



Nunavut Impact Review Board  
File No.: 03MN107



## Hearing Report for the NLCA 12.8.2 Reconsideration of Condition 32 of the Meadowbank Gold Mine Project Certificate (No. 004)

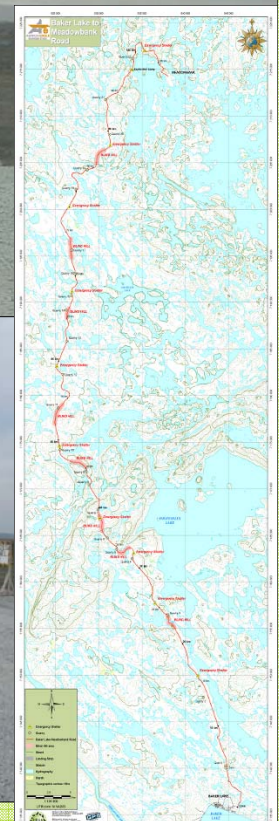
**Agnico-Eagle Mines Ltd**  
**Meadowbank Gold Mine Project**  
**June 2009**



NIRB Board Members



Gate House and Gate at Km 5



Private Access Road Route

## **NIRB's Primary Objectives under the Nunavut Land Claims Agreement Article 12, Section 2.5**

**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 Nunavut Settlement Area. NIRB shall take into account the well-being of residents of Canada outside the Nunavut Settlement Area.**

PO Box 1360  
Cambridge Bay, Nunavut  
X0B 0C0

**Cover Photo Credit – NIRB Staff, AEM Ltd**

## SIGNATURE PAGE



Photo 1: Board Members (from Left) Archie Angnakak, Henry Ohokannoak, Patricia Enuapik, Lucassie Arragutainaq (Chairperson), Peter Akkikungnaq

THIS REPORT IS SUBMITTED TO THE HONOURABLE CHUCK STRAHL,  
MINISTER OF INDIAN AND NORTHERN AFFAIRS CANADA BY THE  
NUNAVUT IMPACT REVIEW BOARD ON THIS 1<sup>st</sup> DAY OF JUNE 2009.

Archie Angnakak  
Board Member

Patricia Enuapik  
Board Member

Henry Ohokannoak  
Board Member/ Secretary - Treasurer

Peter Akkikungnaq  
Board Member

Lucassie Arragutainaq  
Chairperson

NIRB File No.: 03MN107

Honourable Chuck Strahl  
Minister of Indian and Northern Affairs Canada  
Gatineau, QC

RE: Report on NIRB's Reconsideration of Condition 32 of the Meadowbank Gold Mine Project Certificate

Please find enclosed the above cited report by the Nunavut Impact Review Board (NIRB) issued to you pursuant to Section 12.8.3 of the *Nunavut Land Claims Agreement* (NLCA). The report contains an assessment of the proposed reconsideration of Term and Condition 32 of the Meadowbank Gold Mine Project Certificate No. 004 (Project Certificate) in accordance with Section 12.8.2 of the NLCA. Following the Public Hearing held at Baker Lake from April 28 to 30, 2009, the NIRB has revised Term and Condition 32 of the Project Certificate which was issued pursuant to Section 12.5.12 of the NLCA on December 30, 2006.

Translated versions of the report are being prepared in Inuktitut and French, and will be available as soon as possible. Please contact the undersigned in writing should you have any questions regarding the matter.



c.c. Larry Connell, Agnico-Eagle Mines Ltd  
David Aksawnee, Mayor, Hamlet of Baker Lake  
Meadowbank Distribution List

## RECORD OF PROCEEDINGS

Applicants: Agnico-Eagle Mines Ltd  
Hamlet of Baker Lake

Applications Received:  
Agnico-Eagle Mines Limited: July 29, 2008  
Hamlet of Baker Lake: September 12, 2008

Dates of Hearings: Day 1: April 28, 2009, Baker Lake, NU  
Day 2: April 29, 2009, Baker Lake, NU  
Day 3: April 30, 2009, Baker Lake, NU

Members Present: Lucassie Arragutainaq, Chairperson  
Archie Angnakak, Board Member  
Henry Ohokannoak, Board Member  
Peter Akkikungnaq, Board Member  
Patricia Enuapik, Board Member

Board Staff: Executive Director: S. Autut  
Director, Technical Services: J. Rusk  
Manager of Env. Administration: L. Payette  
Technical Advisor: A. Hanson  
Asst. Technical Advisor: T. Arko  
Environmental Administrator: S. Novoligak  
Finance/Administration Clerk: O. Evalik

Interpreters: J. Tucktoo-Lacasse, J. Otokiak, R. Perkison

NIRB Legal Counsel: C. Emrick, (William A. Tillemann Professional Corporation)

Court Reporter: C. Funk, (DICTA Court Reporting)

Sound Technician: T. Bourque, (PIDO Productions)

Applicants:

Agnico-Eagle Mines Ltd:

L. Connell, Corporate Director of Sustainable Development  
S. Robert, Environment Superintendent

Hamlet of Baker Lake:

D. Aksawnee, Mayor  
R. Seeteenak, Assistant Senior Administrative Officer

Parties/Intervenors:

Kivalliq Inuit Association:

L. Manzo, Director of Lands  
R. Toolooktook, Lands Inspector

Government of Nunavut:

P. Suvega, Assistant Deputy Minister (EIA)  
H. Robinson, Ecosystem Biologist  
D. Karadag, Territorial Environmental Assessment Coordinator &  
Scientist  
L. MacKenzie, Director, Community Operations Kivalliq Region

Indian and Northern Affairs Canada:

S. Dewar, Manager of Land Administration  
E. Hopkins, Environmental Analyst  
M. Brisco, Environmental Scientist

Fisheries and Oceans Canada:

A. Liu, Habitat Management Biologist  
N. Johnson, Fish Habitat Biologist



## **Chairperson's Foreword**

This report is prepared by the Nunavut Impact Review Board (NIRB or Board) for the Minister of Indian and Northern Affairs Canada pursuant to Article 12 of the Nunavut Land Claims Agreement. It will also be translated to inform the diverse group of interested persons who participated in the Nunavut Impact Review Board's reconsideration of Term and Condition 32 of the Meadowbank Gold Mine Project Certificate No. 004 (Project Certificate) in accordance with Section 12.8.2 of the NLCA.

The Board thanks all those who provided expert advice, traditional knowledge, and who shared their support and/or concerns for the Project. With this input the Board was able to make an informed decision and recommend to the Minister amendments to the Condition 32 of the Project Certificate. The Board also extends its appreciation to the applicants, Agnico-Eagle Mines Ltd and the Hamlet of Baker Lake for their cooperation during this process, and expects that such cooperation will continue with the NIRB and regulators into the future.

As development in Nunavut continues to expand, the NIRB is confident that the future well-being of Nunavut residents and their land, water and resources, can be protected through the impact assessment process. The success of this reconsideration process is indicative of the NIRB's capacity and determination to meet those objectives, and the Board thanks Indian and Northern Affairs Canada for its funding and support. The NIRB hopes for the continued participation and cooperation of all parties in the impact assessment process in Nunavut.

Finally, I would like to thank the members of the Board and NIRB staff for their efforts throughout the process, for without them this would not be possible.

Kind Regards,



Lucassie Arragutainaq  
Chairperson

## EXECUTIVE SUMMARY

Pursuant to the Nunavut Land Claims Agreement (NLCA), the function of the Nunavut Impact Review Board (NIRB or Board) in this matter is to reconsider Term and Condition 32 of the Meadowbank Gold Mine Project Certificate No. 004 (Project Certificate) in accordance with Section 12.8.2 of the NLCA. In carrying out this function, the primary objective by law is to protect and promote the existing and future well-being of the residents and communities of Nunavut and the protection of Nunavut's ecosystemic integrity.

The Board considered two applications related to Condition 32 of the Project Certificate. Agnico-Eagle Mines Ltd asked that consideration be given to the replacement of the two locked gates specified in the Project Certificate with an installed manned gatehouse. The Hamlet of Baker Lake requested that the Board give consideration to have the road restrictions on the road relocated to the exploration camp (located at approximately kilometre 90) and to thereby allow access to the road up to traditional hunting grounds at Quarry Mark 20. Just prior to the Hearing, following discussions with the Hamlet of Baker Lake, the Baker Lake HTO, and AEM, the Hamlet of Baker Lake amended the request to allow access that maintains the road as a closed private access road but accommodates the needs of local hunters to continue their traditional pursuits.

In April 2009, the Board held a Hearing in the community of Baker Lake during which input was received from members of the community, Elders, the local Hunters and Trappers Organization, the Kivalliq Inuit Association and departments of the federal and territorial governments.

In result, the Board recommends that Condition 32 of the Project Certificate be amended to allow for a gate and manned gatehouse and provide for limited, authorized non-mine use of the road by ATVs for the purpose of carrying out traditional activities.

