

NIRB Assessment and Decision

After a thorough assessment of all material provided to the Board (please see Procedural History and Project Activities in **Appendix A**), in accordance with the principles identified within Section 12.4.2 of the NLCA, the decision of the Board as per Section 12.4.4 of the NLCA is:

12.4.4 (a): the proposal may be processed without a review under Part 5 or 6; NIRB may recommend specific terms and conditions to be attached to any approval, reflecting the primary objectives set out in Section 12.2.5.

Recommended Project-Specific Terms and Conditions, pursuant to Section 12.4.4(a) of the NLCA

The Board is recommending the following or similar project-specific terms and conditions be imposed upon the Proponent through all relevant legislation:

General

1. Indian and Northern Affairs Canada (INAC) – Contaminated Sites Division (the Proponent) shall maintain a copy of the Project Terms and Conditions at the site of operation at all times.
2. The Proponent shall ensure that all field operations staff are aware of the Proponent's commitments.
3. The Proponent shall forward copies of all permits obtained and required for this project to the Nunavut Impact Review Board (NIRB), prior to the commencement of the project.
4. The NIRB shall be notified of any changes in operating plans or conditions associated with this project prior to any such change.
5. The Proponent shall operate the site in accordance with all applicable Acts, Regulations and Guidelines.
6. The Proponent shall operate in accordance with all commitments stated in all documentation provided to the NIRB, namely:
 - a. NIRB Part 1 Summary Application Form
 - b. INAC Application for Land Use Permit
 - c. Kitikmeot Inuit Association Application for Access to Inuit Owned Land
 - d. Nunavut Water Board Water Licence Application
 - e. Non technical Project Proposal summary
 - f. Remedial Action Plan
 - g. Environmental Screening of the Remediation Program
 - h. Preliminary Spill Contingency Plan
 - i. Phase III Environmental Site Assessment, Materials Audit and Geotechnical Investigation
 - j. Human Health and Ecological Risk Assessment
 - k. Archaeological Impact Assessment

Water

7. The Proponent shall not use water, including constructing or disturbing any stream, lakebed or the banks of any definable water course unless approved by the Nunavut Water Board.

Wildlife

8. Harassment of wildlife is contrary to the *Wildlife Act*. This includes persistently worrying or chasing animals, or disturbing large groups of animals. The Proponent shall not hunt or fish, unless proper Nunavut authorizations have been acquired.
9. The Proponent shall ensure that minimum flying altitudes of 610 m above ground level for nesting migratory birds, and 1100 m where birds are known to concentrate (moulting/brooding areas) and identified caribou calving and post-calving areas are implemented. In addition, a minimum horizontal distance of 1500 m from any observed concentrations of birds shall be maintained.
10. The Proponent shall avoid raptor nesting sites and concentrations of nesting or moulting waterfowl by aircraft at all times and ensure that there is minimal disturbance to any nesting birds, migratory birds and wildlife in the area.
11. If nests containing eggs or young are encountered, the Proponent should avoid these areas until nesting is complete and the young have left the nest.
12. The Proponent shall cease activities that may interfere with migration or calving of caribou, until the caribou have passed or left the area.
13. The Proponent shall follow procedures outlined in the "Safety in Bear Country Manual", and should contact the Regional Biologist or the Wildlife manager for information and advice on measures which should be taken to minimize the possibility of conflicts/interactions with bears. Consideration should be given to setting up an electric fence around the camp.
14. The Proponent shall document any wildlife observations (i.e. bear, caribou, fox, wolf and raptor) in the general vicinity of their operation, noting locations and frequencies, and modify activities accordingly to avoid wildlife when possible. Special note should be taken of any designated *Species at Risk* (see Appendix B) observed in the project area. These wildlife observations shall be reported annually at the end of each operational season to the following Department of Environment contacts:
 - a. Shane Sather, Acting Regional Manager, Wildlife (867-983-4167), ssather@gov.nu.ca
 - b. Joe Ashevak, Taloyoak Wildlife Officer (867-561-6231), taloyoakwildlife@qiniq.com
 - c. Mathieu Dumond, Regional Biologist 9867-982-7444), mdumond@gov.nu.ca

Aggregate Removal within Existing Quarry

15. The Proponent is required to ensure the site for stockpiling and processing of quarried material is contaminant free prior to project activities taking place.
16. It is recommended that an undisturbed buffer zone of at least 100 metres be maintained between the proposed quarry operation and the normal high water mark of any water body.
17. The Proponent shall practice progressive reclamation in accordance with the restoration guidelines outlined in Indian and Northern Affairs Canada's document entitled *Environmental Guidelines for Pits and Quarries*.

