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Heritage Resources Management Plan for the Kudz Ze Kayah Mine Project

Prepared for:

BMC Minerals (No.1) Ltd.

530 - 1130 West Pender
Vancouver BC V6E 4A4
Tel. (778) 233-7058

Prepared by:

Ecofor Consulting Ltd.

6B - 151 Industrial Rd
Whitehorse, YT Y1A 2V3
Tel. (867) 668-6600
Fax: (867) 668-6601

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Prepared By:

James Mooney, MA, RPA, RCPA
Ben Vickers-Redhead, MA

Ecofor Consulting Ltd.
6B - 151 Industrial Rd
Whitehorse, YT Y1A 2V3
Tel. (867) 668-6600
Fax: (867) 668-6601

Report Prepared for:

BMC Minerals (No.1) Ltd.
530 - 1130 West Pender
Vancouver BC V6E 4A4
Tel. (778) 233-7058

Heritage Resources Unit
Department of Tourism and Culture
Government of Yukon
PO Box 2703
Whitehorse, YT Y1A-2C6
Phone: (867) 667-5983
Fax: (867) 667-5377

Report also Submitted to:

Ross River Dena Council
Liard First Nation

CREDITS

Plan Authors

James Mooney, MA, RPA, RCPA
Ben Vickers-Redhead, MA

Editor

Cherie Kenya, MA

Mapping

Laura McKersie, Dipl. Tech GIS
Margie Massier. BA/BSc

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Ecofor Consulting Ltd. (Ecofor) prepared this plan on behalf of BMC Minerals (No.1) Ltd. (BMC).

James Mooney, Ben Vickers-Redhead and Kevin Wilson (Owner) would like to thank BMC for the opportunity to prepare this plan and for providing us with assistance. Ecofor would also like to thank the Yukon Heritage Resources Unit for their assistance in providing information and feedback when requested.

Ecofor is solely responsible for any errors evident in this plan.

MANAGEMENT SUMMARY

Ecofor Consulting Ltd., (Ecofor) is pleased to provide BMC Minerals (No.1) Ltd. (BMC) with this Heritage Resources Management Plan (HRMP) to ensure the ongoing protection and management of heritage resources within their existing developments and planned work at the Kudz Ze Kayah (KZK) mine project (the Project). This plan presents action items and communication protocols to assist BMC staff with the orderly and successful management of known heritage resources. This document is intended to be reviewed by the the Ross River Dena Council (RRDC), the Liard First Nation (LFN), and the Heritage Resources Unit of the Yukon Department of Tourism and Culture prior to implementation.

This HRMP was finalized in the fall of 2016 but is designed to be used over the full life of the Project. As such, the first action item is to review the proposed impact areas of the Project, or future proposed revisions of planned impact areas (areas of ground disturbance), to ensure that all planned areas of impact have been assessed. The proposed footprint includes the mine site proper (ABM open pit, mill and water treatment plant, Class A, B, and C storage facilities, overburden stockpiles, topsoil stockpiles, camp, water management ponds, workshops, diversion ditches, storage areas, construction laydown areas, and other ancillary facilities), and the tote road from the mine site to the Robert Campbell Highway. Any current or future proposed ground disturbing components that have not been the subject of a heritage assessment must be assessed prior to ground disturbance. An example of this is the proposed extension of the existing Finlayson Lake airstrip on the Robert Campbell Highway. Since this proposed extension has not be the subject of HRIA efforts, and it is located along an area of increased archaeological potential near a small lake and a known trail, HRIA efforts are required prior to ground disturbance. These additional HRIA field efforts will incorporate TK to guide field efforts and include Kaska field participants in all fieldwork.

The next action item involves revisiting and reflagging any site that is planned to be avoided to clearly identify the boundary of the site. At this time only one site (JjTp-1 near the tote road) has been planned to be avoided. Each known site will be reflagged with 1 inch wide yellow flagging tape marked in black with "**No Work Zone**". This is completed so crews doing ground disturbing construction will be able to clearly identify areas to avoid. Any newly recorded sites will have a site-by-site management review; avoidance of all sites is suggested, however if that is not possible data recovery is recommended. Lastly, it is important to identify and manage any newly recorded sites; these sites could be discovered through chance finds or future heritage resource assessments. Newly identified sites will be flagged and protected till a management plan has be set in place following review with the Yukon Heritage Resources Unit, the RRDC, and LFN. After the risk of construction impacts has ended then site flagging will be removed.

A communications protocol will be used between equipment operators and the on-site management to review areas of planned impacts compared to known heritage resources prior to heavy equipment use. The entire on-site BMC staff will be reminded of the protected status of heritage resources and instructed on what to do during each step in the management plan. Sites recorded in the future will be flagged in the same manner noted above. BMC will continue to inform the Heritage Resources Unit, RRDC, and LFN of heritage resources, sites identified and any impacts to heritage resources. If any sites are the subject of mitigation measures they will remain identified and flagged in the field as noted above and impacts will be avoided, until directed by the Heritage Resources Unit that the mitigation measures have been completed.

In 2015 and 2016 Ecofor completed Heritage Resources Impact Assessments (HRIAs) for the Project. These assessments resulted in the identification of two subsurface lithic archaeological sites, and provided options for the management of heritage resources. The results of these HRIAs, as well as background and supplemental information accessed for these assessments, are used as the basis for the action items listed throughout this HRMP.

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1.0 INTRODUCTION

This Heritage Resources Management Plan (HRMP) is designed for immediate and on-going use at the Project. This includes the proposed mine site area (mine, mill, tailings storage facility, storage areas and other associated facilities) and the road from the mine site to the Robert Campbell Highway. The action items and communication protocols presented here are intended to be used moving forward for the entire Project life unless replaced by a future Heritage Resources Management Plan.

1.1 Review of Past Heritage Assessment Efforts

The proposed Project, tote road, and associated ancillary developments have been the subject of heritage resources impact assessments in 1995 (Rutherford 1995a, 1995b), 1996 (Rutherford 1996), 2015 (Mooney and Bennett 2016), and 2016 (Bennett 2016).

In 1995, a heritage study was conducted in collaboration with the RRDC as part of the Initial Environmental Evaluation. The study identified no cultural materials or features (Rutherford, 1995a); however, a review of the oral history provided by Kaska members indicates that the project area was used for subsistence hunting, trapping and fishing, and as an access route to the North Lakes (Rutherford, 1995b). In 1996, an additional study for cultural materials was undertaken at a proposed airstrip location near the Robert Campbell Highway (Rutherford 1996). No cultural materials were identified in this follow-up study.

