


| <b>PEEL WATERSHED APPROVED LAND USE PLAN CONSISTENCY OPINION</b>                                   |   |
|--|---|
| <b>YESAB Project #</b>   | 2023-0112   |
| <b>Project Title:</b>  | Peel River J-21 Investigation and Remediation   |
| <b>Date:</b>   | October 13, 2023  |
| <b>Submitted to:</b>   | YESAB Dawson Designated Office  |
| <b>Completed by:</b>   | <div style="display: flex; justify-content: space-between;"> <div style="width: 60%;"> <p>Sam Skinner<br/> Yukon Land Use Planning Council<br/> Suite 302 – 309 Strickland Street<br/> Whitehorse, YT<br/> Y1A 2J9<br/> 1-867-667-7397<br/> sam@planyukon.ca</p> </div> <div style="width: 35%; text-align: center;">  <p><b>YLUPC</b><br/> YUKON LAND USE<br/> PLANNING COUNCIL</p> </div> </div> |
| <b>More information on PW consistency opinions:</b>  | <a href="https://planyukon.ca/peel-watershed-consistency-opinions/">https://planyukon.ca/peel-watershed-consistency-opinions/</a>   |
| <b>Project is consistent with the Approved Peel Watershed Regional Land Use Plan: (select one)</b> | <b>Yes</b>  |

## Background Information and Consistency Opinion Analysis

| <b>Affected Landscape Management Unit (LMU)(s):</b><br>Map 2 and Section 5   |                                |   |                    |   |                |                     |                  |
|--|--------------------------------|---|--------------------|---|----------------|---------------------|------------------|
| LM Unit #  | 14                             | LMU Name:   |                    | Peel River  |                |                     |                  |
| Zoning:  | SMA                            | Land Owner:                                       |                    | YG, Tetlit Gwich'in settlement parcel R-04FS, R-14FS) |                |                     |                  |
| Traditional Territories:   |                                | Na-Cho Nyäk Dun, Tetlit Gwich'in Primary Use Area |                    |   |                |                     |                  |
| LM Unit #  | 15                             | LMU Name:   |                    | Peel Plateau East                                     |                |                     |                  |
| Zoning:  | Wilderness Area-Boreal Caribou | Land Owner:                                       |                    | YG  |                |                     |                  |
| Traditional Territories:   |                                | Na-Cho Nyäk Dun, Tetlit Gwich'in Primary Use Area |                    |   |                |                     |                  |
| LM Unit #  | 16                             | LMU Name:   |                    | Jackfish Creek Lakes                                  |                |                     |                  |
| Zoning:  | Wilderness Area-Boreal Caribou | Land Owner:                                       |                    | YG  |                |                     |                  |
| Traditional Territories:   |                                | Na-Cho Nyäk Dun, Tetlit Gwich'in Primary Use Area |                    |   |                |                     |                  |
| <b>Landscape Disturbance Indicators*:</b>  |                                |   |                    |   |                |                     |                  |
| Surface Disturbance (ha):  |                                |   |                    |   |                |                     |                  |
| LMU  | Cautionary Level               | Critical Level                                    | Current est. Level | Project Estimate                                      | Total Estimate | Notification Rqr'd* | Parties Notified |
| 14   | N/A**                          | N/A**   | 362                | Nil***  | 362            | No                  | No               |
| 15   | N/A**                          | N/A**   | 338                | Nil***  | 338            | No                  | No               |
| 16   | N/A**                          | N/A**   | 187                | Nil***  | 187            | No                  | No               |
| Linear Disturbance (km):   |                                |   |                    |   |                |                     |                  |
| LMU  | Cautionary Level               | Critical Level                                    | Current est. Level | Project Estimate                                      | Total Estimate | Notification Rqr'd* | Parties Notified |
| 14   | N/A**                          | N/A**   | 420                | Nil***  | 420            | No                  | No               |
| 15   | N/A**                          | N/A**   | 375                | Nil***  | 375            | No                  | No               |
| 16   | N/A**                          | N/A**   | 204                | Nil***  | 204            | No                  | No               |
| <p>* The YLUPC shall notify the Parties prior to submitting the conformity check to YESAB if they are concerned cautionary or critical levels may be reached.</p> <p>** New disturbances are typically not allowed in Special Management Area and Wilderness Area zones.</p> <p>*** winter work that uses existing disturbances and linear features does not count as new disturbance. See final comments below.</p> |                                |   |                    |   |                |                     |                  |

