



Report of Environmental Assessment

&

Reasons for Decision

EA1112-001: Debogorski

Diamond Exploration Project, Drybones Bay

January 6th, 2012

Contents

Review Board environmental assessment decision	iv
Report summary.....	v
1 Introduction	1
1.1 Requirements of the <i>Mackenzie Valley Resource Management Act</i>	2
1.2 Regulatory history.....	3
1.3 Environmental setting.....	4
1.4 Defining geographic terms.....	6
1.5 Scope of development.....	7
1.6 Scope of assessment.....	10
2 Environmental assessment process.....	11
2.1 Parties to the environmental assessment.....	11
2.2 Environmental assessment chronology.....	12
2.3 Decision on significance.....	17
3 Assessment of impacts	18
3.1 Impacts on heritage and archaeological resources.....	18
3.2 Impacts on traditional land use and culture	25
4 Public concern	33
5 Treaty and Aboriginal rights issues	39
5.1 Assertions of potential impacts to rights	39
5.2 Consultation and accommodation	43
Appendix A: Summary of suggestions.....	46
Appendix B: Public record index – EA1112-001	47

Table of figures

Figure 1: Development setting and Smitski #1 claim	6
Figure 2: Drill location #1.....	8
Figure 3: Drill location #2.....	9
Figure 4: Environmental assessment process	13

List of tables

Table 1: Party participation	12
------------------------------------	----

List of abbreviations

AANDC	Aboriginal Affairs and Northern Development Canada
GNWT	Government of the Northwest Territories
MVRMA	<i>Mackenzie Valley Resource Management Act</i>
PWNHC	Prince of Wales Northern Heritage Centre
DKFN	Deninu Kue First Nation
LKDFN	Lutsel K'e Dene First Nation
YKDFN	Yellowknives Dene First Nation
IMA	Akaitcho IMA Implementation Office
INAC	Indian and Northern Development Canada (former name for AANDC)
IR	Information request
NSMA	North Slave Métis Alliance
NWTMN	North West Territory Métis Nation
TK	Traditional knowledge
EA	Environmental assessment
MVLWB	Mackenzie Valley Land and Water Board

Review Board environmental assessment decision

To make its decision in this environmental assessment, the Mackenzie Valley Environmental Impact Review Board (Review Board) has relied upon all of the information on the public record.

The Review Board has concluded, pursuant to paragraph 128 (1) (a) of the *Mackenzie Valley Resource Management Act*, that the proposed development as described in this Report of Environmental Assessment is not likely to have any significant adverse impact on the environment or to be a cause of significant public concern. The Review Board has therefore concluded that an environmental impact review of this proposed development is not necessary and that the Debogorski Diamond Exploration Project should proceed to the regulatory phase for permitting and licensing.

January 6th, 2012



Richard Edjericon
Chairperson of the Mackenzie Valley
Environmental Impact Review Board

Report summary

The Mackenzie Valley Environmental Impact Review Board conducted an environmental assessment of Debogorski Diamond Exploration Project proposed in the Drybones Bay area of Great Slave Lake, in the Akaitcho region of the Northwest Territories. The Mackenzie Valley Land and Water Board referred the proposed development to environmental assessment based on the authority set out in paragraph 126(2)(a) of the *Mackenzie Valley Resource Management Act*.

Parties identified the following main issues during the environmental assessment process through their submissions and participation at the public hearing:

- Potential impacts on heritage and archaeological resources;
- Potential for cultural impacts from the Debogorski diamond exploration project in combination with other past present and reasonably foreseeable development in the Drybones Bay area;
- Concern with development proceeding in a sensitive area without a land management framework or land use plan in place;
- Concern with the federal agencies' lack of action to approve and implement other Review Board recommendations intended to mitigate against cumulative cultural impacts in the Drybones Bay area;
- Concern with competing interest in land uses in the Drybones Bay area; and
- Concern that adequate Crown consultation and accommodation had not occurred for the proposed project.

After careful consideration of the evidence, the Review Board finds that the Debogorski Diamond Exploration Project is not likely to have significant adverse impacts on the environment or be a cause of significant public concern.

The Review Board concludes that significant adverse impacts to archaeological and heritage sites are unlikely in the context of the first two drill sites and camp location, as these are already disturbed areas. In addition, the Review Board believes that the standard terms and conditions, such as staying at least 30 meters away from heritage sites, included in a land use permit will prevent significant adverse impacts to any unidentified archaeological resources that may exist in the developer's claim block.

The Review Board has considered the protection offered by standard terms and conditions, combined with the very small scale of the project and its location within an area where the land is previously disturbed. It concludes that the proposed project is neither likely to significantly contribute to the previously identified cumulative adverse impacts on land use and culture nor be a cause of significant public concern.

Therefore, the Review Board finds that an environmental impact review of this proposed development is not necessary and the project should proceed to the regulatory phase for approvals.

The Review Board has provided four suggestions that would help protect heritage resources as well as reduce development pressure in the Drybones Bay area. The four suggestions are:

Suggestion #1

The Review Board suggests that developer access the NWT archaeological sites database to obtain the locations of all archaeological sites inside or directly adjacent to the Smitski #1 claim, and that all known archaeological features within proximity to the initial two drill sites and camp location be shown to all staff at the exploration camp to prevent unintentional disturbance of the sites.

Suggestion #2

The Review Board suggests that the developer consult with Yellowknives Dene First Nation traditional land users prior to selecting the location for any camps or drill sites outside of the footprint of the existing Snowfield Development camp and roads.

Suggestion #3

For any activities planned by the developer on Burnt Island, the Mackenzie Valley Land and Water Board should require the developer to conduct further archaeological survey work on the development footprint of any planned drill sites or accesses roads, if the Prince of Wales Northern Heritage Centre can provide sufficient justification to the Mackenzie Valley Land and Water Board for its need.

Suggestion #4

Until such a time that competing interests in land use in the Drybones Bay area are resolved, the Review Board suggests that Aboriginal Affairs and Northern Development Canada proactively communicate to mineral claim holders in the Drybones Bay area that

Section 81 relief of the NWT and Nunavut Mining Regulations will continue to be available to them should they request it, until such time that a plan for the Drybones Bay area is implemented.

1 Introduction

This is the Mackenzie Valley Environmental Impact Review Board (Review Board)'s *Report of Environmental Assessment and Reasons for Decision* for the Debogorski - Diamond Exploration Project in the Northwest Territories. The purpose of this report is:

- a) to summarize the relevant evidence on which the decision is based;
- b) to document relevant parts of the environmental assessment;
- c) to satisfy the reporting requirements of the *Mackenzie Valley Resources Management Act* (the Act) section 128; and,
- d) to explain the Review Board's decision and set out its reasons on whether the proposed development is likely to cause significant adverse impact on the environment or be a cause for significant public concern as required by section 121 of the Act.

The Report of Environmental Assessment has five parts, as follows:

- **Section 1** sets out the requirements of the *Mackenzie Valley Resource Management Act* and provides a brief description of the development proposal. It also provides background information on the regulatory history, the referral of this development to the Review Board and sets out the requirements of the Act.
- **Section 2** describes the process and scope for the environmental assessment of this project. It provides information about the parties to this assessment and the steps the Review Board took to identify any significant adverse impacts or public concerns as required by section 128 of the *Mackenzie Valley Resource Management Act*.
- **Section 3** considers the potential environmental impact of the proposed development. It outlines relevant social and cultural issues that the Review Board examined during the impact assessment.
- **Section 4** describes the issues of public concern that parties brought to the attention of the Review Board. This section includes a summary of the evidence and the Review Board's analysis and conclusions.
- **Section 5** describes the issues and assertions related to impacts on Aboriginal rights that Aboriginal groups raised during the environmental assessment. This section

also summarizes the evidence from this proceeding about any consultation and accommodation that the developer and the Crown conducted. This section includes the Review Board's analysis and conclusions on this matter.

1.1 Requirements of the Mackenzie Valley Resource Management Act

The Review Board administers Part 5 of the *Mackenzie Valley Resource Management Act* (the Act) and therefore has decision-making responsibilities in the environmental assessment of the proposed development. The Review Board is responsible for conducting an environmental assessment, which considers the proposed development's biophysical, social, economic and cultural impacts on the environment in accordance with the process described by section 114 and section 115 of the Act. The Review Board conducted this environmental assessment based on its Rules of Procedure, Environmental Impact Assessment Guidelines and the Act.

Under subsection 117(1) of the Act, the Review Board must decide the scope of the development. The Review Board also considers the factors set out in subsection 117(2), as further described in section 3.2 of this document. The Review Board is required to decide whether the proposed development is likely to cause significant adverse impact on the environment or to be a cause of significant public concern, as required by subsection 128(1) of the Act. The Review Board must then prepare a Report of Environmental Assessment, as described under subsection 128(2) of the Act.

If the Review Board finds the development is not likely to have any significant adverse impact on the environment or be a cause of significant public concern under 128(1) (a), the Act stipulates:

- under paragraph 129(a), that no regulatory authority can issue a license, permit or other authorization before the expiration of ten days after receiving the report of the Review Board; and
- under paragraph 130(1)(a), that the federal Minister and responsible ministers may order an environmental impact review of the proposal, notwithstanding the Review Board's determination.

1.2 Regulatory history

On February 9, 2011, Mr. Alex Debogorski submitted a land use permit application to the Mackenzie Valley Land and Water Board (Land and Water Board) to conduct a ten drill-hole diamond exploration project in the Drybones Bay area of Great Slave Lake (MV2011C0002). On February 11, 2011, the Land and Water Board wrote to Mr. Debogorski to inform him that there was insufficient information to conduct a preliminary screening. The Land and Water Board requested additional information including: a more detailed description of the project impacts on water, land, vegetation and wildlife and associated mitigation measures planned to address or minimize these impacts; and a description of the expected water usage for camp and project operations. The letter also advised the developer to continue his efforts to engage with potentially affected communities and to provide an updated record of community engagement. The Land and Water Board advised Mr. Debogorski to engage the following Aboriginal groups:

- NWT Treaty 8 Tribal Corporation
- North Slave Métis Alliance
- Northwest Territory Métis Nation
- Yellowknives Dene First Nation
- Lutselk'e Dene First Nation

On February 22, 2011, Mr. Debogorski responded to the Land and Water Board's request for additional details. He provided information on the proposed project impacts, expected water usage and an updated record of community engagement (PR#2).

On March 3, 2011, the Land and Water Board deemed Mr. Debogorski's land use permit application complete and sent it out to a distribution list for review and comment. The Land and Water Board received comments from the federal departments of Fisheries and Oceans, Aboriginal Affairs and Northern Development (formerly known as Indian and Northern Affairs), and Environment, the Government of the Northwest Territories Department of Environment and Natural Resources, Yellowknives Dene First Nation and Lutselk'e Dene First Nation.

On April 14, 2011, the Land and Water Board referred the land use permit application for the Debogorski Diamond Exploration Project in the Drybones Bay area to environmental

assessment according to subsection 125(1) of the *Mackenzie Valley Resource Management Act* (PR#16). The referral was based on the following findings:

- The contentious history of other applications in the Drybones Bay area from existing environmental assessment evidence on the public registry;
- The Mackenzie Valley Environmental Impact Review Board's previous suggestion (Feb 2004) that no new land use permits be issued for proposed developments within the Shoreline Zone¹, and within Drybones Bay and Wool Bay proper until a plan has been developed;
- The Review Board's previous and most recent statement that the "cumulative cultural impacts [in the Drybones and Wool Bay areas] are at a critical threshold" (Report of Environmental Assessment and Reasons for Decision on Sidon International Resources Corp. Exploratory Drilling at Defeat Lake, EA0506-006 [Feb, 2008]); and
- Significant public concern regarding the integrity of the cultural and spiritual values associated with the Drybones Bay area with continued development through reviewer comments (PR#16 p.2).

The Review Board formally notified the developer of the referral and environmental assessment start-up in a letter dated April 19, 2011 (PR#01).