In 2015, Ecofor undertook a HRIA of the 2015 proposed project area on behalf of BMC (Mooney and Bennett 2016). Eight areas indicative of archaeological potential were identified and subject to subsurface testing. Out of the eight areas, cultural materials were identified at two resulting in the identification of archaeological sites, JiTp-1 and JjTp-1, both of which are prehistoric, subsurface, lithic scatters. These are the first two archaeological sites recorded in the area. There are no known planned impacts to Site JjTp-1 and as such this site is planned to be avoided. Site JiTp-1 was located within a planned storage facility footprint and as such mitigative data recovery excavations were recommended.

In 2016, Ecofor returned to conduct follow-up assessments at site JiTp-1 based on recommendations made during a previous phase of assessment conducted under permit 15-10ASR (Bennett 2016), and to assess for the first time revised components of the current Project footprint. Follow-up work at JiTp-1 included additional shovel testing (n=41) and 6 m² of excavation divided between two blocks (4 m² and 2 m²) centered on positive shovel tests. Three of the 41 shovel tests excavated in 2016 were positive for heritage resources (each containing a single lithic flake), and the excavation blocks yielded 88 lithic artifacts. No further work was recommended for site JiTp-1.

Assessments of revised component's footprints began with a pedestrian survey aimed at identifying areas of elevated potential for heritage resources, then moved on to shovel testing in identified areas of elevated potential. Areas surveyed included those associated with access roads, ditching, revised overburden stockpile areas, Class A, B, and C storage facilities, open pits, topsoil stockpiles, drill holes, a mill site, potential construction laydown areas, a water management pond, and a settling pond. The pedestrian survey led to the identification of five additional areas of elevated heritage resource potential that were subsequently shovel tested. In total, 186 shovel tests were excavated at these STLs, but all were negative

for heritage resources. No further work is recommended for these landforms and the remaining Project footprint.

In summary, two heritage resources have been identified and recorded across the Project. The results of these efforts have been submitted to the developer, the Heritage Resources Unit, RRDC, and LFN. As sites were found in the field they were assessed for their site significance and the potential impacts by proposed developments and management recommendations were presented on a site-by-site basis. Archaeologists in the field flagged the locations of these sites at time of discovery, however flagging tape is not permanent and as time passes it could be destroyed by weather, disturbed by wildlife or removed by humans.

The assessment approach also includes integrating traditional knowledge (TK) with contemporary knowledge as part of the Socioeconomic Participation Agreement between BMC and Kaska. Through this approach Kaska have committed to giving information to BMC on any environmental concerns they have, and BMC has committed to integrating TK into the gathering of information, the conduct of environmental baseline studies and the preparation of its reports. As such a Kaska Ethnographic Overview of the Kudze Ze Kayah Project has been prepared by Dialectic Research Ltd. (2016). This overview prepared by Dialectic Research Ltd., was a desktop effort and did not include informant interviews and fieldwork. In addition, RRDC is also conducting Project-specific TK work and any new or additional pertinent information provided will be integrated into final project design and operations.

1.2 Scope of Plan

The objectives of this plan were to protect and manage heritage resources during ongoing and future exploration as well as any development. The protection and management steps include direction to:

- Review Project footprints and conduct any required heritage resource impact assessment on revised or newly proposed ground disturbing impacts;
- Revisit and reflag any known sites to be avoided prior to construction;
- Review and implement site by site management recommendations; and to
- Provide communication protocols to manage future ground disturbances and chance finds to avoid impacts to heritage resources.

These objectives will be met through a combination of field work and continued communication between BMC, the Heritage Resources Unit, the RRDC, and the LFN.

1.3 Plan Format

Section 2 reviews relevant legislation and definitions while Section 3 presents the action items and communication protocols. Section 4 lists the references cited. Appendix I presents the Yukon Heritage Resources Policy for Heritage Resource Management on Yukon Lands. Appendix II presents the Guidelines Respecting the Discovery of Human Remains and First Nation Burial Sites in the Yukon. Appendix III presents project mapping with all current heritage resources identified, while Appendix IV contains the table of the heritage resources to be managed. Appendix V presents the BMC Chance Find Report Form.

2.0 RELEVANT LEGISLATION

Heritage resources in the Yukon are protected under the Yukon *Historic Resources Act*, and protected and managed under provisions of the Yukon First Nations Umbrella Final Agreement (UFA), Chapter 13. The Heritage Resources Unit of the Yukon Government prepared an operational policy that communicates the Yukon Government's position on ownership and management of heritage resources. This policy document is attached as a reference in Appendix I.

Besides the *Historic Resources Act*, the HRMP was prepared with the following additional legislation in mind so that heritage resources may be protected and managed including chance finds:

- The Quartz Mining Regulation (YOIC 2003/64) – under the Quartz Mining Act specifically Schedule 1 Operating Conditions, Section E regarding historic objects and burial grounds;
- The Land Use Regulation under the Territorial Lands (Yukon) Act – specifically Section 9 (Prohibitions);

2.1 Heritage Resources Protection and Long Term Curation of Materials Collected

Heritage resources (with the exception of heritage sites identified in First Nation Final Agreements, and ethnographic objects) on non-settlement Yukon lands are considered the property of all Yukoners and are held in trust for all Yukoners, and are managed by the Yukon Government.

Heritage resources on First Nation Settlement lands are owned and managed by the First Nation. In this case the Project and the road from the mine site to the Robert Campbell Highway do not cross over any First Nation Settlement lands or interim settlement lands. A parcel of Interim Protected Land (RRDC-R15A) adjoins the southern boundary of the Project but no ground disturbing impacts are planned near this area.

Under the *Historic Resources Act* and the Archaeological Sites Regulations heritage contractors prepare required written reports as well as artifacts and materials collected in the field for long-term record keeping and artifact curation. This includes preparing artifact catalogs, labeling artifacts, packaging and preparing artifacts to meet specific long term curation goals as needed. In order to ensure proper completion of permit requirements, heritage contractors submit interim and final reporting as well as collected materials to the Yukon Heritage Resources to review. After the permit reporting and artifact curation preparation requirements are met, then the Heritage Resources Unit would submit materials to appropriate First Nations as requested for further management or continue to hold the materials at the direction of the First Nations.

