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### Reasons for Decision

Issued pursuant to paragraph 40(2)(c) of the Mackenzie Valley Land Use Regulations (MVLUR)

Land Use Permit Amendment Request	
File Number	MV2020W0002
Company	Jean Marie River First Nation
Project	Wood Operations
Location	Jean Marie River, NT
Activity	Wood Operation (W)
Date of Decision	January 14, 2021

These Reasons for Decision set out the Mackenzie Valley Land and Water Board's (the Board or MVLWB) regulatory process and decisions on an Amendment Request made by Jean Marie River First Nation (JMRFN or Permittee) to the Board on September 23, 2020 for Land Use Permit (Permit) MV2020W0002.

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#### 1.0 Summary of Amendment Request

On September 23, 2020, JMRFN submitted a request (Amendment Request) to amend Permit MV2020W0002. Details contained in the Amendment Request<sup>1</sup> suggest that JMRFN considers approximately 18 conditions in the Permit as problematic for its Project.

JMRFN request states that "The LUP in its current form makes it both physically and economically impossible for JMRFN to log its Timber Cutting Licence (issued by Deh Cho Region of ENR to harvest 5000 m<sup>3</sup> of saw logs), and to achieve any economic development from our sawmill." JMRFN is of the opinion that several of the conditions contained in its Permit, which it referenced in its Amendment Request, are inconsistent with its Timber Cutting Licence (TCL), pending Annual Operating Plan (AOP), and relevant requirements under the NWT Forestry Management Regulations.

#### 2.0 Outline of Regulatory Process

The Amendment Request, which was deemed complete on October 2, 2020, along with a copy of the draft amended permit developed by Board staff, were distributed to the Deh Cho Distribution List for public review via. MVLWB's Online Review System (ORS). As part of the public review, Board staff requested Parties' comments and recommendations to assist with the Board's preliminary screening exemption determination.

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<sup>1</sup> [MV2020W0002 – JMRFN – Amendment Request – Sept 22, 2020.](#)

Prior to the due date for comments, October 23, 2020, submissions were received from the following Parties: GNWT-Lands (Deh Cho Region), GNWT-Lands, GNWT-ENR and GNWT-Prince of Wales Northern Heritage Centre (PWNHC).<sup>2</sup> On November 12, 2020, JMRFN responded to Parties' comments and recommendations.<sup>3</sup>

On November 23, 2020, the Board received a late submission<sup>4</sup> from GNWT-Lands (South Slave Region), which the Board rejected on November 26, 2020. On the same date, the Board directed staff to issue an Information Request (IR) to the GNWT-ENR and Lands; the IR<sup>5</sup> was issued on December 1, 2020.

On December 10, 2020, GNWT-ENR and Lands provided a joint response to MVLWB's IR. On December 14, 2020, Board staff invited the public to comment on the GNWT's joint IR response.<sup>6</sup> On December 18, 2020, JMRFN commented<sup>7</sup> on GNWT's IR response, and on January 14, 2020, the file was presented to the Board for decision.

### **3.0 Legislative Requirements**

In conducting its regulatory process for the Amendment Request as described above, the Board has ensured that all applicable legislative requirements have been satisfied, as required by section 62 of the MVRMA and as outlined in the subsections below.

#### **3.1 Consultation and Engagement**

In exercising its authority under the MVRMA, the Board must consider the importance of conservation to the well-being and way of life of Indigenous peoples of Canada, as per subsection 60.1(a) of the MVRMA, specifically those to whom section 35 of the *Constitution Act, 1982*, applies and who use an area of the Mackenzie Valley. Accordingly, the Board works with applicants, affected parties (including Indigenous governments and organizations), and other parties (such as other boards and regulators) to ensure that potential impacts of proposed projects are understood and carefully considered before decisions are made with respect to the issuance of permits.