Storage and Management of Waste, Hazardous Waste and other Hazardous Materials

18. The Proponent shall install and operate an incineration device capable of meeting the emission limits established under the *Canada-Wide Standards (CWS) for Dioxins and Furans* and the *CWS for Mercury Emissions*.

19. The Proponent shall apply appropriate technologies to ensure the complete combustion of wastes. The use of a dual chamber, forced-air incinerator is recommended.
20. The Proponent shall not burn or incinerate hazardous wastes.
21. The Proponent shall develop an incineration management plan in consultation with Environment Canada (EC). This would include the submission of an annual incineration management report to EC that provides the following:
 - a. Recycling/segregation waste program
 - b. Incineration technology selected
 - c. Waste inventory/audit that outlines the nature, extent and eventual fate of all waste materials brought to and existing at the site
 - d. Operational and maintenance records
 - e. Operator training
 - f. Incineration ash disposal
 - g. Compliance with the *Canada-Wide Standards (CWS) for Dioxins and Furans* and for *Mercury Emissions*
22. The Proponent shall ensure that workers follow established protocols for working with hazardous material and contaminated soil.
23. The Proponent shall ensure adequate testing for polychlorinated biphenyls (PCB's) in all suspect areas, and ensure appropriate steps are taken to remove and dispose of the contaminated materials.
24. The Proponent shall keep all camp waste inaccessible to wildlife at all times.

Fuel Storage/Spill Contingency

25. The Proponent shall provide the NIRB, Government of Nunavut – Department of Environment (GN-DOE) and EC with updated *Preliminary Contingency Plans* prior to the commencement of project activities. It is recommended that the Proponent refer to GN-DOE regulations and guidelines to ensure the spill plan is developed adequately. The Plan should also include but is not limited to:
 - a. Map of the campsite indicating the location of fuel storage areas and spill kits.
 - b. Contact information for individuals on site who should be notified if a spill occurs.
 - c. Contact information for relevant government agencies that should be notified, including Environment Canada 24 hour Emergency Pager (867-766-3737)
 - d. Copy of the NWT/NU Spill Reporting Form and contact number for the 24 hour Spill Line (867-920-8130)

Other

26. The Proponent should, to the extent possible, hire local people and consult with local residents regarding their activities in the region.
27. Any amendment requests to the above mentioned project may be deemed by NIRB to be outside the original scope of the project and may be considered a new project requiring Screening.

Other NIRB Concerns and Recommendations

In addition to the project-specific terms and conditions, the Board is recommending the following:

1. The Proponent apply for their Quarrying Permit with Indian and Northern Affairs Canada (INAC), Land Administration for their construction of new quarry to access aggregate material (borrow source development) in a timely manner. This application *may* be eligible for exemption from a NIRB Screening through 12.4.3 in the NLCA.
2. The Proponent will be advised that all releases of harmful substances are immediately reportable where the release:
 - a. Is near or into a water body;
 - b. Is near or into a designated sensitive environment or sensitive wildlife habitat;
 - c. Poses an imminent threat to human health or safety; or
 - d. Poses an imminent threat to a listed species at risk or its critical habitat
3. INAC impose mitigation measures, conditions and monitoring requirements pursuant to the Federal Land Use Permit, which require the Proponent to respect the sensitivities and importance of the area. These mitigation measures, conditions and monitoring requirements should be in regard to the location and area; type, location, capacity and operation of facilities; use, storage, handling and disposal of chemical or toxic material; wildlife and fisheries habitat; and petroleum fuel storage.
4. The Kitikmeot Inuit Association impose strict mitigation measures and/or conditions upon the Proponent pursuant to the Inuit Owned Lands License in regard to fuel and chemical storage, drilling, water conditions, ground disturbance and wildlife on Inuit owned land.