2.2 Resource Definitions

The UFA does not provide specific definitions of heritage resources but it does distinguish the types of resources. Part 6 of the *Historic Resources Act* does provide more detailed definitions. Presented below are general definitions used in the common practice of heritage resource impact assessments.

A *Site* is an area or a place, or; a parcel of land which contains heritage resources or objects.

Ethnographic objects refer to an item of material culture relating to the history and traditional culture of an ethnic group.

Historic Sites contain heritage resources that are greater than 45 years in age and possess significant heritage value. By convention, historic sites date to the period for which written records are available; in this case, the historic period commences with the arrival of the Hudson's Bay Company in the early-mid 19th century. Historic sites may include cabins, caches, camps, brush camps, and any other man-made structures, features or objects that date between about 1960 and 1830.

Archaeological or Prehistoric Sites generally represent use before European contact and are found on or under the ground surface, and may consist of the remains of ancient camps, including hearths, animal bone and stone tools and debris. In this usage, an Archaeological Site equates to a Prehistoric Site (a site that dates to the period before written history). Note, however, that in heritage resource management usage, archaeological resources are viewed as resources that are in subsurface context (buried) and may also include historic period objects and features.

Proto-historic Sites can be viewed as prehistoric sites from a time period which includes the effects of foreign historic cultures but lacks the firsthand written descriptions of that area. For example, in the Yukon the proto-historic period ends with the appearance of firsthand written descriptions in the mid-1800s. However the proto-historic time period extends back thru time when foreign materials such as "drift-iron" from ship wrecks on the west coast, or foreign trade items were carried into the Yukon. Examples of foreign historic materials which predate the mid-1800s found in prehistoric contexts usually represent this proto-historic period.

Palaeontological Resources include the fossilized, mummified, or skeletal remains of previous life forms. These resources may be found in sedimentary rock formations, or eroding streams and creeks and contain a great deal of information concerning past environments. The most common of these resources include the skeletal remains of ice age mammals which are often associated with dark humic deposits. These remains may date from approximately tens of thousands to many hundreds of thousands of years before present.

Human remains means non-fossilized remains of human bodies that are found outside a recognized cemetery or burial site.

3.0 HERITAGE RESOURCES MANAGEMENT PLAN TASKS

The HRMP action items and communication protocols presented below incorporate communications between BMC, the Heritage Resources Unit, RRDC and LFN. These actions and protocols are intended to be carried forward throughout construction development, reclamation, and closure of the Project.

Action Item 1: Heritage Resources Review of Any New Proposed Ground Disturbing Activities

As this project moves forward it is possible that further revisions or ancillary components will be added. It is recommended that any areas of potential ground disturbing impact not previously assessed are reviewed and assessed in the field by a team of archaeologists prior to impacts. This fieldwork will incorporate TK to guide field efforts and include Kaska field participants in all fieldwork. If any of the proposed locations are evaluated in the field to contain heritage resources, heritage staff will record and flag the resources as noted below in action item 2. If a target location is evaluated in the field to possess potential for buried heritage resources, heritage staff will conduct sub-surface testing. If resources are identified they will be recorded, and the site will be identified as listed below in action item 2.

Action Item 2: Revisit and Reflag all Heritage Resource Sites Prior to Construction

There have been three archaeological assessments conducted in relation to the proposed Project. During the course of these assessments, two prehistoric sites have been discovered, recorded and identified in the field. Identification consists of affixing a 1 inch wide yellow flagging tape with black printing that states "**No Work Zone**" to a tree, shrub or rock at the centre of the site which includes written on it the field identification number, the date and a contact number. Then a buffer area of 30 m around the known historic or prehistoric site was flagged with the same flagging tape.

Revisiting these sites in order to reflag them is necessary prior to construction because, as previously mentioned, flagging tape is not permanent and as time passes it could be destroyed by weather, disturbed by wildlife or removed by humans. Appendix III and IV describe the remaining prehistoric archaeological site that will require revisiting and reflagging and its relation to the currently proposed project area.

Action Item 3: Site by Site Management Efforts

Impacts to recorded historic and prehistoric resources should be avoided where possible, or mitigation efforts should be completed prior to construction impacts. A site specific management recommendation for site JiTp-1 was presented within the 2015 HRIA Report conducted by Ecofor in 2015 (Mooney and Bennett 2016) and completed by Ecofor in 2016. The remains of this site are planned to be destroyed by construction activities and as such, was the subject of systematic data recovery prior to construction and is considered fully managed/mitigated. There is currently one remaining heritage resource site (JjTp-1) to be managed near the currently proposed Project (continued avoidance), Appendix III contains project mapping with all current heritage resources identified and Appendix V contains the detailed table of the archaeology sites to be managed.

Action Item 4: Identification of Any Newly Recorded Heritage Sites

All heritage sites recorded in relation to the Project (including the mine site, all roads, borrow pits, airstrip, barge landing and any ancillary developments) in the future will be identified as per action item 1. All heritage sites recorded in relation to the Project will be subjected to this HRMP or any subsequent plans.

Communication Protocol 1: Ground Disturbing Activities

Prior to any new ground disturbing activities the relevant equipment operators will request approval from the on-site environmental manager. The on-site environmental manager will review the location of the planned disturbance against previously conducted heritage resource impact assessment efforts and recorded heritage site locations. If the area of planned impacts has not been the subject of a HRIA then an HRIA effort would be required prior to ground disturbance. If any sites have been recorded in or near the planned ground disturbance location the camp manager will review the location of the heritage sites with the equipment operators in the field, on foot, and provide directions to avoid impacts to the identified sites with a 30 m buffer area.

Communication Protocol 2: Chance Finds Procedures

This section provides guidelines to respond to the discovery of either disturbed or intact archaeological materials, historic, paleontological, and/or human remains during development activities. The Chance Find Procedure applies to situations where archaeological sites or resources are found where they are not known during the course of construction, or identified during further exploration efforts, baseline environmental efforts, and ground disturbing activities. The purpose of the Chance Find Procedure is to minimize disruption to the construction schedule, as well as promoting the preservation and proper management of archaeological resources that may be identified.

These heritage resources may range in size from small flakes and chips of lithic debitage remaining from stone tool manufacturing, up to large historic structures such as cabins and workshops. Other possible heritage resources include paleontological resources, culturally modified trees, fire cracked rock, historic adits, cache pits, house pits, paleontological remains, isolated prehistoric tools of wood, bone, antler, and isolated historic items.

