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[www.glwb.com](http://www.glwb.com)

November 23, 2022

File: G22L1-005

Ken Kyikavichik  
Grand Chief  
Gwich'in Tribal Council  
PO BOX 1509  
Inuvik NT X0E 0T0

Sent by email

Mr. Kyikavichik,

**Re: GTC Late Comment Submission - Second Request for Public Hearing – KBL Environmental Ltd Type B Water Licence Renewal for Inuvik Soil Treatment Facility (G22L1-005)**

Thank you for your letter dated October 28, 2022, requesting the Board re-consider its decision to hold a public hearing in respect to KBL Environmental Ltd.'s Type B Water Licence Renewal for the Inuvik Soil Treatment Facility. The Gwich'in Land and Water Board (Board) met on November 18, 2022, to consider the acceptance of this submission to the Public Record for this proceeding.

In accordance with the MVLWB Rules of Procedure (Rules), the Board has decided not to accept GTC's submission because it was made outside the public review period for the application and is considered late. As per the Rules, GTC's letter will be posted to the GLWB public registry along with these decision documents and will include a note indicating that the submission was late and that it was not considered by the Board.

Detailed reasons for this decision are attached. Please do not hesitate to contact GLWB Executive Director Leonard DeBastien should you have any questions or concerns regarding this letter.

Yours sincerely,

Elizabeth Wright  
Chair, Gwich'in Land and Water Board

BCC'd to: GLWB Distribution List  
Attached: Reasons for Decision



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## Reasons for Decision

Water Licence Application – Decision on Late Submission by Gwich'in Tribal Council	
<b>File Number</b>	G22L1-005
<b>Company</b>	KBL Environmental Ltd.
<b>Project</b>	Inuvik Soil Treatment Facility
<b>Location</b>	Inuvik, NT
<b>Activity</b>	Deposit of Waste – In association with the Operation of the Inuvik Soil Treatment Facility
<b>Date of Decision</b>	November 18, 2022

## **1.0 DECISION**

On November 18, 2022, the Gwich'in Land and Water Board (GLWB or Board) met to decide whether to consider late comments that were submitted on October 28, 2022, by the Gwich'in Tribal Council (GTC) in respect to the KBL Environmental Ltd. (KBL)'s Type B Water Licence (Licence) Renewal Application G22L1-005 for the Inuvik Soil Treatment Facility. After reviewing the Application materials, the Public Record for the Proceeding, and the MVLWB Rules of Procedure, the Board has made the following decision:

### **1) To not consider the late comments that were submitted by Gwich'in Tribal Council on October 28, 2022**

These Reasons for Decision set out the Board's regulatory process for the Application to date and rationale for the decision regarding the late submission of evidence.

## **2.0 APPLICATION SUMMARY**

KBL Environmental applied to the GLWB to renew Water Licence G17L1-002, which authorizes the deposit of waste in association with the operation of the Inuvik Soil Treatment Facility (STF). The Inuvik STF is located on previously disturbed lands within Town of Inuvik's Municipal Solid Waste Disposal Facilities.

Project activities involve the collection, storage, and treatment of petroleum hydrocarbon contaminated soil, snow and water, including the operation and maintenance of a soil treatment pad and a water retention pond. Treated soil meeting licence criteria will be transferred for use as daily cover at the Inuvik landfill. Soil determined through laboratory analysis to be unsuitable for re-use will be transported off site to an appropriate facility approved to accept the material for treatment or disposal. Treated water is reused onsite, discharged to the receiving environment, or transported offsite if it does not meet licence criteria.

