

# **Declaration Act Consent Decision-Making Agreement for Eskay Creek Project**

BETWEEN:

**Her Majesty the Queen in Right of the Province of British Columbia**, as represented by the Premier, the Minister of Environment and Climate Change Strategy, and the Minister of Indigenous Relations and Reconciliation

AND:

**Tahltan Central Government** on behalf of the Tahltan Nation

(collectively the “**Parties**” and individually a “**Party**”)

## **WHEREAS**

- A. The Province recognizes and respects that Tahltan’s Title and Rights, including self-government rights, exist throughout Tahltan Territory and that Tahltan has a unique relationship to and connection with the land, water and resources throughout Tahltan Territory;
- B. The 1910 Declaration guides all Tahltan land, water and resource decisions and sets out fundamental Tahltan values that remain central to Tahltan governance of the land, water and resources in Tahltan Territory;
- C. The Parties share the goal of ensuring that Tahltan Territory becomes a world-class sustainable mining jurisdiction that benefits Tahltan and the Province;
- D. Skeena has proposed the Project in Tahltan Territory;
- E. The Project will be subject to reviews under the EA Act and the Impact Assessment Act;
- F. The Parties have undertaken an early engagement process in relation to the Assessments, which included engagement with Skeena to identify and discuss key issues in the process, including the need to obtain TCG’s consent as an Indigenous governing body, the sharing of draft Tahltan information requirements, and discussions around the objective of reflecting these requirements in the Assessments;

- G. In recognition of Tahltan's self-government rights, the Parties have a history of developing and implementing shared decision-making processes in Tahltan Territory, and wish to build on the progress that has been made and further strengthen their government-to-government relationship by clarifying the relationship between Tahltan jurisdiction and provincial jurisdiction in relation to the Assessments;
- H. The Province has committed to implement the UN Declaration, which recognizes self-determination and self-government and provides that states shall consult and cooperate in good faith with Indigenous peoples through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources;
- I. In keeping with its commitment to implement the UN Declaration, the Province enacted the Declaration Act on November 28, 2019;
- J. Subsection 7(1)(b) of the Declaration Act provides that the Lieutenant Governor in Council may authorize the Province to negotiate and enter into an agreement with an Indigenous governing body that relates to the consent of that Indigenous governing body before the exercise of a statutory power of decision;
- K. Subsection 7(b) of the EA Act provides that a reviewable project may not proceed without the consent of an Indigenous nation in an area that is the subject of an agreement between the Indigenous nation and the government that requires this consent and is prescribed by the Lieutenant Governor in Council;
- L. Subsection 41(1) of the EA Act provides that the Minister may enter into an agreement with an Indigenous nation with respect to any aspect of a Provincial environmental assessment; and
- M. This Agreement represents another incremental step in the process of reconciliation and will inform long-term, consent-based decision-making processes which, subject to required mandates being obtained by each of the Parties, will be negotiated under the Foundation Agreement for other proposed mining projects in Tahltan Territory, based on the recognition of Tahltan's Title and Rights and, as applicable, the UN Declaration, the implementation of the Declaration Act, the Draft Principles, the *Calls to Action of the Truth and Reconciliation Commission*, and the Supreme Court of Canada's decision in *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44.

## Part 1 Definitions and Interpretation

1.1 For the purposes of this Agreement, the following definitions apply:

**“1910 Declaration”** means the 1910 Declaration of the Tahltan Tribe signed on October 18, 1910 and reaffirmed by Tahltan on its 100<sup>th</sup> anniversary on October 18, 2010;

**“Agreement”** means this Declaration Act Consent Decision-Making Agreement for Eskay Creek Project;

**“Application”** means Skeena’s application for an EA Certificate under section 27 of the EA Act in respect of the Project, as may be amended from time to time;

**“Assessments”** means both the Provincial Assessment and the Tahltan Assessment;

**“Calendar Day”** means a day shown on the calendar, including Saturday, Sunday and any day that is a Holiday;

**“Canada – BC Cooperation Agreement”** means the Impact Assessment Cooperation Agreement between the Minister of Environment and Climate Change Strategy (British Columbia) and the Minister of Environment and Climate Change (Canada), entered into in August 2019;

**“CEAO”** means the Chief Executive Assessment Officer as defined in the EA Act or any person delegated to undertake the powers assigned to the Chief Executive Assessment Officer;

**“Collaboration Team”** means the body established pursuant to section 6.4 comprised of:

- a) the TCG Lands Director and any additional individual designated by the TCG Lands Director pursuant to section 6.5; and
- b) the EAO Project Lead and any additional individual designated by the EAO Project Lead pursuant to section 6.5;

**“Confidential Information”** means any information provided by a Party under this Agreement to the other Party that is identified in writing as being confidential, which may include information disclosed pursuant to subsection 75(2) of the EA Act but does not include Confidential Tahltan Knowledge, information that is already in the public domain, or information already in the possession of the Party to whom it is provided;

**“Confidential Tahltan Knowledge”** means any Tahltan Knowledge provided by TCG to the Province that is identified in writing as being confidential;

**“Consensus Tracking Tool”** means a comprehensive and accountable tracking system that identifies issues raised in the Assessments and sets out whether, by the completion of each of the process steps set out in Part 7 of this Agreement, an issue:

- a) has been resolved;
- b) is being carried forward to a subsequent phase of the Assessments or carried forward to a subsequent regulatory process;
- c) is out of scope of the Assessments and may be better addressed through other avenues; or
- d) may require Dispute Resolution;

**“Consent Area”** means the area identified as the “Consent Area” on the map in Schedule B and any changes to that area as may be agreed to by the Parties under section 4.6;

**“Constitution Act, 1982”** means the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11;

**“Declaration Act”** means the *Declaration on the Rights of Indigenous Peoples Act*, SBC 2019, c. 44;

**“Detailed Project Description”** means the description of the Project submitted under subsection 15(1) of the EA Act;

**“Dispute Resolution”** means the dispute resolution processes set out in Part 10;

**“Draft Principles”** means the *Draft Principles that Guide the Province of British Columbia’s Relationship with Indigenous Peoples* released by the Province on May 22, 2018;

**“EA Act”** means the *Environmental Assessment Act*, SBC 2018, c. 51;

**“EA Certificate”** means an environmental assessment certificate issued by the Ministers under subsection 29(4) of the EA Act;

**“EAO”** means the Environmental Assessment Office that is continued under the EA Act;

**“EAO Project Lead”** means the individual appointed to be the EAO’s lead for the purposes of carrying out the Provincial Assessment;

**“Environmental Assessment Report”** has the same meaning as “assessment report” in the EA Act;

**“Foundation Agreement”** means the agreement being negotiated by the Parties pursuant to the Consolidated Shared Prosperity Agreement dated for reference March 30, 2020, as amended July 28, 2021;

**“Freedom of Information Act”** means the *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c. 165;

**“Holiday”** means any day that is National Indigenous Peoples Day (June 21), Tahltan Day (October 18), a statutory holiday in the Province of British Columbia, or a national statutory holiday in Canada;

**“Impact Assessment Act”** means the *Impact Assessment Act*, SC 2019, c. 28, s. 1;

**“Impact Assessment Agency”** means the Impact Assessment Agency of Canada as continued under section 153 of the Impact Assessment Act;

**“Minister”** means the Minister of Environment and Climate Change Strategy;

**“Ministers”** means the Minister and the Responsible Minister;

**“Process Order”** means the process order, as defined in the EA Act, for the Assessments;

**“Process Planning”** means the process leading up to the issuance of the Process Order, as set out in sections 7.19 to 7.26;

**“Project”** means the proposed restart of operations at the Eskay Creek brownfield gold and silver mine located in Tahltan Territory, in accordance with the Application;

**“Province”** means Her Majesty the Queen in Right of the Province of British Columbia;

**“Provincial Assessment”** means, in relation to the Project, an assessment as defined under the EA Act;

**“Provincial Official”** means:

- a) any minister, public official, employee, contractor, agent, or representative of the Province; or
- b) any person acting as a decision-maker under any enactment of the Province;

**“Responsible Minister”** has the same meaning as in the EA Act;

**“Senior Officials Table”** means the body established under section 6.2 comprised of:

- a) the TCG President;
- b) the TCG Vice-President;
- c) Chiefs of Tahltan Band and Iskut Band;
- d) Senior TCG staff;
- e) Assistant Deputy Minister of EAO;
- f) Assistant Deputy Minister of Environment and Climate Change Strategy, Environmental Protection Division;
- g) Assistant Deputy Minister of Energy, Mines and Low Carbon Innovation;

- h) Assistant Deputy Minister of Indigenous Relations and Reconciliation; and
- i) representatives from other Provincial ministries as required;

**“Senior Representatives”** means the President of TCG on behalf of TCG, and the Ministers and the Minister of Indigenous Relations and Reconciliation on behalf of the Province;

**“Skeena”** means Skeena Resources Limited, a corporation within the meaning of the *Business Corporations Act*, SBC 2002, c. 57 (Incorporation Number BC0196946), and its successors and assigns;

**“Sustainability Recommendations”** means the CEO’s recommendations respecting whether the Project is consistent with the promotion of sustainability by protecting the environment and fostering a sound economy and the well-being of British Columbians and their communities pursuant to subsection 29(2)(b)(i) of the EA Act;

**“Tahltan”** means the Tahltan Nation, being the collective of individuals who hold and may exercise Tahltan’s Title and Rights;

**“Tahltan Assessment”** means an assessment of the Project undertaken by TCG that includes the development of the Tahltan Risk Assessment Report;

**“Tahltan Continuum”** means Tahltan’s current, ongoing and future exercise of Tahltan’s Title and Rights for all time, founded on Tahltan’s historic use and occupation of Tahltan Territory since time immemorial;