**Designation Considerations:**  
 (Section 3, Plan Concepts) – these are typically high-level directions applied to all LMUs of the same designation. Ones especially relevant for this opinion are **bolded**.

| LMU     | Designation                    | Consideration   |
|---------|--------------------------------|---|
| 14      | Special Management Area        | <ul style="list-style-type: none"> <li>• Permanently withdrawn from any <b>new</b> industrial land use and <b>surface access</b>.</li> <li>• Intended to become legally designated as protected area, with subsequent <b>management plans</b>.</li> </ul>   |
| 15 & 16 | Wilderness Area-Boreal Caribou | <ul style="list-style-type: none"> <li>• Interim withdrawal from any <b>new</b> industrial land use and <b>surface access</b>.</li> <li>• Withdrawal status reviewed as part of formal, longer-term public Plan review conducted jointly by the Parties.</li> <li>• Requires a <b>legal designation and a management plan</b> [to satisfy the requirements of the federal Species at Risk Act, regarding protection of Boreal Caribou habitat]</li> </ul> |

**LMU Objectives:**  
 (Section 5, LMUs). Ones especially relevant for this opinion are **bolded**.

| LMU     | Objectives  |
|---------|---|
| 14      | <ul style="list-style-type: none"> <li>• <b>Wilderness character is maintained.</b></li> <li>• Community cultural activities practiced without significant disturbance.</li> <li>• Regionally significant spawning and fish overwintering habitat maintained.</li> <li>• Wilderness and cultural tourism activities linked to large tributaries that are consistent with the objectives above.</li> </ul>   |
| 15 & 16 | <ul style="list-style-type: none"> <li>• Ecological integrity is maintained.</li> <li>• Helps meet requirements under the federal SARA, with respect to protecting critical habitat of the Boreal caribou herd.</li> <li>• <b>Permitted land use activities do not significantly impact movement and habitats of caribou.</b></li> <li>• Meaningful consultation is done with the TG and NND regarding any new significant land-use activities that might cause surface disturbance.</li> </ul> |

**Special Management Considerations:** (Section 5, LMUs) – these are typically LMU specific

| LMU     | Special Management Consideration  |
|---------|---|
| 14      | <ul style="list-style-type: none"> <li>• N/A</li> </ul>   |
| 15 & 16 | <ul style="list-style-type: none"> <li>• The Boreal Caribou Recovery Plan is relevant to management of land-use activities in this unit.</li> </ul> |

## Affected Values and General Management Directions (GMD): (Section 4)

Only GMDs that are relevant to the project and/or values identified in the LMUs are included here.