The Board's requirements for engagement are set out in the *Engagement and Consultation Policy* (the Policy).<sup>8</sup> The Policy was developed to ensure that the Board's obligations for achieving meaningful consultation (as set out by land claims and applicable legislation) with all affected parties, including Indigenous groups in the Mackenzie Valley, are met and engagement and consultation results clearly articulated.

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<sup>2</sup> See Review Comment Summary Table – Application ([http://lwbors.yk.com/LWB\\_IMS/ReviewComment.aspx?appid=13075](http://lwbors.yk.com/LWB_IMS/ReviewComment.aspx?appid=13075)), dated October 23, 2020.

<sup>3</sup> See Review Comment Summary Table – Application ([http://lwbors.yk.com/LWB\\_IMS/ReviewComment.aspx?appid=13075](http://lwbors.yk.com/LWB_IMS/ReviewComment.aspx?appid=13075)), dated October 23, 2020.

<sup>4</sup> [MV2020W0002 - JMRFN Amendment Application -South Slave Region Comments](#)

<sup>5</sup> [MV2020W0002- JMRFN - Amendment Request - MVLWB Amendment Request](#)

<sup>6</sup> [MV2020W0002 - JMRFN Amendment Request - GNWT Response to IR](#)

<sup>7</sup> [MV2020W0002 -JMRFN Comments on GNWT IR Response](#)

<sup>8</sup> See [www.mvlwb.com](http://www.mvlwb.com) → Resources → Policies and Guidelines: [MVLWB Engagement and Consultation Policy](#) (June 1, 2013).

### 3.1.1 Engagement and Public Notice

JMRFN's engagement efforts are detailed in the Engagement Plan (Version 1) and updated Record,<sup>9</sup> submitted with the Amendment Request. The Board had approved the Engagement Plan (Version 1) when the Permit was originally issued. The updated engagement record did not require approval from the Board.

The Amendment Request was posted to the Board's Public Registry and distributed through the ORS. As the Project is located in the Dehcho Region; the appropriate organizational reviewers, governments, First Nations, and Indigenous organizations were included in the Distribution List.<sup>10</sup> The Distribution List was used throughout this regulatory process to circulate submissions, information, and updates relevant to the proceeding; the List was periodically updated, and (when requested) individuals with specific interests in the Project were added.

The Board is satisfied that notice of and access to copies of the Amendment Request was given to fulfill sections 63 and 64 of the MVRMA, and that a reasonable amount of time was given for participation in this regulatory process by making submissions to the Board.

## **4.0 Preliminary Screening**

On January 14, 2020, the Board met and confirmed the activities associated with the Amendment Request were exempt from preliminary screening based on Part 1, Schedule 1, section 2.1 of the Exemption List Regulations to the MVRMA.<sup>11</sup> Consequently, no further preliminary screening was conducted.

## **5.0 Decision**

In making its decision and preparing these Reasons for Decision, the Board has reviewed and considered:

1. The evidence and submissions received by the Board from JMRFN;
2. The comments and recommendations, evidence, and submissions received by the Board from Parties during the regulatory process; and
3. The Staff Report prepared for the Board.

Having due regard to the facts, circumstances, and the merits of the submissions made to it, and to the purpose, scope, and intent of the MVRMA, the Board has determined that an Amendment to Permit MV2020W0002 should be issued, subject to its scope, defined terms, conditions, and term, which has been developed to address the Board's statutory responsibilities and the concerns that arose during the regulatory process. The Reasons for Decision, set out below, focus on the major concerns and issues raised by Parties, including those that were the subject of substantive argument submitted by one or more Parties.

Only the portions of the Permit requested for amendment are discussed in detail in these Reasons for Decision.

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<sup>9</sup> [MV2020W0002 Amendment Request, submitted to the MVLWB on September 23, 2020.](#)

<sup>10</sup> [Distribution List, October 2, 2020.](#)

<sup>11</sup> See MVLWB Decision Letter – Preliminary Screening Exemption Confirmation, January 14, 2021.