### **2.1 Application Contents<sup>1</sup>**

1. Licence Application Form and Project Description
2. Engagement Record and Plan V.2.1
3. Operations and Maintenance Plan (including Spill Contingency Plan) V.2.2
4. Waste Management Plan V.2.2
5. Environmental Monitoring Plan V.2.1
6. Closure and Reclamation Plan V.1.1

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<sup>1</sup> See [new.onlinereviewssystem.ca](https://new.onlinereviewssystem.ca) for [KBL - Type B Water Licence Renewal - Inuvik STF \(G22L1-005\)](#)

### 3.0 REGULATORY PROCESS

The Board's regulatory process to date for Application G22L1-005 is summarized below. All hyperlinked documents are available on the GLWB Online Public Registry.<sup>2</sup>

Date	Step in Proceeding
June 2, 2022	Licence <a href="#">Application</a> submitted
June 7, 2022	Application deemed complete and circulated for public review on ORS
June 23, 2022	KBL Licence G17L1-002 expired
June 28, 2022	Deadline for comments on Application (GWNT ENR and GTC commented) - GTC Letter requests that GLWB hold a Public Hearing for the Application
July 7, 2022	Deadline for Applicant response (KBL responded)
July 15, 2022	<a href="#">Information Request</a> issued to GNWT ENR (Request for Facility Inspection Report)
July 28, 2022	Deadline for response to Information Request
August 19, 2022	GNWT ENR submitted Response to Information Request ( <a href="#">Inspection Report</a> )
August 23, 2022	KBL <a href="#">Response</a> to GNWT ENR inspection report received
September 7, 2022	GLWB meeting to decide on GTC request for public hearing - <a href="#">GLWB Decision</a> not to hold a public hearing
September 23, 2022	<a href="#">Draft Water Licence</a> circulated for public review
October 7, 2022	Deadline for comments on Draft Licence (GWNT ENR and GTC commented)
October 14, 2022	Deadline for Applicant responses to comments on draft Water Licence (KBL responded)
October 28, 2022	Late Submission received from GTC - GTC requests that GLWB reconsider decision not to hold a hearing
November 2, 2022	GLWB Meeting originally scheduled for November 2 (Re-scheduled to November 10, 2022 to consider late submission)
November 10, 2022	GLWB Meeting to decide on acceptance of late submission - adjourned
November 18, 2022	GLWB Meeting to decide on acceptance of late submission

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<sup>2</sup> See glwb.com for [GLWB Online Registry for G22L1-005](#)

## **4.0     BOARD POLICY ON LATE SUBMISSIONS**

### **4.1     MVLWB Rules of Procedure**

The Mackenzie Valley Land and Water Board (MVLWB) Rules of Procedure<sup>3</sup> (Rules) set out how the Land and Water Boards of the Mackenzie Valley are to conduct Proceedings, including rules that apply to Public Hearings. These Rules are intended to ensure that Board Proceedings meet the requirements of procedural fairness. The Rules are also intended to ensure that Proceedings are efficient, focussed, and meet the needs of Parties and Members of the Public.

In accordance with these Rules, the Public Record in a Proceeding is opened when the Board determines that an Application or submission is complete, or when Notice of a Proceeding is issued. Evidence and submissions received by the Board via the ORS, or in other ways specified by the Board, will be placed on the Public Record for a Proceeding. The Board shall set out deadlines for the submission of evidence at various stages of a Proceeding in a Directive. The Public Record will be closed at the time specified by the Board in a Directive, and no new evidence will be accepted unless a Request for Ruling to re-open the Public Record has been made and is approved by the Board.

As such, late evidence will generally not be accepted by the Board or considered in making a decision in a Proceeding and, therefore, will not become part of the Public Record. A notation will be placed on the Public Record to indicate receipt of late evidence. A Party that cannot provide evidence within the time specified by the Board must submit a written request to the Executive Director for an extension prior to the relevant deadline. An extension request must include the facts and a rationale supporting the request. If the Board grants an extension, timelines in the Proceeding will be adjusted accordingly for all Parties and Notice of the change will be provided. Evidence provided in accordance with an approved extension request will be entered onto the Public Record of the Proceeding.

The Board notes that while the Rules allow for the GLWB to supplement, vary or dispense with the Rules by way of a Board Direction, deviations from Board-established protocols should take place only in exceptional circumstances.

