



Sahtu Land and Water Board

Staff Report

Division: Land Program	Report No.: 2
Date Prepared: December 6, 2021	File No.: S20E-005
Meeting Date: December 7, 2021	
Subject: Amend Permit conditions and Approve Management Plans for the Prohibition Creek All-season Access Road Project in the Tulit'a District.	

1. Purpose/Report Summary

The purpose of this Report is to present to the Sahtu Land and Water Board for consideration:

- a) The Land Use Permit Amendment request submitted by GNWT– Department of Infrastructure (GNWT-INF)- **Attachment 1**
- b) The PCAR Wildlife Management and Monitoring Plan version 1.0
- c) The PCAR Permafrost Protection Plan version 1.0
- d) The PCAR Erosion and Sediment Control Plan version 1.0

2. Background

- **October 6-28, 2021** – Discussions between SLWB staff and GNWT-INF for requirements of Permit Amendment required prior to commencement of construction and future Licence amendment for work required at Christina Creek – **Attachment 2**
- **November 1, 2021** – SLWB received the request for Amendment of two conditions in the Land Use Permit and three management plans for Board approval prior to the commencement of construction.
- **November 3, 2021** - review packages were sent out electronically to members of the Tulit'a District Distribution List using the Online Review System (ORS) with a request for reviewer comments by November 18, 2021.
- **November 16, 2021** – Norman Wells RRC requested an extension for submission of comments and requested a meeting with GNWT-INF.
- **November 19, 2021** – SLWB received additional documents for information as required by Part C, Condition 75 of the Permit.
- **November 30, 2021** – Reviewer comments received.
- **December 3, 2021**– Proponent response deadline.
- **December 7, 2021** – Board meeting.

3. Discussion

3.1 Amendment Application Overview

Government of the Northwest Territories – Department of Infrastructure (GNWT-INF) (the Applicant) has submitted a request to amend Land Use Permit (Permit) S20E-005. The Applicant is requesting to amend Conditions 31 and 32 of the Permit to meet regulatory compliance for the PCAR construction work within 100 metres of the Ordinary High Water Mark (OHWM) of any watercourse as described and approved in the original Application, and detailed in the Design Drawings submitted with this Amendment Application.

Currently, these two conditions do not permit any vegetation removal, operation of heavy equipment or excavation of land within 100 metres of the OHWM of any watercourse. The Permittee's application Project Description Report contemplated construction work within the 100 m zone to match new road embankment profile at the crossings.

GNWT has identified and provided evidence to the Board that the proposed activities near watercourses do not require a water licence except at Christina Creek. The proposed work will require a change to the scope of the Licence S20L8-002 to permit watercourse training. GNWT-INF aren't quite ready to engage on the WL amendment needed for Christina Creek and will submit the Licence amendment application in the new year.

The GNWT-INF has indicated that the amended conditions will not affect other management plans required by the Permit (e.g., spill contingency plan, waste management plan, engagement plan).

3.2. Management Plans

GNWT-INF submitted the following Management Plans required for Board approval in accordance with Part C, Condition 74 of the Permit:

- **Wildlife Management and Monitoring Plan¹** version 1.0 as required per section 95 of the Wildlife Act.
- **PCAR Erosion and Sediment Control Plan²** version 1.0
- **PCAR Permafrost Protection Plan³** version 1.0.

GNWT-INF submitted the following additional studies as required by Part C, Condition 75 of the Permit:

- PCAR Thermal Assessment
- PCAR Archaeological Impact Assessment
- PCAR Fish and Fish Habitat Assessment
- PCAR Hydrotechnical Assessment
- PCAR Final Engineering Design
- PCAR Topographic Survey

¹ See slwb.com registry for S20E-005 – [PCAR Wildlife Management and Monitoring Plan version 1.0](#) – November 1, 2021

² See slwb.com registry for S20E-005 – [PCAR Erosion and Sediment Control Plan version 1.0](#) – November 1, 2021