Specifically, the Board recommends Condition 32 be revised to state:

AEM shall operate the all-weather road as a private access road, and implement all such measures necessary to limit non-mine use of the road to authorized, safe and controlled use by all-terrain-vehicles for the purpose of carrying out traditional Inuit activities. The measures AEM shall undertake include, but are not limited to:

- (a) Maintaining a gate and manned gatehouse at kilometre 5 of the Private Access Road;
- (b) In consultation with the Hamlet of Baker Lake, the local HTO, and the KivIA, update the All-weather Private Access Road Management Plan to set out the criteria and processes to authorize and ensure safe and controlled non-mine use of the road by all-terrain-vehicles for the purpose



- of carrying out traditional Inuit activities, and measure to limit all other non-mine use of the road. The updated Plan is to be submitted to the GN, INAC, and KivIA for approval no later than one (1) month after the approval of revised Condition 32.
- (c) The posting of signs in English and Inuktitut at the gate, each major bridge crossing, and each 10 kilometres of road, stating that unauthorized public use of the road is prohibited;
  - (d) The posting of signs in English and Inuktitut along the road route to identify when entering or leaving crown land;
  - (e) Prior to opening of the road, and annually thereafter, advertise and hold at least one community meeting in the Hamlet of Baker Lake to explain to the community that the road is a private road with non-mine use of the road limited to approved, safe and controlled use by all-terrain-vehicles for the purpose of carrying out traditional Inuit activities.
  - (f) Place notices at least quarterly on the radio and television to explain to the community that the road is a private road with non-mine use of road limited to authorized, safe and controlled use by all-terrain-vehicles for the purpose of carrying out traditional Inuit activities.
  - (g) Record all authorized non-mine use of the road, and require all mine personnel using the road to monitor and report unauthorized non-mine use of the road, and collect and report this data to NIRB one (1) year after the road is opened and annually thereafter; and
  - (h) Report all accidents or other safety incidents on the road, to the GN, KivIA, and the Hamlet immediately, and to NIRB annually.

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## **1.0 Background**

### **1.1 Procedural (Project) History**

On March 31, 2003, the Nunavut Impact Review Board (NIRB or Board) received Cumberland Resources Limited's (Cumberland) Meadowbank Gold Mine Project Proposal (Project) from Indian and Northern Affairs Canada (INAC) and screened the Project for potential adverse ecosystemic and socioeconomic impacts in accordance with Section 12.4.4 of the Nunavut Land Claims Agreement (NLCA). On September 23, 2003, the Board issued its decision pursuant to Section 12.4.4 (b) of the NLCA to then-Minister of INAC, the Honourable Robert Nault (Minister), recommending that the Project be subject to a review pursuant to Part 5 or 6 of Article 12 of the NLCA. On December 3, 2003, the Minister concurred with the NIRB's recommendation, and referred the Project to the Board for a review pursuant to Part 5 of the NLCA (Part 5 Review).

On February 20, 2004, the Board provided Cumberland with Guidelines for the preparation of a Draft Environmental Impact Statement (DEIS) for the project. Cumberland filed the DEIS for the Project on January 4, 2005.

The all-weather access road was not included in the original submission of the Project description, nor was that component considered as part of the DEIS. Cumberland submitted an application to INAC for a Land Use Permit for the all-weather access road on March 23, 2005, just prior to the Preliminary Hearing Conference (PHC) held by NIRB in Baker Lake, Chesterfield Inlet, and Rankin Inlet in June 2005.

The NIRB issued its PHC Decision on July 14, 2005, including a recommendation that the Part 5 Review include the additional all-weather access road component. On July 28, 2005, the NIRB applied to then-Minister of INAC, the Honourable Andy Scott, requesting that the all-weather access road be included with the Part 5 Review. On September 7, 2005, the Minister replied to the NIRB, indicating that the inclusion of the all-weather road as part of the Part 5 Review would result in a thorough and comprehensive assessment of the entire Project. The Minister highlighted the importance of the issues related to the all-weather access road:

*Pursuant to Section 12.5.1 of the Nunavut Land Claims Agreement, I would like to identify a particular issue for the Board to consider. An all-weather road of this scale would be the first of its kind in Nunavut. Given the fact that the road is connected to the community of Baker Lake, it is essential that the environmental*

*and socio-economic effects of its construction, use and eventual abandonment, be fully considered as well as possible future options for the road.*<sup>1</sup>

At the close of the Final Hearing for the Project on March 31, 2006, the Board left the record open to facilitate Cumberland's submission of supplemental information as requested by the Board, including specific information regarding the all-weather access road. On June 12, 2006, Cumberland submitted the requested information, and committed to placing gates at two of the bridges along the road route to prevent unauthorized uses.

In the Final Hearing Report issued August 30, 2006, the NIRB noted that Cumberland adequately assessed the impacts of a private access road to the mine site, and relied upon Cumberland's proposed steps to operate the road as such.<sup>2</sup> Further, the Board required the Proponent to: communicate the private nature of the road to residents of Baker Lake; take measures which would prevent non-mine use of the road, including the gating two major bridges along the road; and monitor unauthorized uses of the road. On November 17, 2006, then-Minister of INAC, the Honourable Jim Prentice, acknowledged and accepted the NIRB's Final Hearing Report and decision on the Project as submitted.<sup>3</sup>

Following the Minister's acceptance of the Final Hearing Report, the NIRB prepared the Meadowbank Gold Mine Project Certificate Number 004 (PC), and issued it to Cumberland on December 30, 2006. In addition to the 113 commitments made by Cumberland throughout the Part 5 Review process, the PC contained 86 project-specific terms and conditions to mitigate the impacts of the Project. Conditions 31 through 35 pertain directly to the all-weather access road, with other conditions associated with certain aspects of the road.

On June 6, 2007, the NIRB received correspondence from Agnico-Eagle Mines Limited (AEM) advising that AEM had acquired Cumberland Resources Limited and the Meadowbank Gold Mine.

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<sup>1</sup> Letter from the Honourable Minister Andy Scott, Minister of Indian Affairs and Northern Development and Federal Interlocutor for Métis and Non-Status Indians, to Elizabeth Copland, Acting Chairperson, Nunavut Impact Review Board, dated September 7, 2005.

<sup>2</sup> See the Nunavut Impact Review Board, File No.:03MN107, Final Hearing Report for the Meadowbank Gold Project, August 2006, available at [http://ftp.nirb.ca/REVIEWS/PREVIOUS\\_REVIEWS/03MN107-MEADOWBANK/02-REVIEW/10-DECISION/353\\_060830\\_NIRB\\_MB\\_MASTER\\_F\\_HEARING\\_RPT\\_OTAE.pdf](http://ftp.nirb.ca/REVIEWS/PREVIOUS_REVIEWS/03MN107-MEADOWBANK/02-REVIEW/10-DECISION/353_060830_NIRB_MB_MASTER_F_HEARING_RPT_OTAE.pdf) as of May 17, 2009.

<sup>3</sup> Correspondence dated November 17, 2006 from then-INAC Minister Jim Prentice which acknowledged and accepted the NIRB's Final Hearing Report for the Meadowbank Gold Project.



In accordance with Section 12.7 of the NLCA, following the issuance of the PC, the NIRB appointed a Monitoring Officer for the Project. The Monitoring Officer conducts an annual visit to the Project site to determine whether the Project and its related activities are carried out in compliance with the PC, and to assess the accuracy of the predictions contained within the Project's Environmental Impact Statement (EIS).

On July 29, 2008, AEM wrote to the Board indicating that a road gate and gatehouse were installed and in use at kilometer 5 of the all-weather access road, beyond the last private cabin along the road right-of-way. AEM requested that consideration be given to the replacement of the two locked gates specified in the PC with the installed manned gatehouse. On August 13, 2008, AEM formally applied to have the Board reconsider Condition 32 a. of the PC pursuant to Section 12.8.2 of the NLCA.<sup>4</sup>

The NIRB's Monitoring Officer conducted a site visit on August 21 and 22, 2008 during which time it was noted that locked gates at bridges 1 and 4 along the all-weather road as required by Condition 32 a. of the PC had not been installed.<sup>5</sup>

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<sup>4</sup> Section 12.8.2 of the NLCA states:

NIRB may on its own account or upon application by a DIO, the proponent, or other interests, reconsider the terms and conditions contained in the NIRB certificate if it is established that:

- a) The terms and conditions are not achieving their purpose;
- b) The circumstances relating to the project or the effect of the terms and conditions are significantly different from those anticipated at the time the certificate was issued; or
- c) There are technological developments or new information which provide a more efficient method of accomplishing the purpose of the terms and conditions.

<sup>5</sup> Condition 32. Cumberland shall operate the all-weather road as a private access road, and implement measures to limit public access to the road, including:

- a. The installation of locked gates at bridges 1 and 4;
- b. The posting of signs in English and Inuktitut at each gate, each major bridge crossing, and each 10 kilometres of road, stating that public use of the road is prohibited;
- c. The posting of signs in English and Inuktitut along the road route to identify when entering or leaving Crown land;
- d. Prior to the opening of the road, advertise and hold at least one community meeting in the Hamlet of Baker Lake to explain to the community that the road is restricted to mine use only;
- e. Place notices on the radio and television to inform the residents of the Hamlet of Baker Lake that the road is restricted to mine use only;
- f. Require all mine personnel using the road to monitor and report unauthorized non-mine use of the road, and collect and report this data to NIRB one (1) year after the road is opened and annually thereafter; and
- g. Report any information received, including accidents or other safety incidents on the road, including the locked gates, to the GN, KivIA, and the Hamlet immediately, and to NIRB annually.

