



Box 32, Wekweètì, NT X0E 1W0  
 Tel: 867-713-2500 Fax: 867-713-2502

#1-4905 48<sup>th</sup> Street, Yellowknife, NT X1A 3S3  
 Tel: 867-765-4592 Fax: 867-765-4593  
[www.wlwb.ca](http://www.wlwb.ca)

## Reasons for Decision

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

Land Use Permit Application	
Preliminary Screener	MVLWB
Reference/File Number:	W2016F0006
Applicant:	Dominion Diamond Ekati Corporation
Project:	Pigeon and Sable Haul Road Land Use Permit (Renewal of W2008F0009)

## Decision from the Wek'èezhì Land and Water Board Meeting of July 19, 2016

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

### **1.0 Decision**

On July 19, 2016, the Wek'èezhì Land and Water Board (WLWB or the Board) met to consider the Land Use Permit Application W2016F0006 for the Pigeon and Sable Haul Road, submitted by Dominion Diamond Ekati Corporation (DDEC) on May 30, 2016.

The Board determined the land use permit application submitted by DDEC for Permit W2016F0006 is exempt from preliminary screening in accordance with the Exemption List Regulations and has issued Land Use Permit W2016F0006 for a period of five years.

### **2.0 Background**

The Mackenzie Valley Land and Water Board (MVLWB) originally issued Land Use Permit MV2001F0032 for the Sable Haul Road commencing October 19, 2001 and expiring October 18, 2006.<sup>1</sup> The Permit was

<sup>1</sup> See WLWB ([www.wlwb.ca](http://www.wlwb.ca)) Online Registry for [MV2001F0032 – BHP – Land Use Permit – Oct 19 01](#)

for the construction and operation of a haul road to the Sable Pit development, as per the application dated April 25, 2001. This haul road passes by the Pigeon pit development. This Permit includes the construction of water crossings, caribou crossings, and the development of a spur road to access and set up facilities at Falcon Lake for the purpose of road watering. A two-year Extension was granted to the Permittee on November 28, 2006.<sup>2</sup> The Permit was then renewed in 2009 (W2008F0009),<sup>3</sup> and again extended in 2014.<sup>4</sup> This Permit is set to expire on September 10, 2016. DDEC began constructing the road to Sable on March 30, 2016.<sup>5</sup>

DDEC submitted a land use permit application (W2016F0006)<sup>6</sup> for the renewal of its current Permit W2008F0009, on May 30, 2016. Board staff conducted a conformity check and deemed the application complete on June 8, 2016.<sup>7</sup>

The application and a draft Land Use Permit were distributed on June 8, 2016. Reviewers were requested to submit comments prior to June 29, 2016. Comments were submitted by the Government of the Northwest Territories, Environment and Natural Resources Department (GNWT-ENR), the GNWT-Lands Inspector, the GNWT-Department of Lands, the Independent Environmental Monitoring Agency (IEMA), the North Slave Metis Alliance (NSMA), and Board staff. The GNWT-Lands Inspector confirmed that DDEC does not require a land lease for the activities included in the Permit. GNWT-Department of Lands recommended the Permit be granted; GNWT-ENR had no comments. Proponent responses were received on July 6, 2016.

### **3.0 Reasons for Decision**

#### **3.1 Preliminary Screening**

DDEC identified in its cover letter that the purpose, activities, location, and scope of the Pigeon and Sable Haul Road Land Use Permit remains the same as those presented in BHP Diamonds Inc.'s 2000 Sable, Pigeon, Beartooth Environmental Assessment Report which was reviewed and approved by the Mackenzie Valley Environmental Impact Review Board (Review Board) in 2001.<sup>8</sup>

DDEC has requested the Board determined this application to be exempt from preliminary screening. This request is made pursuant to Schedule 1 (section 2), Part 1 paragraph 2 of the Exemption List Regulations pursuant to subsection 143 (1) of the MVRMA which states:

“A development, or a part thereof, for which renewal of a permit, licence or authorization is requested that (a) has not been modified; and (b) has fulfilled the requirements of the environmental assessment process established by the Mackenzie Valley Resource

---

<sup>2</sup> See WLWB Online Registry for [MV01F32-ExtensionApproved-Nov06](#)