If any additional heritage resources are identified, be it intact or disturbed, all work in the immediate area will cease. The resources will be left in place, recorded with the Chance Finds Report Form (see below and Appendix V), and the area of the find will be protected from further impacts with a minimum 30m buffer. The camp manager will be notified of the type, amount, and location of the find. Information collected and passed on regarding the chance find will include:

- GPS location of the find;
- Date and time when the find was identified;
- Approximate size of find and type of materials present;
- Description of setting and access to the location of the find; and
- Digital photographs of the find(s) and general area of the find.

The camp manager will then contact the Heritage Resources Unit to discuss further management options and notify the appropriate RRDC and LFN contacts. If the area can be protected and immediate salvage operations are not required then a resource specific or site specific mitigation plan may be developed to recover data and information under direction of the Heritage Resources Unit and the RRDC and LFN.

If the remains include paleontological remains then the Yukon Paleontologist will also be contacted.

If human remains are identified during operations, all work in the area will immediately cease and further impacts to the area will be prevented, and the R.C.M.P will be notified. If the R.C.M.P. and Coroner determine that the remains are from a historic burial, the First Nation(s) and Yukon Heritage Resources Unit will be notified, as per the Guidelines Respecting the Discovery of Human Remains and First Nation Burial Sites in the Yukon (Appendix II). Personnel should recognize that the appropriate course of action may vary depending on whether the remains are found in an archaeological context (i.e. in association with artifacts) or found without direct context to historical resources.

As part of the ongoing and continuing efforts to increase awareness of the possible heritage resources that may be found in the area, and those that have been recorded, BMC will leave multiple copies of the booklet entitled *Handbook for the Identification of Heritage Sites and Features* (Gotthardt and Thomas 2005), and the Chance Find Report Form (Appendix V), at the KZK Camp to be shared with current and future management and staff.

Communication Protocol 3: Planned Impact of Known Sites

Some heritage sites may be planned to be impacted prior to construction. If these sites are planned to be impacted then approval for impact must be granted by the Heritage Resources Unit. In most cases sites to be impacted will be subjected to a data recovery mitigation plan and fieldwork efforts. In the case of prehistoric archaeological sites, detailed block excavation of a significant sample of the site is often used to collect and record information from the site prior to site impact. In the case of historic resources more detailed photographic, ethnographic, informant, and archival research may also be used to document a resource before it is impacted.

Each heritage resource at the Project will be flagged for avoidance as noted above. If any sites have received data recovery excavations and/or other mitigation efforts these efforts and results must be reviewed by the Heritage Resources Unit and applicable First Nations prior to final approval for the site to be impacted. Until such approval, each site area will remain flagged to avoid additional impacts. Only after approval for impact has been granted may the site be impacted. Sites located on non-settlement lands are managed by the Yukon Government, while sites located on settlement lands are managed by First Nations. The Project area and associated road to the Robert Campbell Highway do not include any First Nation settlement or interim settlement lands. A parcel of Interim Protected Land (RRDC-R15A) adjoins the southern boundary of the Project but no ground disturbing impacts are planned near this area.

Please Note: Some site by site management recommendations may include construction monitoring after mitigation efforts have been approved.

Heritage Resources Contact Information

<p>Chief Jack Caesar Ross River Dena Council General Delivery Ross River, YT Y0B 1S0 Ph. 867-969-2277 Jackcaesar21@gmail.com</p>	<p>Chief Daniel Morris Liard River First Nation PO Box 328 Watson Lake, YT Y0A 1C0 Ph. (867) 536-7901 Fax. (867) 536-7910 dmorris@kaska.ca</p>
<p>Mary Maje, YESAA Coordinator Ross River Dena Council General Delivery Ross River, YT Y0B 1S0 yesaa@rrdc.ca</p>	<p>Executive Assistant Liard First Nation PO Box 328 Watson Lake, YT Y0A 1C0 Lfncc_exeasst@kaska.ca</p>
<p>Dr. Grant Zazula, Yukon Palaeontologist Government of Yukon Department of Tourism and Culture Yukon Palaeontology Program 133A Industrial Road Whitehorse, YT Y1A 2C6 Ph. (867) 667-8089 Fax. (867) 667-5377 grant.zazula@gov.yk.ca</p>	<p>RCMP Ross River Detachment P.O. Box 98 Ross River, YT Y0B 1S0 Ph. (867) 969-2677 Fax. (867) 969-2613</p>
<p>Kirsten MacDonald, Chief Coroner Government of Yukon Whitehorse, YT Y1A 2C6 Ph. (867) 667-5317 Fax. (867) 456-6826 Toll free: (800) 661-0408 local 5317 kirsten.macdonald@gov.yk.ca</p>	<p>Greg Hare, Acting Yukon Archaeologist Government of Yukon Department of Tourism and Culture Yukon Archaeology Program 133A Industrial Road Whitehorse, YT Y1A 2C6 Ph. (867) 667-3771 Fax. (867) 667-5377 greg.hare@gov.yk.ca</p>

Communication Protocol 4: Continued Communication with First Nations and the Heritage Resources Unit

It is imperative that communications regarding newly recorded heritage sites and resources, or impacts to heritage sites or resources be passed along in a timely manner to the Heritage Resources Unit, RRDC, and LFN. All results from the heritage assessments and mitigation efforts must be shared in a timely manner with the Heritage Resources Unit, RRDC, and LFN.

4.0 REFERENCES CITED

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APPENDIX I: HERITAGE RESOURCE MANAGEMENT ON YUKON LANDS

Operational Policy for Heritage Resources Management on Yukon Lands

This document has been developed to communicate the Yukon Government's position on ownership and management of heritage resources in the context of the development assessment and review process in the Yukon. The Operational Policy for Heritage Resources Management is based in the provisions of the Yukon First Nations Umbrella Final Agreement (UFA), Chapter 13 and the enabling legislation: the Yukon *Historic Resources Act*, and the Inuvialuit Final Agreement. In the implementation of the legislation, Yukon Government is acting to protect and manage heritage resources on behalf of all Yukoners.

Ownership and Management Authority – Moveable Heritage Resources

Yukon Government is identified as the responsible authority for heritage resource management on non-settlement (Yukon) lands based on the specific provisions concerning ownership of moveable heritage resources in the UFA, Chapter 13 (13.3.3):

- Government owns all moveable and documentary heritage resources that are not “ethnographic resources directly related to culture and history of Yukon First Nation people”.