On September 12, 2008, the NIRB received correspondence from the Hamlet of Baker Lake (Hamlet) requesting that the NIRB relocate access restrictions along the all-weather access road to the road entrance to the mine site. The NIRB considered the Hamlet's request to be an additional and separate application for reconsideration of Condition 32 of the PC, pursuant to Section 12.8.2 of the NLCA. On October 1, 2008 the NIRB requested comments from interested parties with respect to both the Hamlet and AEM's requests.

The PC is the product of an extensive Part 5 Review process which provided opportunities for public comment through written submissions, and participation in the hearings held at Baker Lake on June 6 and 7, 2005 and March 27 to 29, 2006. The issue of public access to the road was a significant issue throughout the NIRB review. Accordingly, the Board determined that a hearing at Baker Lake was necessary to fully reconsider Condition 32 of the PC. On October 27, 2008, the NIRB wrote to the Honourable Chuck Strahl, Minister of INAC, and outlined the proposed process for this NLCA 12.8.2 reconsideration. In a letter dated January 26, 2009, the Minister confirmed support for the NIRB to proceed with a public hearing as part of the reconsideration of Condition 32.

On January 27, 2009, the NIRB gave notice that a Hearing would be held at Baker Lake from April 28 to 30, 2009 (Notice), and requested written comments by March 30, 2009. The Notice was distributed to Federal and Territorial government departments, the Kivalliq Inuit Association (KivIA), and the Hunters' and Trappers' Organizations (HTO) in Baker Lake and Rankin Inlet. Public notice was also advertised on cable television and local radio, and posted in newspapers across Nunavut. The Notice and related advertisements were provided in English and Inuktitut. On March 20, 2009, the Board further requested comments from the parties regarding a public easement issue arising from Article 19 of the NLCA. Comments were received from AEM, KivIA, the Government of Nunavut (GN), INAC, Environment Canada, and the Department of Fisheries and Oceans Canada (DFO).

On March 12, April 25 and April 26, 2009, NIRB staff visited Baker Lake to hold public information sessions regarding the process for a reconsideration of Condition 32(a) of the PC, as well as to provide information about the Hearing procedures and opportunities for the public to participate. The NIRB staff also held an information session for regulators in Iqaluit on April 3, 2009, to provide government and regulatory agencies with information regarding the Hearing.

On April 9, 2009, the Board issued further procedural direction relating to the Hearing, including the issues to be addressed. In accordance with the procedural direction from

the Board, further written submissions were received from AEM, the Hamlet, INAC, and the GN.

The Hearing, including three Community Roundtable sessions, took place at the Baker Lake Community Hall from April 28 to 30, 2009. AEM, the Hamlet, KivIA, the GN, INAC, and DFO attended the Hearing. At the close of the Hearing, the Board closed the record.



Photo 2: Community members and audience at the Public Hearing.

Copies of the applications and all related submissions and correspondence are available on the NIRB's ftp site at: <http://ftp.nirb.ca/MONITORING/03MN107-MEADOWBANK/01-PROJECT%20CERTIFICATE/12.8.2%20AMENDMENTS/CONDITION%2032/>.

## **2.0 Analysis**

### **2.1 Issues to be decided**

The function of the Board at the Hearing was to reconsider Condition 32 of the PC. In carrying out this function, the Board's primary objective by law is the protection and promotion of the existing and future well-being of the residents and communities of the Nunavut Settlement Area, and to protect the ecosystemic integrity of the Settlement Area.<sup>6</sup>

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<sup>6</sup> See section 12.2.5 of the NLCA; see also section 12.5.5.

The Board's reporting parameters on the reconsideration of Condition 32 are to provide this report and recommendation to the Minister in a manner consistent with the reporting requirements for the preceding Part 5 Review of the Project pursuant to Section 12.5.6 of the NLCA.<sup>7</sup>

## **2.2 Burden and Standard of Proof**

The burden of persuading the Board that Condition 32 should be revised rests with AEM and the Hamlet for their respective, independent applications. It is the responsibility of the party in whose interest the application has been filed to provide impact assessments such that the Board may conduct a full review of the matters relevant to its mandate; in this case, a rehearing on a specific concern.

The standard of proof in this Hearing requires a careful balancing of all of the evidence presented in writing and at the Hearing. The Board will recommend revisions to Condition 32 to the Minister for approval only if the Board is convinced that to do so is consistent with the Board's primary objective by law.

## **2.3 Jurisdiction of the Board**

Following the review of the independent applications received from AEM and the Hamlet, the Board determined it has jurisdiction to reconsider Condition 32 pursuant to Section 12.8.2 (a), (b) and potentially (c) of the NLCA.<sup>8</sup> The Board notes that a

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<sup>7</sup> Section 12.5.6 of the NLCA states:

After reviewing the project proposal, NIRB shall issue a report to the Minister and the proponent containing:

- (a) its assessment of the project and its impacts;
- (b) its determination as to whether or not the project should proceed based on its assessment under (a); and
- (c) in the event the project were to proceed, terms and conditions reflecting the primary objectives set out in Section 12.2.5.

For the Board's report and recommendation on the Part 5 review of the project proposal, see: Nunavut Impact Review Board, File No.:03MN107, Final Hearing Report for the Meadowbank Gold Project, August 2006, available at [http://ftp.nirb.ca/REVIEWS/PREVIOUS\\_REVIEWS/03MN107-MEADOWBANK/02-REVIEW/10-DECISION/353\\_060830\\_NIRB\\_MB\\_MASTER\\_F\\_HEARING\\_RPT\\_OTAE.pdf](http://ftp.nirb.ca/REVIEWS/PREVIOUS_REVIEWS/03MN107-MEADOWBANK/02-REVIEW/10-DECISION/353_060830_NIRB_MB_MASTER_F_HEARING_RPT_OTAE.pdf) as of May 17, 2009.

<sup>8</sup> Section 12.8.2 of the NLCA states:

12.8.2 NIRB may on its own account or upon application by a DIO, the proponent, or other interests, reconsider the terms and conditions contained in the NIRB certificate if it is established that:

- (a) The terms and conditions are not achieving their purpose;
- (b) The circumstances relating to the project or the effect of the terms and conditions are significantly different from those anticipated at the time the certificate was issued; or
- (c) There are technological developments or new information which provide a

reconsideration of Condition 32 may also lead to the requirement for further amendments to other road related conditions in the PC.

On January 26, 2009, the Board received a letter from Minister Chuck Strahl supporting the Board's view that a public hearing in the Hamlet of Baker Lake is required to facilitate a thorough assessment of the proposed amendments to Condition 32.<sup>9</sup>

## **2.4 Environmental Assessment Guidelines**

Within the context of reconsidering Condition 32, in addition to the primary objective for the Board established by section 12.2.5 of the NLCA, the Board is taking into account all of the relevant matters that were to be considered pursuant to Section 12.5.5 of the NLCA during the Part 5 Review of the Project. Section 12.5.5 of the NLCA states:

*NIRB shall, when reviewing any project proposal, take into account all matters that are relevant to its mandate, including the following:*

- (a) whether the project would enhance and protect the existing and future well-being of the residents and communities of the Nunavut Settlement Area, taking into account the interests of other Canadians;*
- (b) whether the project would unduly prejudice the ecosystemic integrity of the Nunavut Settlement Area;*
- (c) whether the proposal reflects the priorities and values of the residents of the Nunavut Settlement Area;*
- (d) steps which the proponent proposed to take to avoid and mitigate adverse impacts;*
- (e) steps the proponent proposes to take, or that should be taken, to compensate the interests adversely affected by the project;*
- (f) posting of performance bonds;*
- (g) the monitoring program that the proponent proposes to establish, or that should be established, for ecosystemic and socio-economic impacts; and*
- (h) steps which the proponent proposes to take, or that should be taken, to restore ecosystemic integrity following project abandonment.*

As the Board has stated in previous decisions, while the matters in the Board's mandate are listed separately, the Board is of the view that they are interrelated.<sup>10</sup> This is

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more efficient method of accomplishing the purpose of the terms and conditions.

