



November 2014

Report Title: The Nunavut Impact Review Board's 2013 – 2014 Annual Monitoring Report for the Jericho Diamond Mine Project (NIRB File No. 00MN059)

Project: Jericho Diamond Mine Project

Project Location: Kitikmeot Region, Nunavut

Project Owner: Shear Diamonds (Nunavut) Corp.

Monitoring Officer: Tara Arko

Monitoring Period: October 2013 – September 2014

Date Issued: November 12, 2014

Cover photo: View of site during fly-over

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1.0 INTRODUCTION

According to Section 12.7.1 of the Nunavut Land Claims Agreement (NLCA), the establishment of a project specific monitoring program may be outlined by the terms and conditions contained in a Nunavut Impact Review Board's (NIRB or Board) Project Certificate, recommendations stemming from a Part 4 NLCA determination, or approvals issued by the Nunavut Water Board (NWB). Monitoring programs may specify responsibilities for the Proponent, NIRB, or Government. The purpose of such a monitoring program is outlined in Section 12.7.2 of the NLCA as follows:

- a) *to measure the relevant effects of projects on the ecosystemic and socio-economic environments of the Nunavut Settlement Area;*
- b) *to determine whether and to what extent the land or resource use in question is being carried out within the predetermined terms and conditions;*
- c) *to provide the information base necessary for agencies to enforce terms and conditions of land or resource use approvals; and*
- d) *to assess the accuracy of the predictions contained in the project impact statements.*

1.1. Project History & Current Status

Upon completion of the environmental assessment (Review) of the proposed Jericho Diamond Mine Project (Jericho or the Project) and the Board approving the Project to proceed, in July 2004 the NIRB issued Project Certificate No. 002 (Jericho Project Certificate).

In addition to the terms and conditions within the Project Certificate, the NIRB has developed a monitoring program for the Project in accordance with Section 12.7.1 of the NLCA. Appendix D to the Jericho Project Certificate was issued by the NIRB on October 3, 2007¹ and sets out the responsibilities of the Proponent in carrying out project-specific monitoring, as well as responsibilities of relevant territorial and federal agencies to coordinate with the Proponent and to provide compliance reporting to the NIRB.

This document has been prepared by the NIRB to address requirements of Section 12.7.2 of the NLCA and detail monitoring activities that occurred during the 2013-2014 reporting period as well as to provide an assessment of the following items:

- Success or failure of the terms and conditions within Project Certificate No. 002;
- Adequacy of the monitoring program including ecosystemic and socio-economic impacts of the Project pursuant to Section 12.7.3(c) of the NLCA; and,
- Adequacy of Appendix D of the Jericho Project Certificate in its direction to the Proponent regarding Project-specific monitoring.

The following table provides an overview of monitoring and other activities relevant to the regulatory regime associated with the Jericho project:

¹ Appendix D to Project Certificate No. 002 was issued on October 3, 2006 and revised in August 2007.

