



## **REASONS FOR DECISION**

**IN THE MATTER OF:**                    **The Environmental Assessment of Encore Renaissance Resources Corp. (formerly Consolidated Goldwin Ventures Inc.)**

**AND IN THE MATTER OF:**        **The further consideration of measures from the 2007 Report of Environmental Assessment (EA0506-005)**

### **1. BACKGROUND**

On Nov. 30<sup>th</sup>, 2007, the Mackenzie Valley Environmental Impact Review Board (the Review Board) issued a Report of Environmental Assessment (REA) for its environmental assessment (EA0506-005) of a proposed mineral exploration project by Consolidated Goldwin Ventures Inc. (now Encore Renaissance Resources Corp. or Encore). The Minister of Indian Affairs and Northern Development replied on April 13<sup>th</sup>, 2010, requesting that the Review Board further consider some of the measures in its 2007 REA.

Due to the changes in the Review Board's composition between 2007 and 2010, an issue regarding quorum arose and was discussed between the Review Board, Indian and Northern Affairs Canada (INAC, now called Aboriginal Affairs and Northern Development Canada or AANDC) and the other parties to the environmental assessment. Normally, to fulfill quorum requirements, at least five Board members are required to have heard all of the oral evidence presented during the environmental assessment. By April 13<sup>th</sup>, 2010, there were no longer five members on the Board that had participated in the earlier stages of EA0506-005.

To address this issue, current members of the Review Board reviewed the record in its entirety and, after a Request was received from the Yellowknives Dene First Nation (YKDFN), convened a public hearing and heard directly from the parties in order to complete the further consideration of the 2007 REA. The Review Board canvassed the parties and outlined its proposed procedure. Only the developer expressed any concern and that was regarding the time required for these additional steps. No further concern was expressed by any party about quorum.

The Review Board held a two-day public hearing in N'Dilo, NT, to hear from the parties regarding the further consideration of the measures in question. This was followed by the submission of undertakings from the hearing.

## 2. REVIEW BOARD DECISION

The Review Board has further considered the measures submitted in its 2007 Report of Environmental Assessment (REA). In doing so, it has considered the points raised by the federal and responsible Ministers in their letter of April 13<sup>th</sup>, 2010. It has also considered the views of the parties and public expressed in its hearings of Sept. 12<sup>th</sup> and 13<sup>th</sup>, 2011, the written undertakings that resulted, and the evidence on the public record relevant to the further consideration of the measures. This document describes the measures that have resulted from this further consideration.

### Measure #1

Measure #1 (section 6.1.3 of the REA) originally read as follows:

Consolidated Goldwin Ventures Inc. must identify drill sites by conducting non-intrusive geophysical activities which do not require a land use permit. Once drill sites are identified, Consolidated Goldwin Ventures Inc. must be accompanied by an Aboriginal Elder, translator and a qualified archaeologist to scout out archaeological, burial and cultural sites on any access routes and drill locations before on-land operations at any drill location proceeds. The archaeologist involved must be acceptable to the Prince of Wales Northern Heritage Centre (PWNHC) following consultation with YKDFN.

The AANDC letter of April 13<sup>th</sup> 2010 requested that the Review Board reconsider the use of “non-standard” terms. It identifies the Prince of Wales Northern Heritage Centre’s *Guidelines for Developers for the Protection of Archaeological Resources in the Northwest Territories* as a source of standard cultural resource management terminology.

During the hearing, the PWNHC described its recommendations with respect to heritage resources assessment, providing its 2007 recommendation for a site-specific heritage resources assessment. The YKDFN and Treaty #8 Tribal Corp. made submissions identifying their desire to be directly involved in any early archaeological or heritage resource work related to the project.