<sup>9</sup> Letter from the Honourable Minister Chuck Strahl, Minister of Indian and Northern Affairs Canada to Mr. Lucassie Arragutainaq, Acting Chair Nunavut Impact Review Board, dated January 16, 2009.

consistent with section 12.2.5 of NLCA and the definition of “ecosystemic” in section 12.1.1 of the NLCA.<sup>11</sup> These sections require the Board to look at the management of Nunavut’s resources in a way that recognizes its ecosystemic relationships. This requires considering the interdependency between the different parts of the environment: air, land, water, wildlife and people.<sup>12</sup>

In determining the issues for the Hearing, the Board considered the following direction from the Minister:

*As you indicated, term and condition 32 was developed following an extensive Part 5 review of the Meadowbank Gold Project, which focused on the assessment of impacts resulting from the operation of a private access road. As such, a decision to amend a term and condition that would allow for increased public access to the road should not be made until a thorough assessment of the environmental and socio-economic effects resulting from increased road usage has been completed.*<sup>13</sup>

To address the Minister’s concerns, the Board established the following nine issues to be considered at the Hearing:

1. What, if any, have been the effects of the All-Weather Private Access Road (Private Access Road) as authorized in the NIRB Project Certificate No. 004, on the traditional activities of the residents of Baker Lake and the surrounding area?
2. What, if any, are the potential adverse environmental and/or socio-economic effects of substituting the installation of locked gates at bridges 1 and 4 as prescribed in Condition 32 a. of Project Certificate No. 004, with a gate and manned gatehouse at kilometre 5 of the Private Access Road as requested by Agnico-Eagle Mines (AEM) in their July 29, 2008 submission?
3. How will the effects identified in Issue 2 (above) be assessed and mitigated?
4. What is the nature of the non-mine use of the Private Access Road proposed by the Hamlet of Baker Lake?

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<sup>10</sup> See Jericho Diamond Project, File #00MN059, NIRB Final Hearing Report, February 2004, pp. 47-49; see also Doris North Gold Project, File #02MN134, NIRB Final Hearing Report, August 2004, pp. 30-31.

<sup>11</sup> Section 12.1.1 of the NLCA defines “ecosystemic” as “means relating to the complex of a natural community of living organisms and its environment functioning as an ecological unit in nature;”

<sup>12</sup> See Jericho Diamond Project, File #00MN059, NIRB Final Hearing Report, February 2004, pp. 47-49; see also Doris North Gold Project, File #02MN134, NIRB Final Hearing Report, August 2004, pp. 30-31.

<sup>13</sup> Letter from the Honourable Minister Chuck Strahl, Minister of Indian Affairs and Northern Development and Federal Interlocutor for Métis and Non-Status Indians, to Mr. Lucassie Arragutainaq, Acting Chair Nunavut Impact Review Board, dated January 16, 2009, at p. 1.



- a. How and when will the public be permitted to use the road and under what terms and conditions;
  - b. How will the terms and conditions for non-mine use of the road be communicated and enforced;
  - c. Will the proposed non-mine uses affect the construction of the road; and
  - d. Are there requirements under law that may be relevant to the non-mine use of the road?
5. What, if any, are the potential adverse environmental and/or socio-economic effects of the non-mine use of the Private Access Road as proposed by the Hamlet of Baker Lake?
  6. How will the effects identified in Issue 5 (above) be assessed and mitigated?
  7. What, if any, are the effects of proposed non-mine use on the Proponent's, landowner's, Federal, Territorial, or Municipal Governments' responsibilities for the regulation, maintenance, and reclamation of the Private Access Road?
  8. Do the public easements as identified in Section 19.6.3 and Schedule 19-11(4) and (5) of the NLCA affect the NIRB's decision on the proposed non-mine use of the Private Access Road?
  9. Are *consequential* amendments required to other terms and conditions of Project Certificate No. 004 as a result of the reconsideration of Condition 32 a., and/or the proposed change in non-mine use of the Private Access Road?<sup>14</sup>

Given the extensive nature of the preceding Part 5 Review of the Project, the Board further notes that the record from that Part 5 Review informs this reconsideration to the extent that it is relevant to the reconsideration of Condition 32.

**2.5 Issue #1: What, if any, have been the effects of the All-Weather Private Access Road (Private Access Road) as authorized in the NIRB Project Certificate No. 004, on the traditional activities of the residents of Baker Lake and the surrounding area?**

Several witnesses addressed the extent of which the Private Access Road was built over the pre-existing all-terrain-vehicle (ATV) route used by the residents to access traditional hunting grounds and carry out other traditional activities, such as visiting grave sites. At the Hearing, the Hamlet approximated the extent of the overlap as about 40 percent:

...when the road was being built from Baker Lake to Meadowbank...the road was built over on 40 percent of the Honda trail...ever since Hondas started to coming

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<sup>14</sup> The nine issues were set out in the Board's letter to the Meadowbank Gold Project Distribution List, re: *Further Procedural Direction for the Meadowbank 12.8.2 Public Hearing*, April 9, 2009.

into our communities and being used by our hunters, ...there has always been a Honda trail for hunters prior to the road being built. It's getting harder and harder for our local hunters...to use that access trail that was theirs from the start. So, as a result of that, we have had meetings with Agnico-Eagle as to how we could resolve the issue of the use of the private road.<sup>15</sup>

At the Hearing KivIA used a map to illustrate for the Board the areas where the road and ATV route touched,<sup>16</sup> and in a written submission described how the overlap occurred:

When Cumberland Resources first began researching for the road, they consulted with the community of Baker Lake to determine the best route possible for the road, which was also the route used by hunters for their seasonal Caribou hunting. However, now the Baker Lake hunters are restricted from freely using the AWPAR [all-weather private access road] for their hunting purposes after advising Cumberland during the route selection process.<sup>17</sup>

The Board also heard from the residents of Baker Lake that there is minimal impact on their traditional harvesting activities as a result of the Private Access Road; however, this appears to the Board to be because significant non-mine use of the Private Access Road by ATV to access hunting grounds is occurring. The impact and existing use of the Private Access Road was described to the Board by a representative of the local HTO:

We all use – have used the – the access road, and it hasn't really had an impact on use. We are free to use that access road whenever we want. I'm not really sure if it's had an impact on any of us. Thank you.<sup>18</sup>

And from residents of Baker Lake:

The road, when it's used in the summertime, is usually used by the local people -- and right up to August. I would like to see the access road to be used as much as possible, especially for those hunters,...that like to go out and learn about our -- their traditional ways of hunting. It's going to be very difficult for them if they don't have access to that...particular area. And more and more youth

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<sup>15</sup> David Aksawnee, Hamlet of Baker Lake, Transcript, Volume 1, April 28, 2009, p. 79, lines 10-21.

<sup>16</sup> See Luis Manzo, KivIA, Transcript, Volume 2, April 29, 2009, pp. 118-119, lines 22-2, referring to slides 3 and 4 of Exhibit 4: An electronic version of the presentation filed by the Kivalliq Inuit Association being described as 090428-03MN107-KIA Presentation-IMAE.ppt.

<sup>17</sup> Letter from Jackson Lindell, Land Use Inspector, KivIA, to NIRB, re: File No. 03MN107, The Hamlet of Baker Lake's Request for a 12.8.2 (NLCA) Reconsideration of the Meadowbank Project Certificate Condition 32 Kivalliq Inuit Association (KivIA) Comments, October 14, 2008, at pp. 1-2.

<sup>18</sup> Thomas Iksiraq, HTO of Baker Lake, Transcript, Volume 1, April 28, 2009, p. 23, lines 5-8.

are starting to turn away from their traditional Inuit lifestyle, so I would like to see the access road being used by the youth more. We will never stop eating ...our traditional country food, so I would like to see the access road available to us. Thank you.<sup>19</sup>

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Last summer, we found out that there are some...grave sites -- or burial sites and -- in the Meadowbank area. We wanted to go...set up a cross at our...family's resting place. And we went -- my husband and I just went up there without any consent. We didn't care whether or not we had to get consent to set up a cross at our family burial site.

We live our traditional ways of life. We don't use computers. We don't speak any English. I do not like the conditions that we have to follow. I don't agree with terms and conditions being put up without our consent. Thank you very much.<sup>20</sup>



Photo 3: Elder speaking to the Board during one of the Community Round Table Sessions of the Public Hearing.

And by the Deputy Mayor and member of the Meadowbank Liaison Committee:

It has impacted the hunters. When people are going to their hunting grounds or

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<sup>19</sup> John Nukik, Resident of Baker Lake, Transcript, Volume 1, April 28, 2009, p. 23, lines 9-23.

<sup>20</sup> Winnie Ikinilik, Women's Group and HTO Member, Transcript, Volume 1, April 28, 2009, p. 34, lines 1-23.

fishing, they go by Honda...the summertime. And some...of the road is built on old traditional trail, and we get to use the -- the road. And there are people that go to Gjoa Haven or from Gjoa Haven -- have been affected. It has affected their traditional trail. But we will work on this to resolve it.

The committee thinks that if we use that road more for hunting and fishing, we will not be misusing the wildlife. A person that goes hunting or fishing will not -- will respect the environment and they will only hunt what they need for food.

Last year, I don't think we caught more caribou or fish, and people catch their caribou. Some of the catch were taken by some other wildlife, and I don't think we're catching more caribou than before. They just catch the caribou that they need for food or cash.

We still use the traditional -- tradition we have before, and we still hunt the same amount of food. And I think if this -- if this way, anywhere in Inuit -- even if we are supposed to follow policies or conditions, we still use our tradition. But, in Baker Lake, we have to work with these conditions. We -- I think when the Inuit use -- have to use the wildlife and fish and -- because we use it for food, we will not misuse any wildlife.

I want people to understand the government or other people to understand that these are the traditions that we use. The committee has supported the request from the Hamlet -- the request from the Hamlet and the Agnico-Eagle, and if it could be used by the public to go out hunting.