**“Tahltan EA Strategy Framework”** means the draft Tahltan EA strategy framework dated July 6, 2021;

**“Tahltan Knowledge”** means the cultural heritage, traditional knowledge and traditional cultural expressions of the Tahltan, and knowledge of traditional Tahltan lifeways and systems, whether embodied in tangible or intangible form, and from ancient and contemporary time, transmitted from generation to generation that Tahltan makes available for consideration in the Assessments, including:

- a) manifestations of Tahltan sciences, technologies and cultures, including environmental knowledge, use of natural resources, land use and occupation, systems of land tenure and self-management;

- b) governance and laws, including intra- and inter-societal relations;
- c) spiritual knowledge;
- d) immovable cultural property, including sacred and culturally significant sites and burial grounds;
- e) human and genetic resources and remains;
- f) knowledge of fauna and flora, seeds, medicines, water, soils, weather, solar and lunar effects, processes and cycles;
- g) oral traditions, literatures, and visual and performing arts, including songs, dances, music, stories, ceremonies, symbols and designs;
- h) sports and traditional games;
- i) any documentation of Tahltn heritage, including in archives, film, photographs, videotape, audiotape and all forms of media, including all analysis, compilations, studies, reports or other materials;
- j) factual knowledge about the environment and the relations and connections within the environment, ranging from Tahltn living memory to the memory of several generations preserved as oral history;
- k) factual knowledge about past and current use of the environment or other matters of social or historical interest that bear on the traditional use and rights of Tahltn; and
- l) culturally based value statements about how things should be, and what is fitting and proper to do with respect to animals, the environment, human health and well-being in a holistic sense;

**“Tahltn Nation Member”** means an individual who is a member of Tahltn;

**“Tahltn Official”** means:

- a) any officer, director, agent, employee, public official, or representative of TCG; or



- b) any person acting as a decision-maker under this Agreement on behalf of TCG;

**“Tahltan Resource Development Policy”** means the “Tahltan Tribal Council Resource Development Policy Statement” issued by Tahltan on April 7, 1987;

**“Tahltan Risk Assessment”** means the assessment to be carried out by TCG pursuant to section 7.38, in accordance with the Tahltan Risk Assessment Factors;

**“Tahltan Risk Assessment Factors”** mean factors to be identified by TCG in Process Planning, including the factors set out in Schedule C, which will be set out in the Process Order pursuant to section 7.20(b);

**“Tahltan Risk Assessment Report”** means a written report described in sections 7.38 and 7.39 and submitted to the TCG Board under section 8.1(b);

**“Tahltan Significance Factors”** means the factors TCG will take into account in assessing whether the Project is likely to result in significant adverse or cumulative effects to Tahltan Values, which will be set out in the Process Order pursuant to section 7.20(i);

**“Tahltan Sustainability Requirements”** include the requirements set out in Schedule D and any additional requirements identified by TCG, which will be set out in the Process Order pursuant to section 7.20(b);

**“Tahltan Territory”** means the area that Tahltan identifies as the area where it holds Title and Rights, and which is shown in Schedule A of this Agreement;

**“Tahltan Values”** means values identified by TCG, such as archaeological sites, environmentally or culturally sensitive areas, wildlife, fish, plants, rivers, waterbodies or other features important to Tahltan to be included in the Assessments and assessed in a holistic manner, and which will be set out in the Process Order pursuant to section 7.20(g);

**“TCG”** or **“Tahltan Central Government”** means Tahltan Central Government, a society within the meaning of the *Societies Act*, SBC 2015, c. 18 (Incorporation Number S0011952) and the Indigenous governing body of Tahltan, and its successors and permitted assigns;

**“TCG Board”** means the Board of Directors of TCG;

**“TCG Lands Department”** means the lands department within TCG;

**“TCG Lands Director”** means the individual appointed by TCG to be the director of the TCG Lands Department;

**“TCG Notice of Decision”** means TCG’s notice of decision in relation to the Project pursuant to section 8.2 or section 9.4;

**“Technical Advisory Committee”** means the committee established under subsection 21(1) of the EA Act;

**“Title and Rights”** means asserted or determined Aboriginal rights, including Aboriginal title and self-governance rights, recognized and affirmed under section 35 of the Constitution Act, 1982;

**“UN Declaration”** means the *United Nations Declaration on the Rights of Indigenous Peoples*; and

**“Work Plan”** means the plan developed pursuant to section 7.22, as may be amended from time to time.

1.2 In this Agreement:

- a) “includes” and “including” are not intended to be limiting;
- b) the recitals and headings are inserted for convenience of reference only, do not form part of this Agreement and are not intended to define, enlarge or restrict the scope or meaning of this Agreement or any provision of it;
- c) any reference to a statute includes all regulations made under that statute and any amendments or replacement of that statute or its regulations;
- d) unless the context otherwise requires, words expressed in the singular include the plural and vice versa;
- e) “consensus” means an outcome or approach that is actively supported or is not objected to by the Parties;
- f) “Indigenous governing body” has the same meaning as in the Declaration Act;
- g) “participating Indigenous nation” has the same meaning as in the EA Act;
- h) there will be no presumption that doubtful expressions, terms or provisions in this Agreement are to be resolved in favour of any Party;

- i) in the calculation of time under this Agreement, if the time for doing an act falls or expires on a day that is a Holiday or a weekend, the time is extended to the next Calendar Day that is not a Holiday or a weekend; and
- j) “meet” and “meeting” means a discussion, whether in-person, by phone, or online.

1.3 The following Schedules are incorporated into and form part of this Agreement:

- **Schedule A**            Map of Tahltan Territory
- **Schedule B**            Map of Consent Area
- **Schedule C**            Tahltan Risk Assessment Factors
- **Schedule D**            Tahltan Sustainability Requirements

## **Part 2            Purpose**

2.1 The purposes of this Agreement are to:

- a) set out a consent-based decision-making process that will be used for the Application pursuant to subsection 7(1)(b) of the Declaration Act;
- b) provide clarity and transparency for the Parties’ respective processes for the Assessments and decision-making in relation to the Application;
- c) allow the Parties to engage in cohesive and comprehensive processes for the Assessments that effectively support informed decision-making for both TCG and the Province in relation to the Application;
- d) set out the area that requires TCG’s consent before the Project can proceed in that area pursuant to subsection 7(b) of the EA Act; and
- e) set out how Skeena will be engaged in the Parties’ respective processes for the Assessments and decision-making in relation to the Application.

## Part 3 Principles

3.1 The Parties' work under this Agreement will be guided by the following principles:

- a) **Recognition and Implementation of Tahltan's Title and Rights.** To continue to advance reconciliation between Tahltan and the Province based on the recognition of Tahltan's Title and Rights in Tahltan Territory and, as applicable, the implementation of the 1910 Declaration, the UN Declaration, the Declaration Act, the Draft Principles, the *Calls to Action of the Truth and Reconciliation Commission*, and the Supreme Court of Canada's decision in *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44;
- b) **Respect for and Implementation of TCG Decision-Making.** To respect and implement Tahltan's right of self-determination and decision-making authority as Title and Rights holders and stewards over the land, water and resources throughout Tahltan Territory;
- c) **Sustainability and Balance.** To ensure the sustainability of resource development in Tahltan Territory for future generations and to achieve current and future environmental, land and water use, social, cultural and economic goals;
- d) **Informed Decision-Making.** To foster Assessments that support informed decision-making by TCG and the Province that incorporate Tahltan Knowledge;
- e) **Predictability, accountability, transparency and administrative fairness.** To demonstrate process predictability, shared accountability, transparency and administrative fairness in the reconciliation of Tahltan and Provincial jurisdiction in the Assessments and decision-making processes in relation to the Application; and
- f) **Effective coordination.** To seek to achieve effective and coordinated regulatory processes.

## Part 4 TCG Consent

- 4.1 This Agreement is an agreement with an Indigenous governing body within the meaning of subsection 7(1)(b) of the Declaration Act relating to the consent of TCG, as an Indigenous governing body, before the exercise of a statutory power of decision.
- 4.2 This Agreement is an agreement between an Indigenous nation and the Province within the meaning of subsection 7(b) and subsection 41(1) of the EA Act.

- 4.3 The consent of TCG, provided in accordance with this Agreement, is required for the Project to proceed within the Consent Area.
- 4.4 For greater certainty, the consent requirement of TCG under section 4.3 relates to the Project and does not apply to any other reviewable project within the Consent Area.
- 4.5 For greater certainty, the Consent Area does not limit the geographic scope of Project effects that will be subject to the Assessments and the Province acknowledges TCG's interests in:
- a) using local and regional assessment areas for the Assessments that will allow potential Project effects to be identified and considered; and
  - b) developing a cumulative effects methodology that will identify and consider cumulative effects relevant to the Project.
- 4.6 If the location of the components of the Project to be assessed in the Assessments substantively changes, the Parties will review the Consent Area and discuss the means by which the Consent Area can be amended accordingly.
- 4.7 Before making a decision with respect to the Application, the Ministers will consider:
- a) whether TCG has provided its consent to the Project in accordance with this Agreement; and
  - b) that the Consent Area is the subject of this Agreement and this Agreement has been prescribed pursuant to subsection 7(b) of the EA Act, which results in a prohibition on the Project proceeding in the Consent Area without the consent of TCG.
- 4.8 For greater certainty, TCG consent to the Project may be contingent on certain terms and conditions being included in the EA Certificate, as determined by the TCG Board pursuant to section 8.2.
- 4.9 In the event that TCG does not consent to the Project, and either Party determines that there is or is likely to be a contravention of subsection 7(b) of the EA Act, the Parties will work together to identify what actions may be taken under the EA Act or otherwise to compel compliance.