The Board has decided to revise Measure #1 as follows<sup>1</sup>:

### Measure #1 (revised):

**Encore Renaissance Resources Corp. must identify drill sites by conducting geophysical activities which do not require a land use permit and do not involve cut lines. Once drill sites are identified, Encore Renaissance Resources Corp., accompanied by an Aboriginal Elder, translator and a qualified archaeologist, will conduct a reconnaissance study, and, where indicated by the results of this study, an archaeological impact assessment, as defined in the Prince of Wales Northern Heritage Centre’s *Guidelines for Developers for the Protection of Archaeological Resources in the Northwest Territories*, of archaeological, burial and cultural sites on any access routes, camp locations and drill locations before on-land operations at any drill location proceed.**

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<sup>1</sup> Consolidated Goldwin Ventures Inc. has changed its name to Encore Renaissance Resources Corp. In Measure #1 “Consolidated Goldwin Ventures Inc.” has been updated to “Encore”.

The prohibition of cut lines clarifies the Review Board's intent regarding the "non-intrusive geophysical activities" formerly referred to in the original measure. Cut lines were specified because they were identified as an intrusion of concern during the 2007 hearings and because they do not necessarily require a land use permit.

## **Measure #2**

Measure #2 states:

**No part of the proposed development will occur within 100 metres from any known or suspected archaeological, burial or sacred site.**

No problems with this were identified in the AANDC letter of April 13<sup>th</sup> 2010. Consequently, there are no changes to this measure.

## **Measures #3 and #4**

Measures #3 and #4 (both from section 6.2.10 of the REA) originally read as follows:

Measure #3:

The federal and territorial governments will work with the YKDFN and other Aboriginal land users of the subject area to produce a local Plan of Action for the Shoreline Zone. This will be similar in nature to a regional Plan of Action, but focused on a smaller area. This Plan of Action, at a minimum, will:

1. be drafted and implemented with substantive input from Aboriginal parties;
2. identify the vision, objectives, and management goals based on the resource and cultural values for the area;
3. specifically address future development in the Shoreline Zone and include provisions for protecting sensitive environmental, cultural, and spiritual sites; and
4. provide clear recommendations for managing development and recreational activity in the Shoreline Zone.

The Plan will be produced within one year from the date of Ministerial acceptance of this report, and will be implemented within two years of Ministerial acceptance of this report.

The Minister of INAC will provide a policy directive to the Mackenzie Valley Land and Water Board requiring it to consider the results of this Plan of Action and its implementation before reaching any determinations regarding preliminary screenings of all new applications for developments in the Shoreline Zone.

#### Measure #4:

A long-term monitoring program will be developed as part of the Plan of Action described in Measure #3 to track and evaluate the effects of cumulative changes in the Shoreline Zone, on the culture and well-being of the YKDFN. This program will:

1. Identify the priority biophysical and cultural valued components;
2. Determine the full range of human activities in the shoreline zone that potentially affect those components;
3. Evaluate the cumulative effects of those human activities on the identified components; and,
4. Provide recommendations for management of those impacts in the Plan of Action.

Design and implementation of this program shall take place in cooperation with relevant federal and territorial government departments, the YKDFN and other Aboriginal land users.

The AANDC letter of April 13<sup>th</sup> 2010 discusses measures #3 and #4 together. It states that “the proposed ‘Plan of Action’ and long-term monitoring program are considered excessive for a proposed small-scale exploration project”. Aboriginal parties in the 2011 hearing strongly agreed with the intent of these measures and emphasized the need for the substantive elements of these measures to remain as measures after the Board’s current further consideration. The YKDFN consider measures #3 and #4 particularly important.

The Review Board has considered the Responsible Minister’s views in light of the evidence. Regarding the scale of the measures, the Responsible Ministers stated that they are excessive for a small-scale exploration project. The Review Board’s REA clarified, however, that measures three and four were intended to mitigate the cumulative cultural impact, and not the impacts of this project in isolation. The Board’s REA (s6.2.10) said:

*The Review Board agrees ... that such a monitoring program is not justified by project specific impact, and that such monitoring is valuable in informing cumulative effects management. It is precisely for these reasons that the monitoring is not intended to address project-specific biophysical impacts. Rather, it is required to enhance the management of cumulative effects, for the purpose of reducing the significant likely adverse combined impacts to the combination of all past, present and reasonably foreseeable developments including the proposed project and other human activities.*

*Assessing cumulative likely significant adverse effects of proposed developments is within the mandate of the Review Board as per MVRMA s. 117 (2) (a). It is within the Review Board’s mandate to prescribe measures for mitigating those effects as per MVRMA s. 128(1)(b)(ii).*

YKDFN and Treaty #8 Tribal Corp. recognize this. On the first day of the 2011 hearing, Treaty #8 Tribal Corp. stated “(T)his is not about a ‘small-scale project’, it is about the cumulative impacts of a

host of projects across a limited landscape, where mineral exploration activities have already directly resulted in real significant negative impacts” (Day 1 transcript pp20-21).