1.3 Environmental setting

The proposed diamond exploration project is approximately 50 km south-east of Yellowknife on the north shore of Great Slave Lake. It is within the Tazin Lake Upland ecoregion. Vegetation in this ecoregion is characterized by medium to tall, closed stands of trembling aspen and balsam poplar with white spruce, balsam fir, and black spruce occurring in late successional stages (old growth). Poorly drained fens and bogs are covered with low, open stands of tamarack and black spruce and have localized permafrost. The ecoregion contains many small lakes, often linked by fast-flowing streams that

¹ The term "**shoreline zone**", as used within this report, is the review Board's geographic term for the area between Wool Bay and Gros Cap within three kilometres of any part of the shore of Great Slave Lake. This is an area with the highest levels of traditional use and the highest density of heritages sites. It is consistent with the area described as the shoreline zone in previous environmental assessments reports that considered development proposals within the Drybones Bay area and the Work Plan for this environmental assessment (PR#72 p.3, PR#31 p.2).

eventually drain into Great Slave Lake. Strongly glaciated rock outcrops are common, and dystric brunisols (a silty soil composed of sand, silt, and clay covering glacially deposited sand and gravel) is the dominant soils. Significant inclusions are frost affected soils such as turbic cryosols on permanently frozen sites and organic cryosols in poorly drained, peat-filled depressions.

Both boreal and tundra animal species may be found in the ecoregion. Wildlife includes moose, black bear, woodland caribou, wolf, beaver, muskrat, snowshoe hare, and spruce grouse. The project area is within the winter range of the Bathurst caribou.

The sheltered bays and inlets of the north shore of Great Slave Lake provide habitat for a wide variety of water birds and shorebirds. A number of birds of prey, or raptors, utilize this region, either as residents or as migrants.

The development is proposed within the Smitski #1 Claim #K03016 (the claim). The northern boundary of the claim is approximately three kilometers from Drybones Bay proper (PR#64 p.4). The claim is approximately 90% under water. The northeast corner of the claim includes a portion of the shoreline. It also includes the southern half of Burnt Island, a well-used land mark and stop over place for travel along the shores of Great Slave Lake by both Aboriginal and non-aboriginals. A number of smaller islands and islets are also found within the claim.

The Smitski #1 Claim has been subject to previous mineral exploration activities. Snowfield Development Corp. has conducted mineral exploration (diamond drilling) at a number of locations in the general vicinity of Drybones Bay including at the Mud Lake Claim Group, Hurcomb Claim, the Red Claims Group, the Fate Claim, the GTen 16 Claim Group and the Wire Claims. Snowfield Development Corp. constructed a work camp near Pebble Beach, within the claim. There is an all-weather tote road from the Pebble Beach Camp to a quarry and bulk sampling site, which is beyond the Smitski #1claim.

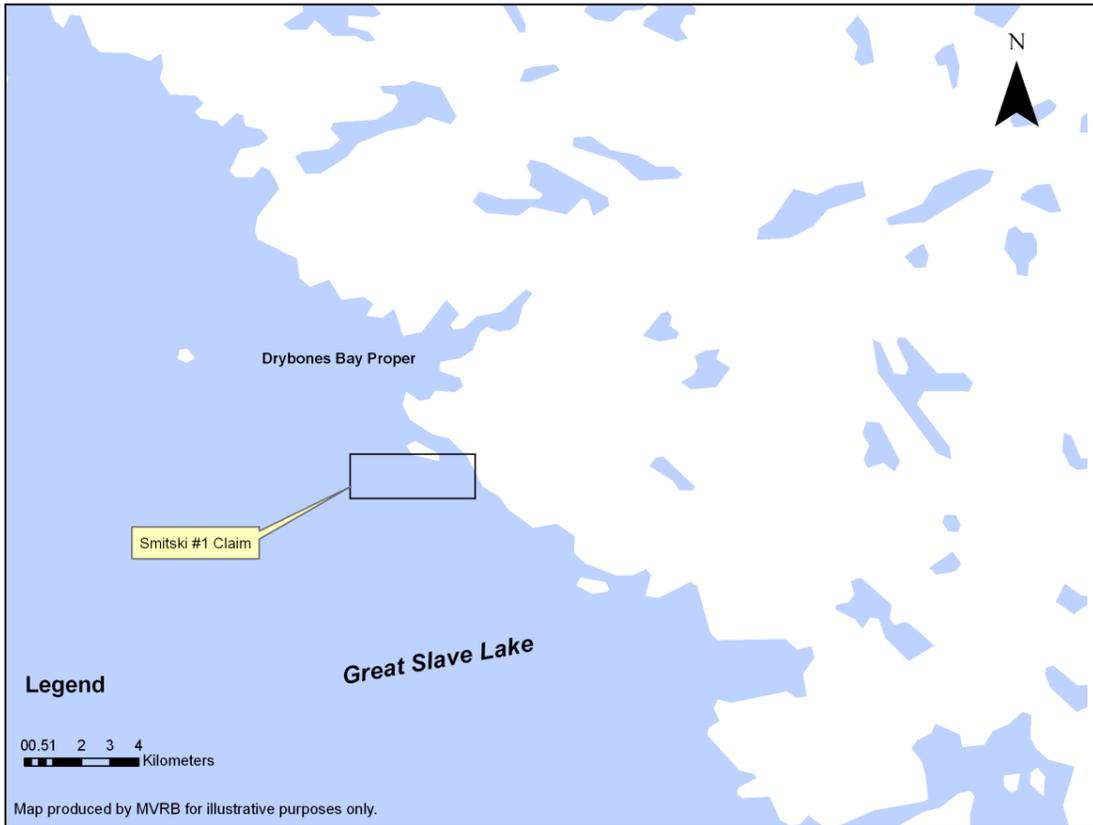


Figure 1: Development setting and Smitski #1 claim

1.4 Defining geographic terms

The specific definitions of the geographic terms used in this report are set out below. Throughout the hearings of this environmental assessment and previous environmental assessments dealing with the same area,² the Yellowknives Dene First Nation frequently used the term “Drybones Bay” to refer to a much larger area than the bay itself, but also referring to a length of surrounding shoreline and points inland. During the public hearing for EA0506-006 - Consolidated Goldwin Ventures Inc. Mineral Exploration Program,

² The Review Board has conducted six environmental assessments for proposed projects in the Drybones Bay area of Great Slave Lake since 2003. They are: EA03-002 - Consolidated Goldwin Ventures Preliminary Diamond Exploration in Drybones Bay; EA03-003 - North American General Resources Corporation Preliminary Diamond Exploration in Wool Bay; EA03-004 - New Shoshoni Ventures Preliminary Diamond Exploration in Drybones Bay; EA03-006 - Snowfield Development Corporation’s Diamond Exploration Program; EA0506-006 - Sidon International Resources Corp. Exploratory Drilling at Defeat Lake; and, EA0506-006 Consolidated Goldwin Ventures Inc. Mineral Exploration Program.

Yellowknives Dene First Nation legal counsel Greg Empson identified the challenge of providing a detailed boundary to the area, and explained that Elders are “looking at a broad perspective of a land they’ve used for generations” (PR#50Y p62).

During the same environmental assessment the Review Board received further clarification from Yellowknives Dene First Nation specifying what was meant when their First Nation members referred to “the whole of the Drybones Bay area” (PR#50DD). The First Nation stated that the traditional land area that its members had previously referred to as the area around Drybones Bay referred to “the whole of the area, not only around Drybones Bay, but all of the lands east of Great Slave Lake south of the community of Dettah to the East Arm of Great Slave Lake and thence inland” (PR#50DD). The area is similar to that described by the Review Board’s geographic term “shoreline zone”.

Yellowknives Dene First Nation requested that the Review Board transfer testimony from other environmental assessments in the Drybones Bay area to the public record for this environmental assessment (PR#50). The Review Board reviewed the registries and transferred relevant evidence on July 18, 2011 (PR#50). Documents explaining what the term ‘Drybones Bay area’ means to the Yellowknives Dene First Nation were included in the transfer of evidence.

1.5 Scope of development

The scope of development is based on the description below. This information comes from the proposed development from developer’s Land Use Permit Application to the Mackenzie Valley Land and Water Board (PR#2), the developer’s response to Information Request #1 (PR#42) and the summary of the community information session (PR#64).

Diamond drilling

The developer has proposed a diamond exploration project that includes up to ten drill-holes over a five-year period within the claim. The developer initially plans to drill two holes close to the Snowfield Pebble Beach camp. He has selected locations on or directly beside already disturbed areas. The first drill hole is proposed adjacent to a storage building beside the tote road at 62° 07.004’ N and 113° 46.258’ W (see Figure 2). The second drill hole is proposed on an access route near Shallow Cove at 62° 07.045’ N and 113° 46.521’ W (see Figure 3) (PR#67).

The developer estimates that the proposed drilling will take approximately one week to complete a drill hole, working for approximately ten hours a day. The two drill holes will be drilled sequentially therefore the initial two holes will take two weeks to complete. The developer estimates one running drill will require 10,000 gallons of water per day. The developer has indicated that the proposed water source will be Great Slave Lake. Specific information about the subsequent drilling is unknown at this time.



Figure 2: Drill location #1



Figure 3: Drill location #2

The drilling will be conducted at an angle to a maximum depth of 300 feet. The developer has not identified the eight remaining drill hole locations. The developer told the Review Board that the results of the first and second holes will lead to decisions about subsequent drilling (PR#106 p.18). The developer is proposing to drill in both winter and summer seasons. Initial drilling is land based, although future drilling might be based on land, ice or both. The developer has stated that he may not do the remaining drilling himself. Depending on the results of the findings, the developer may sell the claim (PR#64 p.3).

Camp facilities

The developer has proposed to use the Snowfield Pebble Beach camp facilities for his two-to-three person operation. The developer has estimated the water usage for the camp facilities would be approximately 20 gallons per person, per day. If the Snowfield camp facilities are not available for use, the developer has proposed a small tent to accommodate

the crew. At the time of writing this report, the Snowfields Pebble Beach Camp is no longer permitted for use.³

Access issues

The developer will access the site by boat, fixed wing aircraft, snow machine, all-terrain vehicle, or truck depending on the season he is working in. The developer has proposed he might make use of the Avalon winter road if it is available. The construction of a winter access road from Yellowknife to the site is not part of the proposed development.

1.6 Scope of assessment

During the environmental assessment start-up phase, the Review Board decided the scope of the assessment using submissions provided during the preliminary screening, the Mackenzie Valley Land and Water Board's preliminary screening decision, as well as a review of relevant evidence from other environmental assessments in the Drybones Bay area (PR#31 p.4). The scope of the environmental assessment focused on the following key issues:

- social and cultural issues:
 - project specific impacts to heritage resources and burial grounds;
 - cumulative impacts on traditional land use and culture; and
- public concern about unimplemented mitigation measures and outstanding issues from previous environmental assessments conducted for proposed projects in the shoreline zone of Drybones Bay.

³ See the Land and Water Board's Letter of October 28, 2011 providing a storage authorization. The document is located at: <http://www.mvlwb.ca/mv/Registry/2003/MV2003C0023/MV2003C0023-%20Approval%20for%20SA-%20Oct28-11.pdf>

2 Environmental assessment process

This section describes the Review Board's environmental assessment process for this project. It provides information about the parties to the environmental assessment and the steps the Review Board took to identify any significant adverse impacts or public concern. This section also describes the scope of the environmental assessment.

2.1 Parties to the environmental assessment

There were eight parties registered for this environmental assessment. According to the Review Board's *Rules of Procedure*, the developer is considered a directly affected party. The remaining seven registered parties were:

- Yellowknives Dene First Nation
- Lutsel K'e Dene First Nation
- Northwest Territories Treaty #8 Tribal Corporation, Akaitcho Interim Measures Agreement Implementation Office
- Government of Northwest Territories
- Aboriginal Affairs and Northern Development Canada
- Deninu Kue First Nation
- North Slave Métis Alliance

During the environmental assessment process, representatives from government departments, Aboriginal groups and the public had the opportunity to identify their interests and to notify the Review Board of their intent to participate in the proceeding as an interested party. Parties to the environmental assessment had the opportunity to attend and actively participate in the process. Table 1 below illustrates the involvement of the parties through this environmental assessment process and the public hearing.