- 4.10 Nothing in section 4.9 limits the Province, any Provincial Official, TCG or any Tahltan Official, from taking any compliance and enforcement action or court proceeding.

## **Part 5          Role of Proponent**

- 5.1 The Parties acknowledge the importance of Skeena having a reasonable opportunity to:
- a) provide timely and complete information to inform the Assessments and support the decision-making processes and milestones set out in this Agreement;
  - b) participate in the Assessments as appropriate to support transparent processes that are consistent with the principles of administrative fairness;
  - c) discuss strategies with the Parties to mitigate Project effects;
  - d) be informed of concerns that Provincial Officials or Tahltan Officials may have regarding the Project; and
  - e) respond to concerns that Provincial Officials or Tahltan Officials may have regarding the Project and to represent Skeena's interests accordingly.

## **Part 6          Collaborative Structures**

- 6.1 The Parties agree to establish the bilateral collaborative structures set out in this Part to assist them in:
- a) undertaking the Assessments;
  - b) seeking to achieve consensus; and
  - c) resolving issues and disputes.
- 6.2 The Parties will establish a Senior Officials Table which will be responsible for:
- a) supporting the implementation of this Agreement; and
  - b) participating in Dispute Resolution, as set out in Part 10.
- 6.3 The Senior Officials Table is not a decision-making body and cannot fetter the discretion of the Parties' respective decision-makers.

- 6.4 The Parties will establish a Collaboration Team which will be responsible for ensuring that:
- a) regular meetings of the Collaboration Team, and Provincial Officials and Tahltan Officials as required, are held so that the responsibilities of the Parties under this Agreement are fulfilled;
  - b) efforts are made to seek to achieve consensus as set out in this Agreement, by working together to seek solutions that meet the needs of the Parties;
  - c) a Consensus Tracking Tool is created and maintained;
  - d) any issue on which the Collaboration Team could not reach consensus is referred to the Senior Officials Table pursuant to section 10.1;
  - e) support is provided to the Province in making its decision with respect to the Application and to TCG in making a free, prior, and informed decision regarding whether to consent to the Project;
  - f) a Work Plan is prepared and maintained as set out in section 7.22;
  - g) Collaboration Team representatives plan for and participate in Technical Advisory Committee meetings, including developing agendas;
  - h) engagement is undertaken with Skeena as set out in this Agreement;
  - i) Tahltan Knowledge and Tahltan Values are appropriately, respectfully, and meaningfully reflected and considered in the Assessments;
  - j) discussions are held in relation to whether there are linkages to broader initiatives which can assist in addressing TCG or Provincial issues or concerns about stewardship of the larger area in which the Project would operate;
  - k) discussions are held in relation to how to integrate the Impact Assessment Agency's assessment requirements, if any, within the Assessments to undertake any substituted or coordinated impact assessment of the Project as applicable;
  - l) Collaboration Team representatives plan and implement public engagement and community engagement undertaken by TCG in relation to the Assessments;

- m) Collaboration Team representatives plan and support the timely request for reconsideration by the Minister pursuant to subsection 9.1(a), and the timely response by the TCG Board pursuant to section 9.3 where it appears likely the EAO's Sustainability Recommendations or the draft EA Certificate with proposed conditions are contrary to the TCG Notice of Decision following Dispute Resolution undertaken pursuant to section 7.49; and
  - n) discussions are held to seek agreement in relation to any decisions proposed under sections 38 and 39 of the EA Act.
- 6.5 The TCG Lands Director and the EAO Project Lead may each designate additional individuals to participate as part of the Collaboration Team on behalf of each Party respectively.
- 6.6 The TCG Lands Director and the EAO Project Lead may identify sub-working groups to be established to explore technical issues in the Assessments and seek approval from their respective decision-makers to establish those sub-working groups, as required.

## **Part 7      Assessment Process**

### **Assessment Policies**

- 7.1 Tahltan, as represented by TCG, will have all the rights of a participating Indigenous nation in the Provincial Assessment and TCG will also independently consider the potential effects of the Project by undertaking the Tahltan Risk Assessment and preparing the Tahltan Risk Assessment Report, to inform the decision of TCG, as an Indigenous governing body, on whether to consent to the Project.
- 7.2 TCG and the Province will, subject to sections 7.7 and 7.8, each apply their own policies to their respective Assessments in accordance with this Agreement and will work collaboratively to try to incorporate both Parties' policies into the Process Order and consider these policies in reviewing the Application and assessing and seeking consensus on Project effects.
- 7.3 The Parties acknowledge that TCG has provided the Province and Skeena with the Tahltan EA Strategy Framework and that it will form the basis for TCG's policy on environmental assessments that will be provided to the Province and Skeena pursuant to section 7.4.



- 7.4 The following TCG policies and guiding documents will be provided to the Province and Skeena within 20 Calendar Days of the start of Process Planning and will be considered by TCG in the Tahlтан Risk Assessment:
- a) 1910 Declaration;
  - b) Tahlтан Resource Development Policy; and
  - c) TCG's approved environmental assessment policy.
- 7.5 The interconnected key principles that TCG will apply in the Tahlтан Assessment include that:
- a) there is an inextricable relationship among Tahlтан people, Tahlтан's way of life, Tahlтан Territory, lands, waters and all resources and creatures within Tahlтан Territory;
  - b) the land, including human beings and all other creatures and elements, must be respected;
  - c) generosity requires human beings to care for the land they use with all creatures and elements;
  - d) Tahlтан people must show respect for all people and beings and understand the importance of using all that we take and not wasting, sharing all that we take, providing offerings and leaving things properly;
  - e) values related to wildlife have been carried forward in time, linked to Tahlтан culture, identity and history, and remain vitally important in the present as well as for future generations;
  - f) fish, and salmon in particular, have a unique relationship to Tahlтан culture, identity and history that has been carried forward in time and remain vitally important in the present as well as for future generations;
  - g) Tahlтан Territory is blessed with abundant and high-quality water resources which the Tahlтан rely on to live and maintain activities that support Tahlтан way of life, and water is a distinct part of Tahlтан culture to be protected now and for future generations;
  - h) air quality must be valued in all land, water and resource decision-making; and

- i) the oral data and voices of Tahltan ancestors, cultural restoration and heritage work of multi-generations of Tahltan are evidence of Tahltan sovereignty and should be respected in decision-making to ensure Tahltan can continue to be effective stewards of Tahltan Territory.
- 7.6 The Province's required assessment matters are established in section 25 of the EA Act and associated policies and regulations, which are available on the EAO's website.
- 7.7 If any substantive changes are made to a Party's policies as set out in this Agreement, or TCG's environmental assessment policy is substantively different from the Tahltan EA Strategy Framework:
- a) that Party will notify the other Party as soon as practicable;
  - b) if requested by either Party, the Senior Officials Table will meet as soon as practicable to discuss the change and implications to the conduct of the Assessments; and
  - c) the Parties will engage with Skeena appropriately.
- 7.8 Following a meeting of the Senior Officials Table under subsection 7.7(b), if requested by either Party, the Senior Representatives will meet as soon as practicable to discuss the matters set out in section 7.7.

## **Process Steps**

### ***Readiness Decision***

- 7.9 Following Skeena's submission of the Detailed Project Description, the Collaboration Team will work together to seek consensus on whether the Project should proceed to Process Planning.
- 7.10 In order to seek consensus pursuant to section 7.9:
- a) the Collaboration Team will meet to discuss:
    - i. each Party's view on the adequacy of the Detailed Project Description;
    - ii. the target date for the CEAO to act under subsection 16(2) of the EA Act and for the TCG Lands Director to make a decision on whether the Project should proceed to Process Planning; and

- iii. the target date for each Party to provide to the other any draft recommendations or report they plan to make to their respective decision-makers, including a report pursuant to subsection 16(5) of the EA Act if applicable;
  - b) each Party will:
    - i. provide the other Party with any draft recommendations or report they plan to make to their respective decision-makers, including a report pursuant to subsection 16(5) of the EA Act if applicable; and
    - ii. within seven Calendar Days of receiving any draft recommendations or report from the other Party pursuant to subsection (i), or such other period agreed by the Parties, provide any response the Party wishes to make;
  - c) the Parties will exchange views and seek to achieve consensus on appropriate next steps; and
  - d) the Collaboration Team will update and review the Consensus Tracking Tool and determine what issues the Parties have not achieved consensus on, discuss whether those issues are impacting the Parties' ability to achieve consensus pursuant to subsection (c) and attempt to address those issues.
- 7.11 If the Collaboration Team is unable to achieve consensus on any issues, the Collaboration Team will refer the issue to the Senior Officials Table pursuant to section 10.1.
- 7.12 The Collaboration Team will engage with Skeena as appropriate, share any draft recommendations or report with Skeena, and provide opportunities for Skeena to respond to any concerns of the EAO or TCG in relation to the Detailed Project Description or whether the Project should proceed to Process Planning.
- 7.13 Prior to the TCG Lands Director deciding whether the Project should proceed to Process Planning, TCG will undertake community engagement.
- 7.14 Prior to the CEO taking an action pursuant to subsection 16(2) of the EA Act, the TCG Lands Director will advise the EAO and Skeena in writing of TCG's decision on whether the Project should proceed to Process Planning.