2004	July	The NIRB issued PC 002 to Tahera Corporation Limited.
2005	January	The NIRB updated the name on PC 002 to Benachee Resources Incorporated, a wholly owned subsidiary of Tahera Diamond Corporation; mine construction began.
2006	July	Jericho diamond mine fully operational.
2007	October	The NIRB issued its Monitoring Program, Appendix D of PC 002.
2008	January	Tahera filed for creditor protection citing insufficient funds to operate the mine.
2008	April	Jericho Mine site placed under care and maintenance.
2008	December	INAC intervened to assume control of the site and maintain existing environmental protection measures as Tahera could not continue to support the care and maintenance of the Jericho Site.
2009	September	INAC completed site closure, i.e. ensuring the site was in a state that it could be safely left unmanned; contractors ceased occupation but continued to monitor the site.
2010	August	Shear Minerals Ltd., renamed Shear Diamonds (Nunavut) Corp. (Shear), completed its purchase of Tahera's assets including the Jericho Diamond Mine.
2011	August	The NIRB reassigned PC 002 to Shear.
2011	December	The NWB issued the renewal Type A water licence to Shear.
2012	August	The NIRB conducted its annual site visit.
2012	September	Shear issued notice that due to low diamond prices the site would be minimally staffed, stockpile re-evaluation suspended, and discontinue exploration at the site.
2012	October	Shear issued Temporary Shutdown Plan to the NWB and AANDC outlining the procedures completed for site shutdown, potential risks at site, a site visit schedule to address the risks, and notice that ongoing monitoring was being discontinued.
2012	November	The NIRB issued its recommendations to Shear regarding events of 2012 and compliance to the Project Certificate.
2013	November	The NIRB issued its recommendations to Shear regarding events of 2013 and compliance to the Project Certificate.
2013	December	Shear's Chief Restructuring Officer provided notice that work has begun to refinance the project.
2014	January	The Minister of Aboriginal Affairs and Northern Development declared the site abandoned.
2014	April	The NIRB received notice of Shear's Chief Restructuring Officer's resignation.
2014	June	The NIRB conducted its 2014 site visit.

1.2. Project Components

The Jericho Project is a diamond mine situated in the West Kitikmeot region of Nunavut, approximately 430 kilometres (km) southwest of Cambridge Bay and 240 km southeast of Kugluktuk. The site consists of a single open pit mine, processing facility, processed kimberlite containment areas (PKCA) and stockpiles, as well as a camp and support

buildings to house approximately 200 persons, fuel tank farm with capacity for 13 million litres of fuel, an airstrip, and roads connecting site infrastructure. The mine is located on Crown land, with access and other infrastructure situated on Inuit Owned Land.

2.0 MONITORING ACTIVITIES

2.1. Reporting Requirements

In August 2011 the NIRB re-issued an amended Jericho Project Certificate to Shear at the request of the company which was based on a number of commitments made by Shear at that time. Appendix D of the Jericho Project Certificate was also amended, and provides a list of reports which Shear is required to submit to the NIRB, including quarterly reports, an annual report, as well as updated management plans as required. The recommendations provided by the Board to Shear in November 2013 stemmed from its 2013 monitoring activities, and required that Shear provide a discussion on its reporting intentions while the site continued in care and maintenance.

2.1.1. Proponent Annual Report as per Project Certificate Appendix D

Appendix D of the Jericho Project Certificate requires the Proponent to submit an annual report to the NIRB by April 30th of each year. The annual report must provide details of the company's efforts to comply with the Jericho Project Certificate, present data collected by Shear on various topics, provide an analysis of the data, and include a discussion of monitoring results and recommendations for adaptive management.

After its acquisition of the Jericho site in 2010, Shear committed to submitting the required reports to the NIRB on numerous occasions; during the NIRB process² to reassign the Jericho Project Certificate, through the renewal process for the Type A Nunavut Water Board water licence³, and in person at the NIRB's 2012 Site visit⁴; however, to date the NIRB has not received the annual report and supporting information as required by Appendix D.

According to Appendix D of the Jericho Project Certificate, starting October 31, 2007 the Proponent has been required to submit quarterly reports, due at the end of October, January, April, and July of each year to document current and planned infrastructure development at the site. The last quarterly report submitted was provided to the NIRB by Tahera on January 24, 2008. In 2010, Shear committed⁴ to preparing the quarterly reports for the periods ending December 31, 2010 and March 31, 2011 for submission to

² Letter dated June 3, 2011 from Pamela Strand, President of Shear Diamonds to Sophia Granchinho, NIRB Re: *Request to assign the Jericho Diamond Mine Project Certificate (No. 002) to Shear Diamonds (Nunavut) Corp.*

³ Letter from P. Strand, President, Shear Diamonds to P. Beaulieu, Manager of Licensing, Nunavut Water Board Re: *Shear Diamonds (Nunavut) Corp. – Licence No. 2AM-JER0410 Notice of Application for Renewal of a Type "A" Water Licence, Jericho Diamond Mine.* June 9, 2013.