Last year, we noticed that, almost every day, people used the road, but they have never misused it. And I know the big trucks have CBs. Whenever they see a Honda, they inform their other -- other truckers where the Hondas are. They...always know where there's Hondas, and we will want to continue to use this tradition.

I know, people that go by Honda. If...you try to stop the hunters using the trail -- I don't think people will stop using the road.

Right now, this reconsideration of the road, I'm glad it's being reconsidered, and they will resolve the issue of the use of the road by the...Hondas. It -- the hunters don't always use that road. They only use it when there's caribou around that area.

The committee would like to see this resolved, and we support their requests that were presented to you. Thank you.<sup>21</sup>

AEM summarized the non-mine use of the Private Access Road for the Board, stating that from June to December 2008, there was a record of people using the road each month with the most use in the summer and fall, and peaks of 20 to 30 ATVs on certain days in July.<sup>22</sup> AEM also advised the Board that there were no accidents, contact or incidents of note as a result of non-mine use, and although the use was unauthorized, from AEM's perspective, the ATVs were operated in a responsible manner.<sup>23</sup>



Photo 4: Agnico-Eagle Mines Ltd closing remarks.

From the evidence, the Board has reached several conclusions: the Private Access Road overlaps with the pre-existing ATV route to traditional hunting grounds; despite the requirements of Condition 32 in the PC there is existing non-mine use of the road by ATVs primarily for hunting; effectively enforcing the non-mine use of the Private Access Road would likely impact traditional harvesting rights established in Article 5 of the NLCA; and the residents of Baker Lake are strongly opposed to restrictions to access their traditional ATV route for traditional activities.

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<sup>21</sup> David Simailak, Deputy Mayor and Meadowbank Liaison Committee Member, Transcript, Volume 1, April 28, 2009, pp. 29-31, lines 21-19

<sup>22</sup> See Stephane Robert, AEM, Transcript, Volume 1, April 28, 2009, pp. 69-70, lines 22-4.

<sup>23</sup> See Larry Connell, AEM, Transcript, Volume 1, April 28, 2009, p.70, lines 6-14.

**2.6 Issue #2: What, if any, are the potential adverse environmental and/or socio-economic effects of substituting the installation of locked gates at bridges 1 and 4 as prescribed in Condition 32a. of Project Certificate No. 004, with a gate and manned gatehouse at kilometre 5 of the Private Access Road as requested by Agnico-Eagle Mines (AEM) in their July 29, 2008 submission?**

The Board accepts AEM's submission that the installation of a gate and manned gatehouse at kilometre 5 of the Private Access Road is safer than and at least as effective as the installation of locked gates at bridges 1 and 4 to operate the Private Access Road as such. In particular, the Board agrees with AEM that the manned gatehouse reduces the risk of collisions from vehicles stopping at the bridges to unlock and lock the gates, provides a better way of controlling the operation of the road, allows for better use of a radio communication system for safety, and allows for improved monitoring of the use of the road.<sup>24</sup> Without making a judgment call on the regulatory status of the road, the Board further accepts AEM's submission that the change does not affect the environmental or socio-economic impacts of the Private Access Road.<sup>25</sup>

The Board's conclusion is consistent with evidence given by INAC,<sup>26</sup> and the GN,<sup>27</sup> that there are no concerns with the substitution of the gate and manned gatehouse for the locked gates at bridges 1 and 4, and that the substitution will be at least as efficient and may lead to enhanced monitoring.

**2.7 Issue #3: How will the effects identified in Issue 2 (above) be assessed and mitigated?**

As discussed in Section 2.6 above, the Board is satisfied that the substitution of a manned gatehouse in place of the locked gates at bridges number 1 and 4 will not result in any new environmental or the socio-economic impacts to be assessed or mitigated.

**2.8 Issue #4: What is the nature of the non-mine use of the Private Access Road proposed by the Hamlet of Baker Lake?**

**a. How and when will the public be permitted to use the road and under what terms and conditions;**

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<sup>24</sup> See Larry Connell, AEM, Transcript, Volume 1, April 28, 2009, pp.46-48, lines 19-20.

<sup>25</sup> See Larry Connell, AEM, Transcript, Volume 1, April 28, 2009, p.49, lines 2-14.

<sup>26</sup> See Spencer Dewar, INAC, Transcript, Volume 2, April 29, 2009, p. 175, lines 18-26.

<sup>27</sup> See Laura MacKenzie, GN, Transcript, Volume 2, April 29, 2009, p. 131, lines 11-14.



- b. How will the terms and conditions for non-mine use of the road be communicated and enforced;**
- c. Will the proposed non-mine uses affect the construction of the road; and**
- d. Are there requirements under law that may be relevant to the non-mine use of the road?**

The Hamlet applied to have the road restrictions on the road relocated to the gate at the Exploration Camp (at approximately kilometre 90 of the Private Access Road<sup>28</sup>), and allow access to the road up to traditional hunting grounds at Quarry Mark 20.<sup>29</sup> The application states “There are many company roads across Canada that have been built by the private sector, which are used by the general public.”<sup>30</sup>

Just prior to the Hearing, following discussions with the Hamlet of Baker Lake HTO and AEM, the Hamlet submitted to the NIRB an amended application, specifically changing their request to allow access that “maintains the road as a closed private access road but accommodates the needs of local hunters to continue their traditional pursuits.”<sup>31</sup> The Hamlet proposed the following accommodation:

1. AEM would continue to operate the road as a private access road with AEM responsible for care and maintenance;
2. AEM would continue to operate a manned gatehouse at kilometre 5;
3. The road would remain closed to cars and trucks owned by the public (i.e., only authorized cars and trucks would have access);
4. Residents of Baker Lake who need to access the road for traditional pursuits would obtain a pass from the Baker Lake HTO. Access would be restricted to ATV's only;
5. All ATV's accessing the road will be required to report to the gatehouse. The resident would present the pass at the AEM gatehouse and would then be given access to the road. Prior to being given access the AEM dispatch person would:
  - a. Provide a safety briefing on the road and specifically on the prevailing traffic and road conditions of the day and time;

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<sup>28</sup> See Letter from David Aksawnee, Mayor, Municipality of Baker Lake, to Leslie Payette, NIRB, April 6, 2009, [Hereinafter “Hamlet Written Submission”].

<sup>29</sup> See Letter from David Aksawnee, Mayor, Municipality of Baker Lake, to Leslie Payette, NIRB, September 12, 2008. [Hereinafter “Hamlet Application”].

<sup>30</sup> Hamlet Application, at p. 1.

<sup>31</sup> Hamlet Written Submission, at p. 2.

- b. Record who is traveling on the road, where they are heading and when they expect to return so that other traffic can be warned by radio of their presence;
  - c. Have the driver acknowledge that they are traveling on a mining road and have been informed of the risks.
6. AEM working with the HTO and Hamlet will develop a set of safety rules and procedures for all ATV's using the road including pulling off the road whenever a truck approaches. These safety rules will be published in Inuktitut and English and will be provided to all ATV's at the gatehouse. AEM and the HTO and Hamlet will jointly educate the residents of Baker Lake on these safety procedures through community radio and through community training sessions;
7. AEM will make available for borrow buggy whips to be temporarily installed on any ATV using the road to improve their visibility on hills. The buggy whip would be returned to either the gatehouse or AEM Baker Lake office after its use.
8. AEM would establish a second barrier at the mine site end of the road to prevent vehicles traveling onto the active mine zone where special safety equipment and training is required under the Nunavut Mining Act. This will consist of a crossing gate constructed at the mine site airstrip terminal building (which also doubles as the site security office. This structure has been sited so that it can be used both to service the airstrip and to control access into the mine site via the road.
9. AEM would establish a no shooting zone along the road so that mine workers and travelers are not inadvertently exposed to the risk of accidental shooting.
10. AEM would reserve the right to refuse future access to the road by individuals who do not respect the rules on safety, speed and the no shooting zone when using the road.<sup>32</sup>

Subsequently, AEM set out these same requirements as a compromise solution to meeting the needs of the residents of Baker Lake while maintaining the private nature of the Private Access Road.<sup>33</sup> The Chairperson of the Baker Lake HTO confirmed to the Board that the HTO Board is working with AEM to ensure safety concerns are being addressed.<sup>34</sup> KivIA also confirmed support for the Hamlet's revised request:

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<sup>32</sup> Hamlet Written Submission, at pp. 1-2.

<sup>33</sup> See letter from Larry Connell, AEM, to Leslie Payette, NIRB, Re: Request for a 12.8.2 (NLCA) Reconsideration of the Meadowbank Project Certificate Condition 32 (a), March 27, 2009, at pp. 4-5. [Hereinafter "AEM Written Submission".]

<sup>34</sup> See Thomas Elytook, HTO Chairperson, Transcript, Volume 3, April 30, 2009, p. 216, lines 7-18.

...[W]e agree [with] the management plan put together for the three parties -- AEM, HTO, and the Hamlet -- in consultation with the hunters and community that you hear[d] in the last two days which address the concerns of the community of Baker Lake to have access -- to have limited access for hunters to hunting grounds.

...

