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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 Application	
Preliminary Screener	WLWB
Reference/File Number	W2016D0003
Applicant	Dominion Diamond Ekati Corporation (DDEC)
Project	Sable Development

Decision from Wek'èezhìi Land and Water Board
Meeting of
May 12, 2016

With respect to this application, notice was given in accordance with sections 63 and 64 of the MVRMA. There was *No* public hearing held in association with this application.

1.0 Decision

The Wek'èezhìi Land and Water Board (WLWB or the Board) met on May 12, 2016 to consider the Land Use Permit Application W2016D0003 for the Sable Development, submitted by Dominion Diamond Ekati Corporation on March 30, 2016.

The Board has determine all activities listed in Land Use Permit Application W2016D0003, except the temporary camp, are exempt from preliminary screening pursuant to Schedule 1 (Section 2), Part 1, paragraph 2(b) of the *Exemption List Regulations*. In consideration of the proposed temporary camp for the Sable Development, the Board is satisfied that:

- the Project has been screened pursuant to section 124(1) of the MVRMA;
- any potential adverse environmental effects are insignificant or mitigatable with known technology; and
- the temporary camp is not likely to be a source of public concern.

After reviewing the submissions of the Applicant, the written comments submitted by reviewers and the Preliminary Screening for the temporary camp, the Board, having due regard to the facts and circumstances, the merits of the submissions made to it, and to the purpose, scope, and intent of the MVRMA and Regulations made thereunder, has determined that:

Land Use Permit W2016D0003 be issued subject to the terms and conditions contained therein.

2.0 Background

The Sable Development was first authorized in 2001 by Permit MV2001X0071 and Water Licence MV2001L2-0008 after Ministerial approval (with modifications) of the Report of Environmental assessment on July 31, 2001.¹

The Project involves construction, operation, and closure of the Sable Pit and corresponding waste management and operational infrastructure, including development of two waste rock piles, supporting roads, laydown areas, and a tank farm. The Permit was renewed in 2009,² and extended in 2014.³ This Permit is set to expire September 10, 2016.

DDEC submitted an application⁴ (W2016D0003) for a new Type A Land Use Permit to the Board on March 30, 2016. DDEC identified that the application was for the same activities currently permitted under Land Use Permit W2008D0007, with one addition, a temporary camp to support fish out activities of Two Rock Lake and Sable Lake in the summer of 2016. Pursuant to section 18 of the Mackenzie Valley Land Use Regulations (MVLUR) and identified in Box 8 of the Land Use Permit Application, DDEC holds active mineral leases for the area identified in the application. Board staff conducted a conformity check and deemed the application complete on April 1, 2016.⁵

The application together with a draft Land Use Permit was distributed for public review on April 1, 2016. Reviewers were requested to submit comments prior to April 22, 2016. Comments were submitted by the Independent Environmental Monitoring Agency (IEMA), the Yellowknives Dene First Nation (YKDFN), and Board staff. The Government of the Northwest Territories (GNWT) Department of Environment and Natural Resources noted that they had no concerns. GNWT-Lands reviewed the application and recommended approval; no comments were received from the Inspector. DDEC submitted its response on April 29, 2016.

3.0 Reasons for Decision

3.1 Scope and Land Use Permit Conditions

DDEC has applied for the following list of activities to be included in its new Permit for the Sable Development, W2016D0003:

- a) extraction of waste rock and kimberlite ore from the Sable Pit;
- b) construction of waste rock storage areas;
- c) construction of a kimberlite ore storage pad;
- d) construction activities associated with water sedimentation pond and water containment dam;
- e) construction of site roads and lay down areas;

¹ See Review Board (<http://reviewboard.ca>) Online Registry for file Sable, Pigeon Beartooth Pipes Expansion, EA99-004: http://reviewboard.ca/registry/project.php?project_id=2

² See WLWB (www.wlwb.ca) Online Registry for [W2008D0007 - BHP - Land Use Permit - Issuance Documents - Sable Pit- Sep 11 09.pdf](#)