⁴ NIRB's 2012 Site Visit Report for the Jericho Diamond Mine Project. November 2012.

the NIRB by June 10, 2011. The NIRB has not received any quarterly reports from Shear since it assumed ownership of the Project.

2.2. Wildlife Monitoring

The Wildlife Mitigation and Monitoring Plan (WMMP) for the Jericho Project details the Proponent's methods for conducting wildlife monitoring activities, describes options to mitigate potential impacts to wildlife, and provides direction to site staff. On May 15, 2007 Tahera submitted a fourth draft of its WMMP in accordance with Condition 10 of the Jericho Project Certificate. After consultation with the Government of Nunavut – Department of Environment and Environment Canada, it was determined that the WMMP as submitted adequately satisfied the requirements of the Jericho Project Certificate.

In a June 3, 2011 submission to the NIRB, Shear committed to implementing the measures proposed in the WMMP prepared by Tahera⁴, which required that Shear compile and submit a Wildlife Mitigation and Monitoring Report annually as well as prepare a comprehensive analysis of the Plan every 3 years beginning in 2009. The submission further stated that *“during care and maintenance Shear will record wildlife sightings in the field and around the mine site. These sightings will be included in the quarterly report to be submitted to the NIRB.”* The NIRB has not received any quarterly reports from Shear, nor has it received any annual wildlife data, analyses, or discussion to meet this requirement.

2.3. Socio-Economic Monitoring

Terms and Conditions 42 through 49 of the Jericho Project Certificate outline the Board's requirements for socio-economic monitoring of the Jericho project.

Inuit Impact and Benefits Agreement

On October 1, 2007 the NIRB received a report from the Kitikmeot Inuit Association (KIA) outlining its experience with the implementation of the Inuit Impact Benefits Agreement (IIBA) for the Jericho project, also noting that since the signing of the IIBA, the relationship between the KIA and Tahera had been positive. In its June 3, 2011 letter to the NIRB Shear clarified that while the site remained in care and maintenance, obligations in the IIBA had been suspended except for those related to employment and contracting, and opportunities for these would be limited while the site remained in this phase.

Socio-Economic Monitoring Committee

Condition 44 of the Jericho Project Certificate requires that a Socio-Economic Monitoring Committee (SEMC) be established to monitor and report on socioeconomic impacts in relation to the Jericho project. To the Board's knowledge, no SEMC specific to the Jericho project has been created.

However, while the fifth regional Kitikmeot SEMC⁵ meeting occurred November 20-21, 2013 in Cambridge Bay, Shear was not in attendance at the event. Discussion of the Jericho site at this event was facilitated through a presentation given by Aboriginal Affairs and Northern Development Canada. The report circulated in February 2014 from this event detailed the following related to the Jericho project:

“Shear Diamonds has not been in contact with government officials nor has the mine been properly closed. AANDC has gone in 3-4 times in the past year and will continue to send inspectors at least once a year now that the site is stabilized. The Committee asked if the costs of sending crews to inspect the site are being charged back to the company. AANDC stated that this type of activity is covered as part of the securities bonding which the company provides, but that the company is past due on these payments.”

The reports and discussion provided limited information on the socio-economic impacts of the Jericho project.

2.4. Compliance Monitoring

2.4.1. Compliance with the NIRB Project Certificate

As previously discussed, Shear has not submitted the required reports to the NIRB and has therefore been non-compliant with various requirements of Appendix D of the Jericho Project Certificate. Shear is required by Condition 10 and the Wildlife Mitigation and Monitoring Plan to submit an annual Wildlife Mitigation and Monitoring Report to the NIRB. The NIRB has not received any wildlife report or data from Shear for years including 2010, 2011, 2012, and 2013. As noted in the 2014 Site Visit Report (see [Appendix I](#)), Shear has not met the requirements of Condition 34 which requires that fuel storage areas be bermed, as well as Condition 35 which requires that fencing or suitable deterrents be employed at the landfills or waste storage areas on site.