KIA sends support of the limited access system proposed as long as the risks associated with limited access is maintained and the decommission of the road is maintained by the proponent – in this case, AEM.<sup>35</sup>

At the Community Round Table sessions of the Public Hearing, residents of Baker Lake also confirmed to the Board that they are satisfied with the access proposed by the Hamlet of Baker Lake:

...I just want to say that I support the AEM, Hamlet and HTO because they have been dealing with this...for a long time and we are concerned about safety. We have to think of the safety if it was open to the public...there are a lot of people in Baker Lake. There may be safety issues. So I just want to say I support these groups.<sup>36</sup>

I also support AEM's...conditions, and I think we understand what we want to do...I also support that only Hondas use the trail...and restrict the vehicles from ...using the road....I would like to thank AEM and [the] Hamlet for giving us a clear understanding. Thank you.<sup>37</sup>

The Chair for the Qilautimiut Elders' Group, summarized the views of the Elders for the Board:

I'm the Chair for Qilautimiut Elders' Group. I'm in agreement with the comments that are being made. The only reason the elders are not speaking is because they...are in agreement, so we would just like to say thanks. Thank you to KIA, NTI, and NIRB, AEM, Hamlet, and different organizations.<sup>38</sup>

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<sup>35</sup> Luis Manzo, Kivalliq Inuit Association, Transcript, Volume 2, April 29, 2009, pp. 121-122, lines 4-7.

<sup>36</sup> Winnie Owingayak, Resident of Baker Lake, Transcript, Volume 3, April 30, 2009, p. 218, lines 12-19.

<sup>37</sup> Ms. Simiaalak, Resident of Baker Lake, Transcript, Volume 3, April 30, 2009, p. 219, lines 16-25.

<sup>38</sup> Ms. Simiaalak, Resident of Baker Lake, Transcript, Volume 3, April 30, 2009, p. 219, lines 16-25.

From this evidence, and without commenting on the regulatory classification of the road,<sup>39</sup> the Board is satisfied that the limited access proposed by the Hamlet is acceptable to the Community. This conclusion is particularly important to the Board because the Board believes that the residents are much more likely to comply with a limited access policy that they perceive to be fair, safe and respectful of their traditional harvesting rights.

With regard to the question of whether the proposed non-mine uses will affect the construction of the road, KivIA advised the Board that the road has been constructed to Canadian standards as set out by the GN and KivIA together in order to grant the permit for construction of an all-weather road across Inuit Owned Lands.<sup>40</sup> However, the Private Access Road was, nevertheless proposed as and built as a private road. In responding to the Hamlet's original application, AEM described the safety issues associated with the road construction:

Our primary concern is with respect to safety. We feel that safety will be significantly compromised if the gates are totally removed from the southern end of the road. In more specific terms our concerns over opening up the AWPAR to unrestricted use are summarized in the following points:

Safety – the AWPAR road was constructed as a single lane road with regular pull offs. Two way radio communications is used by all vehicles currently using the road to identify where all vehicles are and to warn drivers of other traffic so that passing can be safely accomplished. The presence of a dispatcher at the gatehouse ensures that all traffic on the road is recorded and monitored to ensure safe arrival, that hazards are communicated to all vehicles such as wide loads, breakdowns or presence of wildlife and facilitates speed control of vehicles on the road. How will safety be maintained with unrestricted access over the first 90 kilometres. If NIRB directs that the road be open to unrestricted access how can AEM continue to comply with the Nunavut Mines Act on the road;<sup>41</sup>

AEM confirmed in its presentation to the Board that AEM believes these safety concerns are addressed by the accommodation proposal put forward by the Hamlet:

Under this solution, we would continue to operate the road as a private access road. We would be responsible for all the care and maintenance of the road. So it

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<sup>39</sup> In other words, the Board makes no judgment call on whether the “private” road, clearly being used by the public, should or should not receive other regulatory scrutiny.

<sup>40</sup> Luis Manzo, Kivalliq Inuit Association, Transcript, Volume 2, April 29, 2009, p. 121-122, lines 11-2.

<sup>41</sup> AEM Written Submission, p. 4.

would still be a closed road. We would still operate the manned gatehouse at kilometre 5. However, residents of Baker Lake who need to access the road for whatever traditional pursuit, they would get authorization from the Baker Lake HTO. We would have no say in who gets the authorization. That would be strictly controlled by the community through the HTO, because, again, we have no responsibility in deciding who should be accessing traditional activities. The public access that would be given would be strictly for ATVs. It wouldn't be for cars or trucks. And we would work with the HTO and the Hamlet to develop a set of safety rules and procedures so that all ATVs using the road would be done in a safe manner. We believe that we can operate the road with ATVs using it for hunting and still do it safely.<sup>42</sup>

**2.9 Issue #5: What, if any, are the potential adverse environmental and/or socio-economic effects of the non-mine use of the Private Access Road as proposed by the Hamlet of Baker Lake?**

The potential for increased harvesting of fish and caribou, and risks to public safety were identified as the potential adverse environmental and socio-economic effects of the Hamlet's original application. The Hamlet's revised proposal mitigated these potential impacts considerably.

Regarding impacts to fish, at the Hearing DFO submitted that the non-mine use of the road by ATVs as proposed by the Hamlet did not change DFO's conclusion from the Part 5 Review of the Meadowbank Project conducted in 2006 that fish harvests should remain at sustainable levels:

...considering the amendment...proposed on April 6 by the Hamlet of Baker Lake, DFO concludes that the proposed modification to Condition 32(a) of the project certificate does not change the factors that were previously considered...by DFO in 2006, and DFO's conclusions and recommendations remain unchanged from 2006; that is, that DFO concludes that controlling...road access and enforcement of a "no fishing" policy for mine employees while working on the mine site and while using the all-weather road should help keep fish harvest within sustainable limits.<sup>43</sup>

With regard to increased harvesting of caribou, the Baker Lake HTO provided the Board with a good understanding of the caribou hunting practices of the residents:

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<sup>42</sup> Larry Connell, AEM, Transcript, Volume 1, April 28, 2009, p. 55, lines 7-25.

<sup>43</sup> Amy Liu, DFO, Transcript, Volume 2, April 29, 2009, p. 192, lines 15-26.

If I may, Mr. Chair, I'd like to talk about our brief hunting history of Baker. Thank you. The road -- we hunt caribou from Qamanirjuaq, which come from Manitoba along the coast: Arviat, Whale Cove Rankin, then Baker. And when this was brought up over harvesting, the people of Rankin -- Arviat hunt this herd while it's coming up. People from Whale Cove hunt this herd as it's still coming up. And then Rankin hunt from this herd as it's still coming up. And then, in July, mid-July, end of July, the herd go through Kazan and we hunt. And then we have the Beverly herd which comes from the west probably almost same time -- might be earlier or later than the Qamanirjuaq herd -- which goes across. I forgot to mention the herd from Qamanirjuaq is usually the fattest, the healthiest. And then the Beverly herd is still probably -- is still fat but not like the Qamanirjuaq. And then we also hunt the lower herd from Wapos Bay area, which is usually the fattest too which starts in August, mid-August, which is over 100 kilometres away. We can go down Quoich River. If you come in July when the ice goes, you will see boat after boat after boat, regardless of the hour, when they hear there's caribou Quoich or past Quoich. And then, lastly, the Ahiaq herd which comes by the road is usually the skinniest caribou of the three herds.

As we depend on caribou, a good hunter knows -- a good hunter usually hunts for only fat caribou that we eat. So we hunt more other caribou than the Ahiaq herd [which] comes by the road.

I'd like to thank the KIA for working with us as the HTO. So ... in closing, I urge the NIRB Board to listen to the community of Baker Lake.<sup>44</sup>

While INAC initially requested further assessment of the potential environmental and socio-economic impacts of the Hamlet's application, at the conclusion of the Hearing INAC advised the Board that it was satisfied that the outstanding questions were adequately addressed:

INAC would like to again acknowledge the Hamlet of Baker Lake and the HTO and Agnico-Eagle for working together to find a single solution that meets the needs of the parties involved. This collaboration between industry and the community should be applauded and encouraged.

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<sup>44</sup> Thomas Elytook, Baker Lake HTO Chairperson, Transcript, Volume 3, April 30, 2009, pp. 216-218, lines 22-6.



We believe this proposal maintains the road as a private access road while allowing managed access by ATV to the residents of Baker Lake for traditional pursuits. Furthermore, this proposal contains provisions to ensure safety, which was a primary concern of the Board upon conclusion of its previous review of the Meadowbank project.

Earlier in the process, INAC submitted questions to find out more information that would allow us to discuss possible environmental and social impacts. We feel that these questions have been adequately addressed. While we did not receive the predicted traffic numbers, after hearing from the Hamlet and the residents of Baker Lake, it is our understanding that the traditional use of the area that is being proposed predates the Meadowbank project. The use does not stem from the proposal on the table nor will the use be increased by the proposal.<sup>45</sup>



Photo 5: NIRB Legal Counsel swearing in INAC representatives.

The position of the GN with regard to the need for further assessment of the Hamlet's application on the impacts to wildlife harvesting, and in particular with regard to caribou, is less clear to the Board. The GN's request for further assessment of the Hamlet's proposed non-mine use of the road appears to the Board to be rooted in the nature of the assessment that was carried out during the Part 5 Review of the Meadowbank Project:

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<sup>45</sup> Spencer Dewar, INAC, Transcript, Volume 3, April 30, 2009, pp. 234-235, lines 16-13.

