



SCREENING DECISION REPORT
NIRB FILE NO.: 07YN033

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May 14, 2007

Honourable Ed Picco
Minister of Education
Iqaluit, NU

Honourable John Baird
Minister of Environment
Ottawa, ON

Via email: epicco@gov.nu.ca

and

Via email: john.baird@ec.gc.ca

Re: Screening Decision for Dan Utting's North Baffin Island Surficial Geology Studies Project Proposal

Dear Honourable Ministers:

The primary objectives of the Nunavut Land Claims Agreement are set out in section 12.2.5 of the Land Claims Agreement. This section reads:

In carrying out its functions, the primary objectives of NIRB shall be at all times to protect and promote the existing and future well-being of the residents and communities of the Nunavut Settlement Area, and to protect the ecosystemic integrity of the Nunavut Settlement Area. NIRB shall take into account the well-being of the residents of Canada outside the Nunavut Settlement Area.

Section 12.4.4 of the Nunavut Land Claim Agreement states:

Upon receipt of a project proposal, NIRB shall screen the proposal and indicate to the Minister in writing that:

- 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;
- b) the proposal requires review under Part 5 or 6; NIRB shall identify particular issues or concerns which should be considered in such a review;
- c) the proposal is insufficiently developed to permit proper screening, and should be returned to the proponent for clarification; or
- d) the potential adverse impacts of the proposal are so unacceptable that it should be modified or abandoned.

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 Terms and Conditions, pursuant to 12.4.4(a) of the NLCA

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

General

1. Dan Utting (the Proponent) shall maintain a copy of the Project Terms and Conditions at the site of operation at all times.
2. The Proponent shall forward copies of **all permits** obtained and required for this project to the NIRB, prior to the commencement of the project.
3. The NIRB shall be notified of any changes in operating plans or conditions associated with this project prior to any such change.
4. The Proponent shall otherwise conduct all operations in accordance with all information and commitments submitted and stated as part of their Nunavut Research Institute Application dated March 21, 2007.

Water

5. The Proponent shall be advised that the use of water and any disposal of wastewater as a result of the project proposal activities require a Nunavut Water Board licence and the project cannot proceed until this is obtained.
6. The Proponent shall not construct or disturb any stream, lakebed or banks of any definable water course unless authorized by the Department of Fisheries and Oceans.

Waste and Restoration

7. The Proponent shall remove all garbage and non-biological waste material from the site upon completion of activities and ensure transfer to an approved disposal facility.
8. The Proponent shall keep all garbage and debris in bags placed in a covered metal container or equivalent until disposed of.
9. The Proponent shall not discharge or deposit any refuse substances or other waste materials in any body of water, or on the banks thereof, which will impair the quality of the waters of the natural environment.
10. The Proponent shall not locate any sumps or areas designated for waste disposal within thirty (30) metres of the ordinary high water mark of any body of water. Sumps and areas designated for waste disposal shall be sufficiently bermed or otherwise contained to ensure that substances do not enter a waterway unless otherwise authorized.

11. The Proponent shall backfill and recontour all sumps to match the natural environment prior to the expiry date of the licence.
12. The Proponent shall remove all fuel and associated equipment upon abandonment.
13. The Proponent shall complete all clean-up and restoration of the lands used prior to the expiry date of the licence.

Fuel and Chemical Storage

14. The Proponent shall locate all fuel and any hazardous materials (if applicable) a minimum of thirty (30) metres away from the high water mark of any water body and in such a manner as to prevent their release into the environment.
15. The Proponent shall report all spills of fuel, or other deleterious materials immediately to the 24 hour Spill Line at (867) 920-8130.

Wildlife

16. The Proponent shall ensure that there is no damage to wildlife habitat in conducting this operation. Deliberate feeding of any wildlife is absolutely prohibited.
17. The Proponent shall ensure that aircraft/helicopter do not, unless for emergency, touch-down in areas where wildlife are present.
18. The Proponent must avoid raptor nesting sites and concentrations of nesting or molting waterfowl by aircraft/helicopter at all times.
19. The Proponent shall restrict aircraft/helicopter activity related to the project to a minimum altitude of 610m above ground level unless there is a specific requirement for low-level flying - such as choosing sample sites from a helicopter, and this does not disturb wildlife.
20. The Proponent shall ensure that aircraft maintain a vertical distance of 1000 meters and a horizontal distance of 1500 meters from any observed groups (colonies) of migratory birds.
21. The Proponent shall cease activities that may interfere with migration or calving of caribou or muskox, until the caribou or muskox have passed or left the area.
22. 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.
23. The Proponent shall take extra precautions to avoid nesting areas of Ivory Gull, and, upon observing any evidence of Ivory Gull nest sites, shall record their locations and immediately contact Environment Canada NWRC, and Environment Canada CWS.

