

NIRB Assessment and Decision

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

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

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

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

1. 5050 Nunavut Ltd. (the Proponent) shall operate in accordance with commitments stated in all documentation provided to NIRB, namely:
 - a. NIRB Part 2 Form - Project Specific Information Requirements (December 2007)
 - b. Indian and Northern Affairs Canada Application for Land Use Permit (December 2007)
 - c. Kitikmeot Inuit Association Application for Access to Inuit Owned Land (December 2007)
 - d. 5050 Nunavut Ltd. Abandonment and Restoration Plan (December 2007)
 - e. 5050 Nunavut Ltd. Spill Contingency Plan (December 2007)
2. The Proponent shall maintain a copy of this Screening Decision at the site of operation at all times.
3. The Proponent shall forward copies of all permits required for this project to the NIRB prior to the commencement of the project.
4. The NIRB shall be notified of any changes in operating plans or conditions associated with this project prior to any such change.
5. The Proponent shall operate the project in accordance with all applicable Acts, Regulations and Guidelines.
6. The Proponent shall ensure transit occurs only while ground is frozen and covered with ice.
7. The Proponent shall ensure that while in transit, the Caterpillar “walks” with its blades and bucket up so as to avoid any impact to the tundra.
8. The Proponent shall ensure that absolutely no refueling of any equipment takes place on ice or water bodies.
9. A spill kit and drip pan shall be carried on the sled, and will be on hand during all refueling activities.

10. The Proponent shall monitor the presence of wildlife and adjust project activities to avoid any unnecessary disturbances.
11. The Proponent shall survey the transit route in summer 2008 for impacts and will ensure reclamation is carried out accordingly, reporting any reclamation activities to the NIRB.

Other NIRB Concerns and Recommendations

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

1. The Kitikmeot Inuit Association (KIA) impose environmental protection measures through the issuance of an Inuit Owned Lands License, related to:
 - a. General Standards
 - b. Fuel and Chemical Storage
 - c. Camp sites
 - d. Fisheries
 - e. Ground Disturbance
 - f. Wildlife
2. Indian and Northern Affairs Canada (INAC) impose mitigation measures and/or conditions pursuant to the Federal Land Use Permit, in regard to:
 - a. Location and Area
 - b. Time
 - c. Equipment
 - d. Methods and Techniques
 - e. Control or Prevention of Flooding, Erosion and Subsidence of Land
 - f. Use, Storage, Handling and Disposal of Chemical or Toxic Material
 - g. Wildlife and Fisheries Habitat
 - h. Objects and Places of Recreational, Scenic and Ecological Value
 - i. Petroleum Fuel Storage
 - j. Matters Not Consistent with the Regulation

Regulatory Requirements

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

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

deposited oil, oil wastes or any other substance harmful to migratory birds in any waters or any area frequented by migratory birds (<http://laws.justice.gc.ca/en/showtdm/cs/M-7.01>)

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

Validity of Land Claims Agreement

Section 2.12.2

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

Dated ____January 31, 2008____ at Sanikiluaq, NU.



Lucassie Arragutainaq

APPENDIX A – PROCEDURAL HISTORY AND PROJECT ACTIVITIES

On December 13, 2007 the Nunavut Impact Review Board (NIRB) received an application from Indian and Northern Affairs Canada for 5050 Nunavut Ltd's (5050's) Kugluktuk to McGregor Lake Winter Trail Project.

The project is located in the Kitikmeot region of Nunavut, and consists of a winter trail extending approximately 100 km south from the community of Kugluktuk to the existing McGregor Lake campsite (NIRB File No. 06EN055). The proposed trail passes within approximately 5 km of the Kugluk (Bloody Falls) Territorial Park.