³ See slwb.com registry for S20E-005 – [PCAR Permafrost Protection Plan version 1.0](#) November 1, 2021

3.3 Land Use Plan Conformity

The Sahtu Land Use Plan (SLUP) was approved in August 2013, making the requirement for conformity with the SLUP a legislative requirement. A conformity determination, as set out in Section 47 of the MVRMA, was completed for the initial application. The Applicant provided updated information on how the amendment meets conformity requirements of the Sahtu Land Use Plan. The Board did not receive any reviewer comments regarding conformity to the SLUP for this review and Board staff confirm that the amendment conforms with the SLUP.

Board Decision: The SLWB has reviewed the amendment application as per Section 46 of the MVRMA and determined the activity remains in accordance with the conformity requirements of the SLUP.

3.4 Engagement

Community Engagement

The requirements for engagement for the amendment are incorporated in the public review through the ORS. GNWT-INF held pre-application meetings with Board staff to discuss the requirements and process. As per the approved Engagement Plan, GNWT-INF provided notification to the stakeholders originally engaged with on this Project. During the public review period the Norman Wells Renewable Resource Council (NWRRC) had some questions for the Applicant. A meeting was arranged and held on November 29, 2021, and the Board was informed that all questions had been addressed to the satisfaction of the NWRRC.

3.5 Preliminary Screening Exemption

Under the Preliminary Screening Requirements of section 124(1) of the *Mackenzie Valley Resource Management Act* (MVRMA), the Board must conduct a preliminary screening of any proposed development prior to the issuance of a Licence, Permit, or Authorization, unless it is exempt from Part 5 of the MVRMA.

The Applicant requested an exemption from preliminary screening because the potential impacts and mitigation measures related to work in and within 100 m of watercourses were previously described in the Project Description Report and screened and approved by the Board. Mitigation commitments included the submission of an Erosion and Sediment Control Plan and a Permafrost Protection Plan, for Board approval, within 60 days prior to commencement of construction.

Board staff reviewed the preliminary screening report and have confirmed that the Project contemplated and applied for work to occur within 100 m of watercourses.

BOARD DECISION: The requested amendment to permit conditions does not affect the previous preliminary screening decision. The Board approves the **Exemption** from Preliminary Environmental Screening in accordance with the Exemptions List Regulations.

4. Public Review

Of the 22 organizations to which the application was distributed, sixteen (16) of which are represented within the Sahtu Settlement Area, review comments were received from:

- GNWT – Lands – Sahtu Region (**GNWT-Lands**), and
- Environment and Climate Change Canada (**ECCC**).

Attachment 3 includes the Review Comment Table and responses submitted from the Applicant as well as revised Management Plans based on comments received. The revised plans submitted were:

- **Wildlife Management and Monitoring Plan**⁴ version 2.0
- **PCAR Erosion and Sediment Control Plan**⁵ version 2.0

4.1 Issues Raised During the Review

The main issues raised during the review raised by GNWT-Lands Sahtu were:

- i. Construction timing for any watercourse diversions to avoid any permanent damage to habitat and water quality by undertaking work when stream flows are at their lowest. The Applicant noted that this is covered by Condition 19.
- ii. Ensure travel over saturated soils only occurs during the winter months to minimize rutting. The Applicant noted that this is covered by Conditions 21-24.
- iii. Ensure designs and their implementation are following the best management practice for ESCP and PPP. If they do not, provide justification on how this installation will not work without adhering to BMPs. The Applicant has noted this recommendation.