**Part C: Conditions Applying to All Activities**

<b>4 - PARALLEL WATERCOURSE SETBACK</b>	
Existing Condition	The Permittee shall locate all lines, trails, and right-of-ways to be constructed parallel to any Watercourse, a minimum of 100 metres from the Ordinary High-Water Mark, except at crossings.
Amendment Request	<p>The Permittee requested that this condition be amended to reflect the relevant condition in Digaa Enterprises Ltd.'s (Digaa) Permit MV2015W0018 as the definition of Watercourse is very generic and includes swamps and small creeks, commonly used in logging boundaries. Specifically, the Permittee requested that Condition #4 be replaced with the following Condition:</p> <p><i>The Permittee shall locate all lines, trails, and right-of-ways to be constructed parallel to any Watercourse a minimum of:</i></p> <p><i>a) Lakes larger than 16 ha: 100 m buffer; b) Lakes 1 ha to 16 ha area: 30 m buffer; c) Ponds less than 1 ha in area: 10 m buffer; d) Large permanent rivers: 100 m buffer; e) Medium permanent rivers: 60 m; and f) Small permanent rivers and streams: 10 m buffer.</i></p>
GNWT ENR & Lands' (GNW) Response; Permittee' Comments	<p><b>GNWT</b> stated that to ensure consistency with ENR's Timber Cutting Licence (TCL) 005332 and the Proponent's Future Annual Operating Plan (AOP), it is recommended that the condition be changed to:</p> <p><i>The permittee shall not remove vegetation or operate heavy equipment within 100 m of the ordinary high watermark of any watercourse outside of harvest block boundaries. Inside the harvest boundary the Permittee shall locate all lines, trails, and rights-of-way to be constructed parallel to any watercourse a minimum of:</i></p> <p><i>a) Lakes larger than 16 ha; 100 buffer; b) Lakes 1 ha to 16 ha area: 30 m buffer. c) Ponds less than 1ha in area: 10 m buffer; d) Large permanent rivers: 100 m buffer. e) Medium permanent rivers: 60 m buffer; f) Small permanent rivers and streams: 10 m buffer.</i></p> <p><b>The Permittee</b> stated that Condition #4 (PARALLEL WATERCOURSE SETBACK) is not acceptable in its current form as it contradicts Condition #34 (EQUIPMENT: WATERCOURSE BUFFER) and will presents a challenge for it during the establishment of roads outside of cut-block boundaries.</p>
Board Decision	<p>The Board understands that while the GNWT's suggested changes may help to minimize jurisdictional challenges within cut-block boundaries, it does not address this issue outside of cut-block boundaries. To ensure consistency with Condition #34 and minimize potential issues for the proponent outside of cut-block boundaries, the Board has decided to amend the condition to as follows:</p> <p><i>The Permittee shall locate all lines, trails, and right-of-ways to be constructed parallel to any Watercourse a minimum of:</i></p> <p><i>a) Lakes larger than 16 ha: 100 m buffer;</i>  <i>b) Lakes 1 ha to 16 ha area: 30 m buffer;</i>  <i>c) Ponds less than 1 ha in area: 10 m buffer;</i>  <i>d) Large permanent rivers: 100 m buffer;</i>  <i>e) Medium permanent rivers: 60 m; and</i>  <i>f) Small permanent rivers and streams: 10 m buffer.</i></p>