<sup>3</sup> See WLWB Online Registry for [W2008F0009 – BHP – Land Use Permit – Issuance Documents – Sable Haul Road – Sep 11 09](#)

<sup>4</sup> See WLWB Online Registry for [W2008F0009 – Ekati – Land Use Permit – Extension Approved – Aug 12 14](#)

<sup>5</sup> See WLWB Online Registry for [W2008F0009 - Ekati - Sable Haul Road - 48 hr Notification of Persons in Charge - Mar 28 16.pdf](#)

<sup>6</sup> See WLWB Online Registry for [W2016F0006 – Ekati – Pigeon and Sable Haul Road – Land Use Permit Application – May 30 16](#)

<sup>7</sup> See WLWB Online Registry for [W2016F0006 – Ekati – Pigeon and Sable Haul Road – Land Use Permit – Application Complete Letter – Jun 8 16](#)

<sup>8</sup> 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](http://reviewboard.ca/registry/project.php?project_id=2)

Management Act, the Canadian Environmental Assessment Act or the Environmental Assessment Review Process Guidelines Order.”

The Board believes the activities and location identified in this Land Use Permit application for renewal of the Pigeon and Sable Haul Road all support the construction, operation and maintenance of the Sable Haul Road and therefore fall within the activities previously approved during the 2001 Environmental Assessment.

- 1. *the Board has determined the application submitted by DDEC for Permit W2016F0006 is exempt from preliminary screening in accordance with the Exemption List Regulations.***

### **3.2 Land Use Permit – Scope and Conditions**

#### **3.2.1 Scope**

This Land Use Permit, once issued, will allow the Permittee to conduct the following land use operation:

*The construction, operation, and maintenance of a haul road to the Pigeon and Sable Pit developments, including the construction of water crossings, caribou crossings, and the development of a spur road to access and set up facilities at Falcon Lake for the purpose of road watering.*

Construction of caribou crossing was permitted in issuance of Land Use Permit W2008F0009 in 2009 to mitigate the impacts of the haul road on caribou access to habitat, but was not included in the scope at that time. The Board has included construction of caribou crossings in the scope of the draft Land Use Permit. No reviewer comments were submitted on the scope of the draft Permit.

#### **3.2.2 Land Use Permit Conditions**

Together with the item for review, Board staff distributed a draft Land Use Permit with updated standard conditions to reflect the current MVLWB Standard Land Use Permit Conditions Template. Two non-standard conditions have been included in this Permit:

Condition #32 “Reclamation Planning” – *The Permittee shall adhere to the approved Closure and Reclamation Plan.*

The “Closure and Reclamation Plan” referred to in Condition #32 of Land Use Permit W2016F0006 is in reference to Version 2.4 of DDEC’s Interim Closure and Reclamation Plan, or any subsequently approved Closure and Reclamation Plan for the Ekati site that is applicable to the Pigeon and Sable Haul Road. This condition has also been included in the Pigeon Pit Land Use Permit (W2016D0005) as well as the Sable Development Permit (W2016D0003). Similar conditions have also been included in DDEC’s Lynx Pit (W2013D0006) and Lynx Waste Rock Storage Area (W2015D0005) Permits.

Condition #19 “Caribou Crossings” – *Prior to construction of caribou crossings, the Permittee shall submit information on the location and design of caribou crossings which incorporates input from Aboriginal organizations to the Board. The Permittee shall ensure caribou crossings are constructed in accordance with this information.*

A non-standard condition requiring submission of a Caribou Crossings Plan, for approval, was included in the Ekati Lynx Permit W2013D0006 to “ensure that the crossings plan [was] developed in a collaborative manner.”<sup>9</sup> The Board has included a similar condition for the Pigeon and Sable Haul Road to create consistency between conditions for all haul roads at Ekati.