The main issues raised during the review raised by ECCC were:

- i. Disposal and stockpiling of materials be conducted and located in such a manner to prevent any materials or associated runoff from entering surface waters, with periodic verification of stability and mitigation measures planned in the event sediment migration is observed (see ESCP version 2.0 - Material stockpiles will be kept a minimum of 30 m from a watercourse or waterbody with the appropriate erosion control mitigation in place. Section 3 of the plan (Inspection and Response) identifies planned methods and frequency of inspection and response.
- ii. Describe how TSS/turbidity levels would be monitored during in-stream works and provide mitigation measures to manage potential parameter increases. The Applicant responded that during winter construction, watercourses along the PCAR are expected to be frozen to the bottom with no flowing water and therefore no sediment monitoring would be conducted. If construction occurs during flowing water conditions in potentially fish-bearing watercourses, turbidity monitoring is proposed as a method of sediment monitoring to be conducted only during the removal of sediment control structures when pulses of sediment release are most likely to occur. At other times, sediment control measures are expected to be effective, and visual monitoring will be used to monitor performance. If sediment is seen to be released while sediment control is in place, work would be halted until sediment mitigation is corrected. Version 2.0 of the ESCP describes how turbidity would be monitored. No total suspended solids (TSS) monitoring is proposed.

⁴ See slwb.com registry for S20E-005 – [PCAR Wildlife Management and Monitoring Plan version 2.0](#) – December 3, 2021

⁵ See slwb.com registry for S20E-005 – [PCAR Erosion and Sediment Control Plan version 2.0](#) – December 3, 2021

- iii. Add Lesser Yellowlegs to Table 6-1 and change Transverse Lady Beetle to federal SARA status to Special Concern. The WMMP version 2.0 was submitted with these changes.
- iv. Add ECCC as a reporting agency to the Wildlife Incidents and Wildlife Mortalities forms, for wildlife species falling under ECCC's mandate and update the contact information. The WMMP version 2.0 was submitted with these changes.
- v. Correct the reference for raptor nests being protected under the Migratory Birds Convention Act (MBCA). The WMMP version 2.0 was submitted with these changes.
- vi. Use the period of early May to late August to define the sensitive period of all nesting migratory birds and for planning the bird nest surveys in Section 8.2. The WMMP version 2.0 was submitted with these changes.
- vii. Add the following event thresholds to Section 10: - Single incident or mortality event for any individual that is a species of concern (Table 6-1); and - Multiple separate mortality events, involving migratory birds, during a short period of time, or at the same location. The WMMP version 2.0 was submitted with these changes.

Board Decision: The Board has received revised versions of the WMMP and the ESCP to address reviewer comments and incorporate all recommendations. The PPP was not revised, and no reviewer comments required revisions to that plan.

4.2 Amended Permit Conditions

The two conditions for amendment read as follows:

31. EQUIPMENT: WATERCOURSE BUFFER. The Permittee shall not remove vegetation or operate heavy equipment within 100 metres of the Ordinary High Water Mark of any Watercourse.

32. EXCAVATION SETBACK. The Permittee shall not excavate land within 100 metres of the Ordinary High Water Mark of any Watercourse, unless otherwise authorized in writing by an Inspector.

To be compliant with these conditions, the Permittee has requested the following changes:

31. add at the end of the condition, "except as described in the application".

32. add at the end of the condition, "except as described in the application and as authorized in writing by an Inspector".

There were no reviewer comments on the requested amended conditions. Board staff have prepared an amended permit with the revised conditions **Attachment 4**.

6. Recommendation

Board staff recommend that the Board proceed with the regulatory process by:

- 1) Confirming the **Conformity with the Sahtu Land Use Plan**.
- 2) Approve the **Exemption** from Preliminary Screening.
- 3) Approve the **amended Permit** with amended permit conditions 31 and 32.
- 4) Approve the **Wildlife Management and Monitoring Plan** version 2.0.
- 5) Approve the **PCAR Erosion and Sediment Control Plan** version 2.0
- 6) Approve the **PCAR Permafrost Protection Plan** version 1.0.

7) Approve the draft decision letter – **Attachment 5**.

7. Reference Material Attachments

1. Amendment request
2. SLWB requirements for amendment
3. Review Comment Table and associated correspondence
4. Amended Permit
5. Draft Decision Letter

Respectfully submitted,



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Executive Director Comments:



Paul Dixon
Executive Director