This application was distributed to the community of Kugluktuk and to interested Federal and Territorial Agencies. The NIRB requested that interested Parties review the application and provide NIRB with comments by January 21, 2008 regarding:

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

On or before January 21, 2008, the NIRB received comments from the following interested Parties (see Appendix B, Comments and Concerns):

- Government of Nunavut Department of Environment (GN-DOE)
- Nunavut Water Board (NWB)
- Environment Canada (EC)

The proposed project activities occur on both Inuit Owned and Crown Lands, and include the following:

- Single-use, one way travel from Kugluktuk to 5050's McGregor Lake Campsite (NIRB No. 06EN055)
- Transportation of crew and cargo over land and frozen water bodies
- Equipment to include one Caterpillar D6M LPG pulling a 5,000 lb sled, escorted by 2 snowmobiles
- Daily transport of crew to/from the Cat Train/McGregor Lake Campsite via helicopter
- Cargo to include a bobcat, survival equipment, and the fuel(s) necessary to facilitate transport
- Crew to overnight at McGregor Lake Campsite
- Production of human waste

APPENDIX B – COMMENTS AND CONCERNS

The following is a summary of comments provided by Parties:

Government of Nunavut - Department of Environment

- A contact number is provided in the spill plan, but it is not clear if the number is a 24 hour emergency contact number. The 24 hour number for the persons responsible for activating the contingency plan is required as this ensures the employee discovering the spill can activate a response and provides a 24 hour point of contact for the authority investigating the spill.
- Speed on winter roads should not exceed 30 km/hr for fully loaded vehicles and 50 km/hour for empty vehicles.
- Transportation vehicles should carry at least 10 square metres of polyethylene material (for lining a trench or depression), a spark-proof shovel & oil absorbent blankets or squares, in addition to the spill kit materials outlined in the spill plan.
- The project is in an area where bears may be encountered. Proper food handling and garbage disposal procedures should be followed to reduce the likelihood that bears will be attracted to the operation. The proponent should follow procedures outlined in the "Safety in Bear Country Manual", and should contact the Regional Wildlife Manager or Regional Biologist for information and advice on measures which should be taken to minimize the possibility of bear-people conflicts. Any bear sighting or interaction should be reported as soon as possible to the nearest Conservation Officer or the Regional Wildlife Biologist.
- Aircraft activity with no specific requirements for low level flying should be restricted to a minimum altitude of 610m above ground level to minimize disturbance on wildlife.

Nunavut Water Board

- The Nunavut Water Board provided indication that 5050 Nunavut Ltd.'s current water license for the McGregor Lake Campsite (NIRB File No. 06EN055) shall expire July 30, 2008.

Environment Canada

- The proponent should be aware that any chemicals, fuel or wastes associated with the proposed project should not enter waters frequented by fish as per the requirement of **Section 36(3)** of the **Fisheries Act** which states that all effluent discharged into water frequented by fish be non-deleterious.
- The proponent states on page seven (7) of their Spill Contingency Plan, 2008 the following:
"For the purposes of flammable liquids, Environment Canada defines a spill as a volume greater than 100L."
- The proponent should be aware that in "The Guidelines For Spill Contingency Planning" prepared by Water Resources Division, Indian and Northern Affairs Canada, Appendix B-3, under Immediately Reportable Spill Quantities, it also states the following:
"In addition, all releases of harmful substances regardless of quantity are to be reported immediately to the NWT spill line if the release is near or into a water body, is near or into a designated sensitive environment or sensitive wildlife habitat, poses imminent

threat to human health or safety, poses imminent threat to a listed species at risk or its critical habitat, or is uncontrollable.”

- Environment Canada recommends that waste (including food and petroleum waste) be made inaccessible to wildlife at all times. Such waste can attract predators of migratory birds (e.g., foxes and ravens) to an area if not disposed of properly or contained properly.
- Section 5.1 of the ***Migratory Birds Convention Act*** prohibits persons from depositing substances harmful to migratory birds in waters or areas frequented by migratory birds or in a place from which the substance may enter such waters or such an area.

Appendix C



BACKGROUND: Archaeology

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

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

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

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

BACKGROUND: Palaeontology

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

Definitions

¹ s. 51(1)

² P.C. 2001-1111 14 June, 2001

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

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

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

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

“fossil” includes:

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

Terms and Conditions

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

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

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