Table 1: Party participation

Party	Participated in assessment	Participated in community information session	Public hearing
Yellowknives Dene First Nation	✓	(not formally)	✓
Lutsel K'e First Nation	✓		
Akaiicho Interim Measures Agreement Implementation Office	✓		✓
Government of the Northwest Territories	✓	✓	✓
Aboriginal Affairs and Northern Development Canada	✓	✓	✓
Deninu Kue First Nation	✓		
North Slave Métis Alliance	✓		

✓ = actively participated in this phase of the environmental assessment

2.2 Environmental assessment chronology

When the proposed Diamond exploration project was referred to the Review Board on April 14, 2011 the Review Board decided that the environmental assessment process would be proportionate to the size and scope of the development and take into account the relevant information from the six earlier environmental assessments for projects proposed in the Drybones Bay area. Figure 4 below provides an outline of the steps taken for this environmental assessment. Each of these sections is described in further detail below.

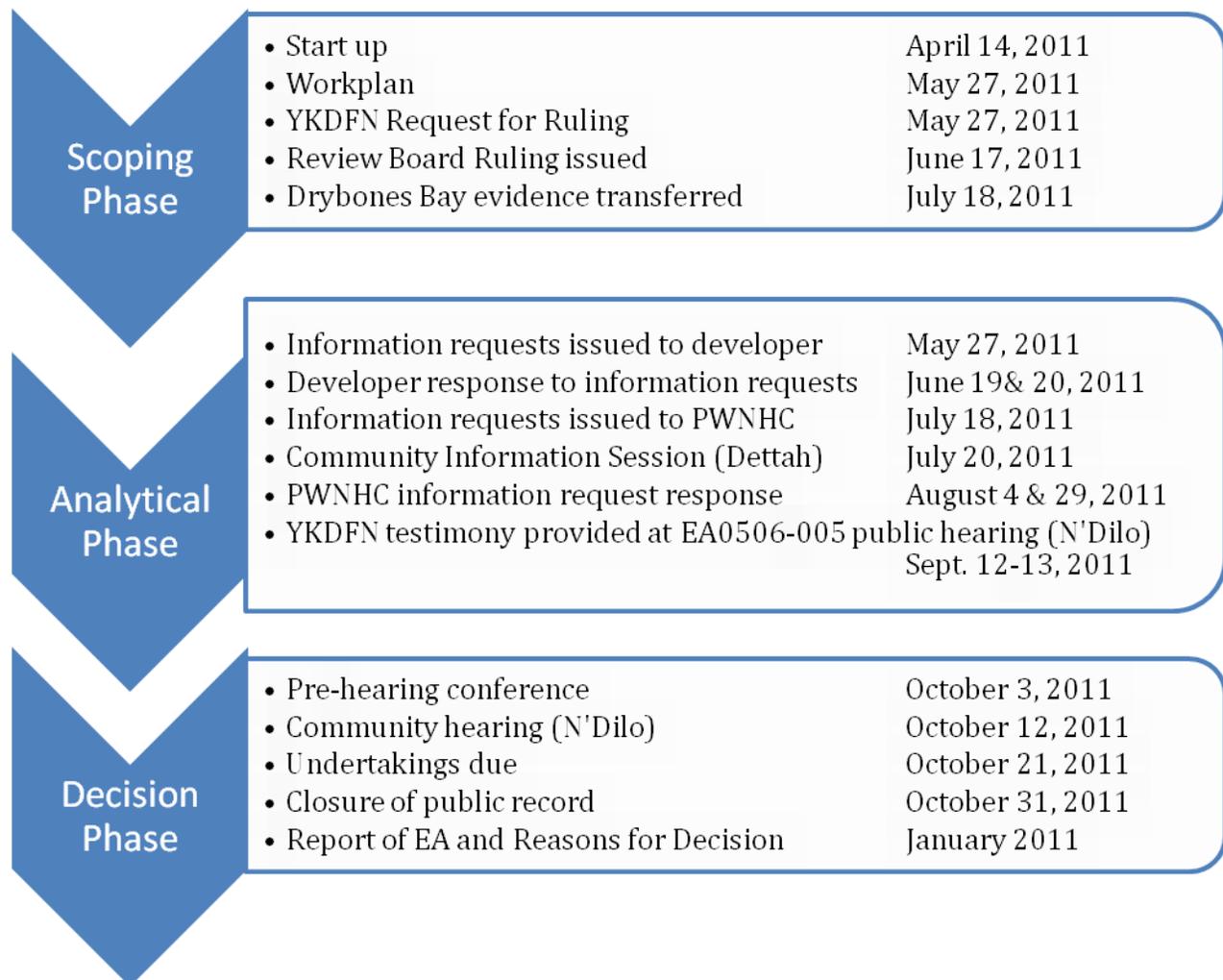


Figure 4: Environmental assessment process

The Review Board decided the scope of the assessment using submissions provided during the preliminary screening, the Land and Water Board's preliminary screening decision as well as a review of relevant evidence from other environmental assessments in the Drybones Bay area (PR#31 p.4). The Review Board issued a draft Work Plan on May 10, 2011. This document set out the proposed schedule for the environmental assessment and included the Review Board's decision on the scope of the assessment. After considering comments from parties on the draft document, the Review Board issued the final Work Plan on May 27, 2011.

On the same day that the final Work Plan was issued, the Review Board received a request for ruling from the Yellowknives Dene First Nation. The letter signed by Chief Ted Tsetta requested the following:

YKDFN ask the Board, pursuant to paragraph 128(l)(d) of the *Mackenzie Valley Resource Management Act* to make a summary decision to reject the proposal without an environmental review (PR#33 p.1).

The following passage from the request for ruling summarizes the reasons for the Yellowknives Dene First Nation request:

The Yellowknives Dene have consistently made their position clear when it comes to developments in Drybones Bay. After reviewing previous decisions and the transcripts it is clear that the impacts, be it direct, accidental or cumulative in nature, have exceeded the acceptable threshold for lands fundamental to the wellbeing and identity of the Yellowknives Dene. Section 115(a) of the MVRMA lays out the guiding principle that the Board must protect the environment from significant impacts from the proposed developments. Within the present regulatory environment, it is not possible for the Board to create the mechanisms to institute appropriate mitigations or accommodations for future operations, and this project must be rejected (PR#33 p.1).

The Review Board provided an opportunity for parties to comment on the Yellowknives Dene First Nation's request for ruling. Comments were received from Lutsel K'e Dene First Nation, Deninu Kue First Nation, North Slave Métis Alliance, the Government of the Northwest Territories, and Aboriginal Affairs and Northern Development Canada.

The Review Board considered the Yellowknives Dene First Nation's request for ruling on June 16, 2011 and decided to dismiss the request as premature. On June 27, 2011 the Review Board issued the Reasons for Decision document which stated that "[i]n consideration of the Review Board's obligation to be fair and the early stage of the EA [environmental assessment] process and the limited information available to the Board, it is too soon for the MVEIRB [Mackenzie Valley Environmental Impact Review Board] to make a decision under section 128 of the MVRMA [*Mackenzie Valley Resource Management Act*]" (PR#45 p.4).

On July 18, 2011 the Review Board transferred relevant documents from the six earlier environmental assessments in the Drybones Bay area to the public registry for the Debogorski Diamond Exploration Project (PR#50). This decision was in response to concerns from the Yellowknives Dene First Nation and other Aboriginal groups that they were repeatedly being asked to restate the same concerns about the Drybones Bay area. The Review Board placed thirty key documents on the public registry and considered all these documents in the context of this environmental assessment.

At the request of Yellowknives Dene First Nation, the Review Board also transferred evidence from the September 12 and 13, 2011 Encore Renaissance Resources Corp (EA0506-005) further consideration hearing, at which the First Nation presented oral testimony and other evidence relevant to development in the Drybones Bay area (PR#102). The Review Board has considered this evidence.

The Review Board issued two information requests during the environmental assessment, to Mr. Debogorski on May 27, 2011 and to the Government of the Northwest Territories' Prince of Wales Northern Heritage Centre on July 18, 2011 (PR#32 and PR#48). Mr. Debogorski provided a response on June 19, 2011 with a follow up on July 20, 2011 (PR#43 and PR#53). The Prince of Wales Northern Heritage Centre provided the requested information on August 4, 2011 and in an addendum on August 29, 2011 (PR#58 and PR#79).

The Review Board held a community information session in Dettah on July 20, 2011. The purpose of the community information session was for the parties and potentially affected community members to become better informed about the proposed development and for the developer to better understand and respond to any concerns community members or parties may have. The Review Board notified the parties of the session on June 27, 2011 (PR#44). The Review Board offered to provide financial assistance for representatives from Aboriginal groups from outside Yellowknife to travel to the area to participate in the community information session.

The Yellowknives Dene First Nation wrote to the Review Board on July 6, 2011 to notify the Review Board that that they did not intend to participate in the July 20, 2011 session "at anything more than a procedural level"(PR#46, p. 1) . Some of the reasons stated in their letter include:

[t]he YKDFN have been through a virtually identical process five times previous (p.1); and

YKDFN are well aware of what can happen when development is permitted in essential parts of their traditional territory. There simply is no development in this area which is acceptable. This fact has been relayed to Mr. Debogorski already (p.1).

The Yellowknives Dene First Nation explained that the Review Board should not view its lack of participation at the community information session as a lack of concern. Deninu Kue First Nation chose not to participate because of the concerns raised by the Yellowknives Dene First Nation. The North Slave Métis Alliance also did not participate because they did not have sufficient staff or resources to attend. The developer, some parties, and some Yellowknives Dene First Nation community members attended the community hearing session (PR#64).

The Review Board held a pre-hearing conference in Yellowknife on October 3, 2011. The purpose of the pre-hearing conference was to discuss the logistics of the public hearing and to identify key issues the participants would be addressing at the hearing. Parties who participated in the prehearing conference were: Mr. Debogorski, the Government of the Northwest Territories, Aboriginal Affairs and Northern Development Canada, Akaitcho Interim Measures Agreement Implementation Office, the Yellowknives Dene First Nation, and the North Slave Métis Alliance. The Northern Project Management Office also participated.

The Review Board initially scheduled the public hearing for the Debogorski Diamond Exploration project for September 14 and 15, 2011. However, because of scheduling conflicts, the Review Board moved the hearing dates to October 12 and 13, 2011 in N'dilo. The hearing was an opportunity for parties to identify important concerns directly to the Review Board. The Review Board advertised the hearing using local radio, including the Aboriginal language broadcaster CKLB, posters and local and regional newspapers. The hearing only required one day.

The developer, the Yellowknives Dene First Nation, the Akaitcho Interim Measures Agreement Implementation Office, and the Government of the Northwest Territories gave presentations. All parties and the public had the opportunity to ask questions following the presentations and to question officials from Aboriginal Affairs and Northern Development

Canada and Northern Project Management. There were three undertakings arising from the hearing, all submitted before the October 21, 2011 deadline (PR#107 and PR#108).

The public record closed on October 31, 2011. After the closing of the public record, the Review Board deliberated on the evidence. The Review Board considered all submissions on the public record in its decision. The Review Board has prepared this *Report of Environmental Assessment & Reasons for Decision* for submission to the Minister of Aboriginal Affairs and Northern Development as required by subsection 128(2) of the *Mackenzie Valley Resource Management Act*.

2.3 Decision on significance

Section 128 of the *Mackenzie Valley Resource Management Act* requires the Review Board to decide, based on all the evidence on the public record, whether or not in its opinion the proposed development will likely have a significant adverse impact on the environment or be a cause for significant public concern.

The Review Board considered the following characteristics of all environmental impacts identified:

- magnitude
- geographic extent
- timing
- duration
- frequency
- nature of the impact
- reversibility of the impact
- probability of occurrence
- predictive confidence level

Section 3 of this report describes the Review Board's analysis and the reasons for its decisions on the significance of adverse impacts that are likely to result from the proposed development. Section 4 of this report addresses public concern.

3 Assessment of impacts

The key concerns brought to the attention of the Review Board during the environmental assessment were about social and cultural issues. Paragraph 115(b) of the *Mackenzie Valley Resource Management Act* requires the Review Board to consider the cultural and social well-being of the residents and communities of the Mackenzie Valley. The social and cultural issues can largely be divided into two categories: those dealing with heritage and archaeological resources, and those dealing with cumulative impacts on traditional practices, land use and culture. This section addresses both of these issues. The Review Board concludes that existing regulations and standard terms and conditions included in a land use permit will protect both known and yet unknown archaeological sites from the proposed development. In addition, the Review Board finds that the proposed project is not likely to contribute to the previously identified cumulative adverse impacts on land use and culture in a way that generates significant impacts. This is largely because of the unusual nature of this particular project, considering its very small scale and its location within an area where the land has been previously disturbed. Moreover, the mineral claim where drilling is planned is approximately 90% under water.