Regulatory Requirements

The Proponent is also advised that the following legislation may apply to the project:

1. The Proponent shall ensure compliance with the *Fisheries Act* (<http://laws.justice.gc.ca/en/showtdm/cs/F-14//en>). Section 35(1) of the *Fisheries Act* specifies that unless authorized by federal regulation, no person shall carry on any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat. Section 36(3) of the *Fisheries Act* specifies that unless authorized by federal regulation, no person shall deposit or permit the deposit of a deleterious substance in any type in water frequented by fish or in any place under any conditions where the deleterious substance may enter such a water body.
2. The Proponent shall ensure compliance with the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* which states that “no person shall use, or permit the use of, waters in Nunavut except in accordance with the conditions of a licence,” and “no person shall deposit or permit the deposit of waste (a) in waters in Nunavut; or (b) in any other place in Nunavut under conditions in which the waste, or any other waste that results from the deposit of that waste, may enter waters in Nunavut” (<http://www.canlii.org/ca/sta/n-28.8/whole.html>).
3. The *Migratory Birds Convention Act* and *Migratory Birds Regulations* which state that no person disturb or destroy the nests or eggs of migratory birds, and that no person shall deposit or permit to be deposited oil, oil wastes or any other substance harmful to migratory birds in any waters or any area frequented by migratory birds (<http://laws.justice.gc.ca/en/showtdm/cs/M-7.01>)

4. *The Species at Risk Act* (<http://laws.justice.gc.ca/en/showtdm/cs/S-15.3>). Attached in **Appendix B** is a list of Species at Risk in Nunavut. The Proponent should consult the Species at Risk Public Registry (<http://www.sararegistry.gc.ca/>) to identify any Species at Risk within the project location. Further, the Proponent shall develop monitoring plans for each relevant Species at Risk in accordance with any applicable status reports, recovery strategies, action plans, and management plans posted on the Species at Risk Public Registry and in consultation with the Government Organization with Primary Management Responsibility. Monitoring plans should record the locations and frequency of observing species of special concern and note any actions taken to avoid contact or cause disturbance to the species, its residence, or its critical habitat.
5. The *Nunavut Act* (<http://laws.justice.gc.ca/en/showtdm/cs/N-28.6>) which requires that no person alter or disturb any archaeological or palaeontological sites in Nunavut unless permission is first granted through the permitting process. If any archaeological or palaeontological sites are found they should remain undisturbed and their location should be reported to the Government of Nunavut Department of Culture, Language, Elders and Youth. The Proponent must comply with the proposed terms and conditions listed in the attached **Appendix C**.
6. The *Transportation of Dangerous Goods Regulations*, *Transportation of Dangerous Goods Act* (<http://www.tc.gc.ca/tdg/menu.htm>), and the *Environmental Protection Act* (<http://laws.justice.gc.ca/en/C-15.31/text.html>) which present the requirements for the handling, storing, managing and transportation of dangerous goods, including hazardous wastes, fuel and contaminated material. The Proponent must ensure that proper shipping documents accompany all movements of dangerous goods. The Proponent must register with GN-DOE by contacting Robert Eno at 867-975-7748 or reno@gov.nu.ca.

Validity of Land Claims Agreement

Section 2.12.2

Where there is any inconsistency or conflict between any federal, territorial and local government laws, and the Agreement, the Agreement shall prevail to the extent of the inconsistency or conflict.

Dated _____ March 28, 2008 _____ at Sanikiluaq, NU.



Lucassie Arragutainaq, A/Chair

Appendix A

PROCEDURAL HISTORY

On February 5, 2008 the Nunavut Impact Review Board (NIRB or Board) received Indian and Northern Affairs Canada's (INAC) *CAM-D (Simpson Lake) DEW Line Site Remediation* project proposal from INAC's Land Administration Office. NIRB assigned this project proposal file number 08DN011.