Significant management direction is provided by the UFA in the use of the term ‘**moveable**’ in connection with heritage resources. Anticipating the requirement to manage heritage resources in future land developments and activities, the option to move heritage resources with the objective of protection is fundamental in the UFA Chapter 13.

Ownership and Management - Heritage Sites

UFA 13.8.1 Ownership and management of Heritage Sites in a Yukon First Nation's Traditional Territory shall be addressed in that Yukon First Nation Final Agreement. Examples of heritage sites that have been identified in First Nation Final Agreements: Fort Selkirk, Forty Mile, Rampart House, Lansing Post, Tagish Post, Canyon City, Lapierre House, Tr'ochëk.

With the exception of heritage sites set out in FNFA as per 13.8.1, heritage sites and non-moveable heritage resources (structures/built heritage) are governed by Laws of General Application (*Historic Resources Act*). Ownership vests in Yukon Government.

Designation of Heritage Sites under the *Historic Resources Act* ensures sites are protected from activity or development impacts. Sites or areas of historical significance in the Yukon, beyond those listed in FNFA, may also be nominated for designation under the HRA. The nominations are reviewed by the Yukon Heritage Resources Board, who then recommends to the Minister that a site be designated as a Yukon Historic Site.

Heritage Resources – Definitions

The UFA Chapter 13 does not provide definitions of heritage resources, but makes the distinction among types of heritage resources as follows (13.3.6.): ethnographic objects directly related to the culture and history of Yukon Indian People, palaeontological objects, and archaeological objects. Definitions for these terms are provided in *Historic Resources Act* (Part 6 Historic Objects and Human Remains – Definitions). Generally, palaeontological objects are the fossil remains of ancient plants and animals; archaeological objects are abandoned objects that are older than 45 years. For operational purposes, “**moveable ethnographic objects directly related to the culture and history of Yukon Indian People**” (UFA 13.3.2) are objects that were

known to have been owned or used by First Nations individuals or families within living memory¹. 'Direct' indicates the line of ownership for the object is unbroken or can be reconstructed. As per UFA 13.3.5 – if an object cannot readily be determined to be ethnographic, it is held in custody by Yukon Government until its nature has been determined.

Protection of Heritage Resources

Accidental discovery of heritage resources (UFA 13.8.7) – heritage resources discovered during construction or excavation are protected under Laws of General Application (*Historic Resources Act, Mining Land Use Regulations; Land Use Regulations*). The *Historic Resources Act* (64) prohibits destruction or alteration of a heritage resource except in accordance with a historic resources permit.

Report of Findings

Historic Resources Act Part 6 Report of Findings:

71(1) Every person who finds an object that is or that likely is a historic object, or remains that are or that likely are human remains, shall immediately report the find to the Minister.

(2) If the object is found on settlement land the finder shall also report the find to the Yukon first Nation which governs the settlement land.

Quartz and Placer Mining Land Use Regulations – E Historic objects and burial grounds

9 . Any sites containing archaeological objects, palaeontological objects or human remains or burial sites discovered in the course of carrying out an operation must be immediately marked and protected from further disturbance and, as soon as practicable, the discovery reported to the Chief (of Mining Land Use).

In respect of UFA 13.4.8, 13.7.1, Yukon Government provides to First Nations archaeological, palaeontological and historic site inventories and research reports on heritage resources found in their traditional territories.

First Nation Burial Sites

Procedures to manage and protect First Nation burial sites have been established by the Yukon Government and Yukon First Nations: “Guidelines Respecting the Discovery of Human Remains and First Nation Burial Sites in the Yukon”. http://www.tc.gov.yk.ca/pdf/respecting_guidelines.pdf . General provisions include:

- Restrict access to preserve dignity of the site
- Newly discovered sites/accidental discovery
 - RCMP/Chief Coroner to be informed
 - If determined to be a First Nation burial, First Nation to be informed
 - general rule no further disturbance

Heritage Resource Assessment and Permits

Standard archaeological impact assessment and mitigation procedures are followed to guide heritage resources assessment in the Yukon. The Government of British Columbia Archaeological Impact Assessment Guidelines are the recommended guideline for Yukon and are comparable to standards used in other Canadian jurisdictions: http://www.tsa.gov.bc.ca/archaeology/docs/impact_assessment_guidelines/in dex.htm

Heritage assessments ideally are undertaken in cooperation with affected First Nations. Archaeological consultants are required to communicate with affected First Nations prior to undertaking field research. A First Nation may choose not to provide oral history or traditional knowledge input to the consultant, however. In such cases, the First Nations may keep confidential information on traditional use areas, subsistence resources and

¹ Ethnographic objects of themselves may not be informative of ownership. Many historic objects (for example, guns, axes, knives) were used equally by all Yukoners and attribution of ownership (for example to Nacho Nyak Dun vs. Selkirk First Nation vs. a non-First Nation trapper) cannot be made without direct knowledge of who made or used the object or in whose former camp the object was found. Therefore knowledge or memory of historic use is critical in determining if the objects are ethnographic.

cultural values and work independently with the Yukon Environmental and Socio-Economic Review board to ensure concerns with these values are addressed for a particular project.

Under the *Yukon Environmental and Socio-Economic Assessment Act*, heritage resource assessment is generally required for all activities that will impact or will potentially impact heritage resources. All heritage resource assessments are required to be carried out under permit:

Historic Resources Act

62 No person shall search or excavate for historic objects or human remains except in accordance with a historic resources permit. *S.Y. 1991, c.8, s.61.*

Archaeological Sites Regulation

3. No person shall survey and document the characteristics of an archaeological site without a Class 1 or Class 2 permit.

4. No person shall excavate, alter, or otherwise disturb an archaeological site, or remove an archaeological object from an archaeological site, without a Class 2 permit.

APPENDIX II: HUMAN REMAINS GUIDELINES

Guidelines Respecting the Discovery of Human Remains and First Nation Burial Sites in the Yukon

With approvals as of August 1999

This document was prepared pursuant to provisions of
Yukon First Nation Final Agreements
and the Yukon Transboundary Agreement with the Gwich'in Tribal Council

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Introduction and Background

The treatment of every burial site requires respect. Legislation of various types protects burial sites and cemeteries from being disturbed. Government agencies and First Nations keep and consult records of known sites so that land use plans or proposals can avoid such sites.

There are many historic and First Nation graves in the Yukon however which are no longer marked and which may be disturbed accidentally through land use or development. Other sites may be disturbed by natural forces, such as erosion, leading to the exposure of human remains.