Camp

24. The Proponent shall ensure that all camps are located on gravel, sand or other durable land.
25. The Proponent shall not erect camps or store material on the surface ice of lakes or streams.

Archaeological

26. The Proponent shall ensure that any archaeological or palaeontological sites encountered are not disturbed.
27. The Proponent should be aware of the law regarding disturbance of archaeological and palaeontological sites and the removal of artifacts found. If a site is found it should remain undisturbed and its location should be reported to the Government of Nunavut Department of Culture, Language, Elders and Youth.

Regulatory Requirements

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

28. The Proponent shall ensure compliance with Section 36(3) of the *Fisheries Act* (<http://laws.justice.gc.ca/en/showtdm/cs/F-14//en>) which states that 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.
29. The Proponent shall ensure compliance with the *Migratory Birds Convention Act* (<http://laws.justice.gc.ca/en/showtdm/cs/M-7.01>) which states that no person disturb or destroy the nests or eggs of migratory birds. If nests containing eggs or young are encountered, the Proponent shall avoid these areas until nesting is complete and the young have left the nest.
30. The Proponent shall ensure compliance with 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.
31. The Proponent shall ensure compliance with the *Nunavut Act* (<http://laws.justice.gc.ca/en/showtdm/cs/N-28.6>) which requires that no person alter or disturb any palaeontological site 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**.

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 _____ May 14, 2007 _____ at Sanikiluaq, NU.



Lucassie Arragutainaq, A/Chair

Appendix A – Procedural History and Project Activities

Procedural History

On March 21, 2007, the Nunavut Impact Review Board (NIRB) received a proposal from Dan Utting for the *North Baffin Island Surficial Geology Studies* project. After a preliminary review, the NIRB determined that a conformity determination from the Nunavut Planning Commission (NPC) was required. The Part 4 Screening commenced upon receiving a positive conformity determination from the NPC on April 4, 2007.

The application was distributed to the communities of Pond Inlet and Clyde River, and to interested Federal and Territorial Agencies. NIRB requested that interested Parties review the application and provide NIRB with comments by May 2, 2007.

The NIRB received comments from the Government of Nunavut, Department of Culture, Language, Elders and Youth on April 16, 2007, and from Environment Canada on April 26, 2007. Concerns arising from these comments were incorporated into the Recommended Terms and Conditions which were approved by the Board, pursuant to Section 12.4.4(a), NLCA, on May 11, 2007.

Project Activities

The proposed activities for the program involve the following components:

- Daily transportation to and from Pond Inlet to research sites via helicopter (first 10 days in field);
- Camping at three different fly camps (for up to 10 days total);
- A maximum of three people staying in camp for 2-3 consecutive nights;
- Camps to be decommissioned and moved via helicopter,
- Sampling of glacial material.

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: October 17, 2006

| Species at Risk | Category of Concern | Schedule of SARA | Government Organization with Primary 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 |
| | | | |
| Peary Caribou (High Arctic population) | Endangered | Schedule 2 | Government of Nunavut |
| Peary Caribou (Low Arctic population) | Threatened | Schedule 2 | 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 |
| 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 ³ | Pending | DFO |
| Bowhead Whale (Davis Strait-Baffin Bay population) | Threatened ³ | Pending | DFO |
| Porsild's Bryum | Threatened | Pending | Government of Nunavut |
| Rusty Blackbird | Special Concern | Pending | Government of Nunavut |
| Barren-ground Caribou (Dolphin and Union population) | Special Concern | 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 is the competent Minister under SARA for terrestrial species and as such, has a national role in the conservation and recovery of these species in Canada. However, day to day management of terrestrial species except migratory birds is primarily under 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 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 - CLEY Conditions



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.

Definitions

¹ s. 51(1)

² P.C. 2001-1111 14 June, 2001

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.