- 7.15 If the CEAO intends to refer the Project to the Minister pursuant to subsection 16(2)(c) of the EA Act, the TCG Lands Director may issue a notice of consent or lack of consent pursuant to subsection 16(5) of the EA Act.
- 7.16 In deciding on the appropriate approach under subsection 16(2) of the EA Act, including whether to proceed to the Process Planning stage of a Provincial Assessment, the CEAO will consider any input provided by TCG, including any notice of consent or lack of consent if applicable, and the TCG Lands Director's decision on whether the Project should proceed to Process Planning.
- 7.17 If the CEAO decides that the Project should proceed to Process Planning, the CEAO will provide their notice of decision to TCG and Skeena.
- 7.18 If the federal Minister of Environment and Climate Change approves EAO's request for substitution pursuant to the Impact Assessment Act, the EAO will act in accordance with the terms of the Canada – BC Cooperation Agreement and other applicable legal requirements.

### ***Process Planning***

- 7.19 If the Project proceeds to Process Planning, the Collaboration Team will work collaboratively to identify and seek to achieve consensus on the informational and assessment requirements required to support decision-making by TCG, the Province and, if applicable, Canada in relation to the Project in accordance with the Parties' respective assessment policies, requirements and principles.
- 7.20 The goal of the collaborative work to be undertaken pursuant to section 7.19 will be to develop a Process Order that sets out:
- a) the information requirements, process steps and timelines required to meet the decision-making needs of both Parties, as well as Canada if applicable;
  - b) the Tahltan Risk Assessment Factors and the Tahltan Sustainability Requirements;
  - c) the information the Parties and, if applicable, Canada require, including for the application of Tahltan Risk Assessment Factors;
  - d) how Tahltan Knowledge is to be collected, synthesized and applied in the Application, including the roles and responsibilities of the Parties and Skeena in relation to the collection of Tahltan Knowledge;

- e) the methods for gathering required information, including any studies related to Tahltan Knowledge or other studies required by the Province, TCG or, if applicable, Canada to inform decision-making;
- f) direction on what data, information, studies, land use planning objectives, TCG management direction or community input TCG will provide for Skeena to incorporate into the Application;
- g) the valued components to be considered, including Tahltan Values and the need to consider connectivity between Tahltan Values, based on Tahltan Knowledge;
- h) the scales of assessment and spatial scoping of assessment areas, including Tahltan's regional, landscape and site-specific areas of interests and high sensitivity areas, based on Tahltan Knowledge;
- i) the methodologies for significance determinations, including Tahltan Significance Factors;
- j) other methodologies that will be applied to the Assessments, including for temporal scoping and cumulative effects; and
- k) any aspects of the assessment of potential effects of the Project on Tahltan or Tahltan's Title and Rights that TCG will complete pursuant to subsection 19(4) of the EA Act, so as to provide direction to Skeena in relation to the requirements for the Application and the process to be undertaken in relation to the Assessments.

7.21 The Collaboration Team will engage with Skeena as appropriate in developing the Process Order so that Skeena can:

- a) participate in discussions relating to the Process Order;
- b) be aware of the requirements of TCG, the Province and, if applicable, Canada and how the Project will be assessed;
- c) raise any concerns relating to the Process Order; and
- d) work with TCG and the EAO to try to address any concerns relating to the Process Order.

- 7.22 The Collaboration Team will work collaboratively and engage with Skeena to develop a Work Plan, which the Collaboration Team may agree to amend from time to time, to support the development and implementation of the Process Order, including:
- a) roles and responsibilities in relation to the work set out in the Process Order;
  - b) timelines for the work set out in the Process Order, in accordance with the timelines set out in the EA Act and any applicable extensions of time, to support the objective of a clear and efficient regulatory process; and
  - c) details of the requirements for TCG's community engagement.
- 7.23 The Collaboration Team will use the Consensus Tracking Tool to keep track of any issues on which TCG and the EAO have not achieved consensus in relation to the Process Order and to try to address any obstacles to achieving consensus on the Process Order, including:
- a) whether the proposed approaches to baseline information and contingencies meet the confidences of TCG and the EAO and if they accurately capture the current knowledge for the area of the Project and the study areas;
  - b) whether the Process Order adequately addresses Tahltan Knowledge; and
  - c) whether the Process Order reflects how matters that TCG, the EAO and, if applicable, Canada require to be addressed will be addressed in the Assessments.
- 7.24 Concurrent with, and subsequent to, the public comment period under subsection 19(5) of the EA Act and community engagement undertaken by TCG, the Collaboration Team will meet to seek to resolve any remaining issues and seek to achieve consensus on the Process Order.
- 7.25 If the Collaboration Team is unable to achieve consensus on any issues with respect to the Process Order, the Collaboration Team will refer the issue to the Senior Officials Table pursuant to section 10.1.
- 7.26 If Dispute Resolution does not address the lack of consensus on any issues with respect to the Process Order:

- a) the Parties will discuss and agree upon what, if anything, either Party may provide to Skeena regarding the outcome of Dispute Resolution, including any aspect of the dispute resolution facilitator's report;
- b) the Parties will discuss whether there are additional information, process or timelines that TCG will require to undertake the Tahltan Risk Assessment; and
- c) TCG will advise Skeena and the Province of any additional information, process or timeline requirements, to guide Skeena's preparation of the Application.

### ***Review of Application***

- 7.27 Following receipt of an Application, or revised Application, from Skeena, the Parties will collaboratively review the Application or revised Application, including through the Collaboration Team and the Technical Advisory Committee as appropriate in the circumstances.
- 7.28 The Collaboration Team will work together to determine the roles and responsibilities of each Party for the public comment period on the Application pursuant to subsection 27(2)(a) of the EA Act and community engagement undertaken by TCG.
- 7.29 The Collaboration Team will seek to achieve consensus on their respective recommendations to the CEO and the TCG Lands Director, respectively, on whether to accept the Application or a revised Application, taking into account, among other relevant considerations:
  - a) compliance with the Process Order;
  - b) whether the Parties' information requirements have been met;
  - c) whether the baseline information and/or contingencies set out in the Application or revised Application meet the confidences of TCG and the Province and if the Application accurately captures the current knowledge for the Project and study areas;
  - d) whether the Application or revised Application has adequately incorporated Tahltan Knowledge; and
  - e) whether the Application or revised Application addresses the decision-making requirements of TCG, the Province and, if applicable, Canada.

- 7.30 The Collaboration Team will use the Consensus Tracking Tool to keep track of any issues on which the Parties have not achieved consensus in relation to the Application or revised Application and to try to address any obstacles to achieving consensus on the Application or revised Application.
- 7.31 In reviewing the Application and any revised Application, the Collaboration Team will engage with Skeena as appropriate so that Skeena has the opportunity to:
- a) participate in discussions relating to the Application and any subsequently revised Application;
  - b) respond to any issues relating to the Application or any revised Application; and
  - c) work with TCG and the EAO to try to address any issues related to the Application or any revised Application.
- 7.32 To inform revisions to the Application, the Parties may provide feedback to Skeena on the Application, or any revised Application, jointly through the Collaboration Team where they have reached a common view on the feedback, or separately.
- 7.33 Upon receiving a revised Application, the Collaboration Team will seek to achieve consensus on whether the revised Application adequately addresses any feedback provided to Skeena pursuant to section 7.32.
- 7.34 If the Parties are unable to achieve consensus on whether to accept an Application or revised Application, the Collaboration Team will refer the issue to the Senior Officials Table pursuant to section 10.1.
- 7.35 Each Party will advise the other Party and Skeena of its respective decision whether to accept or not accept the Application or revised Application.
- 7.36 If Dispute Resolution does not address the lack of consensus on whether to accept the Application or revised Application and the TCG Lands Director decides not to accept the Application or revised Application:
- a) the Parties will discuss and agree upon what, if anything, either Party may provide to Skeena regarding the outcome of Dispute Resolution, including any aspect of the dispute resolution facilitator's report;
  - b) the Parties will discuss whether there are any additional information, process or timelines that TCG will require to undertake the Tahltan Risk Assessment; and



- c) TCG will advise Skeena and the Province of any additional information, process or timeline requirements.

### ***EAO Effects Assessment and Tahltan Risk Assessment***

- 7.37 If an Application or revised Application has been accepted by the EAO, the Parties will work collaboratively to support their respective Assessments and decision-making processes in relation to the Application, including through the Collaboration Team and the Technical Advisory Committee as appropriate in the circumstances.
- 7.38 In undertaking the Tahltan Risk Assessment and preparing the Tahltan Risk Assessment Report, TCG will consider:
  - a) the Tahltan Risk Assessment Factors;
  - b) information in the Application;
  - c) Tahltan Knowledge;
  - d) the EAO's draft Environmental Assessment Report, Sustainability Recommendations, and draft EA Certificate, including proposed certificate conditions and project description;
  - e) information and conclusions in any assessment that TCG undertakes pursuant to subsection 19(4) of the EA Act;
  - f) information from the Technical Advisory Committee;
  - g) input from the public comment period and community engagement undertaken by TCG; and
  - h) the results of consensus-seeking efforts with the EAO on Project effects.
- 7.39 The Tahltan Risk Assessment Report will set out TCG's conclusions with respect to whether the Project is likely to cause significant residual and/or cumulative effects to Tahltan Values, in accordance with the Tahltan Significance Factors.
- 7.40 In undertaking the Provincial Assessment and preparing the Environmental Assessment Report, EAO Sustainability Recommendations and the draft EA Certificate, including proposed certificate conditions and project description, the EAO will consider:

- a) the requirements of the EA Act and associated policies available on the EAO's website;
  - b) information in the Application;
  - c) Tahltan Knowledge;
  - d) the draft Tahltan Risk Assessment Report and any additional proposed terms and conditions;
  - e) information and conclusions in any assessment conducted by TCG pursuant to subsection 19(4) of the EA Act;
  - f) information from the Technical Advisory Committee;
  - g) input from the public comment period and community engagement undertaken by TCG; and
  - h) the results of consensus-seeking efforts with TCG on Project effects.
- 7.41 The EAO will provide to TCG, and make itself available to meet and discuss, its draft Environmental Assessment Report, Sustainability Recommendations and the draft EA Certificate, including proposed certificate conditions and project description.
- 7.42 TCG will provide to EAO, and make itself available to meet and discuss, its draft Tahltan Risk Assessment Report and any additional proposed terms and conditions.
- 7.43 Where apparent inconsistencies emerge between western knowledge and Tahltan Knowledge, the Parties will explore whether these apparent inconsistencies can be explained or resolved, including through the Collaboration Team and Technical Advisory Committee as appropriate in the circumstances.
- 7.44 The Parties will seek to achieve consensus on the EAO's draft Environmental Assessment Report and draft EA Certificate, including proposed certificate conditions and project description, the draft Sustainability Recommendations, and the draft Tahltan Risk Assessment Report, including any additional proposed terms and conditions, before the materials referenced under subsection 28(2)(a) of the EA Act are published for public comment under subsection 28(2)(b) of the EA Act and distributed for community engagement undertaken by TCG.