Regarding the lead department, the letter from the Responsible Ministers stated with respect to these two measures that “it is more appropriate for this work to be carried out under Indian and Northern Affairs Canada’s coordination given the Department’s involvement in land and self-government”. During the hearing, the Treaty #8 Tribal Corp. supported the revision of this measure to clearly indicate that AANDC is the lead federal department responsible for developing the Plan of Action. It requested that references specific to the territorial government be removed.

The Review Board has further considered this and agrees.

The Responsible Ministers objected to the requirement to provide policy directive to the MVLWB. The Treaty #8 Tribal Corp. would like it to remain to ensure the Plan of Action is duly considered in the regulatory process. The YKDFN is of the view that a policy directive would be appropriate because policy directives are meant to address issues outside of existing regulatory mechanisms.

The Review Board has decided to remove the reference to policy direction and to focus this part of the measure on the MVLWB directly. By requiring the MVLWB to *consider* the plan and its implementation before reaching determinations on preliminary screenings, the Review Board intends to avoid fettering any decision of the MVLWB while ensuring that this important mitigation is considered during the preliminary screening of any application for this area.

The Responsible Ministers objected to the time line prescribed by Measure #3, stating that it would result in a lack of flexibility in a stakeholder-driven planning process. In the hearing, Treaty #8 Tribal Corp. agreed with the Responsible Ministers that timelines do not provide enough flexibility for a collaborative planning process. It proposed changes to make the consideration of new projects contingent on an implemented Plan of Action. The YKDFN also agreed at the hearing that the requirement for specific timelines could be changed if new permits were not issued until the Plan of Action was completed.

The Review Board accepts that the original requirement for a time line would lack flexibility. The Review Board has therefore removed the references to time lines.

The Treaty #8 Tribal Corp. recommended that a measure providing relief to mineral claim and mineral lease holders would reduce development pressure in the Drybones Bay area. The Review Board has revised Measure #3 to address this.

The Review Board considered changing Measure #3 to a suggestion instead of a measure. The Review Board has conducted several environmental assessments dealing with the Drybones Bay area and the Shoreline Zone. It identified the need for planning in the area in a suggestion in 2004 in response to evidence and recommendations of the parties to those environmental assessments. The confidence of the parties for AANDC to take some action remains low. This was reinforced with AANDC officials indicating at the September 2011 hearing that the Department has not taken any substantive actions since the Minister’s letter of April 13<sup>th</sup> 2010 letter to the Review Board and no actions are identified

through business plans for the near future. For this reason, the Review Board decided that Measure #3 will remain a measure rather than a suggestion.

With respect to the input on cultural values and sites referred to in the revised Measure #3 below, the plan is intended to identify the vision, objectives, and management goals based on the resource and cultural values for the area, to specifically address future development in the Shoreline Zone including provisions for protecting sensitive environmental, cultural, and spiritual sites.

Based on the Review Board's further consideration, measures #3 and #4 are revised as follows:

**Measure #3 (Revised):**

**To mitigate the identified significant cumulative cultural impacts, the Government of Canada, with AANDC as the lead department, will work with the YKDFN and other Aboriginal land users of the subject area to produce a plan for the Shoreline Zone. This will be a collaborative stakeholder-driven planning process similar in nature to a regional Plan of Action, but focused on a smaller area. This plan, at a minimum, will be drafted and implemented with substantive input from Aboriginal parties familiar with the area, including input on cultural values and sites. The plan will provide clear recommendations for managing development and recreational activity in the Shoreline Zone.**

**The Mackenzie Valley Land and Water Board will consider the results of this plan and its implementation before reaching any determinations regarding preliminary screenings of new applications for developments in the Shoreline Zone.**

**Until this plan is implemented, AANDC will offer appropriate relief to mineral claim and lease holders in the Drybones Bay area from fulfilling the requirements of the *NWT and Nunavut Mining Regulations*.**

**Measure #4 (Revised):**

**AANDC will develop a long-term monitoring program to track and evaluate the effects of cumulative changes in the Shoreline Zone, on the culture and well-being of the YKDFN. This program will:**

- 1. Identify the priority biophysical and cultural valued components;**
- 2. Determine the full range of human activities in the shoreline zone that potentially affect those components;**
- 3. Evaluate the cumulative effects of those human activities on the valued components; and,**
- 4. Provide recommendations for management of those impacts in the plan.**

**Design and implementation of this program will take place in cooperation with relevant federal and territorial government departments, the YKDFN and other Aboriginal land users.**

If appropriate, the monitoring referred to above in Measure #4 should be conducted as part of the NWT Cumulative Impact Monitoring Program.

#### **Measure #5**

The measure #5 (REA s. 6.2.11) originally read as follows:

The PWNHC, with funding from the federal and territorial governments, will conduct a thorough heritage resources assessment encompassing the Shoreline Zone. The YKDFN and other land users shall have substantial input on the design of this assessment, and shall participate in the assessment. This shall be completed within two years of ministerial acceptance of this report.

Responsible Ministers consider this measure excessive for a small-scale project.

The Treaty #8 Tribal Corp. supports the need for a thorough heritage resources assessment, but believes it could be a part of the plan.

The Review Board notes that measure #4 already requires the monitoring program to “identify the priority biophysical and cultural valued components”. This satisfies an important part of the intention of Measure #5. The Board further notes that the revised measure #1 now requires “a reconnaissance study, and, where indicated by the results of this study, an archaeological impact assessment, as defined in the Prince of Wales Northern Heritage Centre’s *Guidelines for Developers for the Protection of Archaeological Resources in the Northwest Territories*, of archaeological, burial and cultural sites on any access routes, camp locations and drill locations”. In the Review Board’s view, the combination of these elements of measures #1 and #4 will generate an acceptable level of scrutiny with respect to heritage resources. The original measure #5 is no longer required and is removed.

#### **Measure #6**

The original measure #6 (section 6.3.3 of the REA) stated:

To prevent impacts on traditional harvesting resulting from increased access to the area, the developer shall access any proposed drill areas by helicopter only, so that no new access from Great Slave Lake is created. Small camps near drill sites may be created to facilitate access by helicopter. Travel by snowmobile from the camps to the nearby drill sites will be the only exception to the requirement for helicopter access. These camps will be located inland of the Shoreline Zone in the vicinity of drill sites on frozen water bodies selected by the YKDFN in consultation with the developer.

If no agreement between the YKDFN and the developer can be reached regarding the locations of these camps within one year of Ministerial acceptance of this report, the decision on camp locations will be made by the Mackenzie Valley Land and Water Board, following its consideration of the views of the developer, the YKDFN and the Land Use Inspector.

The Responsible Ministers note that camps are not permitted on ice. The Review Board originally regarded this as a way of reducing the risk of disturbing heritage resources. However, the Review Board notes that the camps are inland of the shoreline zone, and are not in the areas with the highest density of heritage resources. This, in combination with the revisions to Measure #1 regarding reconnaissance studies and archaeological impact assessments, provides adequate assurance of the protection of heritage sites. Accordingly, the reference to frozen water bodies has been removed from the draft below.

The Review Board has decided that the measure should not place the onus of selecting camp sites on the YKDFN in consultation with the developer, and has removed the reference, along with the dispute resolution mechanism described in the original measure. The revised measure (now re-numbered as "Measure #5" because the previous measure has been removed) reads as follows:


**Measure #5 (as revised and renumbered from the original Measure #6):**

**To prevent impacts on traditional harvesting resulting from increased access to the area, the developer shall access any proposed drill areas by helicopter only, so that no new access from Great Slave Lake is created. Small camps near drill sites may be created to facilitate access by helicopter. Travel by snowmobile from the camps to the nearby drill sites will be the only exception to the requirement for helicopter access. These camps will be located inland of the Shoreline Zone in the vicinity of drill sites.**

### **3. CONCLUSION**

The Review Board is satisfied that these measures, as revised, acceptably mitigate the likely significant adverse impacts identified by the Review Board in the Consolidated Goldwin Ventures Inc. Report of Environmental Assessment. The above reasons set out the Review Board's further consideration of the measures provided pursuant to section 128(1)(b)(ii) of the Mackenzie Valley Resource Management Act.