As more people travel in backcountry areas, for work or pleasure, it is expected that the number of such discoveries may increase. It is important therefore to have guidelines for reporting, investigating and managing such sites in a coordinated and effective manner, to give them proper respect.

Yukon First Nation (YFN) Final Agreements (Section 13.9.0) and the transboundary agreement with the Gwich'in Tribal Council (Tetlit Gwich'in) (Section 9.5) require the development of procedures to protect and manage YFN or TG burial sites, and specify certain actions when such sites are discovered.

Consistent with these obligations, these guidelines were developed at two workshops held jointly in March and October 1998, involving First Nation Elders, heritage and implementation staff, the RCMP, Coroner and other Yukon and federal government officials.

Purpose

To provide direction on the reporting, identification, treatment and disposition of human remains found outside of recognized cemeteries in the Yukon, to ensure these remains are respected and protected consistent with legislation and Yukon land claims agreements.

Scope and Application

These guidelines apply to anyone who discovers human remains or grave goods outside of recognized cemeteries in the Yukon, and to the Yukon, Federal and First Nation government officials involved in protecting and caring for such sites.

The guidelines reflect existing practices in many ways. They do not replace legislation or regulations protecting burial sites, but are intended to integrate obligations contained in Yukon land claim agreements with land use permitting regimes and the Development Assessment Process . These guidelines may apply on Settlement Lands at the discretion of each First Nation. Government approval is required for management plans for sites on non-Settlement Land.

Existing known burial sites that are marked or otherwise recorded are protected by existing legislation. Management plans for these sites may be developed on a case by case basis.

Burial sites discovered within the boundaries of a designated heritage site may be subject to the management plan for that site.

The guidelines do not apply within National Historic Sites or National Parks. Parks Canada has its own guidelines respecting burial sites and human remains.

Evaluation and Revision of Guidelines

The implementation of these guidelines will be evaluated as necessary to ensure that they are fulfilling their purpose.

GUIDING PRINCIPLES

All human remains, and items found at graves (grave offerings, markers etc.) shall be treated with respect and dignity regardless of their cultural affiliation.

Actions taken following the discovery of sites will be consistent with Yukon and transboundary land claim agreement provisions respecting Yukon First Nation and Tetlit Gwich'in Burial Sites.

Each discovery will be handled on a case by case basis in consultation with the affected parties, in a coordinated and timely manner.

Definitions - see Appendix 1

References - see Appendix 2

Land claims provisions - see Appendix 3

Guidelines Respecting the Discovery of Human Remains and First Nation Burial Sites

See also Figure 1.

These guidelines cover five steps: discovery and notification; site protection and investigation; investigation and reporting; and site disposition or management agreements. A final step, arbitration, is provided for where no disposition agreement is reached.

1. Discovery and Notification

If human burial remains are accidentally discovered the following guidelines apply:

- a) The finder will immediately cease any further activity at the site and report the site to the RCMP.
- b) *If the finder is operating under a land use licence or permit*, the site must also be reported immediately to the land manager/permitting authority, as set out on the permit. The land manager/permitting authority shall confirm that the site is reported to the RCMP.
- c) Based on the information it receives, the RCMP will notify: 1) the Coroner's office if the site is of a forensic or criminal nature; or 2) both the First Nation(s) in whose Traditional Territory the Site is located and the Heritage Branch, if the site is a suspected historic or First Nation burial site.

2. Site Protection and Identification

- a) the land manager/permitting authority shall take reasonable measures to protect the site from environmental factors and any form of unauthorized interference or disturbance.
- b) based on the evidence reported at the scene, the RCMP/Coroner will investigate the site and make a preliminary determination as to the nature of the remains.
- c) *if the site is of a criminal or forensic nature* (potential crime scene or missing person), then the Coroner's office and police will assume authority over the site/remains.
- d) Heritage Branch may recommend that an archaeologist assist police or coroner in the preliminary assessment of the site.
- e) *If the site is not of police/coroner interest* then the Director, Heritage Branch, the affected First Nation(s) and the land manager will assume interim responsibility for protection and investigation of the site. If it's a suspected First Nation site, the Heritage Branch and First Nation would assume this responsibility.
- f) the Director, Heritage Branch, the affected First Nation(s) and land manager shall take reasonable measures to restrict access and ensure that the human remains and any grave offerings are not further disturbed pending the investigation and identification of the remains. The RCMP may be consulted about protecting the site.

Figure 1

*Guidelines respecting the Discovery of Human Remains
and First Nation* Burial Sites*

*2. Site Protection and Investigation
-protection/no disturbance or access*

If not a criminal matter, Heritage Branch takes lead with affected FN or transboundary group. RCMP may assist if requested.

- *First Nation, Minister*
- *permitting authority - person may continue activity with FN consent. If consent is not provided, proceed according to terms and conditions of arbitrator(UFA 26.7.0 TG Ch.18)*

or

- *rebury, relocate or remove remains*
- *restrict/specify access if necessary and possible*
- *may designate existing or new site as burial site/cemetery or heritage site*
- *management plan (jointly prepared/approved by FN and Government on Non-Settlement Lands)*

Maps, inventories, reports, plans, agreements.

- g) Where human remains are at risk of being destroyed or damaged, the Minister of Tourism for Heritage may issue a stop work order prohibiting any further activities and may make an agreement with the First Nation or the Tetlit Gwich'in or land owner or user for any investigation, excavation, examination and preservation and removal of the remains, consistent with land claim provisions. (s.72, *Historic Resources Act- This would address concerns about unknown remains.*)

Existing site inventories, land use records, affected First Nations and community elders, and military authorities, should be consulted as soon as possible about possible identification of the remains.

Some examination of the site/remains may be required to determine its cultural affiliation and age, and whether or not the site is modern or historic.

3. Investigation and Reporting

- a) The Heritage Branch/land manager will direct an archaeologist or qualified examiner to carry out an investigation under any required permits, in consultation with the affected First Nation and other affected parties, to make an initial report citing, if possible*, the cultural affiliation of the human remains.
- b) Within a reasonable time to be specified by the Minister, and the affected First Nation(s), the archaeologist or qualified examiner shall deliver a written report and any notification not yet made, to:
- the Minister, and the affected First Nation(s) if appropriate;
 - the Director of the Heritage Branch;
 - the land manager/permitting authority;
 - any other representative of the interred, if known.
- c) The written report shall attempt *to identify:
- the representative group of the interred;
 - the geographic boundaries of the site;
 - the grave offerings or other heritage resources that may be associated with the remains or the site.
- d) The archaeologist or examiner may, with the agreement of the proper authority and the representative of the interred, if known, remove all or part of the human remains for further analysis or for temporary custody where the remains may otherwise be at risk.