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<sup>3</sup> See: [glwb.com/resources](http://glwb.com/resources) for [MVLWB Rules of Procedure Including Public Hearings](#)

## 5.0 REASONS FOR DECISION

The Board has decided not to accept GTC's October 28, 2022 submission because:

1. In accordance with the MVLWB Rules of Procedure, late comments will not be considered unless a written request for an extension of the review deadline has been received from the party and approved in writing by the Board prior to the review deadline.
  - GTC's October 28, 2022 submission was late.
    - The deadline to submit evidence to the Board regarding KBL's Application materials was June 28, 2022.
    - The deadline to provide comments on the Draft Water Licence was October 7, 2022.
    - GTC had already submitted comments on the Application and Draft Water Licence to the Board by these deadlines.
  - GTC did not request an extension to the review deadline(s).
2. The GLWB has the discretion to deviate from the established Rules of Procedure and may choose to do so in exceptional circumstances. In this instance, the Board has determined that there have been no exceptional circumstances in this Proceeding that would warrant altering or dispensing the Rules.
  - KBL undertook engagement with GTC in accordance with the MVLWB Policy and Guidelines on Engagement.<sup>4</sup>
    - The Engagement Policy requires the Applicant to initiate dialogue and engagement planning with affected parties, particularly affected Aboriginal Organizations/Governments, in advance of an application with the goal of explaining the Project; identifying concerns and potential environmental impacts (including any potential for impacts to Aboriginal and treaty rights); addressing concerns raised; and ensuring appropriate levels and types of engagement are carried out over the life of an authorization or Project.
    - KBL's engagement record includes a letter from GTC stating that it was satisfied with the engagement that had taken place and that there were no outstanding questions or concerns.<sup>5</sup>

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<sup>4</sup> See glwb.com for [Engagement and Consultation Policy](#) and [Engagement Guidelines for Applicants and Holders of Water Licences and Land Use Permits](#).

<sup>5</sup> See glwb.com for [KBL - Inuvik Soil Treatment Facility - Engagement Plan V.2.1 - Jun02\\_22.pdf](#)

- As an engaged party, GTC will have the opportunity to continue life-of -project engagement with KBL and will be able to bring future questions and concerns to KBL as they arise, in accordance with the approved Engagement Plan.
  - GTC was able to submit comments and recommendation on the Application materials by the June 28, 2022 deadline, and did so.<sup>6</sup>
    - GTC's submission included concerns regarding perceived Licence non-compliance and a request that the GLWB hold a public hearing in association with the Renewal Application.
    - The Board considered GTC's submission: Upon reviewing the evidence provided by GTC, the GLWB issued an Information Request (IR) to GNWT ENR to assess KBL's compliance. The Board subsequently considered the comments submitted by GTC, GNWT ENR's IR response, and responses provided by KBL, and made the decision not to hold a public hearing.<sup>7</sup>
  - GTC was able to submit comments and recommendations of the Draft Water Licence by the October 7, 2022 deadline, and did so.<sup>8</sup>
    - GTC's submission contained recommendations for improvements and revisions to the Draft Water Licence, and the majority of these recommendations were accommodated in the development of the final Water Licence. No major concerns regarding the project were brought to the Board's attention in GTC's October 7, 2022 submission.
  - GTC had the opportunity to submit Water Licence compensation claims in respect to KBL's Application, but did not.
- 3. GTC's October 28, 2022 submission requests that the GLWB overturn its September 7, 2022, decision not to hold a public hearing in association with the Application.
  - The Board made its September 7, 2022 Decision not to hold a hearing based on the evidence provided to the GLWB at that time.
  - GTC's October 28, 2022 submission contains new evidence, however the Board can not consider it, as it was submitted after the close of the public record.
- 4. KBL is entitled to a fair, transparent, and effective proceeding, and to decisions that are informed, reasonable, and timely.
  - KBL satisfied the Engagement Requirements for this Application;

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<sup>6</sup> See [new.onlinereviewssystem.ca](https://new.onlinereviewssystem.ca) for [KBL - Type B Water Licence Renewal - Inuvik STF \(G22L1-005\)](#)