- 7.45 The Parties will engage with Skeena as appropriate so that Skeena has the opportunity to:
- a) participate in discussions relating to the EAO's draft Environmental Assessment Report and the draft EA Certificate with proposed certificate conditions and project description;
  - b) participate in discussions relating to the draft Tahltan Risk Assessment Report and any additional proposed conditions;
  - c) respond to any issues or concerns; and
  - d) work with TCG and the EAO to try to address any issues or concerns.
- 7.46 The Parties will include the draft Tahltan Risk Assessment Report, subject to any redactions of any sensitive information, the EAO's draft Environmental Assessment Report and the draft EA Certificate with proposed certificate conditions and project description in the referral package for the public comment period under subsection 28(2)(b) of the EA Act and community engagement undertaken by TCG.
- 7.47 Following the public comment period under subsection 28(2)(b) of the EA Act and community engagement undertaken by TCG, the Parties will seek to achieve consensus on any revisions to the EAO's draft Environmental Assessment Report, the draft EA Certificate with proposed certificate conditions and project description, the draft Sustainability Recommendations, the draft Tahltan Risk Assessment Report and any additional proposed terms and conditions.
- 7.48 The Collaboration Team will meet to review the Consensus Tracking Tool and determine what issues the Parties have not achieved consensus on and attempt to address any obstacles to achieving consensus on the Assessments.
- 7.49 If the Parties cannot achieve consensus on the matters in section 7.48, the Collaboration Team will refer the issue to the Senior Officials Table pursuant to section 10.1.
- 7.50 Following the steps outlined in section 7.48 and, if applicable, section 7.49, TCG will prepare a final Tahltan Risk Assessment Report and provide it to the CEO and Skeena.

## **Part 8        Decision-Making**

- 8.1      Following the public comment period under subsection 28(2)(b) of the EA Act, community engagement undertaken by TCG, revisions made to materials in accordance with section 7.47 and the completion of any Dispute Resolution, and pursuant to the timeline for the effects assessment phase set out in the Work Plan, the TCG Lands Director will provide the following materials and information to the TCG Board to inform TCG's decision on whether to consent to the Project:
- a)      the EAO's draft Environmental Assessment Report, the draft EA Certificate with proposed certificate conditions and project description, and draft Sustainability Recommendations;
  - b)      the Tahltan Risk Assessment Report;
  - c)      any unresolved inconsistencies that remain between western knowledge and Tahltan Knowledge; and
  - d)      any unresolved inconsistencies between conditions contained in the draft EA Certificate and any additional conditions considered necessary by the TCG Lands Director for which there was no consensus reached following any Dispute Resolution.
- 8.2      Following its consideration of the materials referenced in section 8.1, TCG will, by resolution of the TCG Board:
- a)      decide whether to provide TCG's free, prior and informed consent to the Project proceeding; and
  - b)      direct that the TCG Notice of Decision be prepared that includes TCG's decision on whether to consent to the Project proceeding, the reasons why TCG is consenting or not consenting, and any terms and conditions that must be attached to the EA Certificate for TCG to consent to the Project proceeding.
- 8.3      TCG will provide the TCG Notice of Decision to the CEAO and Skeena.
- 8.4      If TCG does not consent to the Project, the Senior Officials Table will meet with Skeena to discuss the reasons for the non-consent and explore if there are any ways to address those reasons.

- 8.5 Following the steps outlined in sections 7.47, 7.48 and 8.3 and if applicable, sections 7.49 and 8.4, the EAO will prepare the final Environmental Assessment Report and Sustainability Recommendations, taking into account the Tahltan Risk Assessment Report and the TCG Notice of Decision.
- 8.6 Following receipt of the TCG Notice of Decision, and pursuant to the timeline for the effects assessment phase as set out in the Work Plan, the CEAO will provide the following materials to the Ministers to inform their decision on whether to issue an EA Certificate for the Project:
- a) the material referenced in subsection 29(2) of the EA Act;
  - b) the Tahltan Risk Assessment Report;
  - c) the TCG Notice of Decision; and
  - d) any unresolved inconsistencies that remain between western knowledge and Tahltan Knowledge.
- 8.7 In making their decision under subsection 29(4) of the EA Act, the Ministers must consider, in addition to the matters set out in subsection 29(4)(a) and (b) of the EA Act, the TCG Notice of Decision and, if applicable, the following:
- a) any facilitator's report provided pursuant to section 9.8(b);
  - b) the outcome of any reconsideration process under Part 9; and
  - c) discussions with Skeena pursuant to section 9.9.
- 8.8 The Province will provide notice of the Ministers' decision under subsection 29(4) of the EA Act to TCG and Skeena.
- 8.9 The TCG Notice of Decision, and any amended TCG Notice of Decision pursuant to section 9.4, will be posted on a publicly accessible website, subject to the redaction of any sensitive information.
- 8.10 The Ministers' decision under subsection 29(4) of the EA Act will be posted on a publicly accessible website.

## **Part 9            Reconsideration and Resolution Process**

- 9.1 If the Sustainability Recommendations or the draft EA Certificate with proposed conditions are contrary to the TCG Notice of Decision:
- a) the Minister may make a request in writing to TCG that TCG reconsider the TCG Notice of Decision and, if the Minister makes such a request, the Minister will provide reasons in writing for that request; and
  - b) notwithstanding subsection 5(2) of the EA Act, the CEO will refer the matter to a dispute resolution facilitator.
- 9.2 If the Minister requests a reconsideration pursuant to subsection 9.1(a), TCG will reconsider the TCG Notice of Decision, taking into account the reasons provided by the Minister.
- 9.3 TCG will respond in writing to a reconsideration request under subsection 9.1(a) as soon as practicable but no more than 30 Calendar Days from receipt of the request, and in consideration of timelines in the EA Act, to indicate whether TCG has changed or maintained the TCG Notice of Decision, including any terms and conditions that must be attached to the EA Certificate in order for TCG to consent to the Project.
- 9.4 If TCG changes the TCG Notice of Decision or any terms or conditions pursuant to section 9.3, TCG will provide the Province and Skeena with an amended TCG Notice of Decision.
- 9.5 For greater clarity, a reconsideration request from the Minister pursuant to subsection 9.1(a) does not fetter TCG's discretion in reconsidering the TCG Notice of Decision.
- 9.6 If, following TCG's reconsideration process pursuant to section 9.2, the Sustainability Recommendations or the draft EA Certificate with proposed conditions remain contrary to the TCG Notice of Decision, the Ministers will offer to meet with TCG as contemplated under subsections 29(5) and (6) of the EA Act.
- 9.7 EAO will provide notice to Skeena of any meeting between the Parties under section 9.6.
- 9.8 The dispute resolution facilitator:
- a) will attend any meeting held under section 9.6 to support the Parties seeking to achieve consensus;

- b) must provide a report to TCG and the Ministers pursuant to subsection 5(3) of the EA Act; and
- c) may undertake other activities to support resolution of the issues as agreed to by the Parties.

9.9 The Parties will meet with Skeena and provide information on the outcomes of any reconsideration process and meetings and any new information that may impact Skeena, including any additional proposed conditions, any matters discussed during the meeting held under section 9.6, or other activities undertaken under subsection 9.8(c).

## **Part 10      Dispute Resolution**

### ***Lack of Consensus***

- 10.1 Where this Agreement requires that the Parties seek to achieve consensus and consensus is not achieved, including in instances where the Collaboration Team agree that they cannot resolve the matter, the Collaboration Team will refer the issue to the Senior Officials Table.
- 10.2 The Parties will make all reasonable efforts to refer any issue to the Senior Officials Table in a timely manner before a decision on that issue is required under the EA Act.
- 10.3 If the Senior Officials Table cannot resolve an issue within 20 Calendar Days from the date on which the issue is referred to the Senior Officials Table, or the Senior Officials Table agree that they cannot resolve the issue, and if the issue relates to a pending decision referenced in subsection 5(2) of the EA Act or a pending decision pursuant to subsection 27(4) of the EA Act, either the TCG Lands Director or the CEOA may refer the issue to a dispute resolution facilitator.
- 10.4 To assist in resolving an issue, the Senior Officials Table may agree to engage Skeena or other individuals to discuss the matter at issue or to seek additional information.
- 10.5 Notwithstanding subsection 5(2) of the EA Act, the TCG Lands Director or the CEOA may refer a pending decision under subsection 27(4) of the EA Act to a dispute resolution facilitator.

***Disputes in relation to Agreement interpretation or implementation***

- 10.6 If a dispute arises in respect of the interpretation or implementation of this Agreement, the Parties will refer the dispute to the Senior Officials Table.
- 10.7 If a dispute is referred to the Senior Officials Table pursuant to section 10.6, the Senior Officials Table will make all reasonable efforts to resolve the disagreement in a timely manner.
- 10.8 In the event the Senior Officials Table is unable to resolve a dispute pursuant to section 10.7, the Parties may, on mutual consent, refer the matter for issues resolution to a mutually agreed-upon mediator, with each Party paying its own costs of the mediation and one-half of the costs of the mediator.