NIRB completed a preliminary completeness check of the project proposal and on February 12, 2008 requested that the Proponent provide additional information on the project proposal, including:

- Submission of missing appendices within the INAC application for Land Use Permit
- NIRB Part 2 Form: Project Specific Information Requirements
- Clear maps identifying the project area

On February 19th, the NIRB received a complete application package from INAC that included the missing information. This application was distributed to the Kitikmeot Hunters' and Trappers' Organization, Gjoa Haven, Taloyoak and Kugaaruk, and to interested Federal and Territorial Agencies on February 19th, 2008. NIRB requested that interested Parties review the application and provide NIRB with comments by March 11, 2008 regarding:

- Whether the project proposal is likely to arouse significant public concern; and if so, why;
- Whether the project proposal is likely to cause significant adverse eco-systemic and socio-economic effects; and if so, why;
- Whether the project is of a type where the potential adverse effects are highly predictable and mitigable with known technology, (please provide any recommended mitigation measures); and
- Any matter of importance to the Party related to the project proposal.

On or before March 12, 2008, NIRB received comments from the following interested Parties (see Comments and Concerns):

- Government of Nunavut, Department of Environment
- Environment Canada

All comments provided to NIRB regarding this project proposal can be viewed on NIRB's ftp-site, at the following location: ftp://ftp.nunavut.ca/nirb/NIRB_SCREENINGS/COMPLETED_SCREENINGS/

On March 12, 2008, NIRB sent an extension request letter to the Minister of INAC, requesting more time to screen the project proposal.

PROJECT ACTIVITIES

INAC proposes to carry out the remediation of the abandoned CAM-D Intermediate Distant Early Warning (DEW) Line Site at Simpson Lake from May 2008 to September 2011.

The proposed major activities for the program involve the following components:

- Mobilization and demobilization of equipment, materials/waste and personnel via a winter cat train route from Sheppard or Pelly Bay;
- Enhancement of site access routes;
- Construction of temporary road;

- Temporary camp set-up and operation during remediation period;
- Water use and waste disposal;
- Temporary fuel storage;
- Demolition of existing site infrastructure;
- Removal of all hazardous material and soil to an off-site licensed disposal facility;
- Temporary on-site storage for hazardous materials, equipment;
- Construction of on-site non-hazardous waste landfill for non-hazardous contaminated soil, miscellaneous non-hazardous site debris and demolition waste;
- Remediation of existing landfills and/or dumps;
- In-situ remediation of hydrocarbon impacted soil;
- Debris consolidation and disposal. Contents of barrels will either be incinerated on site or shipped off site for disposal. Empty barrels will be crushed and disposed in on-site landfills;
- Borrow source development to assist in the remediation work; and,
- Construction of a series of culverts to access borrow source near Murchison River.

Appendix B

SPECIES AT RISK IN NUNAVUT

This list includes species listed on one of the Schedules of SARA (*Species at Risk Act*) and under consideration for listing on Schedule 1 of SARA. These species have been designated as at risk by COSEWIC (Committee on the Status of Endangered Wildlife in Canada). This list may not include all species identified as at risk by the Territorial Government.

- Schedule 1 is the official legal list of Species at Risk for SARA. SARA applies to all species on Schedule 1. The term “listed” species refers to species on Schedule 1.
- Schedule 2 and 3 of SARA identify species that were designated at risk by the COSEWIC prior to October 1999 and must be reassessed using revised criteria before they can be considered for addition to Schedule 1.
- Some species identified at risk by COSEWIC are “pending” addition to Schedule 1 of SARA. These species are under consideration for addition to Schedule 1, subject to further consultation or assessment.

Schedules of SARA are amended on a regular basis so it is important to periodically check the SARA registry (www.sararegistry.gc.ca) to get the current status of a species.