| Ecological Resources:                    | Corresponding Management Strategies:  |
|--|---|
| <b>WILDLIFE and TERRESTRIAL HABITATS</b> | <ul style="list-style-type: none"> <li>• Reduce size, intensity and duration of human-caused physical surface disturbances (e.g., utilize low impact seismic, winter roads and principle of full reclamation).</li> <li>• Coordinate, manage and minimize new road and trail access.               <ul style="list-style-type: none"> <li>○ To the extent possible, avoid routing new roads and trails through concentrated seasonal use areas and significant habitats (see figure 2.21 and Map 3, Appendix A for locations).</li> <li>○ Avoid using or crossing seasonal migration corridors with new access routes.</li> </ul> </li> <li>• Avoid or reduce activities in significant wildlife habitats during important biological periods (e.g., utilize timing windows).               <ul style="list-style-type: none"> <li>○ Avoid concentrated woodland caribou use areas (see Map 3, Appendix A for locations)</li> </ul> </li> <li>• Reduce other human land use-related disturbances such as noise, odours and light.</li> </ul>                                      |
| <b>HYDROLOGY and AQUATIC HABITATS</b>    | <ul style="list-style-type: none"> <li>• Minimize surface and vegetation disturbance in riparian areas.</li> <li>• Avoid or minimize industrial land use activities in wetlands and riparian areas.               <ul style="list-style-type: none"> <li>○ Activities in the vicinity of wetlands and wetland complexes should be carried out during the winter period.</li> </ul> </li> <li>• Prohibit significant levels of winter in-stream water withdrawals in sensitive over-wintering fish habitat.</li> </ul>   |
| Heritage, Social, Cultural Resources:    | Corresponding Management Strategies:  |
|  | <ul style="list-style-type: none"> <li>• Avoid or minimize land use impacts in the vicinity of identified heritage and historic resources.</li> <li>• Avoid or minimize land use conflicts by avoiding or reducing the level of land use activities in important subsistence harvesting and current community use areas.</li> <li>• Avoid or reduce activities in significant heritage and current community use areas during important seasonal use periods (e.g., utilize timing windows).</li> <li>• Where impacts to identified heritage and cultural sites and resources may occur, implement the following appropriate mitigation practices.               <ul style="list-style-type: none"> <li>○ Establish work camps associated with resource exploration and development activity near areas of resource production, and away from identified heritage routes, historic sites, and current community use areas.</li> <li>○ Implement immediate stop work orders if evidence of heritage or cultural values is detected, to assess significance.</li> </ul> </li> </ul> |

### Plan Recommended Best Management Practices:

|                   |  |
|-------------------|--|
| Water             | <p>Best Management Practices for Works Affecting Water in Yukon. Water Resources Branch, Yukon Environment. May 2011.</p> <p>Available online:<br/><a href="http://www.env.gov.yk.ca/publications-maps/documents/bestpractes_water.pdf">http://www.env.gov.yk.ca/publications-maps/documents/bestpractes_water.pdf</a></p> <p>This document has a number of recommendations on culverts.</p>   |
| Wildlife and fish | <ul style="list-style-type: none"><li>• Flying in Caribou Country. How to minimize disturbance from aircraft. MPERG Report 2008-1. Available online:<br/><a href="https://yukon.ca/sites/yukon.ca/files/env/env-flying-caribou-country.pdf">https://yukon.ca/sites/yukon.ca/files/env/env-flying-caribou-country.pdf</a></li><li>• Guidelines for Industrial Activity in Bear Country. For the mineral exploration, placer mining and oil and gas industries. MPERG Report 2008-2. Available online: <a href="https://yukon.ca/sites/yukon.ca/files/env/env-guidelines-industrial-activity-bear-country.pdf">https://yukon.ca/sites/yukon.ca/files/env/env-guidelines-industrial-activity-bear-country.pdf</a></li></ul> |