**Part 11 Tahltan Knowledge and Confidential Information*****Tahltan Knowledge***

- 11.1 The Province will only use Tahltan Knowledge that has been shared during the Assessments for the purpose of the Provincial Assessment.
- 11.2 The EAO may only share Confidential Tahltan Knowledge with representatives of other provincial ministries or federal agencies or departments participating in the Provincial Assessment with TCG's written consent.
- 11.3 Where TCG wishes to provide Confidential Tahltan Knowledge to the EAO during the Assessments, TCG will provide it to one of the individuals identified under subsection 75(1) of the EA Act.
- 11.4 The Province will not disclose Confidential Tahltan Knowledge except in accordance with section 75 of the EA Act or where required by law.
- 11.5 Where the CEAO determines that it is necessary for the purposes of procedural fairness under subsection 75(2)(c) of the EA Act to disclose Confidential Tahltan Knowledge:
- a) the EAO will notify TCG of the potential disclosure requirement, engage with TCG regarding the scope of the information to be disclosed, the format of the information to be disclosed, and the conditions attached to the disclosure; and
  - b) the EAO may request from TCG a non-confidential summary of the Confidential Tahltan Knowledge that can be disclosed to third parties.



- 11.6 If the EAO advises TCG that it is necessary to disclose Confidential Tahltan Knowledge pursuant to section 11.5 or, subject to section 11.7, TCG decides for any reason to withdraw all or some Confidential Tahltan Knowledge, TCG may withdraw all or some of that Confidential Tahltan Knowledge from consideration in the Provincial Assessment.
- 11.7 If the EAO, the Minister or the Ministers make a decision under the EA Act that relies on Confidential Tahltan Knowledge, TCG cannot subsequently withdraw that Confidential Tahltan Knowledge.

### ***Other Confidential Information***

- 11.8 The Parties acknowledge and agree that this Agreement is not confidential and that it will be published in the British Columbia Gazette, as required pursuant to subsection 7(4) of the Declaration Act.
- 11.9 The Parties also acknowledge and agree that, in order to support comprehensive Assessments and the decision-making processes set out in this Agreement, a Party may wish to share Confidential Information with the other Party.
- 11.10 If, in implementing this Agreement and undertaking decision-making under this Agreement, a Party shares Confidential Information to the other Party, the Party receiving the Confidential Information will:
- a) subject to subsections (b), (c) and (d), maintain the confidentiality of that information and not publish, release or disclose the Confidential Information;
  - b) the Party receiving Confidential Information may disclose it to its employees and professional advisors who are required to know the Confidential Information in order to act on behalf of or advise that Party, provided they agree to adhere to the confidentiality provisions of this Agreement;
  - c) the Party receiving the Confidential Information may disclose the Confidential Information:
    - i. with the written consent of the other Party;
    - ii. if it is required to do so by law; or
    - iii. where the Confidential Information is or becomes publicly known in circumstances that do not involve a breach of this Agreement; and

- d) if a Party is required to disclose Confidential Information under subsection (c)(ii), it will notify the other Party as soon as practicable after becoming aware of the disclosure requirement.

### ***Disclosure of Confidential Tahltan Knowledge or Confidential Information***

- 11.11 The Province acknowledges that the disclosure of Confidential Tahltan Knowledge or Confidential Information to any other party requesting such information under the Freedom of Information Act could be reasonably expected to harm the relations between the Province and TCG and Tahltan or harm the right of TCG and Tahltan to maintain, control, protect or develop its cultural heritage, traditional knowledge, traditional cultural expressions and manifestations of its sciences, technologies or cultures.
- 11.12 If the Province receives a request for disclosure under the Freedom of Information Act or is otherwise required by law to disclose Confidential Tahltan Knowledge or Confidential Information, the EAO will provide TCG with notice of the request and the opportunity to express any views regarding the disclosure and may request a description of the harm TCG and Tahltan anticipate could arise from the disclosure of the Confidential Tahltan Knowledge or Confidential Information.

### ***Separate Confidentiality Agreement***

- 11.13 The Parties will seek to negotiate and reach agreement on a separate confidentiality agreement to further address TCG's interests in relation to maintaining confidentiality over information provided to the EAO.

## **Part 12 Accountabilities in Judicial Review Proceedings**

### **Judicial review of a Provincial Official's decision**

- 12.1 If served with a petition that seeks judicial review of the decision of a Provincial Official in respect of the Application, TCG may file a response and affidavit evidence in the proceeding and will cooperate with the Provincial Official, to the extent possible without compromising its own legal position in the proceeding, to respond to the application for judicial review.
- 12.2 If a petition is brought to seek judicial review of the decision of a Provincial Official in respect of the Application, but TCG is not served with the petition:
  - a) TCG will:

- i. file a motion in the BC Supreme Court and the Provincial Official will support that motion; or
- ii. support a motion by the Provincial Official in the BC Supreme Court;

to add TCG as a respondent to the proceeding; and

- b) if TCG is added as a respondent, TCG will file a response and affidavit evidence in the proceeding and cooperate with the Provincial Official, to the extent possible without compromising its own legal position in the proceeding, to respond to the application for judicial review.

12.3 If a decision on the judicial review of the decision of the Provincial Official in respect of the Application is appealed by any party:

- a) if TCG was a party to the petition, and if TCG and the Provincial Official both choose to participate in the appeal, TCG and the Provincial Official will cooperate, to the extent possible without compromising their own legal positions in the proceeding, for the purposes of the appeal;
- b) if TCG was not a party to the petition, TCG may seek to intervene in the appeal; and
- c) if granted intervener status, TCG will cooperate with the Provincial Official, to the extent possible without compromising its own legal position in the proceeding, for the purposes of the appeal.

### **Judicial review of TCG Notice of Decision**

12.4 If served with a petition that seeks judicial review of the TCG Notice of Decision, the Provincial Official may file a response and affidavit evidence in the proceeding and will cooperate with TCG, to the extent possible without compromising its own legal position in the proceeding, to respond to the application for judicial review.

12.5 If a petition is brought to seek judicial review of the TCG Notice of Decision, but the Provincial Official is not served with the petition:

- a) the Provincial Official will:
  - i. file a motion in the BC Supreme Court and TCG will support that motion; or

- ii. support a motion by TCG in the BC Supreme Court,  
to add the Provincial Official as a respondent to the proceeding;
  - b) if the Provincial Official is added as a respondent, the Provincial Official will file a response and affidavit evidence in the proceeding and cooperate with TCG, to the extent possible without compromising its own legal position in the proceeding, to respond to the application for judicial review.
- 12.6 If a decision on the judicial review of the TCG Notice of Decision is appealed by any party:
- a) if the Provincial Official was a party to the petition, and if the Province and TCG both choose to participate in the appeal, the Provincial Official and TCG will cooperate to the extent possible without compromising their own legal positions in the proceeding, for the purposes of the appeal;
  - b) if the Provincial Official was not a party to the petition, the Provincial Official may seek to intervene in the appeal; and
  - c) if granted intervener status, the Provincial Official will cooperate with TCG, to the extent possible without compromising its own legal position in the proceeding, for the purposes of the appeal.

## **Part 13 Legal Responsibilities**

### **Relationship of the Parties**

- 13.1 The Province is not the agent of TCG for any purpose related directly or indirectly to this Agreement.
- 13.2 TCG is not the agent of the Province for any purpose related directly or indirectly to this Agreement.

### **Compliance with Laws**

- 13.3 The Province will:
- a) comply with all applicable laws in carrying out its duties and obligations and exercising its rights and privileges under this Agreement; and

- b) ensure that Provincial Officials comply with all applicable laws in carrying out their duties and obligations on behalf of the Province under this Agreement.

13.4 TCG will:

- a) comply with all applicable laws in carrying out its duties and obligations and exercising its rights and privileges under this Agreement; and
- b) ensure that Tahltan Officials comply with all applicable laws in carrying out their duties and obligations on behalf of TCG under this Agreement.

**Compliance with Agreement**

13.5 Any decision of the Province or a Provincial Official in respect of the Application will be made in accordance with the terms and conditions of this Agreement.

13.6 Any decision of TCG or a Tahltan Official in respect of the Application will be made in accordance with the terms and conditions of this Agreement.

**Conflict of interests**

13.7 TCG and the Province each confirm that they have established, and will continue to maintain and enforce, conflict of interest rules applicable to Tahltan Officials and Provincial Officials, respectively, comparable to those generally accepted for other Indigenous or provincial governments respectively.

**Participation in Benefits**

13.8 The Province will ensure that no Provincial Official obtains or is entitled to enjoy any personal benefits related directly or indirectly to this Agreement.

13.9 TCG will ensure that, subject to section 13.10, no Tahltan Official obtains or is entitled to enjoy any personal benefits related directly or indirectly to this Agreement, including as a result of the TCG Notice of Decision.

13.10 A Tahltan Official who is a Tahltan Nation Member is entitled to enjoy the same benefits under this Agreement as all other Tahltan Nation Members.

## **No Assumption of Liability for the Acts of the Other Party**

- 13.11 The Province is not responsible or liable for the acts, omissions, negligence, malfeasance or misfeasance of TCG, Tahltan or any Tahltan Official related directly or indirectly to this Agreement.
- 13.12 TCG and Tahltan are not responsible or liable for the acts, omissions, negligence, malfeasance or misfeasance of the Province or any Provincial Official related directly or indirectly to this Agreement.

## **Part 14 Agreement Effective Date, Amendment, Suspension and Termination**

- 14.1 The term of this Agreement will commence and this Agreement will take effect on the date that this Agreement is:
- a) signed by the authorized representatives of both TCG and the Province;
  - b) published in the Gazette in accordance with subsection 7(4) of the Declaration Act; and
  - c) prescribed by the Lieutenant Governor in Council as an agreement under subsection 7(b) of the EA Act.
- 14.2 Either Party may terminate this Agreement at any time 60 Calendar Days after the delivery of a written notice of proposed termination to the other Party if:
- a) the other Party fails to perform or is in breach of any of its material obligations under this Agreement; or
  - b) any representation or warranty made by the other Party in this Agreement is untrue or incorrect.
- 14.3 A written notice of proposed termination delivered under section 14.2 will include a detailed explanation of the reasons for the proposed termination.
- 14.4 Within 30 Calendar Days of a written notice of proposed termination being delivered by a Party under section 14.2, the Senior Officials Table will meet to discuss the reasons for the proposed termination and seek to address those reasons.
- 14.5 If the Senior Officials Table is unable to address the reasons for the proposed termination within 30 Calendar Days of the Senior Officials Table meeting, the Senior Representatives will meet to discuss the reasons for the proposed termination and seek to address those reasons.

- 14.6 If the Senior Officials Table or the Senior Representatives address the reasons for the proposed termination to the satisfaction of each Party, this Agreement will not be terminated.
- 14.7 If the Senior Officials Table or the Senior Representatives are unable to address the reasons for the proposed termination within 60 Calendar Days of the delivery of a written notice of proposed termination under section 14.2, or such other time period as the Parties may agree to in writing, the Party providing the notice to terminate may, at any time, provide a final notice to the other Party terminating this Agreement and this Agreement will terminate accordingly.
- 14.8 In attempting to address the reasons for the proposed termination, the Senior Officials Table or the Senior Representatives may consider the use of third parties, such as facilitators, mediators, or arbitrators.
- 14.9 If this Agreement is terminated pursuant to section 14.7, Part 11 and sections 13.1, 13.2, 13.11, 13.12, 15.4, 15.5, 15.6 and 15.8 will survive termination.

## **Part 15      General**

### **Representations and Warranties**

- 15.1 TCG represents and warrants to the Province, with the intent and understanding that such representations and warranties will be relied on by the Province in entering into this Agreement, that:
- a) it has the legal power, capacity and authority to enter into this Agreement on its own behalf and on behalf of Tahltan Nation Members;
  - b) it has taken all necessary actions and has obtained all necessary approvals to enter into this Agreement for and on behalf of Tahltan Nation Members; and
  - c) this Agreement is a valid and binding obligation of Tahltan and TCG.
- 15.2 The Province represents and warrants to TCG, with the intent and understanding that such representations and warranties will be relied on by TCG in entering into this Agreement, that it has the authority to enter into this Agreement and that this Agreement is a valid and binding obligation of the Province.

## **Legal Advice**

15.3 The Parties confirm that they have each had the full opportunity to review the terms and conditions of this Agreement and each has sought independent legal advice with respect to the terms and conditions.

## **No Admissions**

15.4 Nothing in this Agreement will be construed:

- a) as an admission by either Party of the validity or invalidity of any claim by Tahltan to any Title or Rights;
- b) as an admission by TCG or Tahltan of any Provincial authority or jurisdiction in Tahltan Territory;
- c) as establishing, defining, limiting, denying, abrogating or derogating any of Tahltan's Title or Rights; or
- d) as in any way limiting the position either of the Parties may take in any process or proceeding except as expressly set out herein.

## **No Fettering**

15.5 This Agreement does not affect or fetter the discretion of Tahltan, TCG, the Province or any Tahltan Official or Provincial Official.

## **Section 35 of the Constitution Act, 1982**

15.6 The Parties agree that this Agreement does not constitute a treaty or land claims agreement within the meaning of section 25 or 35 of the Constitution Act, 1982.

## **Duty to Consult**

15.7 Provided that this Agreement is not terminated pursuant to section 14.7 prior to the completion of the Provincial Assessment, this Agreement constitutes the means by which the Province will fulfill the procedural and information sharing obligations associated with the duty to consult and, if appropriate, accommodate Tahltan in respect of the Provincial Assessment.



- 15.8 If TCG consents to the Project proceeding pursuant to section 8.2 or 9.4, and the EA Certificate includes all terms and conditions identified in the TCG Notice of Decision, TCG will not initiate or participate in any legal action or proceeding that challenges the EA Certificate on the basis that the Province has failed to fulfil its duty to consult and, if appropriate, accommodate Tahltan or that the EA Certificate unjustifiably infringes Tahltan's Title and Rights.

## Notices

- 15.9 Except as expressly set out herein, any notice, document, request in writing or communication required or permitted to be given hereunder shall be in writing and delivered by email, mail, or facsimile to the Party to which it is to be given as follows:

To the Province:

EAO Project Lead  
BC Environmental Assessment Office  
PO Box 9426 Stn Prov Govt  
Victoria BC V8W 9V1

Email: David.Grace@gov.bc.ca  
Fax: 250-387-2208

To TCG:

TCG Lands Director  
Tahltan Central Government  
Box 69, Tatl'ah (Dease Lake)  
BC V0C 1L0

Email: landsdirector@Tahltan.org  
Fax: 250-771-3020

or to such other address in Canada as either Party may advise in writing. Any notice, document or communication will be deemed to have been given on the Calendar Day when delivered or when transmitted with confirmation of transmission by facsimile, other than on a Holiday, if done so during or before normal business hours in the city of the addressee and if after such normal business hours, the Calendar Day next following that is not a Holiday.

## **Amendments in Writing**

15.10 This Agreement may be amended from time to time by the Parties in writing.

## **Invalidity**

15.11 If any part of this Agreement is void or unenforceable at law:

- a) the invalidity of that part will not affect the validity of the remainder, which will continue in full force and effect and be construed as if this Agreement had been executed without the invalid part; and
- b) the Parties will negotiate and attempt to reach agreement on a replacement for the part declared or held invalid with a view to achieving the Parties' intent as expressed in this Agreement.

## **Assignment**

15.12 Unless the Parties otherwise agree, this Agreement and any rights or obligations under this Agreement may not be assigned, in whole or in part.

## **Entire Agreement**

15.13 This Agreement is the entire agreement between the Parties in respect of the subject matter of this Agreement and, except as set out in this Agreement, there is no representation, warranty, collateral agreement, condition, right or obligation affecting this Agreement.

## **Applicable Laws**

15.14 This Agreement will be governed by and construed in accordance with the applicable laws in force in the Province of British Columbia.

## **Other Indigenous Nations**

15.15 This Agreement does not in any way affect or limit any consultation or treaty obligations that the Province may owe to other Indigenous nations, including other participating Indigenous nations, in relation to the Project.

**Execution in Counterparts**

15.16 This Agreement may be entered into by each of the Parties signing a separate copy of this Agreement (including a photocopy or facsimile copy) and delivering it to the other Party by email or facsimile transmission, and all executed counterparts taken together will constitute one agreement.