Updated: January 3, 2007

Species at Risk	COSEWIC Designation	Schedule of SARA	Government Organization with Lead Management Responsibility ¹
Eskimo Curlew	Endangered	Schedule 1	EC
Ivory Gull	Endangered ²	Schedule 1	EC
Peregrine Falcon (subspecies anatum)	Threatened	Schedule 1	Government of Nunavut
Ross's Gull	Threatened	Schedule 1	EC
Harlequin Duck (Eastern population)	Special Concern	Schedule 1	EC
Felt-leaf Willow	Special Concern	Schedule 1	Government of Nunavut
Peregrine Falcon (subspecies tundrius)	Special Concern	Schedule 3	Government of Nunavut
Short-eared Owl	Special Concern	Schedule 3	Government of Nunavut
Fourhorn Sculpin	Special Concern	Schedule 3	DFO
Peary Caribou	Endangered ³	Pending	Government of Nunavut
Beluga Whale (Eastern Hudson Bay population)	Endangered	Pending	DFO
Beluga Whale (Cumberland Sound population)	Threatened	Pending	DFO
Beluga Whale (Western Hudson Bay population)	Special Concern	Pending	DFO

Beluga Whale (Eastern High Arctic – Baffin Bay population)	Special Concern	Pending	DFO
Bowhead Whale (Hudson Bay-Foxe Basin population)	Threatened ⁴	Pending	DFO
Bowhead Whale (Davis Strait-Baffin Bay population)	Threatened ⁴	Pending	DFO
Porsild's Bryum	Threatened	Pending	Government of Nunavut
Atlantic Walrus	Special Concern	Pending	DFO
Narwhal	Special Concern	Pending	DFO
Rusty Blackbird	Special Concern	Pending	Government of Nunavut
Barren-ground Caribou (Dolphin and Union population)	Special Concern ³	Pending	Government of Nunavut
Grizzly Bear	Special Concern	Pending	Government of Nunavut
Polar Bear	Special Concern	Pending	Government of Nunavut
Wolverine (Western Population)	Special Concern	Pending	Government of Nunavut

¹ Environment Canada has a national role to play in the conservation and recovery of Species at Risk in Canada, as well as responsibility for management of birds described in the Migratory Birds Convention Act (MBCA). Day-to-day management of terrestrial species not covered in the MBCA is the responsibility of the Territorial Government. Populations that exist in National Parks are also managed under the authority of the Parks Canada Agency. EC = Environment Canada, DFO = Department of Fisheries and Oceans

² Designated as Endangered by COSEWIC in April 2006 and it is expected that the category of concern in SARA will also be changed from Special Concern to Endangered.

³ Peary Caribou was split into three separate populations in 1991: Banks Island (Endangered), High Arctic (Endangered) and Low Arctic (Threatened) populations. The Low Arctic population also included the Barren-ground Caribou - Dolphin and Union population. In May 2004 all three population designations were de-activated, and the Peary Caribou, Rangifer tarandus pearyi, was assessed separately from the Barren-ground Caribou (Dolphin and Union population), Rangifer tarandus groenlandicus. The subspecies pearyi is composed of a portion of the former "Low Arctic population" and all of the former "High Arctic" and "Banks Island" populations, and it was designated Endangered in May 2004. Although SARA lists Peary Caribou on Schedule 2 as three separate populations, the most current designation is the COSEWIC designation of the subspecies pearyi as Endangered.

⁴ The "Eastern and Western Arctic populations" of Bowhead Whale were given a single designation of Endangered in April 1980 by COSEWIC. These were split into two populations to allow separate designations in April 1986. The Eastern population was not re-evaluated in April 1986, but retained the Endangered status of the original "Eastern and Western Arctic populations". The Eastern Arctic population was further split into two populations (Hudson Bay-Foxe Basin population and Davis Strait-Baffin Bay population) in May 2005, and both these populations were designated as Threatened. Both these populations are under consideration for addition to Schedule 1. Although SARA lists the Eastern Arctic population as Endangered (Schedule 2), the most current designation is the COSEWIC designations of the Hudson Bay-Foxe Basin and Davis Strait-Baffin Bay populations as Threatened.