3.1 Impacts on heritage and archaeological resources

The Review Board heard concerns from parties regarding the identification and protection of heritage and archaeological resources. This subject was also of concern to parties in the previous environmental assessments within the shoreline zone,

There were two archaeological studies conducted within the shoreline zone that are relevant to this environmental assessment. The Prince of Wales Northern Heritage Centre submitted these studies to the public record under confidential cover (PR#58). The confidential treatment of this evidence was intended to protect information about the location of sensitive heritage resources. Relevant findings and conclusions of these studies, along with additional evidence from parties, are described below.

Heritage resources within the shoreline zone

Archaeological investigations were undertaken by Thomson Heritage Consultants in partnership with the Yellowknives Dene First Nation in 2003, and in partnership with Snowfield Development Corporation and the Yellowknives Dene First Nation in 2004. The 2003 preliminary archaeological field inventory and assessment was conducted over a

total of two weeks covering the areas between Wool Bay and Matonabee Bay on the northwest coast of Great Slave Lake, Northwest Territories. The objective of the project was to examine the cumulative effects on local heritage resources of past, present, and proposed mineral exploration and gravel extraction around Drybones Bay and Wool Bay. Participants included archaeologists from Thomson Heritage Consultants and Elders and other members of the Yellowknives Dene First Nation.

The 2004 Preliminary Archaeological Field Inventory and Assessment of Mineral Exploration and Aggregate Extraction in the Vicinity of Drybones Bay and Wool Bay, Great Slave Lake, Northwest Territories (2004 Preliminary Archaeological Inventory and Assessment) was conducted over a total of sixteen survey days in four project areas on the north shore of Great Slave Lake. The objective of the project was to expand from the inventory of heritage resources begun in 2003 in the Drybones Bay area to a broader study area between Taltheilei Narrows and the North Arm, and to assess the effects on local heritage resources of past, present and proposed mineral exploration by Snowfield Development Corp. around Drybones Bay. Representative from Snowfield Development Corp. Elders and other members of the Yellowknives Dene First Nation Land and Environment Committee also participated in the *2004 Preliminary Archaeological Inventory and Assessment (PR#58)*.

Correspondence received by the Review Board from the Yellowknives Dene First Nation on December 18, 2006 and placed on the registry for this environmental assessment on July 19, 2011, summarises the results of the 2004 preliminary archaeological field inventory and assessment:

A total of 118 cultural heritage sites from prehistoric, historic and contemporary periods were found during the four phases of field work... The results of these surveys clearly show that there is great potential for the discovery of archaeological and other heritage sites in the vicinity of Great Slave Lake, and that this heritage extends back over several millennia. It seems evident that much of the coastline between Taltheilei Narrows on the East Arm and the west side of the North Arm of Great Slave lake has been occupied by Aboriginal people for several hundred and most likely several thousand years, and continues to be used by the Yellowknives Dene and others for hunting trapping, fishing, recreation, travel and other pursuits... (PR#50k p.11).

Traditional knowledge contained in the *YKDFN's Land Use Map* confirms the results of the archaeological reports. The Land Use Map indicates many traditional trails, cabins, burial sites, place names, and other historical features throughout the shoreline zone (PR# 50AA).

Testimony from elders also describes the historic use of the shoreline zone by Aboriginal people. "The elders say that from Dettah down to Drybones Bay and beyond there were tents all the way down" (50k p.4). In the correspondence dated December 18, 2006 the Yellowknives Dene First Nation explained the value of the heritage resources found along the shoreline zone to ongoing cultural identity of the Yellowknives Dene First Nation:

[T]here is a cultural web demarcated by grave sites and ongoing cultural activity all along the shoreline of [Great Slave Lake]. For example, Sazel Basil is buried on Ruth Island, there is a young man's grave at Wool Bay, a child's grave and a mass grave at Smokey Lake. Pierre Michel's daughter is buried at Victory Lake and there is another grave northwest of Jackfish Cove by Satli's Cabin and Michel Paper's aunt is buried at Moose Bay, and there is a cemetery of ancestors by Cabin Island. Then there are the Francois Bay, Caribou Island, Narrow Island, Campbell Island and Meander Lake cemeteries. These are just some examples of how the landscape plays a vital role in the history of the YKDFN. There are many more grave sites and cemeteries, many associated with particular families, and some with tragic events. Altogether they form a network of YKDFN history alongside the natural abundance of the area that continues to sustain YKDFN members (PR#50K p.3).

Heritage resources within the subject area

Analysis of the *2004 Preliminary Archaeological Inventory and Assessment* shows there were six archaeological sites in the developer's claim block (PR#79). Of these six, the Prince of Wales Northern Heritage Centre discovered later that the study designated one site in error. As a result, the Prince of Wales Northern Heritage Centre is taking steps to remove the site designation from the register of NWT Archaeological Sites (PR#59). The five remaining sites include tent rings, hide drying racks, and birch bark or toboggan presses. An additional nine archaeological sites are within 500 metres of the boundaries of the developer's claim (PR#79).

At the October 12, 2011 public hearing, Prince of Wales Northern Heritage Centre archaeologist Tom Andrews told the Review Board that one of the archaeological sites is in close proximity to the developer's proposed drill holes. He provided an analysis of the results of the *2004 Preliminary Archaeological Field Inventory and Assessment*, as it relates to the developer's two identified drill locations. Andrews stated:

One of the drill holes is only 38 metres from an archaeological site, KAPF 47. This coordinate was captured with a global positioning system receiver, so a 30 metre buffer, as provided for in legislation, is probably accurate...The first two drill holes will be located in areas that most likely been previously disturbed by the Snowfield camp and access roads. In addition, previous archaeological work in the area seems to have checked these areas to some extent. In my opinion, impacts to unrecorded archaeological sites are unlikely in the context of the first two drill sites (PR#107 p. 73-74).

The Prince of Wales Northern Heritage Centre also recommended the developer inform himself of the archaeological site locations to ensure avoidance. At the October 12, 2011 public hearing Andrews recommended:

...that the proponent access the NWT archaeological sites database to obtain the locations of all archaeological sites inside or within 500 metres of the Smitski claim. The Proponent must avoid all known archaeological sites by a minimum distance of 30 metres (PR#107 p. 74).

Participants expressed the concern that yet undiscovered or undocumented heritage resources could be impacted by the proposed project's remaining eight unidentified drill holes. Todd Slack, Research and Regulatory Specialist with Yellowknives Dene First Nation explained:

There's a fair amount of project uncertainty associated with this proposal. YKDFN have identified two particular areas of uncertainty: the location of the balance of the drill holes...and the long-term camp location. Without knowing where these drill holes are, it is very difficult to properly evaluate the impacts associated with this program (PR#106 p. 37).

Later that day, the Prince of Wales Northern Heritage Centre archaeologists Tom Andrews also spoke to the uncertainty about undocumented and unidentified archaeological and heritage resources. When questioned on the comprehensiveness of the archaeological work that has been done to date he responded:

Our opinion on whether or not there's been a complete systematic survey of the area, I'm afraid I would have to answer no to that. That why our recommendations are structured the way they are, that any further work, once the [additional eight] drill holes are located, would require an archaeological impact assessment for those drill locations (PR#106 pp. 90-91).

Mr. Andrews further explained:

Our professional opinion would be that this is a small development program that is taking place in an archaeological rich area. Ten drill holes is not a large exploration program by any stretch of the imagination. It is a fairly small program. Unfortunately, it takes place at an area where we are uncertain... where we expect that other archaeological sites will exist in the area (PR#106 pp. 127-128).

The Prince of Wales Northern Heritage Centre has submitted that additional archaeological work is required to ensure archaeological and heritage resources are protected from the additional eight yet unidentified drills holes. The Centre made the following recommendation:

Once the locations of the next eight drill holes have been determined, the proponent must hire an archaeologist to conduct an archaeological impact assessment of the drill holes and surrounding areas, access routes, and other areas of anticipated ground disturbance (PR#107 p. 74).

The Yellowknives Dene First Nation also point out the need for additional oversight to avoid impacts to heritage resources and have expressed an interest in the First Nation's involvement. In correspondence dated July 15, 2011 Chief Edward Sangris wrote:

The developer has not involved YKDFN in terms of site selection. This is a recurring Measure in previous EAs. The previous archaeological effort was not comprehensive – the whole of the area was not inspected, this site inspection is still required prior to disturbance (PR#52 p.2).

The North Slave Métis Alliance also submitted that they should be involved in site selection activities to avoid impacts to Métis heritage resources (PR#96).

Review Board analysis and conclusions

Concerns regarding potential impacts to heritage and archaeological resources can largely be divided into two categories: 1) concerns regarding potential impacts to known archaeological and heritage resources within the developer’s claim block and 2) potential impacts to yet unidentified archaeological and heritage resources.

The Review Board accepts that the shoreline zone is historically important to the Aboriginal peoples who have used it for hundreds if not thousands of years, and continue to use the area today. The archaeological record demonstrates the importance of the area. Oral testimony on the public record from this environmental assessment proceeding, and other shoreline zone environmental assessments also confirms the importance of the area. The sites includes archaeological sites spanning from prehistoric times to more recent heritage resource sites of historical relevance to Aboriginal peoples.

Archaeologist Callum Thomson completed a preliminary archaeological inventory and assessment within the developer’s claim block where the development is proposed. The Prince of Wales Northern Heritage Centre has mapped the precise location of five archaeological sites in the developer’s claim block, where the development is proposed.

The developer has proposed the initial two drill locations on or directly adjacent to previously disturbed ground. The developer has also proposed his camp location at the site of the current Snowfield Pebble Beach Camp, which is also previously disturbed ground. One of the developer’s proposed drill holes is only 38 metres from an identified archaeological site.

The Review Board recognizes that any impacts to heritage resources would be unacceptable to Aboriginal groups. However, the Review Board notes that the identified heritage resources do not include burial sites. The Review Board is of the view that because the heritage resources within the claim block are known with a high degree of

accuracy that the 30 meter buffer zone, as required through existing regulations, will protect the known archaeological sites from the two identified drill holes and proposed camp location. The Review Board concludes that significant adverse impacts to archaeological and heritage sites are unlikely in the context of the first two drill sites and camp location.

Suggestion #1

The Review Board suggests that developer access the NWT archaeological sites database to obtain the locations of all archaeological sites inside or directly adjacent to the Smitski #1 claim, and that all known archaeological features within proximity to the initial two drill sites and camp location be shown to all staff at the exploration camp to prevent unintentional disturbance of the sites.

Suggestion #2

The Review Board suggests that the developer consult with Yellowknives Dene First Nation traditional land users prior to selecting the location for any camps or drill sites outside of the footprint of the existing Snowfield Development camp and roads.

The Review Board accepts that there is considerable project uncertainty associated with identifying drill locations in an exploration project. The results of initial drilling lead to decisions about the locations of the next drill locations.

The Review Board notes that proposed development will take place within the developer's claim block, which is predominantly water with the exception of the southern portion of Burnt Island, Snowfield's Pebble Beach Camp, and surrounding areas.

If subsequent drill sites are located offshore on ice during the winter, it is unlikely that those sites would cause impacts to archaeological resources. Any drilling that may affect traditional travel routes over the ice in this area would be of short duration, without lasting impacts.

The Review Board notes that Aboriginal groups frequently use Burnt Island. The island is also a well-known area used by Aboriginal people and recreationally by non-aboriginal

people. The *2004 Preliminary Archaeological Field Inventory and Assessment* identified no sites on the island within the claim. The confidential report does identify four archaeological sites on Burnt Island, one of which is directly bordering on the developer's claim. The report notes "[i]f this site is at risk from exploration or development the features should be more thoroughly documented and mapped and their possible function and age confirmed through more intensive interviews" (PR#58). The report concludes that "the island should be more thoroughly surveyed to find any other structures and evidence of previous occupation" (PR#58).

Suggestion #3

For any activities planned by the developer on Burnt Island, the Mackenzie Valley Land and Water Board should require the developer to conduct further archaeological survey work on the development footprint of any planned drill sites or accesses roads, if the Prince of Wales Northern Heritage Centre can provide sufficient justification to the Mackenzie Valley Land and Water Board for its need.