- e) Any exhumation, examination and reburial of human remains from a YFN/TG burial site shall be at the discretion of the affected YFN/TG; and if ordered by an arbitrator pursuant to land claim provisions, will be done or supervised by the YFN or Tetlit Gwich'in.

*it is often difficult to determine the cultural ancestry or affiliation of fragmentary human remains

3.1 Reporting

- a) If the site is determined to be a Yukon First Nation Burial Site, or Tetlit Gwich'in burial site, the appropriate representative will be contacted in writing to provide further direction on the disposition of the remains. *
- b) A person carrying out Government or First Nation authorized activity where a First Nation site is discovered can continue that activity with the consent of the First Nation in whose Traditional Territory the Yukon site is located. The consent of the Tetlit Gwich'in is required if the site is in the Tetlit Gwich'in primary use area. If consent is denied, the person can seek terms and conditions from an arbitrator about continuing the activity (see Section 5).
- c) If after the final report, the human remains are found to be those of a different aboriginal people than those mentioned previously, the proper authority of that group shall be notified in order that they may assume the role of the representative.
- d) Where a site is **not** found to be a Yukon First Nation or Tetlit Gwich'in burial site, or a military or mariner's burial site, the Director, Heritage Branch may publish notice of the discovery in a newspaper or other public notice seeking information on the remains.

4. Site Disposition Agreement (Management Plan)

4.1 When the site or remains are identified

- a) The site shall not be disturbed and the Director, Heritage Branch or First Nation if on Settlement Land, shall initiate discussions towards entering into a site disposition agreement with the representative of the interred.
- b) If the site is a Yukon First Nation Burial Site or a Tetlit Gwich'in burial site on non-settlement land, there must be joint approval of the site management plan by the Yukon First Nation in whose Traditional Territory the site is located and the Government. If the site is a Tetlit Gwich'in burial site located off Tetlit Gwich'in land but in the primary use area, the management plan must be jointly approved by the Tetlit Gwich'in and the Government.
- c) Decisions regarding reburial, relocation or other disposition should be determined on a case by case basis in consultation with those concerned and in a timely manner.

Site disposition agreements shall determine such things as:

1. the interim care of the human remains;

2. the scope and extent of analysis to be performed on the human remains, if any;
3. the exact location of the place where the human remains are to remain or to be interred;
4. the style and manner of disinterment, if applicable;
5. the style and manner of reinterment, if applicable;
6. the time period in which disinterment and reinterment is to take place;
7. the procedures relating to, and the final disposition of any grave offerings discovered with the human remains and any additional analysis of them;
8. the provision for future maintenance of the cemetery or site where the human remains are to be located;
9. access to the site and ways to prevent disturbance;
10. any other issue agreed upon.

*it is often difficult to determine the cultural ancestry or affiliation of fragmentary human remains

4.2 When no representative is identified or no disposition is specified:

If disposition is not specified by a representative, or the remains are not claimed or no affiliation is established within a reasonable time, the Minister, or First Nation if on Settlement Land, shall with the necessary permits and approvals provide for the following disposition:

- a) cover and leave the remains where they were found and have the site recorded as a burial site/ heritage site, if on land suitable for a burial site; or
- b) have the remains disinterred and reinterred in the nearest appropriate cemetery; or
- c) remove the remains from the site for analysis and may have them reinterred in a recognized cemetery or;
- d) may act as the temporary repository of the remains.

(Where the remains were found on Settlement Land but are not considered First Nations remains, the Government may remove the remains in consultation with the First Nation.)

5. Arbitration

- a) If no disposition agreement or management plan is reached within a reasonable time the matter may be referred to arbitration for settlement. If this matter concerns a Yukon First Nation Burial Site, this shall be done pursuant to 26.7.0 of the UFA; or Chapter 18, if the matter concerns a Tetlit Gwich'in site in the primary use area.

6. Records

- a) A record of the site and a report of the discovery and disposition plan shall be kept by the Government and the affected First Nation(s)/representative for future reference to protect the site.
- b) Access to information about discovered sites will be addressed in any site management plan developed under these guidelines, and will be protected under the *Access to Information and Protection of Privacy Act*, and the *Historic Resources Act* or any similar First Nations legislation.

Appendix 1

Definitions

burial site

the location of any human grave or remains that have been interred, cremated or otherwise placed, and include ossuaries, single burials, multiple burials; rock cairns; cave or cache burials etc. not situated within a cemetery

First Nation Burial Site

This refers to a Yukon First Nation Burial Site or a Tetlit Gwich'in burial site, which is defined as: a place outside a recognized cemetery where the remains of a cultural ancestor of a Yukon Indian Person (or the Tetlit Gwich'in) have been interred, cremated or otherwise placed.”

[from the Definitions section of the *Umbrella Final Agreement for the Council for Yukon Indians (now Council of Yukon First Nations) and the Transboundary Agreement between Canada and the Gwich'in Tribal Council*]

human remains

mean the remains of a dead human body and include partial skeletons, bones, cremated remains and complete human bodies that are found outside a recognized cemetery” (*adapted from Historic Resources Act*)

grave offering

any object or objects associated with the human remains which may reflect the religious practices, customs or belief system of the interred.

historic

under the Historic Resources Act this generally means something older than 45 years.

land manager

Agency responsible for the administration of the land on which the site is located. For example, currently territorial parks are managed by Yukon Parks and Outdoor Recreation; gravel pits and rural airports are administered by Community and Transportation Services. Settlement Land is administered by the First Nation. Private land is administered by the land owner. (Burial sites may not be disturbed on any land without proper authorization.)

Recognized cemetery

a defined area of land that is set aside for the burial of human bodies.

representative

means a descendant of the interred or of the person whose remains are found, or where no descendant survives or is identified, an official representative of the appropriate First Nation in whose Traditional Territory the burial site is located or the closest culturally affiliated group, religious denomination, military or marine authority as evidenced by the location or mode of burial.

Where no representative can be determined the Minister shall act as the representative on Non-Settlement Lands and on Settlement Lands at the discretion and with the consent of the First Nation

representative group

means the appropriate Yukon First Nation or the closest culturally affiliated group, religious denomination, military or marine authority as evidenced by mode and style of burial which is willing to act as a representative.