**IN WITNESS WHEREOF** the Parties have executed this Agreement as set out below:

**Signed on behalf of  
Tahltan Central Government:**



Chad Norman Day  
President, Tahltan Central  
Government

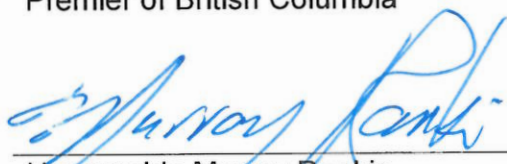
June 6, 2022  
Date

**Signed on behalf of the  
Government of B.C.:**



Honourable John Horgan  
Premier of British Columbia

June 6, 2022  
Date



Honourable Murray Rankin  
Minister of Indigenous Relations  
and Reconciliation

June 6, 2022  
Date



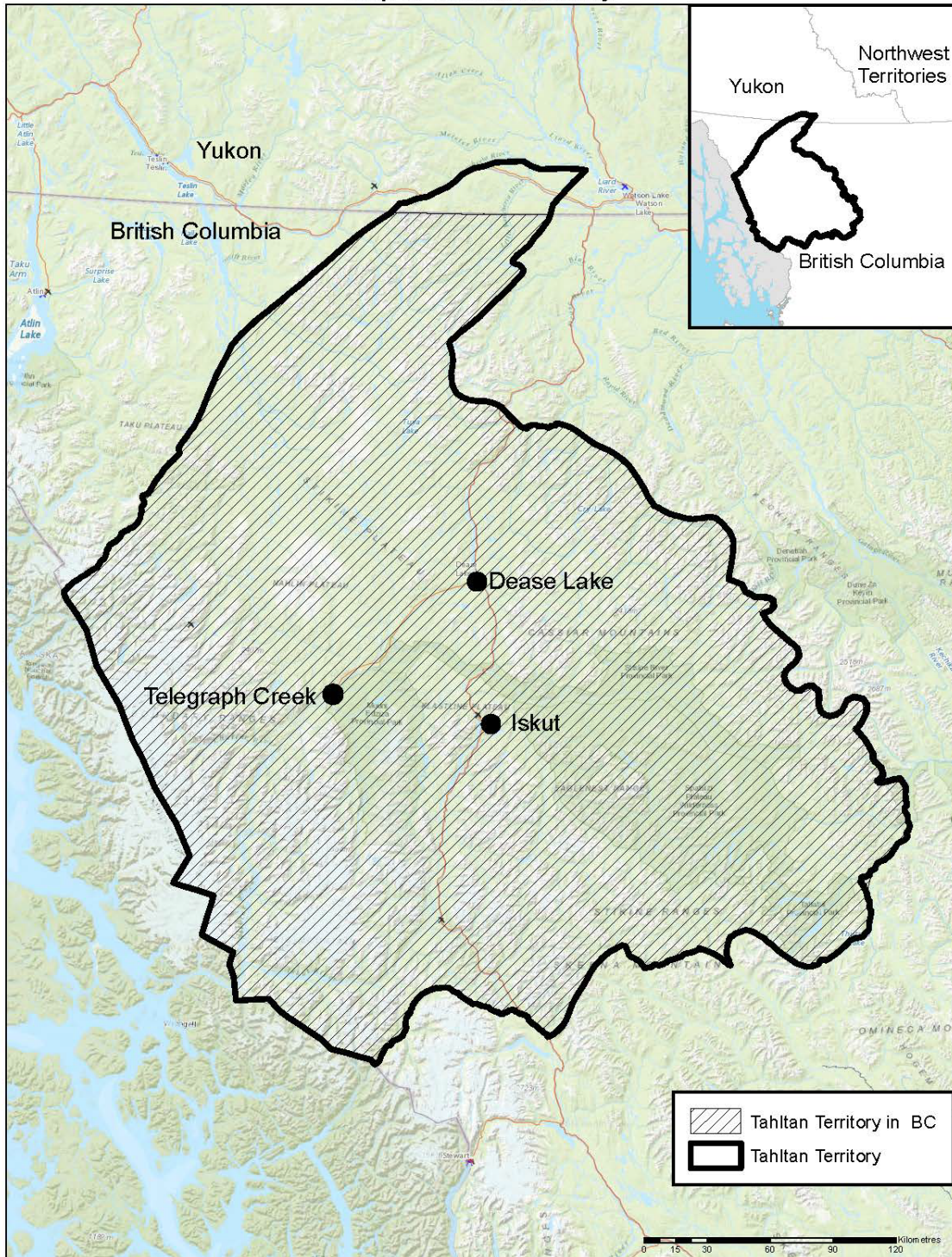
Honourable George Heyman,  
Minister of Environment and  
Climate Change Strategy

June 1, 2022  
Date



## Schedule A

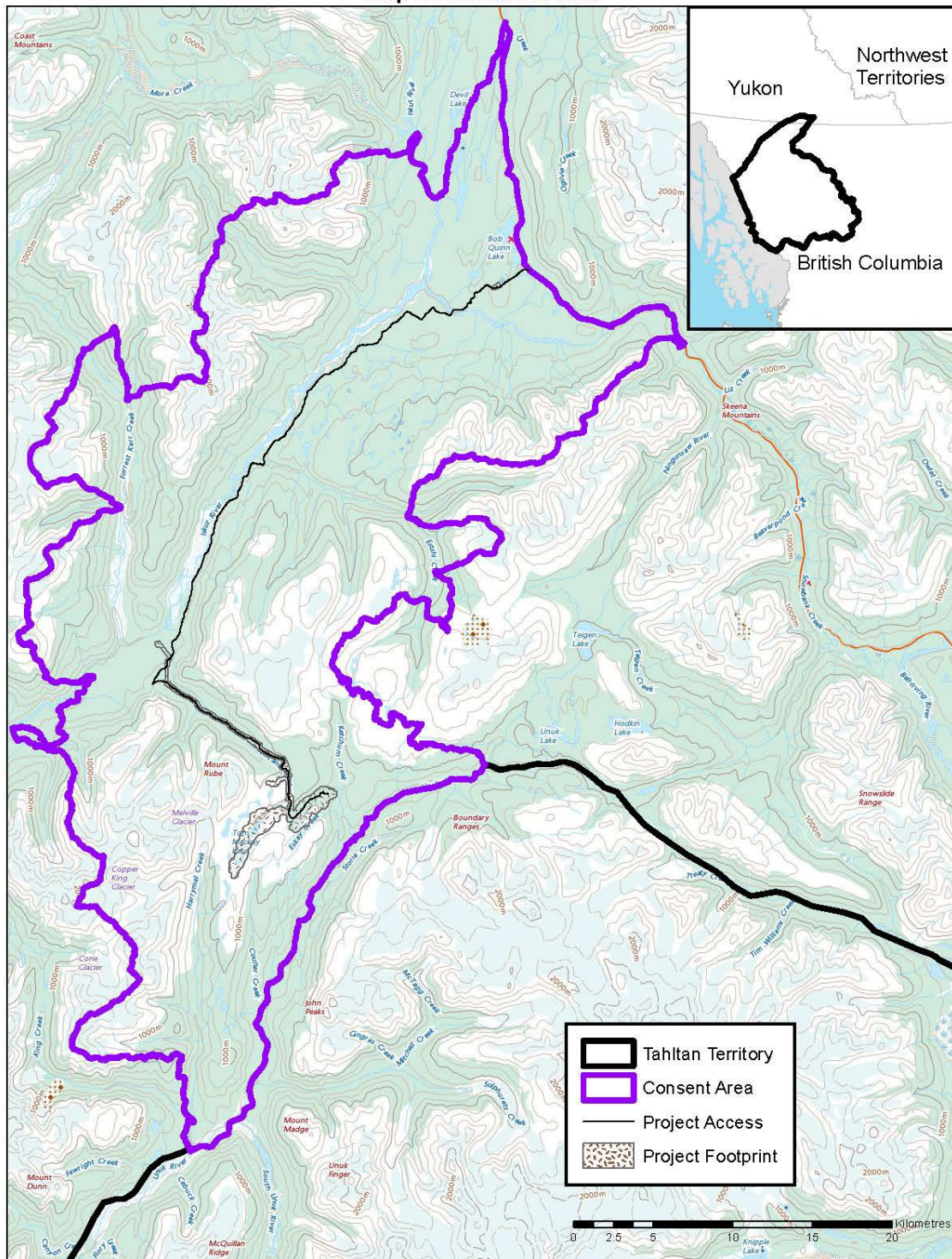
Map of Tahltan Territory





## Schedule B

Map of Consent Area



## **Schedule C**

### **Tahltan Risk Assessment Factors**

In undertaking a risk assessment for a proposed project, the factors that TCG will consider include the following:

1. How will the project affect the following:
  - a) Tahltan's Title and Rights and the exercise of Title and Rights;
  - b) high sensitivity areas or environmentally sensitive areas within Tahltan Territory;
  - c) the quality or quantity of ground water or surface water, or ground and surface water connectivity and aquifers;
  - d) sacred areas;
  - e) important habitat areas, including birthing, breeding and wintering areas for fish and wildlife, or wildlife migration corridors;
  - f) ecosystems or species of importance to Tahltan;
  - g) Tahltan harvesting areas, traditional use areas or other Tahltan land use areas;
  - h) archaeological sites, burial sites, historical village sites or other site-specific features within Tahltan Territory; and
  - i) Tahltan's relationship with the proponent?
2. What are the cumulative effects on the values listed in section 1 above?
3. What is the proximity of the project to Tahltan communities and will the project affect those communities?
4. Will the project cause irreparable harm to Tahltan Territory?
5. Does the project align with Tahltan direction on the use of the project area, including in land use plans?
6. Does the proposed project in the current design, as a stand alone project, and as part of a cumulative review meet the Tahltan Sustainability Requirements?

7. Will the project provide more positive than social impacts on Tahltn?
8. What education, employment and training opportunities will the project provide?
9. What economic opportunities will the project provide for Tahltn and Tahltn businesses?
10. What is the compliance, regulatory, and operational history of the proponent with Tahltn and other Indigenous nations?
11. Does the proponent have the financial resources to carry the proposed project to final closure as well as the legacies required by Tahltn?
12. Can the land and water in the project area be returned to the existing or desired health as directed by Tahltn laws, principles, policies and knowledge?
13. Has a Tahltn land use and occupancy study been completed and used in the design of the project and incorporated into the environmental assessment application?
14. Does baseline information meet the confidences of Tahltn that it accurately and precisely captures the current knowledge for the project area and study areas? If not, do the contingencies meet the confidences of Tahltn?
15. Does the proposed project design, baseline information, mitigations, monitoring and closure protect the ground and surface water in the area and in downstream land and water areas?
16. Is there independent Tahltn monitoring being funded as part of the project design?
17. Have the proponent and/or regulatory agencies applied Tahltn Sustainability Requirements and the above risk criteria? Are they following the consent and decision-making requirements for Tahltn? Are they taking actions in relation to any Tahltn risk and sustainability concerns to require changes to the proposed project, certificate conditions?
18. Has the proponent committed through binding obligations to meet Tahltn Sustainability Requirements?

## **Schedule D**

### **Tahltan Sustainability Requirements**

In assessing whether a project is sustainable, TCG will consider whether the project:

1. Meets the requirements of the 1910 Declaration on Tahltan regarding governance, sovereignty, jurisdiction and authorities.
2. Meets the principles of the Tahltan Resource Development Policy.
3. Is consistent with applicable Tahltan lands governance policies.
4. Is consistent with fundamental Tahltan land and resource principles.
5. Allows the land and water to be returned to a level of environmental health to support Tahltan's Title and Rights and land uses across the Tahltan Continuum, with a focus on future land use by Tahltan.
6. Does not require mitigations, treatment, or monitoring beyond closure (i.e. will not require treatment of the land and water in perpetuity to maintain them at near normal levels).
7. Does not restrict Tahltan from meeting food security needs or conducting social, cultural, and environmental practices.
8. Minimizes adverse impacts to Tahltan Values and has Tahltan social, cultural, environmental, and environmental compensation plans in place to support this requirement.
9. Does not significantly impact Tahltan Values through residual or cumulative effects.
10. Contributes, supports, or assists in creating social, cultural, environmental and economic legacies for Tahltan.