In the Review Board's opinion, it is relevant that the small portion of the developer's claim block that includes the shoreline is already significantly disturbed by the Snowfield camp, roads, access routes and other exploration activities. The Review Board is of the view that it is unlikely that unidentified archaeological resources exist within most of the developer's claim block, and if they do, the standard terms and conditions included in a land use permit will prevent any significant adverse impacts to them. The Review Board does not expect that the developer's unidentified drill locations will have a significant adverse impact on the environment, given the scale of the proposed development.

3.2 Impacts on traditional land use and culture

The Review Board considers cumulative effects assessment to be an important aspect of Environmental Assessment. Paragraph 117(2)(a) of the *Mackenzie Valley Resource Management Act* specifies that every environmental assessment "shall include a consideration of...any cumulative impact that is likely to result from the development in combination with other developments".

The evidence on the public record describes concerns related to the cumulative effects of other past, present and other reasonably foreseeable human activities. This subsection summarizes the evidence related to cumulative cultural impacts.

Development in the regional context

The Review Board heard testimony that the Yellowknives Dene First Nation is affected by impacts of past developments, which collectively impact the quality of the other parts of the Yellowknives Dene First Nation's traditional territory. Hearing participants stated that these other areas are no longer of the same value to the Yellowknives Dene First Nation for traditional land use. As a result, the Drybones Bay area is becoming more important as the last remaining area that is good for traditional harvesting within accessible distance of Yellowknives Dene First Nation communities.

On September 12, 2011, at a public hearing, the Yellowknives Dene First Nation spoke to the Review Board about the First Nation's concerns with ongoing development pressures in the Drybones Bay area given the legacy of past development within its traditional territory. Greg Empson, legal counsel for the Yellowknives Dene First Nation introduced the group of presenters by saying "(I)t just shows what the importance of this area is. Every living Chief of the Yellowknives Dene First Nation is here today" (PR#102 p.38). Former Chief Fred Sangris explained how the value of the Drybones Bay area has increased relative to other areas within the traditional territory that have been affected by past development, and how that has affected the First Nation:

That's why... we're all here speaking out as former Chiefs, as harvesters of the land, to let the Board know that [the Drybones Bay area] is a very important place. The city of Yellowknife established itself here when it discovered gold and it grew and grew...The city has robbed us of all our trails, our land use over to the west of us. Our hunters cannot get through the city without one of our hunters getting charged by the city bylaw going through there with the skidoos, going on to do what we always done, getting food from our trails on our lands.

And this is what gold discoveries and gold mines and population has done to us: devastated our people. Contaminated all our berries in the background we can no longer use it. We're afraid because our medicines are poison. To the west of us and to east and north of us it's no big secret

that the squatter population has taken over that whole area: Prelude, Prosperous and north of it. There are four hundred cabins, squatters, just north of us. Those people have chased our people off the land, taken over our hunting areas, our trap lines, and now they basically almost took out the last fish in Prelude Lake...All land to the north of us is covered by tourism, lodges, or outfitters (PR#102 p. 81-82).

Later on the same day, current Yellowknives Dene First Nation Chief Edward Sangris restated the concern about the cumulative impacts of development. He described the results of the historic encroachment of urban and industrial development on Yellowknives Dene First Nation's traditional territory and explained that this has resulted in an increased value placed on the Drybones Bay area as a place for learning and teaching and passing on traditional culture to the next generation. Chief Sangris said:

It seems to me if you look all along and look at the big picture we have been pushed to a corner, a little spot where our ancestors have said: teach your children, teach your younger generation the tradition and culture of our ways. And to us Drybones Bay is the last resort that we have to follow our ancestors' words (PR#102 p.98).

Mr. Todd Slack, the Research and Regulatory Specialist for the Yellowknives Dene First Nation explained it this way:

[D]evelopment is proceeding in the Chief Drygeese territory, and especially in the Drybones Bay area, completely unrestrained and unplanned. Add to this hundreds of recreational users from Yellowknife with their impacts being magnified by the widespread also uncontrolled construction of cabins and tent frames throughout the area surrounding Yellowknife. The Yellowknives are being squeezed off their land (PR#102 p.48).

Accidents and malfunctions

The Yellowknives Dene First Nation also submitted that that additional activity brings an increased likelihood of accidents and malfunctions, such as spills or fires, with resulting impacts on the environment (PR#9, PR#25, and PR#106). Two examples the Yellowknives Dene First Nation attribute to industrial development in the Drybones area are the 2008

forest fire and the plow truck that went through the ice. In 2008, a man-made forest fire in the Drybones Bay area burned more than a thousand acres and destroyed an important burial ground in the Drybones Bay area (PR#9 p.1) In 2007, a plow truck excavator and a 16 wheel lowboy and pony being transported to the area for the nearby Snowfield development broke through the ice road. Ongoing monitoring shows there do not appear to be any long-term hydrocarbon contamination from the accident (PR#107).

Correspondence from Chief Ted Tsetta dated May 27, 2011 explained how these accidents have changed the relationship of the Yellowknives Dene First Nation with the land:

Activities permitted through the Snowfield EA started a large fire which impacted one of the known cemeteries plus an unknown amount of other culturally significant sites...this obviously had a significant adverse impact, not just on the cultural landscape, but also on the environment as a whole. The truck at the bottom of the Bay has also served to create a looming concern for the environment. These are just the easily quantified impacts from development – a thousand acres, a thousand litres – the larger impacts, as heard by the Board in the original hearings have resulted in a real change, a significant change, to the way the people see and use the land (PR#33 p.2).

Future mineral exploration

The Review Board heard from parties that there are other potential developers, who hold mineral claims in the Drybones bay area, who are currently not seeking to develop their claims because of the sensitivity of the area and unresolved issues between the First Nations, developers, and government.

Mr. Debogorski staked the claim in 2005 (PR#64 p.5). At the October 12, 2011 hearing, Mr. Debogorski explained the circumstances that led to the application to the Mackenzie Valley Land and Water Board for a land use permit for the proposed project, and the subsequent referral to environmental assessment. Mr. Debogorski said:

I had a couple of Section 81s, which means that because of mitigating circumstances, I can't do work on the claim, that we could set the work off for a couple of years. This process basically started August of 2010

when INAC gave me a Section 81, but at the same time told me that I had to make an effort to develop the property (PR#106 p14).

At the same hearing, Kate Hearn, Director of Mineral and Petroleum Resources with Aboriginal Affairs and Northern Development Canada confirmed that that circumstances such as the one in Drybones Bay where there is a sensitive area and unresolved conflict over land use, is one condition, among others, in which relief has been granted pursuant to S. 81 (PR#106 p.174).

Section 81 of the *Northwest Territories and Nunavut Mining Regulations* provides that where a rights holder is prevented through circumstances beyond their control from fulfilling any requirements of the regulations, the rights holder may apply for an order granting whatever relief is necessary in the circumstances. To maintain the lease, permit or claim in good standing for the period within which fulfillment of the requirement is prevented (PR#107).

In a follow up correspondence dated October 21, 2011 Ms. Hearn provided additional information about section 81 relief in the Drybones Bay area:

During the time period from 2003 to 2011, within the 5 NTS Map Sheets⁴ which encompass the “Shoreline Zone” as described by MVEIRB, and which includes Drybones Bay area, the NWT Mining Recorders Office has granted 48 Orders for Section 81 relief involving a total of 89 mineral claims held by 14 individuals or companies. All such relief orders were for periods not exceeding one year...Of the 89 mineral claims which were granted relief under Section 81 in the described area, 48 claims have since lapsed and 41 are active and held by 8 individuals or companies (PR#107 p.3).

The evidence and findings from earlier environmental assessments in the Drybones Bay area states that the impacts from various human activities have reached a critical threshold in the Drybones Bay area (PR#70-75). Parties placed considerable emphasis on these earlier findings during this environmental assessment.

⁴ NTS areas 85 J 01, 85 J 08, 85 I 03, 85 I 04, 85 I 05

The Yellowknives Dene First Nation submitted evidence stating that that the critical threshold remains an important issue for the First Nation, reiterating that the situation in the Drybones Bay area has not changed since evidence was presented that led to the Review Board's findings quoted above. In a letter dated September 12, 2011 and signed by the current Yellowknives Dene First Nation Chiefs Edward Sangris and Ted Tsetta and five former Chiefs Fred Sangris, Peter Liske, Darrell Beaulieu, Jonas Sangris, and Isadore Tsetta, the Yellowknives Dene First Nation stated:

The Drybones Bay area is a special place to the YKDFN. Culturally, this area is without parallel and the highest level of protection is needed. The people's use of this area has been significantly impacted by the level of development and the subsequent effects that arise out of those impacts and we have seen our treaty rights considerably degraded over the last decades... The former Chiefs of the YKDFN are asking you ensure that this land can continue support the people who have lived here for generations. There is no other area we can move to – Drybones Bay is unique and irreplaceable. This area cannot be avoided – it is fundamental to the identity and wellbeing of our First Nation (PR#90).

Lutsel K'e Dene First Nation, the North Slave Métis Nation, Deninu Kue First Nation, and the Akaitcho Interim Measures Agreement Implementation Office have also submitted that they do not support the project because of the importance of the area to Aboriginal land users (PR#10, 27, 38, 37, 89).

Review Board's analysis and conclusions

The Review Board has considered the evidence on the public record. It accepts that the Drybones Bay area is of high importance to the Yellowknives Dene First Nation and other Aboriginal groups who use the area. The Aboriginal groups have occupied the shorelines zone for hundreds and perhaps thousands of years. The archaeological record as described in subsection 3.1 provides evidence of this fact. The Review Board has also heard testimony from the Yellowknives Dene First Nation that this historic and continued presence on the land is fundamental to the identity and well-being of the First Nation.

The Review Board finds, based on this evidence, that the management of the Drybones Bay area has changed very little since issues were first raised with the Review Board in 2003. There is little evidence that any real steps or substantive progress has been made by

appropriate government agencies to address the issues raised by the Yellowknives Dene First Nation despite the numerous recommendations and suggestions in the six Drybones Bay Reports of Environmental Assessment. The concerns that were raised by parties about lack of action on approval and implementation of suggestions and measures will be addressed in more detail in section 4 of this report.

The Review Board notes that it has recommended measures elsewhere⁵ for planning, monitoring and management of cumulative effects for the shoreline zone area, including the area where the current development is proposed. If approved and implemented, the Review Board expects the measures contained in the EA0506-005 decision will address the issue of cumulative impacts in the Drybones Bay area.

The development itself is a small exploration project, on a claim which approximately 90% water. The Review Board recognizes that the Yellowknives Dene First Nation and other Aboriginal land users have traditional travel routes over this portion of Great Slave Lake. However, the Review Board is of the opinion that any disturbance to those routes from winter drilling would be of short duration, and therefore would not create significant impacts.

The small portion of the developer's claim block that includes the shoreline has already been substantially affected by Snowfield's use including the camp, roads, access routes and other exploration activities. These disturbances have already occurred; the proposed development will not add to this disturbance in any significant way.

The Review Board notes that in the event that the developer, or a subsequent developer, chooses to drill in the Burnt Island areas, the impacts to Yellowknives Dene First Nation's ability to access and use the islands would be of a short duration.

The Review Board acknowledges the Yellowknives Dene First Nation's concerns that a mine in the heart of the Drybones Bay area would cause serious cultural impacts. However, in the event that this small exploration project leads to additional development, there will be a subsequent opportunity to review any larger projects that are proposed.

⁵ Reasons for Decision on the further consideration of measures in the 2007 Report of Environmental Assessment for EA0506-005: Encore Renaissance Resources Ltd. (November 16, 2011)

Considering the evidence set out above, and noting the anomalous nature of the small scale of the project, and its location within an area where the land is previously disturbed, and well-used, and the predominance of water within the developer's claim, the Review Board concludes that the proposed project is not likely to significantly contribute to the previously identified cumulative adverse impacts on land use and culture.

4 Public concern

The Mackenzie Valley Land and Water Board referred this proposed development to environmental assessment based on public concern. The Land and Water Board staff report recommended the referral based, in part, on "significant public concern regarding the integrity of the cultural and spiritual values associated with the Drybones Bay area with continued development..."(PR#14 p.5).

Section 128(1) requires the Review Board to decide whether the proposed development is likely to be cause of significant public concern. In the Reference Bulletin- *Operational Interpretation of Key Terminology*, the Review Board defines for "public concern" as "widespread worry or anxiety".

This document states:

During an environmental assessment, when the Review Board determines whether or not there is public concern about a development, it undertakes the challenging task of considering how widespread the concern is, and how great the degree of anxiety or worry (p.10).

The same document lists factors that can be considered. They include:

- Development scale
- Proximity to communities
- New technology
- Severity of the worst case scenario
- Proximity to protected or sensitive areas
- Areas known for harvesting

Parties' submissions

The Review Board observed some evidence of worry and anxiety throughout the environmental assessment. Concern was also evident in documents transferred from the six other environmental assessments in the Drybones Bay area. The concerns expressed relate mainly to 1) development proceeding in a sensitive area without a land management framework or land use plan in place; 2) lack of action on the part of federal agencies to approve and implement the recommendations from the Review Board which were intended to mitigate against cumulative cultural impacts in the Drybones Bay area; and 3) concern with competing interest in land uses in the Drybones Bay area.

Development proceeding without a management framework or land use plan in place

Aboriginal parties have consistently expressed concern about development proceeding within the Drybones Bay area without a management framework or a land use plan in place to protect the values associated with the critical area. This issue has been thoroughly explored in the six environmental assessments for development proposals in the Drybones Bay area, and has been documented in the reports of environmental assessment which have been placed on the registry for this proceeding (PR# 70-75). In various submissions made to the Review Board during this environmental assessment, the Yellowknives Dene First Nation once again reiterated the importance the First Nation places on this issue (PR#9, PR#33, PR#102, PR#106).

Lack of action on the part of federal agencies to approve and implement recommendations

Several parties expressed concern that government agencies have done nothing to approve and implement the recommendation made by the Review Board, which are intended to mitigate cumulative impacts in the Drybones Bay area⁶. In a letter to the Land and Water Board on March 15, 2011 the Yellowknives Dene First Nation characterized this as a “breakdown in the system” (PR#9). In the same letter Chief Ted Tsetta states:

Few of the measures have been addressed and implemented, especially the most important mitigation measures — for instance, there has been no land use planning in the area and no management plan has been mentioned since the EA reports. Once again, we have an example of the

⁶ The measures intended to mitigate cumulative cultural impacts in the Drybones Bay area were contained in the 2007 Report of Environmental Assessment and Reasons for Decisions for Consolidated Goldwin Ventures Inc. (now Encore Renaissance Resources Corp. or Encore) (EA 0506-005) and of Sidon International Resources Corp. (EA0506-006) released the same year. At the request of the federal Minister of Aboriginal Affairs and Northern Development Canada, the Review Board recently completed a further consideration of the measures contained in Encore Renaissance Report of Environmental Assessment. The results of this process was summarized in a Reasons for Decision document and sent to the federal Minister on November 16, 2011. The Reasons for Decision document is available at http://reviewboard.ca/upload/project_document/EA0506-005_Reasons_for_Decision_-_Further_consideration_of_measures_in_2007_Report_of_EA_1321488047.PDF

Crown and the Board processes acting in isolation and without follow up
— creating a series of empty gestures without meaningful results.

Chief Tsetta further described the Yellowknives Dene First Nation’s concern that the First Nation has actively participated in seven environmental assessments, including this one, dealing with development in the Drybones Bay area, over a period of eight years, which has led to little concrete action to protect the values in the Drybones Bay area. In the Yellowknives Dene First Nation’s request for ruling he articulates the First Nation’s concern with the current regime:

Within the present regulatory environment, it is not possible for the Board to create the mechanisms to institute appropriate mitigations or accommodations for future operations, and this project must be rejected (PR#33 p.1).

Deninu Kue, NSMA and the Akaitcho IMA Implementation Office have also expressed concern that no action has been taken to implement the Board’s suggestions and measures (PR#37, PR#38, PR#96, PR#106).

Competing interests in land use in the Drybones Bay area

The Review Board heard concern that competing interests in the Drybones Bay area continue to go unresolved, creating conflict among land users and rights holders.

The Review Board heard testimony from traditional land users that they have concerns with exploration activities interfering with traditional harvesting activities. At the September 12th hearing Elder Alfred Baillargeon spoke to the Board. He said:

We’re talking about Drybones Bay that is very important for us and ever since we were young kids, we have been hunting and trapping in the area and living there. In the past, some elders have said that land area is very important, from Drybones Bay to Francois Bay. [T]hat whole area is not to be touched because there is a lot of wildlife, like moose, muskrats and all the other animals, there for people to live on. Our ancestors survived by hunting for wildlife all in that area there. We want to hold on to that land area for future generations (PR#102 p. 69).

At the same hearing, Yellowknives Dene First Nation Elder Peter Sangris shared the same concern about development competing with traditional land use. He said:

From Yellowknife to Drybones Bay to Francois Bay, that is the areas for our people, where we lived and survived on the land. We do not want any mines in these areas because we want our future generations to practice their traditions in those areas and that's why we keep on saying no (PR#102 p.74).

At the October 12, 2011 public hearing, Mr. Debogorski expressed his concern to the Review Board and explained his view on how the conflict in the Drybones Bay area could be avoided:

I'm not happy about being embroiled in what I consider a jurisdictional dispute between Canada and our First Nations...I feel that the Drybones area should have a 'blanket Section 81' [I]f a person has a mineral claim out there and feels he'd like to develop it, that he could apply through the [Mackenzie Valley Land and Water] Board, of course, to do development. But if he'd rather not be embroiled in some of the ongoing arguments that he could put it off until a plan has been developed, or other things have calmed down in this area (PR#106 p.14).

Review Board analysis and conclusions

The Review Board recognizes that there is concern among the Aboriginal parties about development proceeding in the Drybones Bay area without an appropriate land management or land use plan in place. This includes the Yellowknives Dene First Nation and members as well as members of other Akaitcho communities that have spoken out clearly and consistently in previous environmental assessments. The Review Board again notes that it has previously recommended measures and made suggestions⁷ for planning, monitoring and management of cumulative effects in the shoreline zone, including the area where the project is proposed.

⁷ Reasons for Decision on the further consideration of measures in the 2007 Report of Environmental Assessment for EA0506-005: Encore Renaissance Resources Ltd. (November 16, 2011)

The Review Board also recognizes the developer's concern that disputes about land use and jurisdiction remain unresolved while the mineral rights regime, as set out under the *NWT and Nunavut Mining Regulations*, requires claim holders to move projects forward. The Review Board is of the view that this leads to conflict over mineral exploration rights and traditional land use that is expressed through the regulatory and environmental regime.

Based on the evidence in this proceeding, the Review Board concludes that very little progress has yet been made on resolving the underlying land use management issues in the shoreline zone or the area affected by the project. Despite earlier federal government commitments there has been no action on the development of a plan for the Drybones Bay area.

The Review Board approved the request made earlier in this proceeding by the Yellowknives Dene First Nation to move the evidence from previous Drybones Bay environmental assessments related to public concern on to the record for this proceeding. Review of that evidence in relation to the Debogorski project reveals that much of it is regional in nature and that it tends to be focussed on the need for regional level land use management. In the Review Board's view, the main concerns of previous environmental assessments dealt with cumulative effects throughout the Drybones Bay area and for the reasons set out below this evidence is less helpful and relevant in this case.

The Review Board has concluded that the Debogorski project will not contribute significantly to the cumulative impacts in the Drybones Bay area due to a particular combination of factors: the development itself is located in a previously disturbed area; it is of small scale and of short duration. The Review Board has concluded that the Debogorski project can proceed without significant or lasting impacts. Public concern about cumulative effects are therefore not relevant to this particular development. Regional land management concerns have also been addressed in other assessments and these matters are in front of the Federal Minister. The Review Board is of the opinion that the underlying concern over ongoing competing land uses within the Drybones Bay area is regional in nature, and that the Debogorski project will not contribute to them significantly.

Based on this analysis, the Review Board concludes that the effects of the Debogorski project will not be material and that they do not provide a basis for significant public concern, as defined in subsection 128(1) of the Act.

The following suggestion may partly address the concerns raised by the Yellowknives Dene First Nation and other Aboriginal groups.

Suggestion #4

Until such a time that competing interests in land use in the Drybones Bay area are resolved, the Review Board suggests that Aboriginal Affairs and Northern Development Canada proactively communicate to mineral claim holders in the Drybones Bay area that Section 81 relief of the NWT and Nunavut Mining Regulations will continue to be available to them should they request it, until such time that a plan for the Drybones Bay area is implemented.

5 Treaty and Aboriginal rights issues

This section of the report describes issues related to Aboriginal or treaty rights that some parties brought to the attention of the Review Board during the environmental assessment. This section describes the views of Aboriginal groups about potential impacts to the rights that these groups hold or are asserting. It also describes evidence of consultation conducted outside of the preliminary screening and environmental assessment process.

5.1 Assertions of potential impacts to rights

A review of the evidence shows that the Yellowknives Dene First Nation, the North Slave Métis Alliance, the Northwest Territory Métis Nation, and the Akaitcho Treaty 8 Tribal Corporation presented evidence with regard to potential impacts to Treaty and asserted Aboriginal rights.

The Yellowknives Dene First Nation members are descendants of signatories to Treaty 8. The Akaitcho Dene First Nations is currently negotiating a Land, Resources and Self-Government Agreement with the Government of Canada and the Government of the Northwest Territories. The Akaitcho Treaty 8 Tribal Corporation represents the Akaitcho Dene First Nations, including the Yellowknives Dene First Nation and other Akaitcho communities in these negotiations. A Framework Agreement was signed in 2000. An Interim Measures Agreement was signed in 2001.

The Northwest Territory Métis Nation is currently negotiating a land, resources and self-government agreement with Canada and the Government of the Northwest Territories. The parties signed a Framework Agreement in 1996, and an Interim Measures Agreement in 2002.

The North Slave Métis Alliance is not currently in land claim or self-government negotiations with the Crown. In a letter dated July 22, 2011 Aboriginal Affairs and Northern Development Canada stated that the government of Canada is currently assessing information that was provided to them about the North Slave Métis Alliance's Aboriginal rights assertions (PR#87).

Yellowknives Dene First Nation

The Yellowknives Dene First Nation state that the area in which the project proposed is of “highest importance in terms of the membership’s exercise of their Treaty Rights, cultural pursuits and Dene Practices” (PR#02).

In this and other environmental assessments in the Drybones Bay area, the Yellowknives Dene First Nation has stated that the area is a vitally important cultural area that contains many burial and archaeological sites. They also state that their members use the area extensively today for hunting trapping and providing youth with cultural exposure to traditional activities and the land. The Yellowknives Dene First Nation also submits that the cumulative impacts in the Drybones Bay area are at a critical threshold. In a letter from seven former and current Yellowknives Dene First Nation Chiefs state:

The Drybones Bay area is a special place to the YKDFN. Culturally, this area is without parallel and the highest level of protection is needed. The people’s use of this area has been significantly impacted by the level of development and the subsequent effects that arise out of those impacts and we have seen our Treaty Rights considerably degraded over the last decades. Six times we have asked the Review Board to help protect this area but we are still facing the same impacts and this will continue unless real measures and mitigations are in place (PR#90).

Fred Sangris addressed the Review Board at the September 12, 2011 Encore Renaissance hearing about the importance of the Drybones Bay area to the exercising of the Yellowknives Dene First Nation’s treaty rights. He said:

This is the last piece of land that we're holding onto...From that I want to go south into that islands. It's the only place where we can harvest and hunt. It's the last piece of land that we have that holds many foods and we're trying to hang onto it dearly. There's no place else like it. There's no place else like it. This is the very most important lands that we have. It has fed many people for many generations over thousands of years. Today this land, and the bay, and the whole area is still feeding our people today. We still use it. We still get our foods there, we still get our berries, we get our plants there. Now our hunters are there now getting their ducks for the winter. Our hunters are there getting their fish for the

winter. They're getting their moose there. I think for us as indigenous people need to be recognized so that we can carry on with our way of life and continue hanging onto what little left -- is there (PR#102 p.83).

At the October 12, 2011 hearing in N'dilo, Todd Slack the Yellowknives Dene First Nation Land and Environment Coordinator summarized the views of how the First Nation's rights are being impacted. He stated:

The Yellowknives Dene members have repeatedly mentioned that they have felt as though they were being pushed off the land, that the game they relied on and their ability to exercise their traditional rights was being taken from them. The large fire is just an example of this and it has increased these impacts. The land has changed and because of the specialness of this area the membership cannot simply move elsewhere. There is no substitute area for Drybones Bay (PR#106 p.34).

At the same hearing, Mr. Todd Slack also described the specific treaty rights they exercise within the specific subject area of this environmental assessment. Mr. Slack explained that the area within the claim is an important travel, fishing, and hunting area. Mr. Slack stated:

[T]hose islands [within the claim] are important travel areas and are important areas where people stop and practice their traditional activities. They exercise their rights. Burnt Island, in particular, is a well or a very highly used area in the summertime -- is an important safety area, in terms of people who are stopping over. When they stop over there, again, they're practising their rights; they're fishing, they're hunting (PR#106 p. 65-66).

Northwest Territory Métis Nation

The Northwest Territory Métis Nation did not participate in the environmental assessment, although the Review Board provided them the opportunity to do so (PR#21). The Northwest Territory Métis Nation has participated in previous environmental assessments in the Drybones Bay area. Their submissions were included with the evidence transferred to the Debogorksi record (PR#50Q). The Northwest Territory Métis Nation state that "Drybones Bay is one of the historical sites that [their] people have used (PR#50Q p. 1). The state that their interests include: "Title and access throughout [their] territory which

[they] have traditionally used and occupied, to allow [them] to practice of [their] Aboriginal Right to harvest plants, animals, and fish as we always have” (PR50Q p.2).

North Slave Métis Alliance

North Slave Métis Alliance claim that they have Aboriginal rights in North Slave area of the Northwest Territories, including the Drybones Bay area (PR#38 p.1). In their final submission to the Review Board, the North Slave Métis Alliance stated that “historic and genealogic evidence was provided regarding: Métis interests in the area, the strength of NSMA’s claims of Aboriginal Rights, Métis Rights established by Peace and Friendship Treaty 11, including verbal promises made by Treaty Commissioner Conroy in 1921” and that there are “[p]otentially significant impacts expected as a result of the proposed project” (PR#96 p.7). The North Slave Métis Alliance expressed:

Impacts on traditional harvesting and lifestyle continue unabated to this day, and are continually increasing. Impacts have long ago passed the threshold of significance, and are now critical.... In the vicinity of Yellowknife, very few areas remain available for the settlement of North Slave Métis land claims, or for Métis to practice their traditional lifestyle undisturbed” (PR#96 p. 28).

Akaiicho NWT Treaty 8 Tribal Corporation Interim Measures Agreement Implementation Office

On October 12, 2011 the NWT Treaty 8 Tribal Corporation, Interim Measures Agreement Implementation office submitted final recommendations to Review Board. The purpose of their presentation was to recommend measures and procedures that if implemented will help ensure that the Debogorski Project does not have significant adverse impacts upon the rights and aspirations of the Akaiicho Dene First Nations (PR#106 p2). These include:

- The public registry for this environmental assessment must remain open to include all evidence from all the previous environmental assessments in the region, including the ongoing Encore Renaissance (CGV) & Sidon International environmental assessments;
- A measure should be made indicating that no permits or licenses should be issued in the Drybones Bay area until the federal government has developed and implemented, in partnership with the Akaiicho Dene, a “Plan of Action” that may guide regulatory considerations in the area.

- An adequate cumulative effects assessment of all exploration activities, historical and contemporary, upon the Drybones Bay area prior to any new permit/license consideration. This could be completed as part of the “Plan of Action”.
- The Review Board should provide a directive to Aboriginal Affairs and Northern Development Canada, until such time as a “Plan of Action” is implemented:
 - To secure an order from the Governor-In-Council to set apart the Drybones Bay area, as per s. 4 or p. 23(d)(ii) of the *Territorial Lands Act*;
 - To offer relief from fulfilling representation work to mineral claim holders in the Drybones Bay area, as per the NWT and Nunavut Mining Regulations;
 - To offer relief from paying rent to mineral lease holders in the Drybones Bay Area;
- Review Board must communicate to the federal government that it cannot satisfactorily complete environmental assessments in the absence of a Crown-led process whereby rights infringements are assessed and adequate accommodations are implemented. This process could include to a large degree the development of a “Plan of Action” for the area (PR#99).

5.2 Consultation and accommodation

This section describes any consultation and accommodation that was conducted outside of the regulatory and environmental assessment process. Opportunities for Aboriginal groups to participate in the regulatory and environmental assessment process have already been described in section 2 of this report.

The developer’s consultation with potentially affected Aboriginal groups

The public record shows that the developer wrote a letter, dated January 17, 2011, to the Aboriginal groups listed below to notify them of his intent to apply for a Class ‘A’ Land Use Permit to drill up to ten holes (PR#12, Appendix D). The letter briefly describes the proposed project, and states the developer’s intention to drill one hole in 2011. The letter also offers to meet face-to-face. The groups are:

- Akaitcho Regional Pre-screening Board
- Northwest Territory Métis Nation
- North Slave Métis Alliance

- Yellowknives Dene First Nation
- Lutsel K'e Dene First Nation

The developer's consultation log states that the January 17, 2011 letter, along with the developer's Land Use Permit Application was hand delivered to Bill Enge, President of the North Slave Métis Alliance, Yellowknives Dene First Nation Chiefs Ted Tsetta and Chief Edward Sangris on January 19, 2011 (PR#02 Appendix F). The letter and application were mailed by registered mail to Lutsel K'e Chief Nitah, Georgina Biscaye at the Akaitcho Regional pre-screening Board in Fort Resolution, and Chris Heron of the Northwest Territory Métis Nation on the same day (PR#12 Appendix F). The record details efforts made by the developer to follow up with the Aboriginal groups between January 20 to February 25, 2011 (PR#12 Appendix F and PR#02 p.2-3).

The public record shows that Yellowknives Dene First Nation Chief Edward Sangris responded to Mr. Debogorski's January 17, 2011 letter on January 19, 2011. He stated:

The Drybones Bay area is critical to the Yellowknives Dene First Nation. The area is of the highest importance in terms of the membership's exercise of their Treaty Rights, cultural pursuits and Dene Practices. These values are simply not compatible with any development, regardless the mitigation or good intentions...YKDFN have steadfastly opposed any development in this area, and will continue to do so in the future (PR#12 Appendix E).

The public record does not show any response from the other Aboriginal groups who received notification of the proposed project.

The record shows no indication that the developer conducted any additional consultation with any of the Aboriginal groups during the course of the environmental assessment.

The Crown's consultation with potentially affected groups

On July 26, 2011, Yellowknives Dene First Nation staff, Mr. Todd Slack, sent an email to officials in the federal department of Aboriginal Affairs and Northern Development requesting "an engagement plan and meaningful accommodation to continuing infringements in [the Drybones Bay] area". In the email, Yellowknives Dene First Nation stated that scope of Crown consultation required for the Debogorski exploration proposal is "at the furthest end of the spectrum" (PR#61 p.3).

The Yellowknives Dene First Nation further elaborated on the scope of consultation and accommodation to which it feels entitled:

[I]n this case we have the importance of the area, which is the highest; the level of existing and probable impacts, which is a critical threshold; and the degree of accommodation to date, which is essentially none. Together this all means that the need for those accommodations falls at that far end of the spectrum and... if the [Encore Renaissance Measures] are significantly changed, that limits the existing accommodations that are being provided to the Yellowknives (PR#102 pp.55-56).

On August 10, 2011 Ms. Julie Jackson, an official with Aboriginal Affairs and Northern Development Canada responded to the Yellowknives Dene First Nation's email that the federal department "is of the view that where a reasonable and consultative process already exists, such as that provided for in the *Mackenzie Valley Resource Management Act* – i.e. the Mackenzie Valley Environmental Impact Review Board and the accompanying regulatory processes – the Crown may take such consultation into account and rely on these processes to fulfill its duty to consult where appropriate" (PR#61 p.1).

At the October hearing federal officials confirmed that at that time, no consultation with Yellowknives Dene First Nation had occurred outside of the environmental assessment process with regard to the developer's application (PR#106 p.180). The record also shows no evidence of Crown consultation with any other Aboriginal groups.

Review Board's analysis and conclusions

The Review Board is of the view that the environmental assessment process has provided an opportunity for Aboriginal groups to identify the specific adverse environmental impacts in the areas where they assert Aboriginal or treaty rights. The Review Board recognizes that any adverse impacts could also have an effect on traditional land use. The Review Board has taken this into consideration in its finding that significant adverse impacts to the environment are unlikely. The Review Board concludes that following the release of this Report of Environmental Assessment, the Crown has the opportunity to further address potential effects of the proposed development to Aboriginal or treaty rights.

Appendix A: Summary of suggestions

Suggestion #1

The Review Board suggests that developer access the NWT archaeological sites database to obtain the locations of all archaeological sites inside or directly adjacent to the Smitski #1 claim, and that all known archaeological features within proximity to the initial two drill sites and camp location be shown to all staff at the exploration camp to prevent unintentional disturbance of the sites.

Suggestion #2

The Review Board suggests that the developer consult with Yellowknives Dene First Nation traditional land users prior to selecting the location for any camps or drill sites outside of the footprint of the existing Snowfield Development camp and roads.

Suggestion #3

For any activities planned by the developer on Burnt Island, the Mackenzie Valley Land and Water Board should require the developer to conduct further archaeological survey work on the development footprint of any planned drill sites or accesses roads, if the Prince of Wales Northern Heritage Centre can provide sufficient justification to the Mackenzie Valley Land and Water Board for its need.

Suggestion #4

Until such a time that competing interests in land use in the Drybones Bay area are resolved, the Review Board suggests that Aboriginal Affairs and Northern Development Canada proactively communicate to mineral claim holders in the Drybones Bay area that Section 81 relief of the NWT and Nunavut Mining Regulations will continue to be available to them should they request it, until such time that a plan for the Drybones Bay area is implemented.

Appendix B: Public record index – EA1112-001

PR Item #	Document	Date Posted to Registry	Originator
1	Letter from the Review Board to the developer notifying of EA Start-up	19-Apr-11	Review Board
2	Land Use Permit Application including additional project information from the developer	21-Apr-11	Alex Debogorski
3	Letter dated February 11, 2011 from the MVLWB to the Developer stating that the LUP application was deemed incomplete	21-Apr-11	MVLWB
4	Email dated March 11, 2011 from DFO to MVLWB providing comments on LUP application	21-Apr-11	DFO
5	Letter dated March 24, 2011 from DOT to MVLWB providing comments on LUP application	21-Apr-11	DOT
6	Letter dated March 30, 2011 from EC to MVLWB providing comments on LUP application	21-Apr-11	EC
7	Letter dated March 30 from ENR to MVLWB providing comments on LUP application	21-Apr-11	ENR
8	Email of March 11, 2011 from INAC to MVLWB providing comments on LUP application	21-Apr-11	INAC
9	Letter dated March 15, 2011 from YKDFN to MVLWB providing comments on LUP application	21-Apr-11	YKDFN
10	Letter dated March 28, 2011 from LKDFN to MVLWB providing comments on LUP application	21-Apr-11	LKDFN
11	Letter dated March 3, 2011 from MVLWB to the Developer notifying that the LUP application was deemed complete.	21-Apr-11	MVLWB
12	Land Use Permit Application to MVLWB	21-Apr-11	Alex Debogorski
13	Letter dated March 3, 2011 from MVLWB requesting comments on LUP application	21-Apr-11	MVLWB
14	MVLWB Staff Report dated March 30, 2011	21-Apr-11	MVLWB
15	Letter dated March 29, 2011 from INAC to MVLWB providing comments on LUP application	21-Apr-11	INAC
16	Letter from MVLWB to the Review Board notifying of referral of Debogorski Diamond Exploration Project, Drybones Bay to environmental assessment	21-Apr-11	MVLWB
17	Note to file summarizing the April 20th meeting between the developer and Review Board staff	21-Apr-11	Review Board
18	May 10th letter from the Review Board requesting comments on the draft Work Plan and requesting party status applications	10-May-11	Review Board
19	Request for Party Status form - attachment to letter of May 10th requesting comments on the draft Work Plan and request for party status	10-May-11	Review Board
20	Draft Work Plan for Debogorski EA dated May 10, 2011	10-May-11	Review Board
21	Fax Distribution List for May 10th Cover Letter, draft Work Plan, request for Party	10-May-11	Review Board

EA1112-001: Alex Debogorski, Diamond Exploration Project
Report of Environmental Assessment and Reasons for Decision

	Status Form		
22	Note-to-file - additional Information from Alex Debogorski about location options for initial drilling and archaeological assessments	13-May-11	Alex Debogorski
23	Letter from GNWT providing comments on the draft Work Plan	19-May-11	GNWT
24	Letter dated May 20, 2011 from YKDFN regarding the draft Work Plan	19-May-11	YKDFN
25	Letter dated May 20, 2011 from Alex Debogorski regarding the draft Work Plan	20-May-11	Alex Debogorski
26	Letter dated May 20, 2011 from INAC providing comments on the draft Work Plan	20-May-11	INAC
27	Letter dated May 20, 2011 from LKDFN to the Review Board providing comments on the draft Work Plan and Requesting Party Status	20-May-11	LKDFN
28	Summary of the May 18, 2011 meeting between Alex Debogorski, government representatives, and the MVLWB	26-May-11	NPMO
29	Note-to-file stating the Review Board has granted official Party Status to YKDFN, LKDFN, DKFN, INAC, and the GNWT	26-May-11	Review Board
30	Work Plan cover letter dated May 27, 2011	27-May-11	Review Board
31	Final Work Plan for EA 1112-001	27-May-11	Review Board
32	Cover letter and IR from the Review Board to Alex Debogorski	27-May-11	Review Board
33	Request for Ruling from YKDFN	27-May-11	YKDFN
34	Letter to parties requesting comments on Request for Ruling	30-May-11	Review Board
35	Letter from INAC (AANDC) - comments on Request for Ruling	03-Jun-11	INAC
36	Letter from the GNWT - comments on Request for Ruling	03-Jun-11	GNWT
37	Letter from DKFN - comments on the YKDFNs Request for Ruling	03-Jun-11	DKFN
38	Letter from NSMA - comments on the Request for Ruling	03-Jun-11	NSMA
39	Letter from LKDFN - comments on Request for Ruling	06-Jun-11	LKDFN
40	Letter from Review Board to YKDFN – decision on Request for Ruling	17-Jun-11	Review Board
41	Note to file – NSMA has been granted party status	17-Jun-11	Review Board
42	IR response from Alex Debogorski to Review Board	19-Jun-11	Alex Debogorski
43	Note-to-file - wall-poster sized map depicting land tenure available	20-Jun-11	Review Board
44	Letter notifying parties of the July 20th Community Information Session	27-Jun-11	Review Board
45	Review Board's Reasons for Decision on Request for Ruling	27-Jun-11	Review Board
46	Letter from YKDFN regarding the Community Information Session	06-Jul-11	YKDFN
47	Note to File - shuttle bus schedule for Community Information Session	15-Jul-11	MVEIRB
48	IR from the Review Board to PWNHC	18-Jul-11	Review Board
49	Email from NSMA stating no staff or resources to attend Information Session	14-Jul-11	NSMA
50	Note-to-file - transfer of evidence to public registry	19-Jul-11	Review Board
50A	Letter dated July 7, 2003 from the GNWT providing comments on the Drybones/Wool Bay Environmental Assessments.	19-Jul-11	GNWT

50B	Written submission from the PWNHC regarding available mechanisms for heritage resource protection	19-Jul-11	GNWT-PWNHC
50C	Use of Confidential Reports and Maps Submitted by the YKDFN	19-Jul-11	YKDFN
50D	Note-to-file - process to view the three YKDFN confidential reports: Preliminary report on the Cultural and Historical Resources of the Drybones Bay and Wool Bay Areas; Archaeological Assessment of Mineral Exploration and Aggregate Extraction in the Vicinity of Drybones Bay and Wool Bay, Great Slave Lake, Northwest Territories; Wildlife and Wildlife Related Activities in the Wool Bay and Drybones Bay area, Great Slave Lake, NWT	19-Jul-11	MVEIRB
50E	Gartner Lee Ltd.'s Presentation for the Public Hearing on Cumulative Effects Assessment	19-Jul-11	Gartner Lee
50F	Public Hearing Transcripts for December 4, 2003	19-Jul-11	MVEIRB
50G	Public Hearing Transcripts for January 13, 2004	19-Jul-11	MVEIRB
50H	YKDFN Land and Environment April 2, 2003 public meeting minutes	19-Jul-11	YKDFN
50I	Summary of the April 2 & 3, 2003 YKDFN public meeting	19-Jul-11	YKDFN
50J	IR response from Indian and Northern Affairs	19-Jul-11	INAC
50K	IR response from YKDFN	19-Jul-11	YKDFN
50L	Public hearing presentation by PWNHC	19-Jul-11	GNWT-PWNHC
50M	1-page hearing presentation summary from PWNHC	19-Jul-11	GNWT-PWNHC
50N	1-page hearing presentation summary from Treaty 8 Tribal Corporation	19-Jul-11	T8TC
50O	Update from Indian and Northern Affairs Canada regarding land management	19-Jul-11	INAC
50P	Public hearing presentation - Treaty 8 Tribal Corporation	19-Jul-11	T8TC
50Q	1-page hearing presentation summary from NWTMN	19-Jul-11	NWTMN
50R	Presentation summary & process to view confidential TK	19-Jul-11	YKDFN
50S	Moose Survey Report from GNWT-Environment and Natural Resources	19-Jul-11	GNWT-ENR
50T	Hearing presentation from NSMA	19-Jul-11	NSMA
50U	Submission from INAC - report on incident where equipment went through the ice in the vicinity of Drybones Bay	19-Jul-11	INAC
50V	Presentation by GNWT-Environment and Natural Resources on Wildlife Monitoring	19-Jul-11	GNWT-ENR
50W	Public hearing presentation speaking notes from NWTMN	19-Jul-11	NWTMN
50X	Sidon and Consolidated Goldwin Venture public hearing transcripts - April 3rd, 2007	19-Jul-11	Review Board
50Y	Sidon and Consolidated Goldwin Venture public hearing transcripts - April 4th, 2007	19-Jul-11	Review Board
50Z	Undertaking from INAC - map and land tenure information	19-Jul-11	INAC
50AA	Letter from MVEIRB to parties YKDFN TK Map on the public registries	19-Jul-11	Review Board
50BB	Letter dated April 18, 2007 from YKDFN Chiefs	19-Jul-11	YKDFN
50CC	Aboriginal Cultural Landscapes guidelines submitted on April 23, 2007	19-Jul-11	GNWT-PWNHC
50DD	Letter dated April 23, 2007, from Chief Peter Liske of the providing clarification regarding the areas of concern in the "Drybones Bay" area	19-Jul-11	YKDFN

51	Letter from YKDFN - comments on the community information session stage	19-Jul-11	YKDFN
52	Note-to-file - update on the road conditions to Dettah	19-Jul-11	Review Board
53	Updated mineral claim sheet map submitted by Alex Debogorski	20-Jul-11	Alex Debogorski
54	Note-to-file - describes the July 13, 2011 site visit to proposed project area	21-Jul-11	Review Board
55	Note-to-file - DKFN absence from community information session	21-Jul-11	Review Board
56	Email from LKDFN - LKDFN will not attend the community information session	14-Jul-11	LKDFN
57	Letter from YKDFN requesting additional documents be transferred to registry	03-Aug-11	YKDFN
58	IR response from GNWT	04-Aug-11	GNWT
59	Note-to-file -hearing date set for September 14 & 15	10-Aug-11	Review Board
60	Email from DKFN stating why they did not attend the information session	26-Jul-11	DKFN
61	Email between YKDFN and the Consultation Support Unit, AANDC regarding Crown consultation	10-Aug-11	AANDC
62	Note-to-file - pre-hearing conference date changed to Friday September 2	11-Aug-11	Review Board
63	Letter from developer stating he may not be present on September 14, 2011	11-Aug-11	Alex Debogorski
64	Summary of the community information session	12-Aug-11	Review Board
65	Note-to-file - confidential archaeological reports placed on registry	12-Aug-11	Review Board
66	Letter from the Review Board to the developer regarding GPS coordinates	12-Aug-11	Review Board
67	Letter from the developer providing approximate GPS coordinates	15-Aug-11	Alex Debogorski
68	Letter from the Review Board - financial support will be provided to out-of-town parties to travel to Yellowknife for the hearing	19-Aug-11	Review Board
69	Letter from YKDFN to the Board, dated August 15, requesting hearing be delayed	22-Aug-11	YKDFN
70	Report of EA for New Shoshoni Ventures - EA03-004	23-Aug-11	YKDFN
71	Report of EA for Snowfield Development - EA 03-006	22-Aug-11	YKDFN
72	Report of EA for Consolidated Goldwin Ventures EA0506-005	22-Aug-11	YKDFN
73	Report of EA for Sidon International Resources Corp. EA0506-006	22-Aug-11	YKDFN
74	Report of EA for Consolidated Goldwin Ventures EA03-002	22-Aug-11	YKDFN
75	Report of EA for North American General Resources EA03-003	22-Aug-11	YKDFN
76	Letter from YKDFN requesting that transcripts from YKDFN testimony at the CGV hearing on September 12 &13 be copied to the registry	22-Aug-11	YKDFN
77	Letter from the Review Board to YKDFN stating that they will not defer the Debogorski hearing	25-Aug-11	Review Board
78	Note-to-file - notification of Debogorski hearing	26-Aug-11	Review Board
79	Letter from the GNWT to the Review Board providing an addendum to IR02	29-Aug-11	GNWT
80	Note-to-file - agenda for the pre-hearing conference	29-Aug-11	Review Board
81	Letter from the Review Board to parties - Debogorski hearing has been rescheduled for October 12 & 13	01-Sep-11	Review Board

82	Note-to-file - Akaitcho IMA Implementation office has been granted party status	01-Sep-11	Review Board
83	Agenda for the October 3rd pre-hearing conference	16-Sep-11	Review Board
84	Note-to-file - updated work plan	16-Sep-11	Review Board
85	Transcripts from the Encore Renaissance public hearing - September 13	19-Sep-11	Review Board
86	UN Declaration of Indigenous Rights	14-Sep-11	NSMA
87	Letter dated July 22, 2011 from AANDC to NSMA acknowledging the information required by Canada to assess NSMAs	14-Sep-11	NSMA
88	Presentation from AT8TC - September 12 & 13 Encore Renaissance hearing	12-Sep-11	T8TC
89	Resolution from the Dene National Assembly Resolution	12-Sep-11	Dene National Assembly
90	Letter dated September 12 from YKDFN to the Review Board regarding the CGV and Debogorski Hearings	12-Sep-11	YKDFN
91	Final submission from Alex Debogorski	05-Oct-11	Alex Debogorski
92	Draft hearing agenda and deadline for final submissions	05-Oct-11	Review Board
93	Outline of the YKDFN's public hearing presentation	05-Oct-11	YKDFN
94	Final submission from the GNWT	06-Oct-11	GNWT
95	Final submission from Akaitcho Treaty 8 Tribal Corporation	07-Oct-11	AT8TC
96	Final presentation from NSMA	07-Oct-11	NSMA
97	Letter from DKFN - will not attend hearing but support the YKDFN	07-Oct-11	DKFN
98	Hearing presentation from YKDFN	10-Oct-11	YKDFN
99	Hearing presentation from AT8TC	12-Oct-11	AT8TC
100	Sign-in sheet from the October 12th public hearing	12-Oct-11	Review Board
101	Note-to-file - September 12th, Encore Renaissance hearing transcript has been replaced with an updated version	14-Oct-11	Review Board
102	Updated transcript from September 12 th Encore Renaissance hearing	12-Sep-11	Review Board
103	Undertaking from AANDC - Encore Renaissance (formerly CGV) hearing	04-Oct-11	Review Board
104	Undertaking from YKDFN - Encore Renaissance (formerly CGV) hearing	04-Oct-11	YKDFN
105	Letter from the Review Board - undertakings from the October 12th hearing	17-Oct-11	Review Board
106	Transcript for the Debogorski hearing - October 12, 2011	19-Oct-11	Review Board
107	Undertaking from AANDC - Debogorski hearing	21-Oct-11	AANDC
108	Undertaking from NPMO - Debogorski hearing	21-Oct-11	NPMO
109	Note-to-file - closure of the public record	27-Oct-11	Review Board