude whether or not the chosen route for the pipeline is appropriate. Information is required about alternative routes through or adjacent to the Kitselas traditional territory that were considered and the reasons why they were not chosen. This applies not only to the selected route but to the methods of construction proposed for the Kitselas territory.

- Is the applicant's consultation program for the Project adequate?
No. The Kitselas Stewardship Policy encourages proponents to engage with Kitselas in establishing the data base for project analysis. This has not been done with the result that additional studies need to be undertaken with respect to fisheries, wildlife and terrain suitability before the project can be considered on the basis of appropriate information.

- What is the capacity of the applicant to safely build and operate the proposed facilities in the range of physical conditions along the Rocky and Coastal Mountains and at the Kitimat Terminal?

The following paragraphs are taken from a report by Richard Girard, Polaris Institute Research Coordinator issued in May 2010: “Every year Enbridge strives for the lofty goal of zero releases, or no spills that could send toxic poisons, chemicals and hydrocarbons into the environment. In spite of its stated objective thousands of litres of dangerous fluids are released from the company’s pipelines and holding tanks into the environment each year.

Between 1999 and 2008, across all of Enbridge’s operations there were 610 spills that released close to 132,000 barrels (21 million litres) of hydrocarbons into the environment. This amounts to approximately half of the oil that spilled from the oil tanker the Exxon Valdez after it struck a rock in Prince William Sound, Alaska in 1988.
Based on the number of spills that Enbridge causes every year, despite what the company says about pipeline safety, a rupture, leak or spill is seemingly inevitable.

Safety, Mitigation and Prevention

- What safety measures are in place to protect people and the environment?
- What are the consequences of hydrocarbon release from the Project?
- Are the proposed risk assessment, mitigation and prevention measures and programs appropriate for the design, construction, operation and abandonment of the proposed facilities?
- Are the proposed plans and measures for emergency preparedness and response appropriate?

In general, Kitselas does not believe that the application deals adequately with the potential impacts on the marine environment, marine resources and the socio-economic impacts on communities linked to the marine environment. Kitselas has not been invited to participate in the marine transportation study so we are not aware of any detailed risk and impact scenarios that may have been developed to consider a likely incident that would result in the release of hydrocarbons to the marine environment. The applicant proposes to utilize the largest tankers (VLCC) in the Douglas Channel and the ocean approaches to the terminal. We understand that these vessels
have the capacity to carry up to 2 million barrels of oil per ship. These would be the largest crude oil carriers on the west coast of North America and the consequences of an incident and the potential damage to the marine environment are beyond comprehension. Similar concerns exist with respect to the potential impact of a pipeline failure on the terrestrial and aquatic environment within and adjacent to the Kitselas traditional territory.

Terms and Conditions

- What terms and conditions should be included in any decision the Panel may issue?

This question is premature. First, the data base upon which the present assumptions regarding environmental and socio-economic impacts are based must be expanded as per the Kitselas proposals contained in the following section. Then the application must be expanded to include the additional information and re-submitted for review. Identification of terms and conditions can only follow a thorough review of an expanded and amended application.

Question 2 — Additional information that the applicant should be required to file

Kitselas has reviewed the baseline information upon which the application was prepared. Kitselas performed a similar exercise with respect to the Pacific Trails Pipeline Environmental Impact Statement. The routes proposed for both projects are similar in terms of their impact areas.

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general, the information used to prepare the application in terms of wildlife; fisheries and terrain stability are inadequate, inaccurate and out of date. The following studies need to be undertaken in the Kitselas traditional territory. These additional studies will have an effect on detailed route selection, construction approaches and construction timing. All of the studies listed below should be undertaken through, or in conjunction with the Kitselas Natural Resource Department

Grizzly

Study area: Kitimat Valley from the Wedeene River to the Clore River; Trapline Creek and Williams Creek to the BC Hydro Skeena sub-station adjacent to the Terrace/Kitimat Regional Airport

- Appropriate denning studies and springtime movement and feeding.
- Autumn feeding and hibernation.
- Population study.

Goat

Study area: Kitimat Valley and adjacent mountain ranges from the Wedeene River to the Clore River; Copper River and adjacent mountain ranges, Trapline Creek and Williams Creek to the BC Hydro Skeena sub-station adjacent to the Terrace/Kitimat Regional Airport.

- Winter range study
- Kidding areas
Ungulates

Study area: Kitimat Valley from the Wedeene River to the Clore River; Trapline Creek and Williams Creek to the BC Hydro Skeena sub-station adjacent to the Terrace/Kitimat Regional Airport

- Winter range study
- Calving areas
- Population study

Salmonids

Study area: Kitimat Valley from the Wedeene River to the Clore River; Trapline Creek and Williams Creek to the BC Hydro Skeena sub-station adjacent to the Terrace/Kitimat Regional Airport

- Fish habitat
- Population studies, spawning and rearing areas

Terrain stability

Study area: Kitimat Valley from the Wedeene River to the Clore River; Trapline Creek and Williams Creek to the BC Hydro Skeena sub-station adjacent to the Terrace/Kitimat Regional Airport

- Potential for erosion
- Slope stability
- Impacts on groundwater movement
- Potential for riverbed shifting

**Construction facilities**

Additional information is required with respect to size and location of construction camps and construction lay down areas, particularly addressing concerns about increased hunting pressure and the effects on local fish and wildlife populations and on the environmental concerns with respect to waste management.