<sup>7</sup> See [glwb.com](https://glwb.com) [KBL - Inuvik Soil Treatment Facility - GLWB Decision on GTC Public Hearing Request - Sept 08 22.pdf](#)

<sup>8</sup> See [new.onlinereviewssystem.ca](https://new.onlinereviewssystem.ca) for [KBL - Draft Water Licence - Inuvik STF \(G22L1-005\)](#)

- KBL provided timely responses to reviewer comments and recommendations on the Application materials;
- KBL provided timely responses to reviewer comments and recommendations on the Draft Water Licence;
- KBL provided timely responses to the GNWT ENR Inspection report and corrected the identified deficiencies;
- The Board added additional time to the proceeding so to adequately consider GTC's initial concerns; and
- The Board must consider procedural fairness and any prejudice to KBL that might occur if additional delays take place because the Board has deviated from its established process.

## 6.0 **CONCLUSION**

In making its decision and preparing these Reasons for Decision, the Board has reviewed and considered:

- 1) The Application as submitted by the Applicant for the Project;
- 2) The evidence and submissions received by the Board from the Applicant in relation to the Licence;
- 3) The comments and recommendations, evidence, and submissions received by the Board from Parties during the regulatory proceeding; and
- 4) The MVLWB Rules of Procedure.

The GLWB is satisfied that this decision was made in accordance with the Board's mission to regulate and manage the use of the land and water and deposit of waste in the Gwich'in Settlement Area through fair, effective, inclusive, and transparent processes. The Board will now continue with the regulatory process for Application G22L1-005.

SIGNATURE




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**Elizabeth Wright, Chair**  
**Gwich'in, Land and Water Board**

November 23, 2022

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**Date**





October 28, 2022

Elizabeth Wright, Chair  
Gwich'in Land and Water Board  
P.O. Box 2018  
Inuvik, NT X0E 0T0

**Request for Public Hearing –Type B Water Licence Renewal for Inuvik Soil Treatment Facility (G22L1-005) by KBL Environmental Ltd.**

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Dear Elizabeth,

Mahsi (thanks) for your response dated September 8, 2022 to our request for a public hearing concerning Water Licence G22L1-005 by KBL Environmental Ltd. (KBL or Licensee or Applicant). The Gwich'in Tribal Council (GTC) wishes to petition the Gwich'in Land and Water Board (GLWB) to revisit your decision. The GTC respectfully requests the GLWB reconsider our request for a public hearing for G22L1-005.

We are elaborating on this request by providing a further level of detail below, however the broad reasons for this request are the result of concerns possessed by the GTC in relation to the:

1. Need for a Public Hearing;
2. Licensee's Compliance and Water rights;
3. Land Use and Zoning;
4. Adequate Consideration of Gwich'in Rights; and,
5. Community Engagement and Consultation.

*Need for a Public Hearing*

The GTC is deeply concerned with the GLWB's reasons and conclusions to deny our request for a public hearing on the premise that MVRMA exemption regulations apply to this project. The original preliminary screening determination for G17L1-001 considered the impact to water quality changes however, wastewater management was not the focus of the original application – it was deposition of solid waste soil. While it is reasonable to expect contaminated soil to remain 'fixed in place', our main concern is the mobility of water out of the 'SFT Berm' and Storage Tanks (ASTs) and the potential for effluent flow into the environment during an unplanned discharge event. Based on our review, the original screening does not appear to effectively consider the additional contaminated water management in the scope of Licence G22L1-005. It is our understanding that the addition of contaminated water management would create a new scope of assessment and therefore a new preliminary screening would be required. For this reason, the GTC feels that the original screening should not be relied upon for the purpose of this Water Licence renewal application.