2.4.2. Compliance Monitoring by Authorizing Agencies

Appendix D of the Jericho Project Certificate sets out expectations for authorizing agencies' collaborative monitoring for the Jericho site. Agencies with responsibilities related to the monitoring program are requested to provide compliance reports to the NIRB by April 30th of each year.

2.4.3. Kitikmeot Inuit Association

The KIA is responsible for holding land tenure permits for Shear as well as maintaining several agreements with regards to the function of the site and use of resources for the project. On September 10, 2014 the KIA⁶ provided an update to the NIRB which

⁵ Kitikmeot Socio-Economic Monitoring Committee Fall 2013 Report on Fifth Kitikmeot SEMC Meeting, Cambridge Bay, Nunavut: 20-21 November 2013 and Kitikmeot Socio-Economic Monitoring, Government of Nunavut Department of Economic Development & Transportation. December 2013.

⁶ P. Emingak, Executive Director, Kitikmeot Inuit Association letter to T. Arko, NIRB Monitoring Officer for the Jericho Project. RE: NIRB Request for Update from KIA Regarding Activities at the Jericho Diamond Mine Site. Dated September 10, 2014.

indicated that the organization views AANDC as the primary regulator for the project, and confirmed that it would be collaborating with AANDC to ensure that the portion of the project site on Inuit Owned Land is properly abandoned.

2.4.4. Aboriginal Affairs and Northern Development Canada

Aboriginal Affairs and Northern Development Canada (AANDC) is responsible for issuing Crown land leases for the Jericho Diamond Mine and conducting land use inspections required under the *Territorial Lands Act and the Territorial Lands Regulations*, as well as conducting inspections under the *Nunavut Water and Nunavut Surface Rights Tribunal Act* for compliance to water licence(s) that have been issued by the NWB.

The NWB issued a renewed Type A Water Licence to Shear for the Jericho site on December 21, 2011, and its decision to the Minister of AANDC⁷ included that the total amount of securities which Shear was responsible to provide to AANDC to be held in trust was \$3,389,074. Shear provided AANDC with a Compliance Plan⁸ for the Jericho site at the end of 2012 which noted that it was not in a financial position to provide the outstanding securities amount of \$321,074. On December 19, 2013 AANDC⁹ provided additional detail on the status of the securities, indicating:

“the Department currently has \$6,618,556 in cash-equivalent and \$1,701,858 in debentured security under the Crown land lease and type A water license for the Jericho mine site. The work done on-site by the Department from June to October 2013 to manage water levels and ensure tailings management is maintained has cost approximately \$232,000.”

On January 22, 2014 AANDC issued notice to Shear¹⁰ that “pursuant to section 89 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*, the Minister of Aboriginal Affairs and Northern Development (“AANDC”) believes that Shear Diamonds (Nunavut) Corp. (“Shear”) has closed or abandoned, temporarily or permanently the Jericho diamond mine” and further that “since leaving the site in September 2012, Shear has failed to undertake any work to remedy deficiencies, mitigate risks, or otherwise maintain the site and assets in any way, creating potential adverse effects to persons, property and the environment.”

⁷ Nunavut Water Board, *Reasons for Decision Including Record of Proceedings In the Matter of Shear Diamonds (Nunavut) Corp. Renewal Application for a Type “A” Water Licence. December 21, 2011.*

⁸ Author unknown, 2AM-JER1119 Compliance Plan, September 30, 2012.

⁹ I. Gray, Regional Director General, Nunavut Region, Aboriginal Affairs and Northern Development Canada Letter to R. Barry, Executive Director, NIRB., *Re: Request for clarification regarding ongoing responsibilities for the Jericho Diamond Mine Site.* Dated December 19, 2013..