The Board has determined that DDEC’s caribou crossings information for the Pigeon and Sable Haul Road not be for approval because DDEC has already submitted a document with a proposed design for the caribou crossings along this road and outlined the engagement DDEC conducted with aboriginal organizations in developing the design and selecting the locations (see Map #2).<sup>10</sup> In a follow-up e-mail with Board staff (attached) DDEC explained that it will continue to work with aboriginal organizations once the crossings are built, prior to determining them complete:

*[DDEC has] committed to bringing community members back to [Pigeon and Sable Haul Road] site to inspect the constructed crossings to ensure adequate crossing width, that the slope of crossing allows for safe movement of caribou, and that the surface of crossing is adequately smooth for caribou, and more generally that [the information collected] has been implemented. Crossings will be improved as recommended at this time.*

During the review period, NSMA recommended the Traditional Knowledge Elders Group (TKEG) developed for the Jay Project be consulted in development of these caribou crossings (NSMA comment #1). IEMA requested that other interested parties, in addition to aboriginal organizations, have an opportunity to provide comment on the design details and locations of caribou crossings; IEMA recommended the condition be reworded (IEMA comment #2). In response to IEMA, DDEC identified that the TKEG is specific to Jay but confirmed that TK experts provided by IBA Groups. DDEC responded to IEMA stating:

*Condition 19 does not preclude any parties from providing input on the Plan, but rather places emphasis on the importance of collaboration with Aboriginal organisations in selecting the location and design of caribou crossings.*

In consideration of the information provided in the February 16, 2016 document, DDEC’s commitments to ongoing engagement prior to finalizing the design of caribou crossing (response to Board staff e-mail), and DDEC’s openness to receiving input from other interested parties (response to IEMA comment #2 and NSMA comment #1), the Board has included the condition as written above because DDEC has demonstrated that the crossings are being developed in a collaborative manner.

**2. The Board has issued Land Use Permit W2016F0006 for a period of five years.**

**3.3 Management Plans**

Standard land use permit conditions require land use permit holders to adhere to approved Waste Management, Engagement, and Spill Contingency Plans. DDEC has approved versions of all these Plans.

---

<sup>9</sup> See WLWB Online Registry for [W2013D0006 - Ekati Lynx - Land Use Permit - Reasons for Decision - April 30 14.pdf](#)

<sup>10</sup> See WLWB Online Registry for [W2008F0009 - Ekati - Sable Haul Road - Caribou Crossings - Feb 16 16.pdf](#)

DDEC submitted Version 10.0 of its Spill Contingency Plan on June 6, 2016,<sup>11</sup> and Version 3.0 of its Waste Management Plan on June 23, 2016.<sup>12</sup> DDEC has incorporated details for the Sable Development into both these updated versions. Version 3.0 of DDEC’s Engagement Plan was submitted on May 13, 2016<sup>13</sup> and is currently undergoing review. No comments were submitted by reviewers in regards to information to be included in DDEC’s Management Plans for the Pigeon and Sable Haul Road.

### 3.4 Security

In its 2015 Closure and Reclamation Plan Progress Report, DDEC updated its security estimate for the Sable Development, including costs for reclamation of the Pigeon and Sable Haul Road. The Board approved this update in its June 15, 2016 Reasons for Decision.<sup>14</sup> In its June 16, 2016 Reason for Decision, the Board approved phasing of the security deposit for the Sable Development.<sup>15</sup> Costs for reclamation of the Pigeon and Sable Haul Road are to be posted as part of the first phase of security, 60 days prior to commencement of Construction at the Sable Development.

**Signed the 19th Day of July, 2016, on behalf of the Wek’èezhii Land and Water Board**



\_\_\_\_\_  
Witness



\_\_\_\_\_  
Name  
Chair, Wek’èezhii Land and Water Board

<sup>11</sup> See WLWB Online Registry for [W2012L2-0001 – Ekati – Spill Contingency Plan – Version 10.0 – Jun 6 16](#)

<sup>12</sup> See WLWB Online Registry for [W2012L2-0001 – Ekati – Waste Management Plan – Version 3.0 – Jun 23 16](#)

<sup>13</sup> See WLWB Online Registry for [W2012L2-0001 – Ekati – Community Engagement Plan – Version 3.0 – May 13 16](#)

<sup>14</sup> See WLWB Online Registry for [W2012L2-0001 - Ekati - CRP - 2015 Annual Progress Report - Board Directive and Reasons for Decision - Jun 15 16.pdf](#)

<sup>15</sup> See WLWB Online Registry for [W2012L2-0001 - Ekati - Sable - Phasing of Security - Board Directive and Reasons for Decision - Jun 16 16.pdf](#)