### Relevant Recommendations from the Plan:

With comments

- Research Recommendation #3 requested Yukon-based research on Boreal caribou to inform management decisions. To our knowledge this has not happened.
- Policy Recommendations #3, 4 and 6 requested that adequate baseline data collection is completed prior to any *development* activities occurring in the Peel Watershed Planning Region. Though this project requires access, it isn't considered a *development*.
- Policy Recommendation #5 is very much in support of this project: "Contaminated sites should be remediated, with the priority being those sites with the highest potential to negatively affect water quality and/or tourism and big game outfitting."
- Policy Recommendation #15 states: "In the Conservation Area, outside of existing dispositions, new surface access should not be allowed. The construction of new roads and surface transportation features are incompatible with Conservation Area management objectives." Some of the existing linear disturbances proposed for access by this project have recovered, therefore there may be an argument that this project proposes new surface access. However, our opinion is that this recommendation was intended for *development* activities, and therefore the proposed access is appropriate.
- Policy Recommendation #17 states: "The use of all new surface transportation features should be carefully managed and controlled. Public access on all new roads and surface transportation features should not be allowed. This action will decrease the potential for over-harvesting and un-regulated ORV use".
- Research Recommendation #11 states: "Land use patterns of trappers, including but not limited to the location of cabins and trails, should be documented, in order to facilitate improved project assessment and future resource planning." To our knowledge this has not happened. However, information gathered during the writing of the plan indicated access routes largely overlapping that of this project as well as cabins and/or other infrastructure in the area to be remediated (these appear to be across the Peel River) (see Map 4, Appendix A for locations).

### Additional Analysis or Comments:

This project proposal triggers conflicting directions from the Plan, perhaps because the Plan was focused on addressing industrial development rather than remediation. In the absence of an active planning commission for this region that could provide clarification, this consistency check considers plan objectives, the many plan directions, and the regional context.

Though the zoning for the affected LMUs prohibits **new** industrial land use and **surface access** (and thus new disturbance), we note that almost all the proposed access route re-uses old winter roads and/or seismic lines that were considered disturbed in recent YG disturbance mapping (imagery from 2020). The Plan exempts “winter work that utilizes existing un-reclaimed disturbances and linear features from previous activities” from being considered new disturbance. Further, Policy Recommendation #15 prohibited **new** surface access from Conservation Areas.

This project supports implementation of Policy Recommendation #5 and helps achieve the first listed objective for LMU 14 (maintaining a wilderness character). This, and the exemption of winter access on existing disturbances, leads us to find that **this project is consistent with the Peel Watershed Regional Plan (2019)**.

However, this project runs counter to other plan directions. We believe that this project could be more fully consistent with plan directions should access to the project site be done in summer by barge or by other watercraft. This would avoid traffic through core Boreal caribou habitat during a sensitive time and would avoid re-disturbing old cutlines and winter roads. We recognize that this approach may have impacts on fish habitat (thus requiring some understanding of local fish biology and mitigations) and that barging as far upstream as J-21 may not be possible. So, we encourage the proponent to evaluate this approach, and, if not selected, provide explanations as to why they kept their proposed access.

If the project proceeds as written, we recommend the following management strategies to help mitigate impacts:

1. LMUs 15 and 16 are zoned specifically for the conservation of Boreal Caribou. Permitted activities in these LMUs must not significantly impact movement and habitats of caribou. Of all the species at risk potentially occurring in the project area (see Table 5 of the Wildlife Management and Monitoring Plan (WMMP)), ironically the species with the most potential to be disturbed (given the time of year of the project), is Boreal caribou. The WMMP includes reasonable mitigations; however, in the absence of the recommended Yukon-based research on Boreal caribou to inform management decisions (RP #3), we encourage caribou experts from the GTC, Mayo RRC, YG, GNWT and Canada to be invited to attend the kickoff meeting with the wildlife monitors and/or meet with the wildlife monitors before the project begins.
2. Similarly, in the absence of current information on land use patterns of local trappers (RR #11), the proponent should discuss their project with trappers in the project area as well as with subsistence harvesters in order to demonstrate that they will avoid or minimize activity in “significant heritage and current community use areas during important seasonal use periods”.

3. The plan does not allow the public use of new access (PR#17) and generally discourages public surface access. However, the proposed access route follows a pre-existing winter road, likely with a history of local winter use. The proponent should explore options to manage and control public access to reduce over-harvesting or wildlife disturbance. The proposed access route unfortunately runs through a Boreal caribou concentrated use area.

This is the first proposal (at least in the North Yukon and Peel Watershed planning regions) where spatial data was provided via YESAB's YOR. This should be encouraged in other proposals.