<b>6 - MARK AREA 7 - CORNER POSTS</b>	
Existing Conditions	6 - Prior to the commencement of the land-use operation, the Permittee shall mark each corner of the land-use area. 7 - The Permittee shall maintain the corner markings until the area is reclaimed.
Amendment Request	The Permittee requested removal of Conditions #6 and #7 as it believes Condition #3 of the permit adequately addresses the same requirements. Additionally, the Permittee stated that these Conditions were not included in the permits for Paterson Sawmill Ltd. (Paterson) (MV2014W0017) and Digaa Enterprises Ltd. (Digaa). (MV2015W0018).
GNWT's (ENR & Lands Jointly) Response; Permittee's Comments	<b>GNWT</b> suggested that Conditions #6 and #7 be removed as they are generally reserved for a land use permit with multiple users at one site. <b>The Permittee</b> indicated that it agrees with GNWT suggestion
Board Decision	The Board concurs with the suggestions from GNWT and the Permittee. Accordingly, the Board decided to remove conditions #6 and #7 from the Permit as they are more appropriately applied to different types of undertaking occurring within the same project area, such as quarry operations.
<b>15 - FIRE-FIGHTING EQUIPMENT (Amended Permit – Condition #13)</b>	
Condition Text	The Permittee shall maintain fire-fighting equipment at the site.
Amendment Request	The Permittee requested that this condition be amended to reflect GNWT-ENR's fire season, similar to Digaa's Permit MV2015W0018, which references GNWT's <i>Forest Fire Prevention and Suppression Guidelines for Industrial Activities</i> .
Parties' Comments & Proponent's Response	<b>GNWT-ENR</b> stated the SOP Manual and the TCL includes a fire control plan in accordance with the GNWT's <i>Forest Fire Prevention and Suppression Guidelines for Industrial Activities</i> (Guidelines). GNWT-ENR advises that the Permittee should continue to maintain fire-fighting equipment at the Project site in accordance with the Guidelines. <b>GNWT-Lands</b> stated that the Department of Lands is different from the Department of ENR as they have different mandates; the Lands inspector recommends that condition #15 be retained within the Permit. <b>The Permittee</b> stated that this Condition #15 should be amended to recognize the fire season.
Board Decision	Board has decided to keep Condition #15 unchanged as the Board believes the condition is effective and functional in its current form. Further, the Board's standard approved permit conditions typically do not reference external legislations or guidelines due to potential enforceability concerns.
<b>16 - DOGLEG APPROACHES (Amended Permit – Condition #14)</b>	
Existing Condition	The Permittee shall Dogleg lines, trails and right-of-ways that approach Watercourses or public roads.
Amendment Request	The Permittee requested that condition #16 (DOGLEG APPROACHES) be changed to the following to allow for consistency with the Workers' Safety & Compensation Commission (WSCC) Legislations: <i>The Permittee shall Dogleg new lines, trails, and right-of-ways that approach Watercourses or public roads unless otherwise authorized in writing by an Inspector.</i>
Parties' Comments & Proponent's Response	<b>GNWT-Lands</b> stated that the Department of Lands is different from the Department of ENR as they have different mandates; the GNWT-Lands inspector recommended that this Condition be retained. <b>The Permittee</b> stated that Condition #16 should be amended to include the qualifier "new" as a Permittee cannot dogleg an existing access route or cutline, and the Condition should also include "unless otherwise authorized in writing by an Inspector" to enable the condition to be consistent with WSCC legislation.