Dated: November 15<sup>th</sup>, 2011

  
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Richard Edjericon, Chairperson  
Mackenzie Valley Environmental Impact Review Board

*Attachment:  
Summary of Measures and Suggestions, EA0506-005*



## Summary of Measures and Suggestions

EA0506-005

The following is a complete list of measures and suggestions resulting from this environmental assessment. It includes the revised measures, the unchanged measure, and the suggestion from the original Report of Environmental Assessment.

### **Measure #1** (as revised):

Encore Renaissance Resources Corp. must identify drill sites by conducting geophysical activities which do not require a land use permit and do not involve cut lines. Once drill sites are identified, Encore Renaissance Resources Corp., accompanied by an Aboriginal Elder, translator and a qualified archaeologist, will conduct a reconnaissance study, and, where indicated by the results of this study, an archaeological impact assessment, as defined in the Prince of Wales Northern Heritage Centre's *Guidelines for Developers for the Protection of Archaeological Resources in the Northwest Territories*, of archaeological, burial and cultural sites on any access routes, camp locations and drill locations before on-land operations at any drill location proceed.

### **Measure #2:**

No part of the proposed development will occur within 100 meters from any known or suspected archaeological, burial or sacred site.

### **Measure #3** (as revised):

To mitigate the identified significant cumulative cultural impacts, the Government of Canada, with AANDC as the lead department, will work with the YKDFN and other Aboriginal land users of the subject area to produce a plan for the Shoreline Zone. This will be a collaborative stakeholder-driven planning process similar in nature to a regional Plan of Action, but focused on a smaller area. This plan, at a minimum, will be drafted and implemented with substantive input from Aboriginal parties familiar with the area, including input on cultural values and sites. The plan will provide clear recommendations for managing development and recreational activity in the Shoreline Zone.

The Mackenzie Valley Land and Water Board will consider the results of this plan and its implementation before reaching any determinations regarding preliminary screenings of new applications for developments in the Shoreline Zone.

Until this plan is implemented, AANDC will offer appropriate relief to mineral claim and lease holders in the Drybones Bay area from fulfilling the requirements of the *NWT and Nunavut Mining Regulations*.

**Measure #4** (as revised):

AANDC will develop a long-term monitoring program to track and evaluate the effects of cumulative changes in the Shoreline Zone, on the culture and well-being of the YKDFN. This program will:

1. Identify the priority biophysical and cultural valued components;
2. Determine the full range of human activities in the shoreline zone that potentially affect those components;
3. Evaluate the cumulative effects of those human activities on the valued components; and,
4. Provide recommendations for management of those impacts in the plan.

Design and implementation of this program will take place in cooperation with relevant federal and territorial government departments, the YKDFN and other Aboriginal land users.

**Measure #5** (as revised and renumbered from the original Measure #6):

To prevent impacts on traditional harvesting resulting from increased access to the area, the developer shall access any proposed drill areas by helicopter only, so that no new access from Great Slave Lake is created. Small camps near drill sites may be created to facilitate access by helicopter. Travel by snowmobile from the camps to the nearby drill sites will be the only exception to the requirement for helicopter access. These camps will be located inland of the Shoreline Zone in the vicinity of drill sites.

**Suggestion #1:**

To reduce the potential for conflict between the duty to consult when aboriginal rights are infringed by mineral exploration and development and the free-entry system set out in the *Canada Mining Regulations*, the Government of Canada should adapt and apply the prospecting permit process to areas in the Akaitcho Territory, in order to provide notice and ensure opportunities for consultation with aboriginal users of that area, before mineral interests are granted.