

## Potential Conditions

The Canadian Environmental Assessment Agency is contemplating the following potential conditions in relation to the Black Point Quarry Project (the Designated Project) for recommendation to the Minister of the Environment for inclusion in a Decision Statement issued under the *Canadian Environmental Assessment Act, 2012*. If the Minister of the Environment decides that the carrying out of the Designated Project is unlikely to cause significant adverse environmental effects as defined under subsections 5(1) and 5(2), or if the Minister of the Environment decides that the Designated Project is likely to cause significant adverse environmental effects and the Governor in Council decides such effects are justifiable in the circumstances therefore allowing the Designated Project to proceed, any conditions established would become legally binding.

### **1** Definitions

- 1.1 *Aboriginal groups* means the 12 Mi'kmaq First Nations represented by the Kwilmu'kw Mawklusuaqn (Mi'kmaq Rights Initiative) Negotiation Office and the Sipekne'katik First Nation in Nova Scotia.
- 1.2 *Agency* means the Canadian Environmental Assessment Agency.
- 1.3 *Baseline* means the environmental conditions prior to initiating construction of the Designated Project.
- 1.4 *Construction* means the phase of the Designated Project during when the site preparation work, building or installation of any components of the Designated Project are undertaken by the Proponent.
- 1.5 *Days* mean calendar days.
- 1.6 *Decommissioning* means the phase of the Designated Project where the Proponent has permanently ceased commercial production and has commenced removal from service of any components of the Designated Project, and continues until the site is restored.
- 1.7 *Deleterious substance* means deleterious substance as defined in section 34 of the *Fisheries Act*.
- 1.8 *Designated Project* means the Black Point Quarry Project as described in section 2 of the environmental assessment report prepared by the Canadian Environmental Assessment Agency (Canadian Environmental Assessment Registry Reference Number 80064).
- 1.9 *Environment Canada* means the Department of the Environment as established under subsection 2(1) of the *Department of the Environment Act*.
- 1.10 *Environmental effects* means the environmental effects as described in section 5 of the *Canadian Environmental Assessment Act, 2012*.
- 1.11 *Fish* means fish as defined in subsection 2(1) of the *Fisheries Act*.

- 1.12 *Fish habitat* means fish habitat as defined in subsection 2(1) of the *Fisheries Act*.
- 1.13 *Fisheries and Oceans Canada* means the Department of Fisheries and Oceans as established under subsection 2(1) of the *Department of Fisheries and Oceans Act*.
- 1.14 *Follow-up program* means follow-up program as defined in subsection 2(1) of the *Canadian Environmental Assessment Act, 2012*.
- 1.15 *Listed species at risk* means a species that is listed on the List of Wildlife Species at Risk set out in Schedule 1 of the *Species at Risk Act*.
- 1.16 *Migratory bird* means migratory bird as defined in subsection 2(1) of the *Migratory Birds Convention Act, 1994*.
- 1.17 *Mitigation measures* means mitigation measures as defined in subsection 2(1) of the *Canadian Environmental Assessment Act, 2012*.
- 1.18 *Offsetting plan* means offsetting plan as defined in section 1 of the Applications for Authorization under Paragraph 35(2)(b) of the *Fisheries Act Regulations*.
- 1.19 *Operation* means the phase of the Designated Project during which the commercial production takes place.
- 1.20 *Progressive reclamation* means a planned approach to reclamation which is carried out concurrently with all phases of the Designated Project to progressively return any physically disturbed areas to a state as close to the baseline as possible, as soon after the disturbance as practical.
- 1.21 *Project area* means the geographic area occupied by the Designated Project.
- 1.22 *Proponent* means Black Point Aggregates Inc. and its successors or assigns.
- 1.23 *Qualified individual* means someone who, through education, experience and knowledge relevant to a particular matter, may be relied on to provide advice within his or her area of expertise.
- 1.24 *Reporting year* means from April 1 of a calendar year through March 31 of the subsequent calendar year.
- 1.25 *Wetlands* means land saturated with water long enough to promote formation of water altered soils, growth of water-tolerant vegetation and various kinds of biological activity that is adapted to the wet environment and separated into five classes: fen, bog, marsh, swamp, and shallow open water wetlands (includes open water areas less than two metres deep with wetland characteristics).
- 1.26 *Wetland functions* means the natural processes and derivation of benefits and values associated with wetland ecosystems, fish and wildlife habitat, organic carbon storage, water supply and purification (e.g. groundwater recharge, flood control, maintenance of flow regimes, shoreline erosion buffering), and soil and water conservation, as well as traditional use, tourism, heritage, recreational, educational, scientific, and aesthetic opportunities.

## **Potential conditions**

These conditions may be established for the sole purpose of the Decision Statement issued under the *Canadian Environmental Assessment Act, 2012*. They do not relieve the Proponent from any obligation to comply with other legislative or other legal requirements of the federal, provincial or local governments. Nothing in this document shall be construed as reducing, increasing, or otherwise affecting what may be required to comply with all applicable legislative or legal requirements.

## **2 General conditions**

- 2.1 The Proponent shall, throughout all phases of the Designated Project, ensure that its actions in meeting the conditions set out in this document are informed by the best available information and knowledge, including community and Aboriginal traditional knowledge, are based on validated methods and models, are undertaken by qualified individuals and have applied the best available economically and technologically feasible mitigation measures.
- 2.2 The Proponent shall, where consultation is a requirement of a condition set out in this document:
  - 2.2.1 provide a written notice of the opportunity for the party or parties being consulted to present their views on the subject of the consultation;
  - 2.2.2 provide sufficient information and a reasonable period of time to permit the party or parties being consulted to prepare their views;
  - 2.2.3 provide a full and impartial consideration of any views presented by the party or parties being consulted; and
  - 2.2.4 advise the party or parties that have provided comments on how the views and information received have been considered by the Proponent.
- 2.3 The Proponent shall, where consultation with Aboriginal groups is a requirement of a condition set out in this document, and prior to initiating that consultation, communicate with each Aboriginal group to determine the manner by which to satisfy the consultation requirements referred to in condition 2.2, including methods of notification, the type of information and the period of time to be provided when seeking views, the process for full and impartial consideration of any views presented and the means by which each Aboriginal group will be informed of how the views and information received have been considered by the Proponent.
- 2.4 The Proponent shall, where a follow-up program is a requirement of a condition set out in this document:
  - 2.4.1 undertake monitoring and analysis to verify the accuracy of the environmental assessment as it pertains to the particular condition and/or to determine the effectiveness of any mitigation measures;
  - 2.4.2 determine whether additional mitigation measures are required based on the monitoring and analysis undertaken pursuant to condition 2.4.1; and
  - 2.4.3 if additional mitigation measures are required pursuant to condition 2.4.2, implement the additional mitigation measures and monitor them pursuant to condition 2.4.1.

- 2.5 Where consultation with Aboriginal groups is a requirement of a follow-up program, the Proponent shall discuss with each Aboriginal group opportunities for the participation of that Aboriginal group in the implementation of the follow-up program as set out in condition 2.4.
- 2.6 The Proponent shall, commencing in the reporting year that construction begins, submit to the Agency an annual report, including an executive summary of the annual report in both official languages. The annual report shall be submitted by the Proponent no later than June 30 following the reporting year to which the annual report applies. In the annual report, the Proponent shall set out:
- 2.6.1 activities implemented in the reporting year to comply with each of the conditions set out in this document;
  - 2.6.2 how the Proponent complied with condition 2.1;
  - 2.6.3 for conditions set out in this document for which consultation is a requirement, how the Proponent considered any views and information that the Proponent received during or as a result of the consultation;
  - 2.6.4 the results of the follow-up program requirements identified in conditions 3.2, 3.8, 4.7, 5.7 and 5.8; and
  - 2.6.5 any additional mitigation measures implemented or proposed to be implemented by the Proponent, as determined under condition 2.4.
- 2.7 The Proponent shall publish on the Internet, or any medium which is widely publicly available, the annual report and the executive summaries referred to in condition 2.6, the plan to offset the loss of fish and fish habitat referred to in condition 3.3, the communication plans referred to in condition 5.3 and 7.5, the cultural resource management plan referred to in condition 6.1, the reports referred to in conditions, 7.4.3 and 7.4.4 and the implementation schedule referred to in condition 8.1 and any updates or revisions to the above documents, upon submission of these documents to the parties referenced in the respective conditions. The Proponent shall keep these documents publicly available for 25 years following the end of operation or until the end of decommissioning of the Designated Project, whichever comes first. The Proponent shall notify the Agency and Aboriginal groups of the availability of these documents once they are published.
- 2.8 The Proponent shall notify the Agency in writing no later than 60 days after the day on which there is a transfer of ownership, care, control or management of the Designated Project in whole or in part.

### **3 Fish and fish habitat**

- 3.1 The Proponent shall implement all reasonable measures to prevent and mitigate adverse environmental effects on fish and fish habitat from changes to water quality during all phases of the Designated Project in compliance with the *Fisheries Act* regarding the deposition of a deleterious substance and taking into account the *Nova Scotia Pit and Quarry Guidelines*. The measures shall include:
- 3.1.1 measures to control erosion and limit run-off;

- 3.1.2 measures to capture and treat run-off prior to discharge into the environment according to provincial requirements; and
- 3.1.3 a 30-metre minimum distance from the overburden stockpiles, the fuel and chemical storage facilities, and the construction equipment to any water body.
- 3.2 The Proponent shall develop and implement, in consultation with the relevant federal and provincial authorities, a surface-water follow-up program to verify the effectiveness of the mitigation measures referred to in condition 3.1.
- 3.3 The Proponent shall develop and implement any required offsetting plan related to the loss of fish and fish habitat associated with the carrying out of the Designated Project in consultation with Fisheries and Oceans Canada, local commercial fishers and Aboriginal groups. The plan shall be developed prior to construction.
- 3.4 For any fish habitat offset areas proposed in any offsetting plan under condition 3.3, and prior to submitting the offsetting plan to Fisheries and Oceans Canada, the Proponent shall determine whether there are adverse effects on:
  - 3.4.1 migratory birds and their habitats;
  - 3.4.2 listed species at risk and their habitats;
  - 3.4.3 the current use of lands and resources for traditional purposes by Aboriginal peoples;
  - 3.4.4 physical and cultural heritage and structure, site or thing that is of historical, archaeological, paleontological or architectural significance to Aboriginal peoples; and
  - 3.4.5 the flow rates, water depths or water widths that may affect the passage of a vessel, including a vessel used by Aboriginal peoples in the context of their current use of lands and resources for traditional purposes.
- 3.5 The Proponent shall, if there are adverse effects on any of the elements set out in conditions 3.4.1 to 3.4.5, implement mitigation measures to address those effects.
- 3.6 For vessels associated with the Designated Project transiting between shipping lanes and the marine terminal, the Proponent shall implement measures to mitigate the risk of collisions with marine mammals and sea turtles taking into account the *Notice for Mariners General Guidelines for Aquatic Species at Risk and Important Marine Mammal Areas*. The measures shall include:
  - 3.6.1 conducting and recording observations for marine mammals and sea turtles;
  - 3.6.2 requiring vessels to travel at a speed limit of 10 knots and to slow down to less than 7 knots when within 400 m of the nearest marine mammal or sea turtle; and
  - 3.6.3 reporting collisions with marine mammals and sea turtles within 2 hours to the Canadian Coast Guard, and notifying Aboriginal groups in writing.
- 3.7 The Proponent shall implement measures to prevent or avoid the destruction of fish, or any potentially harmful effects to fish habitat, during all phases of the Designated Project when using explosives in or around water frequented by fish and shall conduct blasting by taking into

consideration Fisheries and Oceans Canada's *Guidelines for the Use of Explosives In or Near Canadian Fisheries Waters* and the *Nova Scotia Pit and Quarry Guidelines*.

- 3.8 The Proponent shall develop and implement a follow-up program in consultation with Fisheries and Oceans Canada, to verify the Designated Project will not result in loss of fish or fish habitat in Reynolds Brook. The follow-up program shall include:
- 3.8.1 a pre-construction fish and fish habitat field survey, to determine the presence of fish and fish habitat in Reynolds Brook. If the presence of fish or fish habitat in Reynolds Brook is confirmed, the Proponent shall:
- 3.8.1.1 determine the water flow and water levels, including seasonal variations, that are required to maintain fish habitat in Reynolds Brook; and
- 3.8.1.2 monitor water flow and water levels in Reynold Brook during construction and operation phases, and implement any measures required to maintain the water flow and water levels determined in 3.8.1.1.

#### **4 Migratory birds**

- 4.1 The Proponent shall carry out all phases of the Designated Project in a manner that protects migratory birds and avoids harming, killing or disturbing migratory birds or destroying, disturbing or taking their nests or eggs. The Proponent shall take into account Environment Canada's *Avoidance Guidelines*. The Proponent's actions in applying the *Avoidance Guidelines* shall be in compliance with the *Migratory Birds Convention Act, 1994* and with the *Species at Risk Act*.
- 4.2 The Proponent shall not clear vegetation within 30 metres of the coastal high water mark with the exception of the location where the ship loading conveyor and the marine terminal transect this area. The Proponent shall also not clear vegetation in the control zone between 30 and 75 metres from the coastal high water mark except where needed for the access road, the ship loading conveyor, and the marine terminal.
- 4.3 The Proponent shall mitigate the adverse environmental effects of the Designated Project on wetland functions that support migratory birds. The Proponent shall give preference to avoiding the loss of wetlands over minimizing the effects on wetlands and to minimizing the effects on wetlands over compensating for lost or adversely affected wetlands. For effects on wetlands that cannot be avoided or minimized, the Proponent shall, in consultation with Aboriginal groups and relevant provincial and federal authorities, compensate for wetland functions lost.
- 4.4 The Proponent shall control lighting required for the operation of the Designated Project including direction, timing, intensity, and glare of light fixtures to avoid effects on migratory birds, while meeting operational health and safety requirements.
- 4.5 The Proponent shall install line marking devices along the transmission line to avoid effects on migratory birds from collisions with the transmission line connecting the Designated Project to the existing transmission line.

- 4.6 The Proponent shall take into consideration Environment Canada's *Best practices for stranded birds encountered offshore Atlantic Canada* when stranded birds are encountered on vessels associated with the operation of the Designated Project.
- 4.7 The Proponent shall develop and implement a follow-up program to determine the effectiveness of the mitigation measures used to avoid harm to migratory birds, their eggs and nests, including the measures used to comply with conditions 4.1 to 4.6. The follow-up program shall be developed prior to construction and implemented from the start of construction until the end of the decommissioning phase.

## **5 Current use of lands and resources for traditional purposes and socioeconomic conditions**

- 5.1 The Proponent shall conduct marine in-water construction activities outside of lobster fishing season for the lobster fishing area 31a established by Fisheries and Oceans Canada.
- 5.2 The Proponent shall implement marine vessel transportation routes, developed in consultation with local fishers, between the shipping lanes and the marine terminal. The transportation routes shall avoid shrimp trap areas present at the time the transportation routes were established.
- 5.3 The Proponent shall develop and implement a plan for communicating with Aboriginal groups to minimize marine traffic interaction with Aboriginal groups. The plan shall be developed prior to construction and include procedures and practices for sharing information on the following:
- 5.3.1 location and timing of Designated Project-related activities;
  - 5.3.2 location and timing of traditional fishing activities by Aboriginal groups; and
  - 5.3.3 ways in which Aboriginal groups can provide feedback to the Proponent about adverse environmental effects related to navigation caused by the Designated Project.
- 5.4 The Proponent shall notify Aboriginal groups at least 60 days in advance of vegetation clearing to allow Aboriginal groups to catalogue, harvest, and transplant species of importance.
- 5.5 The Proponent shall, in consultation with Aboriginal groups, undertake progressive reclamation of the habitats impacted by the Designated Project and re-vegetate disturbed habitats by using native species that typified the plant communities prior to construction, including those of importance to Aboriginal groups.
- 5.6 The Proponent shall implement noise and dust reduction measures during all phases of the Designated Project including:
- 5.6.1 restricting operating hours for the quarry and processing plants to 16 hours per day;
  - 5.6.2 restricting blasting to daytime hours and weekdays;
  - 5.6.3 applying dust suppressant on all disturbed areas and roads as necessary;
  - 5.6.4 limiting the amount of vegetation clearing so as to clear the smallest extent possible; and
  - 5.6.5 suspending activities during periods of sustained high winds greater than 30 kilometres per hour if fugitive dust emissions cannot be controlled.

- 5.7 The Proponent shall develop and implement a follow-up program to verify the predictions of the environmental assessment related to dust and noise levels. The Proponent shall consider the methodologies described in the *Nova Scotia Pit and Quarry Guidelines* when developing and implementing the program.
- 5.8 The Proponent shall develop and implement a follow-up program to verify the predictions of the environmental assessment related to effects of the Designated Project on mainland moose (*Alces alces amerinana*). The Proponent shall conduct field surveys in consultation with the Aboriginal groups to monitor the presence of mainland moose and its habitat use in the Project area.

**6 Physical and cultural heritage, and structure, site or thing of historical, archaeological, paleontological or architectural significance**

- 6.1 Prior to construction, the Proponent shall develop and implement, in consultation with Aboriginal groups and the province of Nova Scotia, a Cultural Resource Management Plan to conduct additional archaeological work in the areas that may be disturbed during construction. The Cultural Resource Management Plan shall outline the methodologies and timing of the additional archeological work.
- 6.2 In the event that archaeological and heritage resources are discovered, the Proponent shall:
- 6.2.1 halt work at the location of the discovery;
  - 6.2.2 have a qualified individual conduct an assessment at the location of the discovery;
  - 6.2.3 inform, in writing, Aboriginal groups of the discovery, forthwith, and allow for monitoring by Aboriginal groups during archeological work; and
  - 6.2.4 comply with any legislative or legal requirements respecting the discovery of archaeological and heritage resources.

**7 Accidents and Malfunctions**

- 7.1 The Proponent shall take all reasonable measures to prevent accidents and malfunctions that may result in adverse environmental effects.
- 7.2 The Proponent shall, prior to construction, consult with Aboriginal groups on the measures to be implemented to prevent accidents and malfunctions.
- 7.3 The Proponent shall, prior to construction and in consultation with relevant federal and provincial authorities and Aboriginal groups, develop an emergency response plan in relation to the Designated Project.
- 7.4 In the event of an accident or malfunction with the potential to cause adverse environmental effects, the Proponent shall implement the emergency response plan referred to in condition 7.3 and shall:
- 7.4.1 notify relevant federal and provincial authorities and Aboriginal groups of the accident or malfunction as soon as possible and in writing, the Agency;