³ See WLWB Online Registry for [W2008D0007 - Ekati - Land Use Permit - Extension Approved - Aug 12 14.pdf](#)

⁴ See WLWB Online Registry for [Ekati - Sable Development - Land Use Permit Application - Mar 30 16.pdf](#)

⁵ See WLWB Online Registry for [Ekati - Sable Development - Application Complete Letter - Apr 1 16.pdf](#)

- f) construction and operation of supporting infrastructure;
- g) storage of fuels;
- h) use of machinery and equipment to support operations; and
- i) establishment of temporary camp.

The MVLWB's *Standard Land Use Permit Conditions* Template has been used to develop the Land Use Permit for the Sable Development. All conditions which pertain to the activities outlined in the land use permit application and those which mitigate potential impacts from activities listed in the scope of this Permit have been included.

During the review period, IEMA identified that Condition #42 refers to the "approved closure and reclamation plan" and recommends that either the condition refer directly to Version 2.4 of DDEC's Interim Closure and Reclamation Plan (ICRP), or that the condition be better defined (IEMA comment #6). Condition #42 reads:

'Reclamation Planning': *"The Permittee shall adhere to the approved Closure and Reclamation Plan."*

Specific reference to DDEC's ICRP within the condition may be problematic because future versions of the ICRP are anticipated to be submitted during the life of this Permit. Therefore, the Board confirms the "Closure and Reclamation Plan" referred to in Condition #42 of Land Use Permit W2016D0003 is in reference to Version 2.4 of DDEC's ICRP, or any subsequently approved Closure and Reclamation Plan for the Ekati site which is applicable to the Sable Development. No further comments regarding the conditions included in the draft Land Use Permit were raised during the review period.

3.2 Management Plans

Standard land use permit conditions require land use permit holders to adhere to approved Waste Management, Engagement, and Spill Contingency Plans.

3.2.1 Spill Contingency

During the review period IEMA requested clarification on the location of the Sable tank farm and further details regarding the type of containment system that will be used (IEMA comment #3). DDEC confirmed that the four 467,000 L tanks will be located on the Sable infrastructure pad adjacent to the maintenance building. DDEC confirmed that the tanks at Sable and their containment structures will be installed and maintained in compliance with the *Federal Storage Tank Systems for Petroleum Products and Allied Petroleum Products Regulations* (SOR/2008-197), the same procedure used for management of all hydrocarbon storage at Ekati.

IEMA also requested DDEC provide additional details regarding spill management at the Sable Development, considering its distance from main camp facilities (IEMA comment #5). DDEC confirmed that all equipment will be refueled by a mobile fuel truck, and all mobile equipment carries dedicated spill response equipment. Larger spill response kits are stored at all re-fueling stations. DDEC further explained that all emergency situations at Ekati are handled by the Emergency Response Team (ERT) which is stationed at the main camp. A second ERT is situated at the Misery camp. DDEC did not respond directly

to IEMA's question as to whether an ERT will be located at the Sable site. Considering that the distance of the Sable site from main camp is similar to the distance to Misery, the Board has determined DDEC is to provide rationale for whether or not a third ERT should be located at the Sable Development.

DDEC is to submit Version 10.0 of its Spill Contingency Plan, which explains whether an ERT station will be included at the Sable site and includes all other relevant spill contingency information for Sable, 60 days prior to the commencement of construction at the Sable Development.

3.2.2 Waste Management

DDEC included details regarding management of wastes from the Sable Development and confirmed all wastes will be managed in accordance with its approved Waste Management Plan. Inert wastes are to be landfilled at the Ekati main site landfill. Food wastes will be returned to the main camp for composting and incineration, as is applicable, and hazardous wastes will be returned to the Waste Management Building for processing, disposal, or recycling.

DDEC is to submit Version 3.0 of its Waste Management Plan to include all relevant waste management details for Sable Development, 60 days prior to the commencement of construction at the Sable Development.