It is unfortunate the GLWB considers the GTC a single party. As you are very aware, the GTC represents the collective interest of all Participants to the Gwich'in Comprehensive Land Claim Agreement (GCLCA). We have over 3,500 Participants approximately 45% of which reside in the communities of Inuvik, Aklavik, Teet'it Zheh (Fort McPherson) and Tsiigehtchic. A public

hearing would allow our Participants to represent their concerns to the GLWB. During the timeframe of the COVID-19 public emergency, community members were unable to gather in groups to express their concerns at public venues. As a result of these unprecedented measures, normal review processes were deferred, disrupted and abbreviated by regulatory decision makers, which made adequate consultation and public participation difficult and in some cases impossible. The GTC believes that a public forum would be the shortest route to address identified deficiencies during the regulatory review process of this Licence.

#### *Licensee's Compliance and Water rights*

With regard to the public review of this Water Licence and the Online Review System (ORS), the GTC would like to revisit a submission by the GNWT-ENR to the ORS during the review of G17L1-002. In a letter of advice dated June 20, 2017 on the public registry, Patrick Clancy who is an Environmental Regulatory Analyst for the Conservation Assessment and Monitoring Division for the GNWT-ENR, wrote that GNWT-ENR 'is aware of Hay River Biotreatment Facility Retention Pond capacity issues, also managed by KBL, where leachate from the Water Retention Pond was ultimately discharged to the municipal sewage lagoon due to poor leachate management issues and excessive ponded surface runoff (drainage).' Previous compliance issues of the licensee's performance should be considered during a review of a renewal application, even if such non-compliance occurred in another region. An unplanned discharge, such as what occurred in the Hay River sewage lagoon, highlights a serious environmental concern for the GTC as municipal lagoons are not designed to deal effectively with hydrocarbon contamination. Should an unplanned discharge occur in Inuvik, the Inuvik municipal sewage lagoon should not be considered an approved facility or as an alternative to other waste disposal options. Stakeholders had expressed similar concerns during review of G17L1-002. A public hearing would assist all stakeholders and rights holders such as the GTC, with a better understanding of the intricacies of regulatory dynamics and avoid simply being referred by one regulator to another.

The GTC is of the opinion that the GLWB has not thoroughly assessed how a water treatment containment failure would impact the receiving environment other than Boot Creek or the East Branch of the Mackenzie River as proposed in the Licence application, such as an unnamed waterbody; less than 500 meters away and 10 meters downgrade, adjacent to Gwich'in Municipal Lot 1015 (attachments provided). The Gwich'in have specific water rights in the GCLCA with regards to water flowing through and adjacent to Gwich'in land and these rights are a limitation to the Licensee, not a limitation to the Gwich'in or the GTC as noted in your September 8<sup>th</sup> response.

#### *Land Use and Zoning*

Currently, the Applicant does not hold active water rights as G17L1-002 has expired and activities associated with G2217-002 have been suspended. KBL's Inuvik Soil Treatment Facility document dated May 30, 2022, refers to an 'agreement to share the main gate access' and in a response to a review comment from the GNWT-ENR regarding access, KBL makes the statement 'the lease was renewed in 2022 and the next review is scheduled for 2027' on the ORS. However, there is no evidence provided in the application for a lease of Lot 6, the parcel where the treatment 'berm' is located, and reviewers are left to assume the lease would cover terms, conditions and liability for Lot 6 in its entirety.

With all due respect to KBL's application, there remain questions regarding formal rights that have been issued by the Town of Inuvik. It is the understanding of the GTC that rights are a necessary

component of eligibility under the Mackenzie Valley Land Use Regulations (MVLURs) and the establishment of rights may be crucial in this review and the land use associated with the Water Licence.

Section 4.3 (Surface Water Management) of the KBL Inuvik Soil Treatment Facility document attached to the G22L1-005 application, established that ‘two aboveground storage tanks (ASTs) with a capacity of 63,000 liters each are located on-site within the containment of the soil treatment pad’. The GTC notes that subsection 4(b) of the MVLURs SOR/98-429 require, under the prohibitions heading, at a minimum, the developer hold a Type B Land Use Permit for:

- (iii) the establishment of a petroleum fuel storage facility with a capacity equal to or exceeding 80 000L,

Considering a precautionary principle of just 3.2% of hydrocarbon (petroleum fuel) per volume of water (4032 L) contained in the total capacity (126,000L) of the two ASTs, would result in the applicant being legally bound to obtain a Type B Land Use Permit subject to the MVLURs. This demonstrates a need for further vetting of the contamination concentration and volume of water received and processed under this Water Licence. Therefore, the GTC recommends that the GLWB carefully consider all legal land rights necessary for this project.