In looking at the history of the file, the road was proposed for mine traffic only...that was part the project certificate through the NIRB process. The parties involved in consultations at the very beginning agreed that the road -- the only way to mitigate effects was to have the road used by mine traffic only. And so the way it was assessed originally was for mine traffic only and so...because the environmental assessment process needs to consider the ecosystemic effects and those are set out by the questions that are -- by the rules that are set out of use. And because that rule of use is officially changing on paper, we need to assess what the -- we need to answer some of these questions which were unable to be answered in the previous days. So that would be the result. That would be the goal of the study. There is currently...a harvest study being done. This study would allow -- due to the change, would allow questions that are outstanding -- which -- some of which I listed earlier -- how that would dovetail with the...Wildlife Mitigation and Monitoring Plan.<sup>46</sup>

As KivIA advised the Board, some traditional use of the Private Access Road was considered in the Part 5 Review of the Meadowbank Project.<sup>47</sup> Moreover, based on the evidence provided by the Baker Lake HTO regarding the hunting practices of residents, and the conclusions reached by the Board in Section 2.5 above that the Private Access Road overlaps with the pre-existing ATV route to traditional hunting grounds, and the testimony given regarding existing non-mine use of the road by ATVs primarily for hunting, the Board does not agree with the GN that the nature of the limited non-mine use of the road by ATVs as proposed by the Hamlet requires further assessment of the impact on caribou hunting at this time.

The Board notes that, subject to the outstanding questions related to potential impacts on wildlife harvesting, the GN supported the Hamlet's revised request:

ED&T considers the amendment to Term and Condition 32 of the Meadowbank Gold Mine Project Certificate 004 as being consistent with the Government of Nunavut's Transportation Strategy that promotes improved transportation, infrastructure, and accessibility for recreational and traditional uses. Our department supports the proposed changes to the project certificate to replace the locked gates by the manned gatehouse at kilometre 5.

ED&T acknowledge and accept the desire for Agnico to continue to operate the road as a private access road. The department -- our department, ED&T,

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<sup>46</sup> Hillary Robinson, GN, Transcript, Volume 2, April 29, 2009, pp. 132-133, lines 25-20.

<sup>47</sup> See Luis Manzo, KivIA, Transcript, Volume 2, April 29, 2009, pp. 116-118, lines 15-8.

commends Agnico-Eagle and the Hamlet of Baker Lake for finding an option to allow access by ATV along the traditional route for residents from Baker to participate in recreational and traditional activities. ED&T does not feel that the proposed amendment of Condition 32 provides any significant change to the project certificate. Thank you.<sup>48</sup>

In reconsidering non-mine use of the Private Access Road, of most concern to the Board, and the parties at the Hearing, is the safety of all of the users of the road. As discussed in Section 2.8 above, AEM assured the Board that the proposed system of authorization and safety rules and procedures will allow AEM to operate the road safely. The GN also advised the Board that the mitigative measures for safety are either already in place or can be put in place through a revised traffic management plan.<sup>49</sup> The Board expects that AEM will do so.

In conclusion, with little or no expected increase in the harvesting of caribou and fish anticipated, and the system of authorization and safety rules and procedures that are being established, the Board is satisfied that limited, authorized non-mine use of the road by ATVs for the purpose of carrying out traditional activities, can be accommodated without adverse environmental and/or socio-economic effects.

## **2.10 Issue #6: How will the effects identified in Issue 5 (above) be assessed and mitigated**

To ensure the safety of all users of the road, in consultation with the Hamlet of Baker Lake, the area HTO, and KivIA, the Board further recommends that Condition 32 be revised to require the All-weather Private Access Road Management Plan be updated to set out the criteria and processes to authorize and ensure safe and controlled non-mine use of the road by ATVs for the purpose of carrying out traditional Inuit activities, and to further clarify the measures to limit all other non-mine use of the road.<sup>50</sup> The updated

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<sup>48</sup> Laura MacKenzie, GN, Transcript, Volume 2, April 29, 2009, p. 131, lines 2-24.

<sup>49</sup> See Paul Suvega, GN, Transcript, Volume 2, April 29, 2009, pp. 162-163, lines 4-5.

<sup>50</sup> When asked by Brittany Uqayuittuq of Baker Lake “What happens if we go around the gate without a pass?”, Larry Connell, AEM stated:

I like that question. And...the details of those sort of things have to be addressed with the HTO. Those are the rules we were talking about. So whatever I say right now is subject to the -- the ongoing discussion that will take place with HTO.

The intent is that people who are unauthorized, who are going around the system will ultimately be caught by our maintenance or our security people on the road. They'll probably be pulled over, they'll be asked what they're doing, they'll be given a lecture about what they're going, and the name will be taken. And, if the person continues to do that, they'll also be told to go back and see the HTO. If the person continually causes a problem like that, we will take that back to the community and we will address a way to deal with that through the community.

Plan is to be submitted to the GN, in accordance with its transportation related responsibilities and pursuant to the *Nunavut Mine Act*,<sup>51</sup> and KivIA and INAC as the landowners, for approval no later than one (1) month after the approval of revised Condition 32. In addition, when conditions allow, the Board strongly encourages AEM to take steps to fix a particularly curvy and steep section of the road referred to as “the switchback”, which AEM described as “a very tight “S” curve” that is “problematic”.<sup>52</sup>

While the Board is satisfied that the limited non-mine use by ATVs as proposed by the Hamlet does not require further assessment of potential effects on wildlife harvesting at this time, the Board strongly encourages the Baker Lake HTO, KivIA and the GN, working in conjunction with the Nunavut Wildlife Management Board where possible, to continue to study the harvest of wildlife in hunting grounds accessed via the Private Access Road. If the non-mine use of the road is found to have greater impacts on wildlife than anticipated by the parties to this review, further revisions to the All-weather Private Access Road Management Plan or reconsideration of Condition 32 may become warranted.

**2.11 Issue #7: What, if any, are the effects of proposed non-mine use on the Proponent's, landowner's, Federal, Territorial, or Municipal Governments' responsibilities for the regulation, maintenance, and reclamation of the Private Access Road?**

As set out in Section 2.8 above, the application by the Hamlet was amended to request that the Private Access Road continue to operate as a private road, with the PC amended to allow AEM to authorize safe and controlled non-mine use by ATVs in order to carry out traditional activities. As AEM retains full responsibility for the road,<sup>53</sup> the proposed non-mine use is not expected to have any effects on AEM, the landowners, and we assume without deciding, on the Federal, Territorial, and Municipal Government responsibilities for the regulation, maintenance, and reclamation of the Private Access Road.

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We are not a police force. We're not going to put tickets out. We're not going to do that sort of thing. We will come back to the community and find...the community's help how best to solve that problem.

See Transcript, Volume 3, April 30, 2009, pp. 222-224, lines 26-1.

<sup>51</sup> AEM advised the Board that as part of the mine property, the *Nunavut Mining Act* applies to the Private Access Road and the inspector pursuant to that Act requires AEM to “monitor who is on the road to ensure that when a traveler goes up the road, we know that he arrives at the mine site.” See Transcript, Volume 1, April 28, 2009, lines 2-8.

<sup>52</sup> See Larry Connell, Transcript, Volume 1, April 28, 2009, p. 88, lines 7-21.

<sup>53</sup> See Larry Connell, AEM, Transcript, Volume 1, April 28, 2009, p. 55, lines 7-25.

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**2.12 Issue #8: Do the public easements as identified in Section 19.6.3 and Schedule 19-11(4) and (5) of the NLCA affect the NIRB's decision on the proposed non-mine use of the Private Access Road?**

Based on the evidence provided by the KivIA<sup>54</sup> and INAC,<sup>55</sup> indicating that the location of the winter road route on which the public transportation route described in Section 19.6.3 and Schedule 19-11(5) is based upon is different from the Private Access Road route, the Board is satisfied that the public easement provisions of Article 19 of the NLCA do not affect the Board's decision on the proposed non-mine use of the Private Access Road. The Board notes that, should a further consideration of the winter road route find that the route as described in the NLCA overlaps with the Private Access Road, and the Board's decision to maintain the road as a Private Access Road is found to be contrary to the public easement provisions of Article 19, to the extent the Board's decision is inconsistent or in conflict with these provisions, the public easement provisions of the NLCA will prevail.

**2.13 Issue #9: Are *consequential* amendments required to other terms and conditions of Project Certificate No. 004 as a result of the reconsideration of Condition 32 a., and/or the proposed change in non-mine use of the Private Access Road?**

Through the course of the reconsideration process, no recommendations were received from the parties for consequential amendments to the PC as a result of the reconsideration of Condition 32 and the proposed change in non-mine use of the Private Access Road. The NIRB is also satisfied that Condition 32 as amended does not directly conflict with other terms and conditions of the PC. Accordingly, at this time the Board does not recommend the amendment of any other terms and conditions of the PC. If AEM finds that the amended Condition 32 does result in an unanticipated effect on AEM's ability to comply with the other term and condition of the PC, the Board expects AEM to bring the matter to the attention of the NIRB.