Appendix C
Archaeological and Palaeontological Resources Terms and Conditions for Land Use Permit Holders



BACKGROUND: Archaeology

As stated in Article 33 of the Nunavut Land Claims Agreement:

The archaeological record of the Inuit of Nunavut is a record of Inuit use and occupancy of lands and resources through time. The evidence associated with their use and occupancy represents a cultural, historical and ethnographic heritage of Inuit society and, as such, Government recognizes that Inuit have a special relationship with such evidence, which shall be expressed in terms of special rights and responsibilities. [33.2.1]

The archaeological record of Nunavut is of spiritual, cultural, religious and educational importance to Inuit. Accordingly, the identification, protection and conservation of archaeological sites and specimens and the interpretation of the archaeological record is of primary importance to Inuit and their involvement is both desirable and necessary. [33.2.2]

In recognition of the cultural, spiritual and religious importance of certain areas in Nunavut to Inuit, Inuit have special rights and interests in these areas as defined by Article 33 of the Nunavut Land Claims Agreement. [33.2.5]

BACKGROUND: Palaeontology

Under the Nunavut Act¹, the federal Government can make regulations for the protection, care and preservation of palaeontological sites and specimens in Nunavut. Under the *Nunavut Archaeological and Palaeontological Sites Regulations*², it is illegal to alter or disturb any palaeontological site in Nunavut unless permission is first granted through the permitting process.

¹ s. 51(1)

² P.C. 2001-1111 14 June, 2001

Definitions

As defined in the *Nunavut Archaeological and Palaeontological Sites Regulations*, the following definitions apply:

“archaeological site” means a place where an archaeological artifact is found.

“archaeological artifact” means any tangible evidence of human activity that is more than 50 years old and in respect of which an unbroken chain of possession or regular pattern of usage cannot be demonstrated, and includes a Denesuline archaeological specimen referred to in section 40.4.9 of the Nunavut Land Claims Agreement.

“palaeontological site” means a site where a fossil is found.

“fossil” includes:

- (a) natural casts
- (b) preserved tracks, coprolites and plant remains; and
- (c) the preserved shells and exoskeletons of invertebrates and the eggs, teeth and bones of vertebrates.

Terms and Conditions

- 1) The permittee shall not operate any vehicle over a known or suspected archaeological or palaeontological site.
- 2) The permittee shall not remove, disturb, or displace any archaeological artifact or site, or any fossil or palaeontological site.
- 3) The permittee shall immediately contact the Department of Culture, Language, Elders and Youth (867) 934-2046 or (867) 975-5500 or 1 (866) 934-2035 should an archaeological site or specimen, or a palaeontological site or fossil be encountered or disturbed by any land use activity.
- 4) The permittee shall immediately cease any activity that disturbs an archaeological or palaeontological site encountered during the course of a land use operation, until permitted to proceed with the authorization of the Department of Culture, Language, Elders and Youth, Government of Nunavut.
- 5) The permittee shall follow the direction of the Department of Culture, Language, Elders and Youth and DIAND in restoring disturbed archaeological or palaeontological sites to an acceptable condition.
- 6) The permittee shall provide all information requested by the Department of Culture, Language, Elders and Youth concerning all archaeological sites or artifacts and all palaeontological sites and fossils encountered in the course of any land use activity.
- 7) The permittee shall make best efforts to ensure that all persons working under authority of the permit are aware of these conditions concerning archaeological sites and artifacts, and palaeontological sites and fossils.

- 8) The permittee shall avoid the known archaeological and/or palaeontological sites listed in Attachment 1.
- 9) The permittee shall have an archaeologist or palaeontologist perform the following functions, as required by the Department of Culture, Language, Elders and Youth:
 - a. survey
 - b. inventory and documentation of the archaeological or palaeontological resources of the land use area
 - c. assessment of potential for damage to archaeological or palaeontological sites
 - d. mitigation
 - e. marking boundaries of archaeological or palaeontological sites
 - f. site restoration

The Department of Culture, Language, Elders and Youth shall authorize by way of a Nunavut Archaeologist Permit or a Nunavut Palaeontologist Permit, all procedures subsumed under the above operations.