¹⁰ I. Gray, Regional Director General, Aboriginal Affairs and Northern Development Canada Letter to M. Rappaport, Director, Shear Diamonds (Nunavut) Corp. and T. Pladsen, Chief Restructuring Officer, Shear Diamonds (Nunavut) Corp. *Re: Status of the Jericho Diamond Mine.* January 22, 2014.

On April 22, 2014 the NIRB distributed a reminder that authorizing agencies provide any compliance monitoring reports¹¹ to the NIRB by April 30th of each year as outlined in Appendix D of the Jericho Project Certificate. On May 3, 2014 AANDC provided the NIRB with its inspection reports and direction previously issued during 2013 as well as additional correspondence from AANDC Field Operations and Contaminated Sites Program.

On September 4, 2014 the NIRB inquired¹² further with AANDC requesting an update regarding ongoing activities at the Jericho Diamond Mine Site. No response has been received to date.

2.4.5. Fisheries and Oceans Canada

Fisheries and Oceans Canada's authority is legislated pursuant to the *Fisheries Act* to issue an Authorization (NU-00-0068) which bears relevance to items addressed in Terms and Conditions 4 and 19 through 24 of the Jericho Project Certificate. On May 12, 2014 the NIRB received a compliance update from Fisheries and Oceans Canada noting that Shear was not in compliant status with the existing *Fisheries Act* Authorization.

2.4.6. Natural Resources Canada

In July 2005 Natural Resources Canada issued a licence to Dyno Nobel Nunavut Limited under Section 7 of the *Explosives Act* for the storage and manufacture of explosives at the Jericho Mine site. In Natural Resources Canada's update to the NIRB provided on May 7, 2014, it indicated that there is no longer a licence associated with the site as all explosive materials have been removed from the site.

2.5. NIRB Site Visit

During its site visit on June 6, 2014, the NIRB noted that the Jericho site was in similar condition to that observed during the previous site visit conducted on June 11, 2013. The NIRB's Site Visit Report provides further details regarding specific observations at site (see [Appendix I](#)). The site visit provided an opportunity for the NIRB to make visual observations in relation to requirements of the Jericho Project Certificate and compliance issues noted during the previous visit.

Most of the terms and conditions of the Jericho Project Certificate are designed to manage impacts brought about by an operating mine, and as the site has not been in operations since 2008 many of the terms and conditions are not relevant to current site activities being undertaken by Aboriginal Affairs and Northern Development Canada. It appeared from the NIRB's visit to site that Shear had not been conducting monitoring activities at site as required by the Jericho Project Certificate.

¹¹ T. Arko, Technical Advisor, Nunavut Impact Review Board Letter to K. Costello, Director, Resource Management, Aboriginal Affairs and Northern Development Canada. *Re: Reminder of Project Certificate [002] Deadline for Compliance Monitoring Reports Jericho Diamond Project*. Dated April 22, 2014.

¹² T. Arko, Technical Advisor, Nunavut Impact Review Board Letter to Ian Gray, Regional Director General, Aboriginal Affairs and Northern Development Canada, *RE: NIRB Request for Update from AANDC and KIA regarding Ongoing Activities at the Jericho Diamond Mine Site*. Dated September 4, 2014.

2.5.1.Processed Kimberlite Containment Area

The NIRB observed that the majority of the surface of the processed kimberlite containment area Cell A remained dry (see [Photo 1](#)), and there continued to be evidence of fine processed kimberlite outside of the processed kimberlite containment area (see [Photo 3](#)). Dustfall stations are still present at locations as previously noted however, nothing observed during the site visit indicated that the dustfall stations have been used to actively monitor the area.