Sewage from the Sable Development will be collected from washrooms and lunchrooms and stored on site until transferred to the main Ekati site for treatment. DDEC explains that sewage at Ekati is treated using "an activated sludge system with the effluent pumped into the Long Lake Containment Facility (LLCF). Prior to commencement of construction, DDEC will set up the temporary camp at the Sable site which will use a sand pit outhouse to support operations. All overburden materials will be stored in a designated area of the Sable waste rock storage area. Approximately 120 million tons of waste rock will be removed from the open pit and stockpiled at the Sable Development area. DDEC is required to submit updated versions of its Wastewater and Processed Kimberlite Management Plan and its Waste Rock and Ore Storage Management Plan to incorporate details pertaining to the Sable Development, 60 days prior to commencement of construction, in accordance with Part H, Item 2(b) and Item 3(b) of Water Licence W2012L2-0001, respectively.

3.2.3 Engagement

DDEC has an approved Engagement Plan which discusses triggers for Engagement related to site-wide activities. These triggers for engagement and the general engagement guidelines outlined in DDEC's Plan are applicable to the Sable Development. Should the temporary camp be used as a culture camp in future, it will need to be incorporated into DDEC'S Engagement Plan.

Written notification, confirmation of receipt, and follow-up are required engagement activities for all previously permitted land use permits (including renewals) according to the MVLWB (2014) *Engagement Guidelines for Applicants and Holders of Water Licences and Land Use Permits* (Engagement Guidelines).⁶

⁶ See WLWB Policies and Guidelines webpage for [Engagement Guidelines for Applicants and Holders of Water Licences and Land Use Permits](#)

Board staff and IEMA noted that DDEC had not identified whether it had followed up to confirm receipt of notification letters sent in February 2016 (IEMA comment #1, WLWB Staff comment #1). It was requested that DDEC update its Engagement Log to include dates when confirmation of receipt and follow-up was completed. DDEC submitted a response on April 29, 2016 stating it would “update the engagement log to include follow communication of receipt of the [notification] letters,” but did not provide the updated Engagement Log. Board staff followed-up and requested that it be submitted; DDEC submitted an updated Engagement Log which satisfies the Engagement Guidelines on May 2, 2016.⁷

3.3 Security

The RECLAIM estimate for the Ekati site⁸ outlines the total security for the Sable Development including security for land use activities. Under the previous Sable Pit Land Use Permit, a total security of \$860,000 was included in a condition of the Permit; this security has not yet been posted because construction at the Sable Development has not yet commenced. Since 2008, several changes and updates to the Sable Development security have been made however, because the security for land use permits are set within a condition of the land use permit, the value for Sable could not be changed without amending the Permit. Additional security has therefore been added to the total amount of security that will be posted to the Water Licence prior to commencement of construction, instead of updating the amount to be posted to the Permit. In addition, DDEC’s RECLAIM estimate does not separate security by land and water activities, therefore, determining a value for land use-related security is complicated. It has become increasingly apparent that security is likely to be updated several times throughout the life of a land use authorization (5-7 years) for large projects such as the Sable Development. Therefore, to avoid double counting of security due to overlapping authorizations, the Board has included condition #28, the standard condition for “Responsibility for Remediation Costs” in Land Use Permit W2016D0003 and has determined that ***DDEC is to calculate all security related to land use activities at the Sable Development together with the Water Licence security using RECLAIM. Once the updated RECLAIM estimate is approved, the total security for the Sable Development is to be posted to Water Licence W2012L2-0001 as outlined in Schedule 2 of the Water Licence.***

Wek’èezhìi Land and Water Board



Violet Camsell-Blondin, Chair

May 12, 2016

Date

⁷ See WLWB Online Registry for [Ekati - Sable Development - Pre-submission Engagement Log - May 2 16](#)

⁸ See WLWB Online Registry: [W2012L2-0001>Permit-Licence-Other Issuances>Security and Water Use Fees](#)