Board Decision	<p>The Board decided to amend Condition # 16 to include the word “new”, thus ensuring that the Permittee is not obliged to dogleg existing lines, trails and right-of-ways that approach Watercourses or public roads. The amended condition shall read as follows:</p> <p><i>The Permittee shall Dogleg new lines, trails and right-of-ways that approach Watercourses or public roads.</i></p>
<b>34 - EQUIPMENT: WATERCOURSE BUFFER (Amended Permit – Condition #32)</b>	
Existing Condition	The Permittee shall not remove vegetation or operate heavy equipment within 100 m of the Ordinary High-Water Mark of any Watercourse.
Amendment Request	The Permittee requested that this Condition be deleted or amended to include GNWT water classification system management practices and Digaa’s Condition #5 of Permit MV2015W0018 or default to the AOP.
GNWT’s (ENR & Lands jointly) Response; Permittee’ Comments	<p><b>GNWT</b> suggested the following changes to the Condition #34 to ensure consistency with the Condition #4 and ENR’s Timber Cutting Licence 005332:</p> <p>The Permittee shall setback the removal of vegetation and operation of heavy equipment from any Watercourse as follows:</p> <ul style="list-style-type: none"> <li>a) Lakes larger than 16 ha; 100 m buffer.</li> <li>b) Lakes 1 ha to 16 ha area: 30 m buffer.</li> <li>c) Ponds less than 1 ha in area: 10 m buffer.</li> <li>d) Large permanent rivers: 100 m buffer.</li> <li>e) Medium permanent rivers: 60 m buffer.</li> <li>f) Small permanent rivers and streams: 10 m buffer.</li> </ul> <p><b>The Permittee</b> indicated that it agrees with GNWT’s suggested changes.</p>
Board Decision	<p>The Board concurs with the GNWT’s and the Permittee’s suggested changes as these changes will minimized conflicting requirements contained in various regulatory instruments issued to the operations. Accordingly, the Board decided to amend Condition #34 to read as follows:</p> <p><i>The Permittee shall set-back the removal of vegetation and operation of heavy equipment from any Watercourse as follows:</i></p> <ul style="list-style-type: none"> <li><i>a) Lakes larger than 16 ha: 100 m buffer;</i></li> <li><i>b) Lakes 1 ha to 16 ha area: 30 m buffer;</i></li> <li><i>c) Ponds less than 1 ha in area: 10 m buffer;</i></li> <li><i>d) Large permanent rivers: 100 m buffer;</i></li> <li><i>e) Medium permanent rivers: 60 m buffer; and</i></li> <li><i>f) Small permanent rivers and streams: 10 m buffer.</i></li> </ul>
<b>47 - ARCHAEOLOGICAL OVERVIEW</b>	
<b>48 - AIA (ARCHAEOLOGICAL IMPACT ASSESSMENT)</b>	
Existing Conditions	<p>47 - At least 60 days prior to any new land disturbance, including new drill sites, the Permittee shall conduct an Archaeological Overview to identify areas of high and low potential for archaeological and burial sites and shall submit a summary report to the Board and the Prince of Wales Northern Heritage Centre.</p> <p>48 - Prior to any new land disturbance, the Permittee shall conduct an Archaeological Impact Assessment of the sites where disturbance is planned and shall submit a summary report to the Board and the Prince of Wales Northern Heritage Centre.</p>

Amendment Request	The Permittee requested complete removal of these conditions as it believes they are unjustified, economically unfeasible, and were not included in past permits issued by the Board to the same Permittee. The Permittee stated that hunting, historical travels, and past work conducted within the vicinity of the Project area under expired permits did not identify any archaeological features.
Parties' Comments & Proponent's Response	<b>PWNHC</b> stated as no archaeological studies have been conducted within the proposed Project area, it recommends that Condition 47, ARCHAEOLOGICAL OVERVIEW, be retained while Condition 48, ARCHAEOLOGICAL IMPACT ASSESSMENT (AIA) be replaced with the standard AIA - HIGH POTENTIAL CONDITION.  <b>The Permittee</b> responded that these Conditions should be deleted as they exist in two landscape-level FMA and not in any small-scale Woods Operation. The Permittee stated that the cost adhering to these conditions could be very onerous for it
Board Decision	The Board decided to remove Conditions #47 and #48 from the Permit for the following reasons: <ul style="list-style-type: none"> <li>• These conditions have been generally excluded from permits with similar type and scope of operations. These conditions have been applied to more large-scale operations because of the financial cost associated with adhering to these conditions; and</li> <li>• The existing Condition #44 (ARCHAEOLOGICAL BUFFER) could address same intent given the scope of the undertaking.</li> </ul> <p>Consequentially, the Board has removed the following associated definitions from Part B: Defined Terms of the Permit: "Archaeological Impact Assessment" and "Archaeological Overview".</p>
<b>52 - SECONDARY CONTAINMENT – REFUELLING (Amended Permit – Condition #48)</b>	
Existing Condition	The Permittee shall set up all refueling points with Secondary Containment.
Amendment Request	The Permittee requested that Condition #52 be removed from the Permit or be amended to be consistent with its Spill Contingency Plan as there are no on-site stationary fuel supplies and no secondary containment.
Parties' Comments & Proponent's Response	<b>GNWT-ENR</b> stated that this Condition should be retained in the Permit. <b>GNWT-Lands</b> stated that the Department of Lands is different from the Department of ENR as they have different mandates; the Lands Inspector recommends that this Condition be retained within the Permit. <b>The Permittee</b> stated that this condition is unclear and should be amended to be consistent with the Spill Contingency Plan.
Board Decision	The Board has decided leave Condition #52 unchanged as the Board believes it is flexible enough to address refueling activities for both stationary and/or mobile fuel supply and/or storage station/units.
<b>65 - CLEARING SENSITIVE AREA (Amended Permit – Condition #61)</b>	
Existing Conditions	The Permittee shall clear by hand all trees and brush a minimum distance of 100 metres from the top edge of all stream banks and top edge of slopes.
Amendment Request	The Permittee requested complete removal of this Condition
GNWT's (ENR & Lands Jointly) Response; Permittee's Comments	<b>GNWT</b> recommends that the minimum distance in the condition be change from 100 metres to 10 metres or to as consistent with the SOP Manual and the AOP, which relies on waterbody size criteria to determine protective buffer <b>The Permittee</b> indicated that it agrees that the minimum distance should change from 100 metres to 10 metres.
Board Decision	The Board decided to amend Condition #65 to ensure it is consistent with other regulatory requirements issued to the operations. The amended form of condition #65 shall read as follows:

	<p><i>The Permittee shall clear by hand all trees and brush a minimum distance of 10 metres from the top edge of all stream banks and top edge of slopes.</i></p> <p>The intent of this condition is prevented erosion. Ten metres is suggested as a general distance but can be modified for site-specific considerations.</p>
<b>66 - PRE-CONSTRUCTION PROFILES (Amended Permit – Condition #62)</b>	
Existing Condition	All areas affected by construction or removal activities shall be stabilized and landscaped to their pre-construction profiles, unless otherwise authorized in writing by an Inspector.
Amendment Request	The Permittee requested that this Condition be removed from the Permit as it believes this condition is not in other wood operation permits. Additionally, the Permittee stated that Condition #66, which is inconsistent with the AOP and SOP, could create an occupational hazard for workers.
Parties' Comments & Proponent's Response	<p><b>GNWT-ENR</b> recommended that Condition # 66 be amended as follows: <i>Prior to the end of the land-use operation, the Permittee shall complete all clean-up and restoration of lands used outside of the harvest- block boundaries.</i></p> <p><b>GNWT-Lands</b> stated that the Department of Lands is different from the Department of ENR as they have different mandates; the Lands Inspector recommended that this condition be retained within the Permit.</p> <p><b>The Permittee</b> stated that this condition needs to be consistent with the AOP and Condition 75 - Engagement Plan. The Permittee believes that the Permit conditions must not conflict with the Engagement Plan and directions given in the AOP.</p>
Board Decision	The Board has decided to keep Condition #66 unchanged to ensure relevant restoration work is carried out after any construction activities are undertaken inside and outside cut-blocks boundaries.
<b>67 - FINAL CLEANUP AND RESTORATION (Amended Permit – Condition #63)</b>	
Existing Condition	Prior to the end of the land-use operation, the Permittee shall complete all clean-up and restoration of the lands used.
Amendment Request	The Permittee requested this condition be made consistent with GNWT-ENR's Mandates.
GNWT's (ENR & Lands jointly) Response; Permittee' Comments	<p><b>GNWT</b> suggested that this condition be kept unchanged to ensure restoration of impacted areas within and outside of cut-block boundaries.</p> <p><b>The Permittee</b> indicated that it agrees with GNWT's suggestion</p>
Board Analysis	The Board decided to keep Condition #67 unchanged to ensure that restoration and reclamation activities occur inside and outside of cut-block boundaries
<b>68 - NATURAL VEGETATION (Amended Permit – Condition #64)</b>	
Existing Condition	Prior to the end of the land-use operation, the Permittee shall prepare the site in such a manner as to facilitate natural revegetation.
Amendment Request	The Permittee requested amendment of this Condition to make it consistent with GNWT-ENR's Mandates.
GNWT (ENR & Lands jointly) Response; Permittee' Comments	<p><b>GNWT</b> suggested that this condition be kept unchanged because its intended is to ensure that all areas cleared to mineral soil are reclaimed where natural vegetation of the disturb area is promoted</p> <p><b>The Permittee</b> stated that it agrees with GNWT's suggestion.</p>

Board Decision	The Board decided to leave this condition unchanged to ensure that the entire project site is left in a manner that is supportive of natural revegetation
<b>69 - ACTIVE VEGETATION (Amended Permit – Condition #65)</b>	
Existing Condition	Prior to the end of the land-use operation, the Permittee shall initiate active revegetation of disturbed areas.
Amendment Request	The Permittee requested amendment of this Condition to make it consistent with ENR's Mandates.
GNWT's (ENR & Lands Jointly) Response; Permittee' Comments	GNWT recommended that this condition be removed from the Permit as revegetation is covered under Conditions #67 and #68. <b>The Permittee</b> indicated that it agrees with GNWT's suggested changes.
Board Decision	The Board decided to keep Condition #68 unchanged as the condition addresses the need for the Permittee' carrying out active revegetation as may be necessary.
<b>70 - PROGRESSIVE RECLAMATION (Amended Permit – Condition #66)</b>	
Existing Condition	The Permittee shall carry out Progressive Reclamation of disturbed areas as soon as it is practical to do so.
Amendment Request	The Permittee requested an amendment of this condition to make it consistent with ENR's Mandates.
GNWT's (ENR & Lands jointly) Response; Permittee' Comments	<b>GNWT</b> suggested that this condition be kept unchanged in the permit as it is intended to ensure complete reclamation as the operation progresses. <b>The Permittee</b> stated that it disagrees with retention of this condition because the Engagement Plan and AOP include deactivation procedures.
Board Decision	This Board decided to keep this condition unchanged to ensure that progressive reclamation activities occur inside and out-side of cut-block boundaries.
<b>71 - TRAILS RESTORATION (Amended Permit – Condition #67)</b>	
Existing Condition	Prior to the end of the land-use operation, the Permittee shall restore any trails impacted by the land-use operation by removing fallen trees and any other obstructions from the trails.
Amendment Request	The Permittee requested an amendment to this condition to make it consistent with ENR's Mandates.
GNWT ENR & Lands' Response; Permittee' Comments	<b>GNWT</b> suggested that this condition be amended to ensure trails used by trappers and for recreational purposes are not impacted by the operation. <b>The Permittee</b> did not comment on GNWT's suggestion.
Board Decision	The Board decided to this condition to address the GNWT's concerns. The amended condition shall read as follows:  <i>The Permittee shall immediately restore any trails impacted by the land-use operation by removing fallen trees and any other obstructions from the trails</i>

Security (Condition 49 of the Permit)

In its Amendment Request, JMRFN requested that the security required under the original permit issued to the Project, \$25,128.13, be waived for a number of reasons including historical performance, project scope, low probability of the project' activities resulting in environmental/significant environmental damage, security requirements in other regulatory instruments, and precedence of waiving security for similar types and magnitude of activities.

Sections 31 and 32 of the Mackenzie Valley Land Use Regulations (MVLUR) provide the legislative mandate to the Board to require security for any project for the purpose of supporting land use abandonment activities under authorizations issued. The Board, in deciding if and what amount of security a Permittee may post for a project, may consider several factors, such as, the Board’s legislative requirements to set security, the permittee’s financial disposition, permittee’s historical performance, precedence for similar undertaking, security requirements under other regulatory instruments, and input from commenting stakeholders.

Following a comprehensive review of the evidence provided in support of the Amendment Request while recognizing the above-referenced factors, the Board decided to reduce the reclamation security for the Project from \$25,128.13 to \$15,000 (rounded down) to reflect Board staff’s revised estimate. The Board opted against lower security estimates provided by the Permittee and the GNWT, \$10,207.50 and \$9,137.50, respectively, for the following reasons: The Permittee’s estimate did not account for regulated/hazardous materials and hydrocarbons present at the project site while the GNWT’s estimate did not sufficiently account for liabilities, other than reforestation and revegetation, within cut-block boundaries and/or liabilities out-side of cut-block boundaries.

The reduced security amount acknowledges and considers the historical performance of the Permittee, equipment simultaneously in operation at the Project site, stakeholders concerns, overall area impacted by the Project, and potential reclamation liabilities associated with the Project. The Board understands that there might be the perception that past projects of this nature were not required to post reclamation security; however, requirement to post has been and continues to evolve as a proactive measure towards ensuring financial resources are set aside for “potential” restoration activities. The Board is confident that the reduced security amount will optimize conditions required for the Permittee to undertake the Project while minimizing relevant potential environmental risk.

Table 2 below provides a comparison of the estimates generated for the Project by stakeholders during the review processes for the original Permit and/or amendment application(s). The table also shows a breakdown of the various line items/assumptions used in generating the same estimates. It should be noted that the differences in the estimates mainly stem from assumptions made with respect to the pieces of equipment simultaneously in use at the Project site, and quantities of hazardous materials and hydrocarbons stored onsite.

**Table 2: Original and/or Revised Security Estimates Prepared for the Project by Various Parties**

Line Item	Permittee (Original)	MVLWB Original	MVLWB Revised	GNWT Unadjusted	GNWT Adjusted	Notes
Camp C1	\$0	\$0	\$0	\$0	\$0	No changes included in the staff’s revised estimate
Regulated / Hazardous Materials R1	\$0	\$3,500	\$2,000	\$2,500	\$2,500	Staff revised estimate included \$1,500 reduction in the value for potential quantities of hazardous waste, compared to staff original estimate.

Hydrocarbon Storage / Transfer H1	0	\$928.13	928.13	\$0	\$0	Same value included in Staff original and revised estimate for the line item
Land Disturbance L1	\$10,200	\$10,200	\$10,200	\$10,200	\$2,500	Same value included in Staff original and revised estimate for this line item
Equipment E1	\$4750	\$10,500	\$4,750	\$5,750	\$5,750	Staff revised estimate accounted for 4 instead of 7 pieces of heavy equipment.
<b>Total</b>	<b>\$10,207.50</b>	<b>\$25,128.13</b>	<b>\$15,196.41</b>	<b>\$15,682.50</b>	<b>\$9,137.50</b>	Staff revised estimate included slightly different multipliers.

\*The numbers in these columns do not directly add up because of multipliers (for site access, performance, and environmental risks) in the Board's security template

Based on the reasons, as stated above, the Board has determined that the total security deposit amount for the Project shall be **\$15,000**. Complete details on the factors that the Board considered in determining this amount can be found in the relevant staff report.

## 6.0 Conclusion

Land Use Permit MV2020W0002 Amendment No. 1 contains provisions that the Board deems necessary to ensure and monitor compliance with the MVRMA and the Regulations made thereunder, and to provide appropriate safeguards in respect of Jean Marie River First Nation's use of the land affected by the Permit.

SIGNATURE

Mackenzie Valley Land and Water Board

\_\_\_\_\_  
Mavis Cli-Michaud, Chair

January 14, 2020

\_\_\_\_\_  
Date