With consideration to the Land Use Plans (LUPs) that the GLWB has referenced in its hearing denial, and in this case, the applicability of LUPs within communities, the *Community Planning and Development Act* establishes that ‘a community plan’ under subsection 4(2) ‘must include a map or series of maps showing the land that is affected by the plan.’ The Inuvik Community Plan Bylaw #2582/P+D/15 (Dillon Consulting 2015) map series designates Lot 6 as zoned for ‘Community Use and Parks.’ Therefore, the GLWB had issued an industrial water licence inconsistent with the Town of Inuvik’s land use plan. It is not clear whether the applicant obtained a formal exception, amendment or variance to the Community Use and Parks zone for the purpose of an industrial development. This calls into question, the legitimacy of rights associated with this Water Licence. Since the written submissions during the review of this application have failed to provide the necessary clarity regarding this topic, perhaps a public hearing or forum will achieve this desired outcome.

#### *Adequate Consideration of Gwich’in Rights*

It is important to note that although the GLWB has the mandate to administer the *Mackenzie Valley Resource Management Act*, the GLWB is not the holder of land rights in the Gwich’in Settlement Area. The Gwich’in hold specific water rights in the GCLCA under Chapter 19, that include Water Rights and Management that establish, under section 19.1.2 ‘(n)othing in this chapter is intended to give authority to any person to take or damage Gwich’in Lands except in accordance with this agreement’ and section 19.1.8(a) ‘the Gwich’in have the right to have waters which are on or flow through or are adjacent to Gwich’in lands remain substantially unaltered as to quality, quantity and rate of flow when such waters are on or flow through or are adjacent to Gwich’in lands’. The GTC as a Designated Gwich’in Organization (DGO) and the community DGOs established by the GCLCA that the GTC represents, hold a real public concern of damage to Gwich’in Lands and alteration of water flowing through and adjacent to Gwich’in Lands, potentially affecting the established Aboriginal and Treaty Rights of the Gwich’in (Gwich’in Rights).

The GTC finds it extremely unsettling that the GLWB weigh the rights that the Applicant has not clearly demonstrated over the consideration of Gwich'in Rights which are protected by the Constitution of Canada. The GTC is of the opinion that it could bring vital clarity and context to Gwich'in Rights in relation to this Water Licence renewal for the reasons noted above during a public forum.

*Community Engagement and Consultation*

KBL has only met with the GTC in a preliminary session, which was characterized as pre-engagement consultation, and have not formed any agreement with GTC regarding an engagement plan on G22L1-005. The GTC views the acceptance of KBL's public comments on its engagements and meeting of its duty to consult by the GLWB as being insufficient.

In closing, for the reasons stated above, we reiterate our ask for the GLWB to reconsider its decision and hold a public hearing for application G22L1-005. Mahsi for your time and attention to this important matter. Please do not hesitate to contact our Manager of Lands and Resources, Leigh-Ann Williams-Jones, should you have any questions or concerns regarding this correspondence.