Site disposition agreement

means a written agreement to be reached between the Director of the Heritage Branch and the representative of the interred regarding the disposition of the remains, including any disinterment and reinterment, and management plan

Management plan

means a plan to identify the roles of the representative, Government and land owner or manager respecting the care and protection of the site, including a consideration of site records, site access, and ways to protect a site from disturbance.

Appendix 2

References

The following include requirements to protect burial sites and were considered in the development of these Guidelines.

Umbrella and Yukon First Nation Final Agreements, Sections 13.9.0 and 26.7.0, and Implementation Plans

Yukon Transboundary Agreement (Gwich'in Tribal Council), Sections 9 and 18, and Implementation Plan

Yukon Historic Resources Act, Part 6

Criminal Code

Cemeteries and Burial Sites Act

Coroner's Act

Territorial Land Use Regulations

Yukon Archaeological Sites Regulations

Yukon Quartz Mining Act, and Regulations

Yukon Placer Mining Act, and Regulations

Yukon Surface Rights Act

Vital Statistics Act

Appendix 3

Land Claims Provisions Relating to Burial Sites

13.9.0 Yukon First Nation Burial Sites*

- 13.9.1 Government and Yukon First Nations shall each establish procedures to manage and protect Yukon First Nation Burial Sites which shall:
- 13.9.1.1 restrict access to Yukon First Nation Burial Sites to preserve the dignity of the Yukon First Nation Burial Sites;
 - 13.9.1.2 where the Yukon First Nation Burial Site is on Non-Settlement Land, require the joint approval of Government and the Yukon First Nation in whose Traditional Territory the Yukon First Nation Burial Site is located for any management plans for the Yukon First Nation Burial Site; and
 - 13.9.1.3 provide that, subject to 13.9.2, where a Yukon First Nation Burial Site is discovered, the Yukon First Nation in whose Traditional Territory the Yukon First Nation Burial Site is located shall be informed, and the Yukon First Nation Burial Site shall not be further disturbed.
- 13.9.2 Where a Person discovers a Yukon First Nation Burial Site in the course of carrying on an activity authorized by Government or a Yukon First Nation, as the case may be, that Person may carry on the activity with the agreement of the Yukon First Nation in whose Traditional Territory the Yukon First Nation Burial Site is located.
- 13.9.3 In the absence of agreement under 13.9.2, the Person may refer the dispute to arbitration under 26.7.0 for a determination of the terms and conditions upon which the Yukon First Nation Burial Site may be further disturbed.
- 13.9.4 Any exhumation, examination, and reburial of human remains from a Yukon First Nation Burial Site ordered by an arbitrator under 13.9.3 shall be done by, or under the supervision of, that Yukon First Nation.
- 13.9.5 Except as provided in 13.9.2 to 13.9.4, any exhumation, scientific examination and reburial of remains from Yukon First Nation Burial Sites shall be at the discretion of the affected Yukon First Nation.
- 13.9.6 The management of burial sites of a transboundary claimant group in the Yukon shall be addressed in that Transboundary Agreement.

*This is an excerpt from the Umbrella Final Agreement between Canada, the Council for Yukon Indians and the Government of the Yukon (1993), Ch. 13, pp. 128-129, and subsequent Yukon First Nation Final Agreements.

9.5. Tetlit Gwich'in Burial Sites*

9.5.1 Government and Tetlit Gwich'in shall each establish procedures to manage and protect Tetlit Gwich'in burial sites which shall:

(a) restrict access to Tetlit Gwich'in burial sites to preserve the dignity of Tetlit Gwich'in burial sites;

(b) where the Tetlit Gwich'in burial site is outside the primary use area (*Fort McPherson Group Trapping Area*), require the joint approval of government and the Yukon First Nation in whose traditional territory the Tetlit Gwich'in burial site is located for any management plans for the Tetlit Gwich'in burial site;

(c) where the Tetlit Gwich'in burial site is on land in the primary use area which is not Tetlit Gwich'in Yukon land, require the joint approval of government and the Tetlit Gwich'in for any management plans for the Tetlit Gwich'in burial site; and

(d) provide that, subject to 9.5.2, where a Tetlit Gwich'in burial site is discovered, the Yukon First Nation in whose traditional territory the Tetlit Gwich'in burial site is located or the Tetlit Gwich'in, if the Tetlit Gwich'in burial site is in the primary use area, shall be informed and the Tetlit Gwich'in burial site shall not be further disturbed.

9.5.2 Where a person discovers a Tetlit Gwich'in burial site in the course of carrying on an activity authorized by government, a Yukon First Nation or the Tetlit Gwich'in, as the case may be, that person may carry on the activity with the agreement of the Yukon First Nation in whose traditional territory the Tetlit Gwich'in burial site is located or the Tetlit Gwich'in if the Tetlit Gwich'in burial site is in the primary use area.

9.5.3 In the absence of agreement under 9.5.2, the person may refer the dispute to arbitration under chapter 18 of this appendix for a determination of the terms and conditions upon which the Tetlit Gwich'in burial site may be further disturbed.

9.5.4 Any exhumation, examination and reburial of human remains from a Tetlit Gwich'in burial site ordered by an arbitrator under 9.5.3 shall be done by, or under the supervision of, the Tetlit Gwich'in.

9.5.5 Except as provided in 9.5.2 to 9.5.4, any exhumation, scientific examination and reburial of remains from Tetlit Gwich'in burial sites shall be at the discretion of the Tetlit Gwich'in.

*This is an excerpt from Appendix C - Yukon Transboundary Agreement between Canada and the Gwich'in Tribal Council, (1992), p. 32.

APPENDIX III: PROJECT MAPPING

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APPENDIX IV: SUMMARY TABLE

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APPENDIX V: CHANCE FIND REPORT FORM

BMC Minerals (No. 1) Ltd.

530-1130 West Pender Street, Vancouver, BC V6E 4A4

ARCHAEOLOGICAL CHANCE FIND REPORT FORM
Recorders name:
Date, time of discovery, time work stopped in area:
Location (site name, co-ordinates, depth below surface):
Access (describe how to get to site):
Description of find:
Photographs:
Estimated weight and dimensions:
Who was contacted (i.e. BMC representatives, Archaeology Branch, Kaska Representatives). Record the name, date, time, phone number and details of conversation:
Any protective measures to be taken:
Further action required:
Printed name and signature of the Project Geologist:
Date submitted: