

GUIDELINES FOR DEVELOPERS FOR THE PROTECTION OF ARCHAEOLOGICAL SITES IN THE NORTHWEST TERRITORIES

INTRODUCTION

The following guidelines have been formulated to ensure that the impacts of proposed developments on archaeological sites are assessed and mitigated before ground surface altering activities occur. Effective collaboration between land management authorities, the developers, the Cultural Places Program of the Prince of Wales Northern Heritage Centre, and the contract archaeologist(s) will ensure proper preservation of archaeological sites in the Northwest Territories. The roles of each are briefly described.

The **Prince of Wales Northern Heritage Centre** (PWNHC) is the Territorial Government agency that oversees the protection and management of archaeological sites in the Northwest Territories, in partnership with land claim authorities, regulatory agencies, and the federal government. Briefly, its role in mitigating impacts of developments on archaeological sites is to identify the need for an impact assessment and make recommendations to the appropriate regulatory agency, assist in setting the terms of reference for the study depending upon the scope of the development, suggest the names of qualified individuals prepared to undertake the study to the developer, issue a NWT Class 2 Archaeological Permit authorizing field work, assess the completeness of the study and its recommendations, and, in conjunction with the land management authority, ensure that the developer complies with the recommendations.

A **developer** is the initiator of a land use activity. It is the obligation of the developer to ensure that a qualified archaeologist is hired to perform the required study and that provisions of the contract with the archaeologist allow permit requirements to be met (i.e. fieldwork, collections management, artifact conservation, and report preparation). On the recommendation of the contract archaeologist in the field, or the PWNHC, the developer shall implement avoidance or mitigative measures to protect archaeological sites or to salvage the information they contain through excavation, analysis, and report writing. The developer assumes all costs associated with the study in its entirety. Archaeological fieldwork can only be effectively undertaken during the summer months and project planning must take this into account. Furthermore, before an NWT Archaeologists Permit can be issued, permit review procedures require consultation with community and/or land claim authorities. This can take up to 60 days and project planning must account for this as well. Developers can facilitate the archaeological permit consultation process by ensuring that this is covered during their own project consultation.

Through active participation and supervision of the study, the **contract archaeologist** is accountable for the quality of work undertaken and the quality of the report produced. Facilities to conduct fieldwork, analysis, and report preparation should be available to this individual through institutional, agency, or company affiliations. The contract archaeologist is responsible for the curation of objects recovered during field work while under study, for documents generated in the course of the study, as well as remittance of artifacts and documents to the depository specified on the archaeological permit. This individual is also bound by the legal requirements of the **Northwest Territories Archaeological Sites Regulations** under which NWT archaeological permits are issued (see below).

TYPES OF DEVELOPMENT

In general, those developments that cause concern for the safety of archaeological sites will include one or more of the following kinds of surface disturbances. These categories, in combination, are comprehensive of the major kinds of developments commonly proposed in the Territories. For any development proposal, several kinds of these disturbances may be involved. Examples include, but are not limited to, the following:

1. **Linear disturbances:** including the construction of highways, roads, winter roads, transmission lines, and pipelines;
2. **Extractive disturbances:** including mining, gravel removal, quarrying, and land filling;
3. **Impoundment disturbances:** including dams, reservoirs, and tailings ponds;
4. **Intensive land use disturbances:** including industrial, residential, commercial, recreational, and agricultural siting, woodcutting, land reclamation work, and use of archaeological sites as tourist developments.
5. **Mineral, oil and gas exploration:** establishment of camps, temporary airstrips, access routes, well sites, drilling activities, trenching, blasting, seismic activities, or quarries.

TYPES OF STUDIES UNDERTAKEN TO PRESERVE ARCHAEOLOGICAL SITES

Overview: An overview study of archaeological sites should be conducted at the same time as the development project is being designed or its feasibility addressed. They usually lack specificity with regard to the exact location(s) and form(s) of impact and involve limited, if any, field surveys. Their main aim is to accumulate, evaluate, and synthesize the existing knowledge of the archaeological record of the known area of impact. The overview study provides managers with baseline data from which recommendations for future research and forecasts of potential impacts can be made. Copies of the overview report should be submitted to the Cultural Places Program at the Prince of Wales Northern Heritage Centre. If fieldwork is undertaken then a permit is required.

Reconnaissance: This is done to provide an informed appraisal of a region sufficient to provide the developer, the consultant, and government managers with recommendations for further development planning. This study may be implemented as a preliminary step to inventory and assessment investigations except in cases where a reconnaissance may indicate a very low or negligible archaeological potential.

The main goal of a reconnaissance study is to provide baseline data for the verification of the presence of potential archaeological sites, the determination of impacts to these resources, the generation of terms of reference for further studies and, if required, the advancement of preliminary mitigative and compensatory plans. The results of reconnaissance studies are primarily useful for the selection of alternatives and secondarily as a means of identifying impacts that must be mitigated after the final siting and design of the development project. An NWT Class 2 Archaeological Permit is required.

Archaeological Impact Assessment: Generally, an Archaeological Impact Assessment (AIA) consists of two phases of archaeological research, focused on the project footprint or study area:

Inventory: The inventory is generally conducted at that stage in a project's development at which the geographical area(s) likely to sustain direct, indirect, and perceived impacts can be well defined. This requires systematic and intensive fieldwork to ascertain the effects of all possible and alternate construction components on archaeological sites. All archaeological sites must be recorded on Archaeological Survey of Canada site survey forms and submitted electronically. Sufficient information must be amassed from field, library and archival components of the study to enable the developer to make planning decisions and recognize their likely effects on known or predicted resources, and make the developer aware of the expenditures which may be required for subsequent studies and mitigation. An NWT Class 2 Archaeological Permit is required.

Assessment: At this stage, sufficient information concerning the numbers and locations of archaeological sites will be available, as well as data to predict the forms and magnitude of impacts. Assessments provide information on the size, volume, complexity, and content of an archaeological site that is used to rank the values of different sites or site types given current

archaeological knowledge. As this information will shape subsequent mitigation program(s), great care is necessary during this phase.

Mitigation: This refers to the amelioration of adverse impacts to archaeological sites and involves the avoidance of impact through the redesign or relocation of a development or its components, the protection of the resource by constructing physical facilities, or the scientific investigation and recovery of information from the resource by excavation or other method. The type(s) of appropriate mitigative measures are dictated by their viability in the context of the development project. Mitigation strategies should be developed in consultation with the PWNHC. It is important to note that mitigation activities should be initiated as far in advance of the construction of the development as possible.

Surveillance and monitoring: These may be required as part of the mitigation program. A surveillance, or survey, may be conducted during the construction phase of a project to ensure that the developer has complied with the recommendations. Monitoring involves identification and inspection of residual and long-term impacts of a development (i.e. shoreline stability of a reservoir) or the use of impacts to disclose the presence of archaeological sites, for example, the uncovering of buried sites during the construction of a pipeline.

REPORTING PROCEDURES

By law, a holder of an NWT Class 2 Archaeological Permit must submit a report on the work performed by March 31st following the calendar year in which the permit was issued. Copies of the report are submitted to the PWNHC, the local land claim authority, the Archaeological Survey of Canada, and other authorities as outlined in the permit conditions. The structure of the report is outlined in the NWT Archaeological Sites Regulations and in conditions appended to the permit.

Permit applications must be received by the PWNHC by March 31 if work is to proceed the following field season. Archaeological fieldwork in the NWT is undertaken between late May and early September, depending on the region and weather conditions.

The PWNHC sends copies of the application to appropriate organizations for comment. Until recently, the procedure was to forward copies to communities nearest the proposed work for review. With the successive completion of land claims in the NWT this consultation process is evolving. Where land claims have been completed we now communicate directly with the designated claim organization and request them to coordinate the community review. The procedures for this are:

- In the Inuvialuit Settlement Region: The PWNHC sends a copy of the permit application to the Inuvialuit Land Administration and the local Hunters and Trappers Association for review. A copy, for information purposes only, is also sent to the Environmental Impact Steering Committee.
- In the Gwich'in Settlement Area: The PWNHC sends a copy of the permit application to the Gwich'in Tribal Council, which forwards it to the Gwich'in Social and Cultural Institute for review.
- In the Sahtu Settlement Region: The PWNHC sends a copy of the permit application to Sahtu Secretariat Incorporated (SSI) in Deline for review. SSI coordinates consultation with over 20 regional land claim corporations and community governments.
- In the Tłı̄chǫ Settlement Region: The PWNHC sends a copy of the permit application to the Lands Protection Director, Tłı̄chǫ Lands Protection Department, Tłı̄chǫ Government. Where a permit application for work within the Tłı̄chǫ Settlement Region falls within the region of overlap with the Akaitcho Territory, then copies are also sent to the closest Akaitcho Territory community and the North Slave Metis Association.
- In regions where there is no settled land claim, the PWNHC sends a copy of the permit application to the nearest band, settlement office or Tribal Council for comments.

When a community or review agency raises concerns over the issuing of a particular permit, these are addressed before the permit is issued, or are reflected in the conditions attached to the permit. In some cases the permit may not be issued. The PWNHC relates concerns (if any) to the applicant. At the end of the review one of the following will happen:

- The permit is issued for the work originally outlined in the application;
- The permit is issued with conditions attached; or
- The permit is refused, and the reasons for refusal provided to the applicant.

A permit may be refused if the research has not been adequately justified by the applicant, if the applicant lacks appropriate credentials, has significant obligations outstanding on previous permits issued to him or her, proposes to disturb a site of spiritual significance, or has not complied with any conditions precedent to obtaining a permit set out in any applicable land claims agreement. All permits are appended with requirements that inform permit holders of their obligations.

Upon expiry of the permit, a permit holder must have complied with of the following obligations:

- A technical report and copies must be submitted to the PWNHC, claim agencies, the community closest to the research area and other communities/organizations as directed on the permit,
- Provide a non-technical summary for use in public education programs, and
- Submit the catalogued artifacts, field notes, maps and photos to the PWNHC. If the permit holder needs the artifacts for further research, loan arrangements must be made with the Collections Section of the PWNHC.

THE NWT ARCHAEOLOGICAL SITES DATABASE

The Prince of Wales Northern Heritage Centre maintains an inventory of all known archaeological sites in the NWT, which currently totals just over 6000 sites. Developers wishing to determine if there are any known archaeological sites within their area of interest may apply to the PWNHC for a licence agreement to access a subset of the database. The licence agreement may be downloaded at <http://pwnhc.ca/programs/archa.htm>.

Please bear the following in mind when reviewing data from the NWT Archaeological Sites Database:

- Only a small fraction of the archaeological sites in the NWT have been located and recorded. If there are none recorded in your area of interest this likely means that the area remains unexplored for archaeological sites and that sensitive, unrecorded archaeological sites may exist.
- Local Aboriginal groups may have heritage, cultural, or sacred sites in the area which are not registered in the NWT Archaeological Sites database. As well, local knowledge of traditional land use patterns can provide valuable information about past use of your development area.
- If you are applying for access to the NWT Archaeological Sites Database as part of a land use permit, lease or other land use or water use application, please note that a request to access to the database does not constitute an archaeological review of your project.
- If you receive archaeological data under the terms of a licence agreement, we ask you to follow the terms of the agreement closely. All land and water regulatory agencies in the NWT have agreed that you are not required to submit maps detailing the location of archaeological sites with your land use application. This helps protect the sites from unnecessary attention.
- Information on sites has been gathered over many decades and most coordinates were obtained prior to precision GPS. Geographic coordinates for any given site might vary by up to 250 metres. Archaeological site locations are provided as point data, usually marked at the center of a site. Sites

vary in extent and size however, and information regarding this is located in the site record. You should pay particular attention to this if you are planning development activities in the vicinity of an archaeological site. Though Mackenzie Valley and Territorial Land Use Regulations prohibit development activities within 30 metres of a known or suspected archaeological site, Land and Water Boards now generally stipulate a buffer between 100 – 150 metres depending on the region.

SUMMARY OF LEGISLATION PROTECTING ARCHAEOLOGICAL SITES IN THE NORTHWEST TERRITORIES

The **Northwest Territories Archaeological Sites Regulations**, pursuant to the *Northwest Territories Act* apply throughout the Territories and state:

4. No person shall search for archaeological sites or archaeological artifacts, or survey an archaeological site, without a Class 2 or Class 2 permit.
5. No person shall excavate, alter or otherwise disturb an archaeological site, or remove an archaeological artifact from an archaeological site without a Class 2 permit.

Under the *Mackenzie Valley Resource Management Act* "heritage resources" are defined as archaeological or historic sites, burial sites, artifacts and other objects of historical, cultural or religious significance, and historical or cultural records. Furthermore under Part 5 of the Act, an "impact on the environment" means any effect on land, water, air or any other component of the environment, as well as on wildlife harvesting, and includes any effect on the social and cultural environment or on heritage resources.

The **Mackenzie Valley Land Use Regulations** (MVLUR) stem from the *Mackenzie Valley Resource Management Act*, and apply throughout the NWT, except in the Inuvialuit Settlement Region. Two sections of the MVLUR are relevant to archaeological sites:

6 (a). Unless expressly authorized by a permit or in writing by an inspector, no permittee shall conduct a land use operation within 30 m of a known monument or a known or suspected historical, archaeological site or burial ground; and

12. Where, in the course of a land-use operation, a suspected historical or archaeological site or burial ground is discovered,

(a) the permittee shall immediately suspend operations on the site or burial ground and notify the Board or an inspector; and

(b) the Board or inspector shall notify any affected First Nation and the department of the Government of the Northwest Territories responsible therefor of the location of the site or burial ground and consult them regarding the nature of the materials, structures or artifacts and any further actions to be taken.

Within the Inuvialuit Settlement Region the **Territorial Land Use Regulations**, pursuant to the *Territorial Lands Act* apply to federal crown land. Again, two sections are relevant to archaeological sites:

10 (a). No permittee shall, unless expressly authorized in his permit or expressly authorized in writing by an inspector conduct a land use operation within 30 metres of a known monument or a known or suspected archaeological site or burial ground; and

16. Where, in the course of a land use operation, a suspected archaeological site or burial ground is unearthed or otherwise discovered, the permittee shall immediately

(a) suspend the land use operation on the site; and

(b) notify the engineer or an inspector of the location of the site and the nature of any unearthed materials, structures or artifacts.

On Inuvialuit private lands the **Inuvialuit Lands Administration Rules and Procedures** apply. One section is relevant to the protection of archaeological sites:

19(9) Where in the course of an operation, a suspected archaeological site or burial ground is unearthed or otherwise discovered, the Holder shall immediately:

- (a) suspend the operation on the site; and
- (b) notify the Administrator or an Inspector of the location of the site and the nature of any unearthed materials, structures or artifacts.

Development activities near archaeological sites are also regulated by the **Canada Oil and Gas Geophysical Operations Regulations** of the *Canada Oil and Gas Operations Act*. These apply on Crown and private land, including those in settled claim areas, in the NWT and Nunavut:

27. (1) Where an archaeological site or a burial ground is discovered during an onshore geophysical operation, the operator shall so inform a conservation officer and suspend the operation in the immediate area of the discovery until permitted by the conservation officer to resume the operation in that area.

(2) A conservation officer shall permit the resumption of a geophysical operation that was suspended under subsection (1) if the conservation officer, after consultation with the Minister of Communications, is satisfied that the operation will not disturb the archaeological site or the burial ground and will not affect the archaeological or other special characteristics or the nature of the site or ground.

The **Historical Resources Act** (Territorial) pertains to Commissioner's Land. Protection of sites in these areas is afforded by:

9(1). Whenever, in the opinion of the Commissioner, any prehistoric or historic remains, whether or not designated as an historic place under this ordinance or under the Historic Sites and Monuments Act of Canada is threatened with destruction by reason of commercial, industrial, mining, mineral exploration or other activity, the Commissioner may order the persons undertaking the activity to provide for adequate investigation, recording and salvage of prehistoric or historic objects threatened with destruction.

The Inuvialuit, Gwich'in Sahtu, and Tłı̨chǫ **land claim agreements** contain provisions regarding archaeological sites and we strongly advise that these documents be reviewed carefully.

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