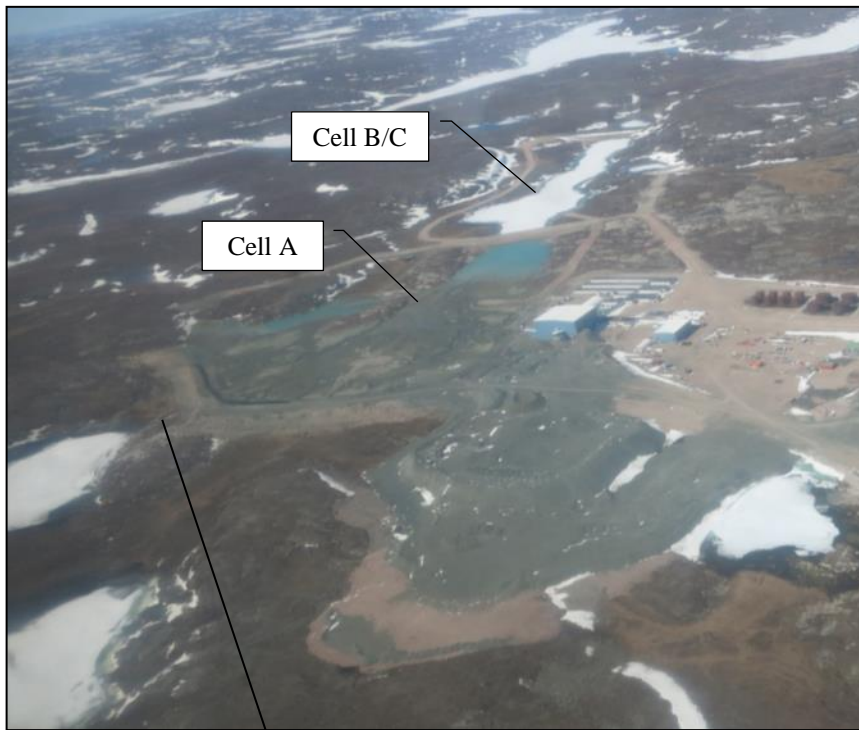


Photo 1: Mine processing facility and processed kimberlite containment area



Photo 2: View along Southeast dam opposite processed kimberlite containment area



Photo 3: Accumulation of fine processed kimberlite on boulders along Southeast dam

2.5.2. Aquatic Effects Monitoring

During the 2014 site visit, AANDC inspectors collected water samples of all sitting waterbodies associated with mine infrastructure. No information has been received from Shear during the 2013-2014 monitoring period to indicate any further aquatic effects monitoring.

2.5.3. Wildlife

Since the 2012 site visit, the NIRB has not received any additional wildlife monitoring data from Shear, and during the 2014 site visit the NIRB did not observe any evidence of wildlife monitoring being carried out at site. Fencing or other suitable deterrents have not been employed as required by Condition 35 of the Jericho Project Certificate.

2.5.4. Fuel and Hazardous Waste Management

The fuel and hazardous waste storage areas that were bermed, were found to contain significant amounts of sitting water within the bermed area. The unsealed and unlabelled barrels found during the 2013 site visit (see [Photo 4](#)) were observed during the 2014 site visit to be covered by a tarp (see [Photo 5](#)), and still stored within the main fuel tank farm.



Photo 4: Barrels of waste stored within berm of main fuel tank farm Phase 2, observed during 2013 site visit



Photo 5: Barrels observed during 2014 site visit, covered by a tarp



Photo 6: Bulk fuel tanks at airstrip



Photo 7: Main tank farm Phase 1

2.6. Follow up to NIRB's 2013 Recommendations

As a result of the NIRB's findings through its 2013 monitoring program, the Board made three recommendations to Shear on November 27, 2013¹³ that would assist it in reaching compliance with the Jericho Project Certificate and the NIRB's expectations moving forward. These recommendations are outlined below, including updates from the NIRB.