- 7.4.2 implement immediate measures to mitigate any adverse environmental effects associated with the accident or malfunction;
- 7.4.3 submit a written report to the Agency no later than 30 days after the day on which the accident or malfunction took place. The written report shall include:
  - 7.4.3.1 a description of the accident or malfunction and of its adverse environmental effects;
  - 7.4.3.2 the measures that were taken to mitigate the adverse environmental effects of the accident or malfunction;
  - 7.4.3.3 any views received from relevant federal and provincial authorities and Aboriginal groups with respect to the accident or malfunction, its adverse environmental effects or measures taken by the Proponent to mitigate adverse environmental effects;
  - 7.4.3.4 a description of any residual environmental effects, and any additional measures required to mitigate residual adverse environmental effects; and
  - 7.4.3.5 details concerning the implementation of the emergency response plan.
- 7.4.4 submit a written report to the Agency no later than 90 days after the day on which the accident or malfunction took place, on the changes made to avoid a subsequent occurrence of the accident or malfunction, and on the implementation of any additional measures to mitigate residual adverse environmental effects taking into account the information in the written report submitted pursuant to condition 7.4.3.
- 7.5 The Proponent shall develop and implement a communication plan in consultation with Aboriginal groups. The communication plan shall be developed prior to construction and shall be implemented and maintained up to date during all phases of the Designated Project. The plan shall include:
  - 7.5.1 the types of accidents and malfunctions requiring a notification by the Proponent to the respective Aboriginal groups;
  - 7.5.2 the manner by which Aboriginal groups shall be notified by the Proponent of an accident or malfunction and of any opportunities for the Aboriginal groups to assist in the response to the accident or malfunction; and
  - 7.5.3 the contact information of the representatives of the Proponent that the Aboriginal groups may contact and of the respective Aboriginal groups to which the Proponent provides notification.

## **8 Implementation schedule**

- 8.1 The Proponent shall submit an implementation schedule for conditions contained in this document to the Agency, or anyone designated pursuant to section 89 of the *Canadian Environmental Assessment Act, 2012*, at least 30 days prior to the start of construction. The implementation schedule shall indicate the commencement and completion dates for each activity relating to conditions set out in this document.

- 8.2 The Proponent shall submit an update to this implementation schedule in writing to the Agency, or anyone designated pursuant to section 89 of the *Canadian Environmental Assessment Act, 2012*, every two years on or before June 30, until completion of the activities.
- 8.3 The Proponent shall provide the Agency, or anyone designated pursuant to section 89 of the *Canadian Environmental Assessment Act, 2012*, with a revised implementation schedule if any material change(s) occur from the initial schedule referred to in condition 8.1 or any subsequent update(s). The Proponent shall provide the revised implementation schedule at least 30 days prior to the implementation of the change.

## **9 Record keeping**

- 9.1 The Proponent shall maintain a written record, or a record in an electronic format compatible with that used by the Agency, and retain and make available that record to the Agency, or anyone designated pursuant to section 89 of the *Canadian Environmental Assessment Act, 2012*, at a facility close to the Designated Project in Canada (local facility). The record shall include information related to the implementation of the conditions set out in this document, and the results of all associated monitoring, including:
- 9.1.1 the place, date and time of any sampling, as well as techniques, methods or procedures used;
  - 9.1.2 the dates and the analyses that were performed;
  - 9.1.3 the analytical techniques, methods or procedures used in the analyses;
  - 9.1.4 the names of the persons who collected and analyzed each sample and documentation of any professional certification(s) relevant to the work performed that they might possess; and
  - 9.1.5 the results of the analyses.
- 9.2 The Proponent shall retain and make available upon demand to the Agency, or anyone designated pursuant to section 89 of the *Canadian Environmental Assessment Act, 2012*, the information referred to in condition 9.1 at a facility in Canada close to the Designated Project (or at another location within Canada and agreed upon by the Agency, should the local facility no longer be maintained). The information shall be retained and made available throughout construction and operation, and for 25 years following the end of operation or until the end of decommissioning of the Designated Project, whichever comes first.