**Access**

Proposed new access routes will create a loop connecting Williams Creek to Trapline Creek and the Copper River. Kitselas is concerned with the potential for increased wildlife and fish mortality created by additional hunting and fishing pressure. The application does not identify which of the proposed access routes are temporary or will remain permanent. Kitselas needs to independently assess alternatives to the proposed access routes and their respective potential for wildlife and fisheries impacts.

**Trapping**

The Applicant needs to organize meetings with trappers in the Kitselas traditional territory to gather information and discuss project impacts with a specific focus on access issues and loss of habitat. Discussions should also include compensation.
Hydrology

Kitselas needs the additional information that would be provided by an independent review of the project effects on groundwater patterns and their impacts on spawning systems in the Kitimat and its tributaries.

Additional Aboriginal Traditional Knowledge (ATK) studies

The proposed hydro rights of way and roads at Williams Creek and the connecting routes to the Skeena sub-station that are now included as part of the application were not included in the Kitselas ATK study and need to be re-assessed.

Preliminary identification of Issues and Concerns identified through the review of the application for completeness

Kitselas affirms that the “stewardship lens” described in the Kitselas Land and resource Stewardship Policy will be applied to this proposed project through participation in the project review and through direct communication with the applicant. Second, an assessment of whether or not the proposed project would provide greater community benefit than negative impact will also be undertaken. With this as context, the initial issues and concerns identified by the Kitselas First Nation about the proposed Project include:

- The need for information on alternate routes for the Project.
• Slope stability in the steeper terrain through the upper Kitimat valley, Nimbus Mountain and the Clore valley, particularly where substantial timber removal is required and where a larger road prism is required due to steep slopes.

• Thorough analysis is required of the proposed location of the “waste rock” stockpiles created by tunnelling – their proximity to spawning systems and more stringent mitigation and protection from metals leaching into groundwater, creeks and rivers.

• Management of drainage water on access roads and in the pipeline trench to prevent erosion and impacts to watercourses.

• The need for additional terrain stability assessments

• Protecting fish habitat by ensuring timing windows and mitigation strategies are adhered to.

• The high risk of impacts to fish and wildlife habitat values associated with the Chist Creek, Hunter Creek and other stream crossings.

• The risk of impacts to important grizzly bear habitat (e.g. spring feeding areas, fishing areas, denning areas, movement corridors) along portions...
of the proposed pipeline route in the upper Kitimat valley; candidate Wildlife Habitat Areas should be identified on project maps.

- The risk of impacts to wet areas and beaver ponds in the Kitimat valley.

- Insufficient information regarding ungulates, particularly critical areas for mountain goats (winter range, natal areas, travel corridors, habitat features).

- The need for site assessments and consultation with Kitselas First Nation prior to permitting to confirm appropriate work windows.

- Inclusion of Kitselas First Nation in future field assessments (specifically including a "pre-construction route walk"), access management and monitoring programs.

- Potential for impacts to seasonal harvesting activities during proposed construction and post construction.

- Increased access for hunters, predators and others along the corridor; restrictions on access will be sought and must be considered as part of an amended project application.

- Acceptable involvement of Kitselas First Nation in the project review process, supported by adequate capacity funding.

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• Acceptable involvement of Kitselas in post certification detailed design, construction monitoring and regulatory oversight.

• Post-approval compliance and Proponent commitments being implemented properly.

• Adequate socio-economic benefits.

• Potential impacts to the marine environment due to increased tanker traffic.

• Ensuring government and proponents understand the Kitselas Land and Resource Stewardship Policy and Kitselas views on the Development Assessment Process.

**Question 3 — Location and timing of Oral Hearings with respect to the completeness of the Application**

In addition to these written comments, Kitselas intends to register and participate in the Panel session scheduled for Prince George on Wednesday September 8, 2010.
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Enbridge Northern Gateway Project

Joint Review Panel

Panel Session Registration Form

Fields marked with an asterisk (*) must be filled in.

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<tr>
<th>* First Name: Chris</th>
<th>* Last Name: Knight</th>
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<td>* Postal Code: V8G 3X6</td>
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<td>*Telephone: 250 635 8882 extension 238</td>
<td>E-mail: <a href="mailto:m.mckenzie@kitselas.com">m.mckenzie@kitselas.com</a> and <a href="mailto:knighter1@shaw.ca">knighter1@shaw.ca</a></td>
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*Which Panel session would you like to attend? (Select one)

_____ Whitecourt (starting on 10 August)

_____ Kitimat (starting on 31 August)

X _____ Prince George (starting on 8 September)

You will have approximately 30 minutes or less for your oral comments. Participants who believe that additional time is required to provide their comments are encouraged to specifically seek additional time to be scheduled for their oral comment by contacting Louise Niro, Regulatory Officer, at 403-299-3987 or toll free at 1-800-899-1625.

Please indicate your preference for when you would like to make your comments to the Panel:

_____ Morning

X _____ Afternoon

_____ Evening
Panel staff will contact you shortly after the applicable registration deadline to confirm the location, date and approximate time of your appearance. If you have not been contacted by the Friday prior to the start of the scheduled Panel session, please contact Louise Niro, Regulatory Officer, at 403-299-3987 or toll free at 1-800-899-1265.