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<sup>54</sup> See Luis Manzo, KivIA, Transcript, Volume 2, April 29, 2009, p. 118, lines 9-21, referring to slides 3 and 4 of Exhibit 4: An electronic version of the presentation filed by the Kivalliq Inuit Association being described as 090428-03MN107-KIA Presentation-IMAE.ppt.

<sup>55</sup> See Spencer Dewar, INAC, Transcript, Volume 2, April 29, 2009, p. 180, lines 1-13, and Exhibit 11: The map approximating location of the NLCA Schedule 19-1, Public Easement Number 5, BL-14/57D,E, 66A, H – A public transportation route, the location to be based on the location of the winter road route used in the years 1980 to 1990 between Baker Lake and the Meadowbank river area being a printed copy filed by Indian and Northern Affairs Canada.

### **3.0 Recommendation on Condition 32**

#### **3.1 Application of AEM**

In considering the application of AEM to substitute the installation of locked gates at bridges 1 and 4 as prescribed in Condition 32 a. of Project Certificate No. 004 with a gate and manned gatehouse at kilometre 5 of the Private Access Road, it is the Board's conclusion that the installation of a gate and manned gatehouse at kilometre 5 of the Private Access Road is safer than and at least as effective as the installation of locked gates at bridges 1 and 4 to operate the Private Access Road as a private road. Therefore the Board recommends that Condition 32 a. be revised to state:

- a. Maintaining a gate and manned gatehouse at kilometre 5 of the Private Access Road;

#### **3.2 Application of the Hamlet of Baker Lake**

Based on the application by the Hamlet of Baker Lake, and as subsequently amended, the Board is satisfied that limited, authorized non-mine use of the road by ATVs for the purpose of carrying out traditional activities can be accommodated without adverse environmental and/or socio-economic effects. Accordingly, the Board recommends that Condition 32 be amended to allow for limited non-mine access by ATVs for the purpose of carrying out traditional Inuit activities. The Board recommends Condition 32 be further revised to state:

32. AEM shall operate the all-weather road as a private access road, and implement all such measures necessary to limit non-mine use of the road to authorized, safe and controlled use by all-terrain-vehicles for the purpose of carrying out traditional Inuit activities. The measures AEM shall undertake include, but are not limited to:
  - a. Maintaining a gate and manned gatehouse at kilometre 5 of the Private Access Road;
  - b. In consultation with the Hamlet of Baker Lake, the local HTO, and the KivIA, update the All-weather Private Access Road Management Plan to set out the criteria and processes to authorize and ensure safe and controlled non-mine use of the road by all-terrain-vehicles for the purpose of carrying out traditional Inuit activities, and measure to limit all other non-mine use of the road. The updated Plan is to be submitted to the GN, INAC, and KivIA for approval no later than one (1) month after the approval of revised Condition 32.
  - c. The posting of signs in English and Inuktitut at the gate, each major bridge crossing, and each 10 kilometres of road, stating that unauthorized public use of the road is prohibited;



- d. The posting of signs in English and Inuktitut along the road route to identify when entering or leaving crown land;
- e. Prior to opening of the road, and annually thereafter, advertise and hold at least one community meeting in the Hamlet of Baker Lake to explain to the community that the road is a private road with non-mine use of the road limited to approved, safe and controlled use by all-terrain-vehicles for the purpose of carrying out traditional Inuit activities.
- f. Place notices at least quarterly on the radio and television to explain to the community that the road is a private road with non-mine use of road limited to authorized, safe and controlled use by all-terrain-vehicles for the purpose of carrying out traditional Inuit activities.
- g. Record all authorized non-mine use of the road, and require all mine personnel using the road to monitor and report unauthorized non-mine use of the road, and collect and report this data to NIRB one (1) year after the road is opened and annually thereafter; and
- h. Report all accidents or other safety incidents on the road, to the GN, KivIA, and the Hamlet immediately, and to NIRB annually.

In addition to complying with the Terms and Conditions of the PC, the Board stresses to AEM that there is a general legal requirement to comply with all of the legislative and regulatory requirements established under Federal and Territorial law. Furthermore, the Board expects that AEM will comply with all terms and conditions of surface leases and licenses. The Board also expects the Hamlet representatives to assist AEM with communicating to the residents of Baker Lake the fact that the mine access road remains a private road with non-mine use restricted to those permitted by AEM, and that any non-mine use of the road not expressly permitted by AEM and carried out in accordance with the procedures established by AEM may be both unsafe and unlawful.

#### **4.0 Other Matters**

On June 6, 2007, the NIRB received correspondence from AEM advising that Agnico-Eagle Mines Ltd acquired Cumberland Resources Limited and the Meadowbank Mine.<sup>56</sup> The Board recommends that at this time the Minister also approve changing the name of the PC holder from “Cumberland Resources Ltd” to “Agnico-Eagle Mines Ltd”. The Board notes that the Nunavut Water Board issued, with the Minister’s approval, the Type

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<sup>56</sup> Letter from Ebe Scherkus, AEM, to Michael Nadler, INAC, and copied to Stephanie Briscoe, NIRB, Re: Meadowbank Mine Socio-Economic Monitoring Committee, dated June 6, 2007.



A Water Licence 2AM-MEA0815 for the Meadowbank Gold Project to “Agnico-Eagle Mines Ltd.”<sup>57</sup>

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<sup>57</sup> Nunavut Water Board Licence No. 2AM-MEA0815, issued June 9, 2008, available at <http://nunavutwaterboard.org/APPROVED%20LICENCES/2AM/>, as of May 21, 2009.

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## **APPENDIX A: SIGN IN SHEETS – ATTENDANCE AT THE 12.8.2 PUBLIC HEARING**

For the scanned copies of the sign in sheets from the public hearing, please visit the NIRB's public registry (ftp site) at the following Internet link:

<http://ftp.nirb.ca/MONITORING/03MN107-MEADOWBANK/01-PROJECT%20CERTIFICATE/12.8.2%20AMENDMENTS/CONDITION%2032/5-HEARING/SIGN-IN%20SHEETS/>.

## APPENDIX B: LIST OF EXHIBITS FOR THE 12.8.2 PUBLIC HEARING

No.	Description of Exhibit	Hard Copy Electronic	Filed By:	Received (check)
1	PowerPoint Presentation titled: Meadowbank All Weather Private Access Road, NIRB Public Hearing April 28-30, 2009, AEM Position on Condition 32 of the Project Certificate	<input checked="" type="checkbox"/> Hard Copy <input type="checkbox"/> Electronic	AEM	X
2	090421-03MN107-AEM Presentation-IMAE.ppt	<input type="checkbox"/> Hard Copy <input checked="" type="checkbox"/> Electronic	AEM	X
3	PowerPoint Presentation titled: ALL WEATHER ROAD	<input checked="" type="checkbox"/> Hard Copy <input type="checkbox"/> Electronic	KIA	X
4	090428-03MN107-KIA Presentation-IMAE.ppt	<input type="checkbox"/> Hard Copy <input checked="" type="checkbox"/> Electronic	KIA	X
5	PowerPoint Presentation titled: Presentation to the NIRB by the Government of Nunavut, NIRB Public Hearing on Condition 32 of the Meadowbank Project Certificate No. 004, Baker Lake – April 28, 29, 30	<input checked="" type="checkbox"/> Hard Copy <input type="checkbox"/> Electronic	GN	X
6	090423-03MN107-GN Presentation-IMAE.ppt	<input type="checkbox"/> Hard Copy <input checked="" type="checkbox"/> Electronic	GN	X
7	PowerPoint Presentation titled: Proposed Amendment to Project Certificate (Condition 32), Meadowbank Private Access Road, INAC's Comments to NIRB, Baker Lake, Nunavut [April 28-30, 2009]	<input checked="" type="checkbox"/> Hard Copy <input type="checkbox"/> Electronic	INAC	X
8	090422-03MN107-INAC Presentation-IMAE.ppt	<input type="checkbox"/> Hard Copy <input checked="" type="checkbox"/> Electronic	INAC	X
9	PowerPoint Presentation titled: Meadowbank Gold Project, Re-consideration of Project Certificate Condition 32(a), Nunavut Impact Review Board Public Hearing, Baker Lake, Nunavut, April 28 – 30, 2009	<input checked="" type="checkbox"/> Hard Copy <input type="checkbox"/> Electronic	DFO	X
10	090421-03MN107-DFO	<input type="checkbox"/> Hard Copy	DFO	X

Report on the NIRB's 12.8.2 Public Hearing –  
Reconsideration of Condition 32 of the Meadowbank Gold Mine Project Certificate

No.	Description of Exhibit	Hard Copy Electronic	Filed By:	Received (check)
	Presentation-IMAE.ppt	X Electronic		
11	Map approximating location of the NLCA Schedule 19-11 Public Easements #5 (BL-14/56D,E,66A,H - A public transportation route, the location to be based on the location of the winter road routes used in the years 1980 to 1990 between Baker Lake and the Meadowbank River area).	X Hard Copy □ Electronic	INAC	X