Regards,

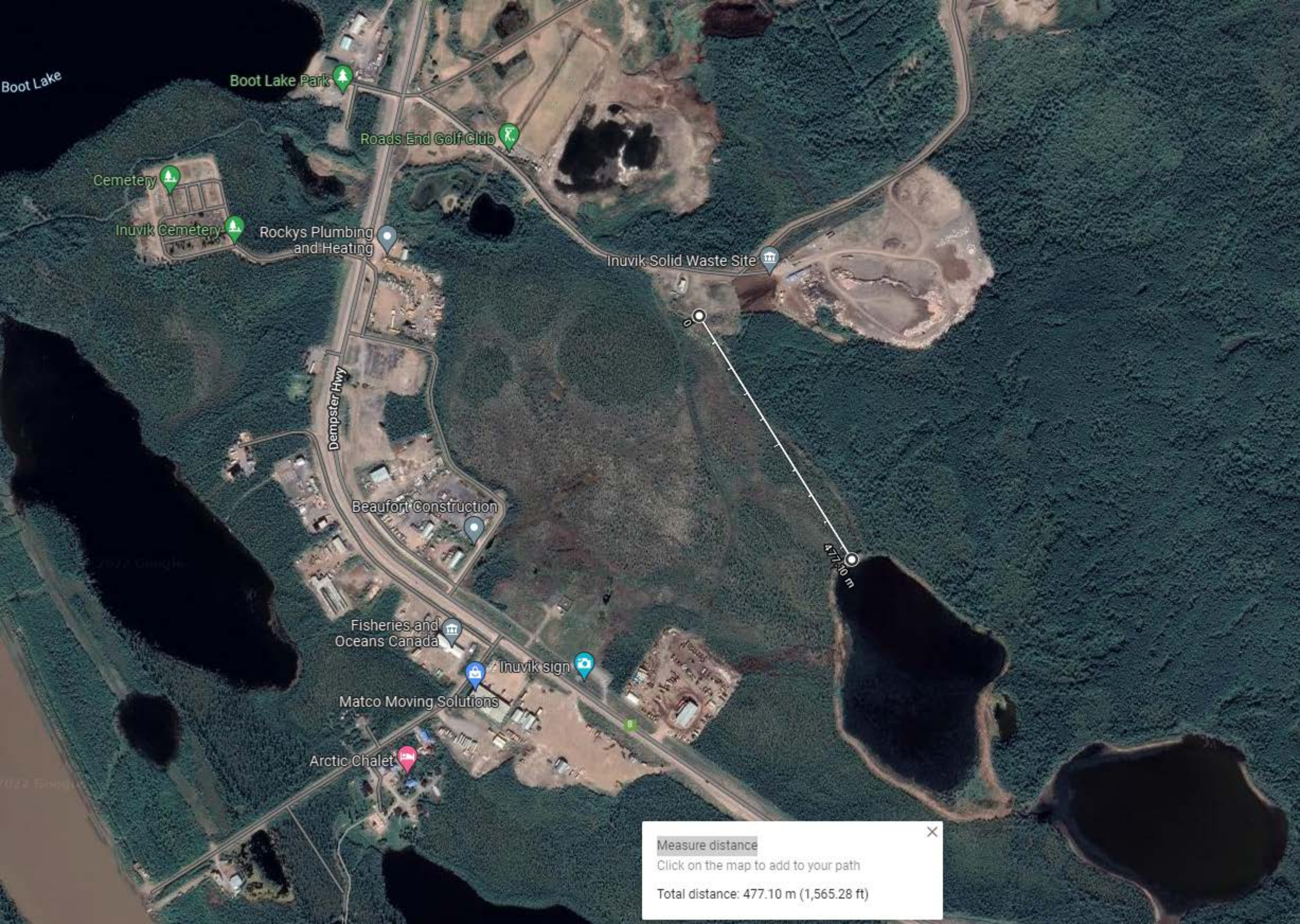


Ken Kyikavichik  
Grand Chief

Encl.

cc. President Kelly McLeod, Nihtat Gwich'in Council  
Chair Barry Greenland, Nihtat Renewable Resources Council  
Tom Weegar, GTC Chief Executive Officer  
Leigh-Ann Williams-Jones, GTC Manager of Lands and Resources  
Darren Campbell, GTC Lands and Resources Coordinator  
Willard Hagen, GTC Senior Advisor





Measure distance ✕

Click on the map to add to your path

Total distance: 477.10 m (1,565.28 ft)





Measure distance ✕

Click on the map to add to your path

Total area: 161,300.79 m<sup>2</sup> (1,736,227.28 ft<sup>2</sup>)

Total distance: 2.93 km (1.82 mi)