Recommendation 1: *The Board requests that Shear provide the following outstanding submissions:*

- a) 2010, 2011, and 2012 annual reports;*
- b) Quarterly reports for 2010 through 2012 and 2013; and*
- c) Wildlife monitoring data from 2010-2013.*

Recommendation 2: *The Board requests that Shear provide the NIRB with a plan of action to construct fencing around all landfill and waste storage areas. It is requested that this plan of action be provided within 30 days' receipt of the Board's recommendations.*

Recommendation 3: *The Board requests that Shear provide the NIRB with an update regarding water monitoring and sampling practices as well as releases of water at site, and an update of activities undertaken to manage the risks identified at the Jericho site as outlined by AANDC in correspondence to the NWB dated June 1, 2013. It is requested that these details be provided within 60 days' receipt of the Board's recommendations.*

In response to the Board's recommendations, the Chief Restructuring Officer provided his understanding that while new financing was being sought, "that AANDC was assuming responsibility for the care and maintenance of the Mine."¹⁴

As a result of this response, on December 12, 2013 the NIRB sought clarification from both AANDC and the KIA on continuing responsibilities at the Jericho site.¹⁵ On December 19, 2013 the NIRB received a response from AANDC which detailed that:

"AANDC has not taken over the management of the Jericho Diamond Mine Project. Shear Diamonds continues to be responsible for maintaining compliance with the terms and conditions of all authorizations and permits issued for the project. Shear Diamonds is still the owner of the site and the company remains accountable

¹³ T. Arko, Technical Advisor, Nunavut Impact Review Board Letter to M. Rappaport, Director, Shear Diamonds (Nunavut) Corp. and T. Pladsen, Chief Restructuring Officer, Shear Diamonds (Nunavut) Corp. *Re: The Nunavut Impact Review Board 2012-2013 Monitoring Report for the Jericho Diamond Project and Board Recommendations*. Dated November 27, 2013.

¹⁴ T. Pladsen, 2208932 Ontario Inc. Letter to T. Arko, Nunavut Impact Review Board. *Re: The Nunavut Impact Review Board's 2013 Site Visit Report for Shear Diamonds (Nunavut) Corp.'s Jericho Mine Project*. Dated December 4, 2014.

¹⁵ R. Barry, Executive Director, Nunavut Impact Review Board letter to I. Gray, Regional Director General, Nunavut Region, Aboriginal Affairs and Northern Development Canada and P. Emingak, Executive Director, Kitikmeot Inuit Association. *Re: NIRB Request for Clarification from AANDC and the KIA regarding Ongoing Responsibilities for the Jericho Diamond Mine Site*. Dated December 12, 2013.

during the temporary closure. AANDC's involvement regarding site management has been limited to ensuring environmental stability at the property by addressing the terms set out in the letter of Direction issued to Shear Diamonds.”⁹

As of the date of this report, the NIRB has not received any additional responses or clarification related to the Board's 2013 recommendations.

3.0 FINDINGS

During the 2013-2014 monitoring period, the NIRB did not receive any documentation, or observe any evidence at site, that would indicate Shear had been conducting monitoring at Jericho. Shear remains non-compliant to many of the requirements as outlined in the Jericho Project Certificate.

4.0 CONCLUSIONS

After purchasing the Jericho Diamond Mine, Shear committed to operating under the Plans and procedures which were put in place by Tahera to address the requirements of the Jericho Project Certificate, however the site continues to remain unmanned by Shear personnel, and the company remains non-responsive to inquiries.

As a result of Shear's failure to implement requirements of the Jericho Project Certificate at site, the Board is unable to provide a detailed assessment required by Section 12.7.2 of the NLCA, to determine the success or failure of these terms and conditions to mitigate predicted impacts associated with the Jericho Project. However, due to the site remaining non-operational, most of the impacts for which the terms and conditions of the Jericho Project Certificate were written, are not likely being realized.

The coordination of regulatory authorities as intended through the recommendations of the Appendix D of the Jericho Project Certificate remains a key component of the NIRB's ongoing monitoring efforts for the site, and the NIRB will continue to work with these agencies in the absence of Shear Diamonds (Nunavut) Corp.

Prepared by: Tara Arko
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NIRB File No.: 00MN059

APPENDIX I - 2014 SITE VISIT REPORT