

SETTLEMENT AGREEMENT

THIS AGREEMENT IS MADE July 31, 2014 IN ACCORDANCE WITH THE NISGA'A FINAL AGREEMENT, CHAPTER 19, DISPUTE RESOLUTION, PARAGRAPH 27.

BETWEEN:

THE NISGA'A NATION, as represented by the NISGA'A LISIMS GOVERNMENT EXECUTIVE ("NLG")

AND

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by the MINISTER OF ABORIGINAL RELATIONS AND RECONCILIATION ("BRITISH COLUMBIA")

(each a "Party" and collectively the "Parties")

WHEREAS:

- A. On March 13, 2013, NLG delivered a Notice of Disagreement pursuant to the Nisga'a Final Agreement (the "Nisga'a Treaty"), Chapter 19, paragraph 15, to British Columbia and Her Majesty the Queen in right of Canada ("Canada") in which NLG alleged that British Columbia and Canada had, *inter alia*, not completed assessments of the proposed Kitsault Mine Project (the "Kitsault Project") as required under Chapter 10 of the Nisga'a Treaty (the "Disagreement").
- B. The delivery of the Notice of Disagreement triggered Stage 1, Collaborative Negotiations of the dispute resolution process set out in the Nisga'a Treaty.
- C. On March 18, 2013 British Columbia issued an Environmental Assessment Certificate for the Kitsault Project (the "Kitsault EAC").
- D. All of the parties to the Disagreement met twice between April 17, 2013 and May 27, 2013 as part of the Stage 1, Collaborative Negotiations.
- E. The Disagreement was not resolved during Stage 1, Collaborative Negotiations, and on June 10, 2013 NLG triggered Stage 2, Facilitated Process, of the dispute resolution process by delivering a Notice to British Columbia and Canada pursuant to the Nisga'a Treaty, Chapter 19, paragraph 20.
- F. The Parties determined that the Stage 2 Facilitated Process would be Mediation pursuant to Appendix M-2 of the Nisga'a Treaty.

- G. On July 31, 2013 NLG filed a Petition for judicial review in British Columbia Supreme Court (No. S-135773, Vancouver Registry), challenging the issuance of the Kitsault EAC (the "Petition").
- H. On September 5, 2013, NLG filed a Notice of Application in British Columbia Supreme Court seeking interim or interlocutory relief and setting September 23 and 24, 2013 as the dates for hearing the application (the "Interlocutory Application").
- I. The parties to the Disagreement agreed to a mediator, the Honourable Frank Iacobucci.
- J. NLG and British Columbia agreed to "Minutes of Settlement", dated September 12, 2013 which are attached as Appendix "A" to this Agreement, and further to adjourn the Interlocutory Application generally.
- K. NLG and British Columbia have agreed to resolve the Disagreement as it relates to the Parties as set out below.

THEREFORE NLG and British Columbia agree as follows:

GUIDING PRINCIPLES:

1. This Agreement will be guided by the following principles:
 - a. NLG and British Columbia recognize the significance of the Nisga'a Treaty and the importance of their treaty relationship.
 - b. NLG and British Columbia are committed to working as treaty partners in the collaborative process set out in this Agreement for fulfilling the Chapter 10 obligations set out in the Nisga'a Treaty.
 - c. NLG and British Columbia agree that the environmental assessment processes under the *Environmental Assessment Act*, S.B.C. 2002 c. 43 are to be predictable, practical, expeditious and reflective of Chapter 10 of the Nisga'a Treaty.
 - d. NLG and British Columbia agree that there are third party interests that must be considered in the collaborative process set out in this Agreement.
 - e. NLG and British Columbia recognize that BC will be the ultimate decision-maker in respect of provincial statutory decisions.
 - f. In light of the tripartite nature of the Nisga'a Treaty, the Parties agree that it is desirable to have a coordinated approach amongst NLG, Canada and British Columbia in respect of environmental assessments of projects that are subject to Chapter 10 of the Nisga'a Treaty and

NLG and British Columbia will work with Canada in an effort to achieve this objective.

2. Consultation and Environmental Assessments

- a. NLG and British Columbia will, in accordance with the term sheet set out in Appendix "B" and within 120 days of the last date this Agreement has been fully executed by the Parties (the "Effective Date"), negotiate and attempt to conclude an agreement (the "Nass Stewardship Protocol" or "NSP") concerning landscape monitoring and assessment and the application of Chapter 10 of the Nisga'a Treaty in respect of land and resource activities requiring statutory decisions or authorizations by British Columbia that may adversely impact rights as set out in the Nisga'a Treaty.
- b. NLG and British Columbia acknowledge that the negotiation of the NSP will be confidential, but NSP itself will not be confidential.
- c. In the event the NSP is concluded, NLG and British Columbia will incorporate into the NSP the Process for Collaboration in Environmental Assessments set out in Appendix "C" of this Agreement.
- d. Prior to the NSP coming into effect, NLG and British Columbia agree to apply the Guiding Principles set out in paragraph 1 of this Agreement, and the Process for Collaboration in Environmental Assessments set out in Appendix "C" of this Agreement to ongoing processes in respect of the Kitsault EAC and existing and future projects that are subject to the Nisga'a Treaty, Chapter 10 and that require an environmental assessment certificate under the *Environmental Assessment Act*, S.B.C. 2002, c. 43.
- e. British Columbia and NLG agree to follow the NSP when undertaking consultation in respect of any authorization, permit, licence, land disposition or other statutory decision related to the Kitsault Project that may adversely affect residents of Nisga'a Lands, Nisga'a Lands or Nisga'a interests set out in the Nisga'a Treaty.
- f. Prior to the NSP coming into effect, British Columbia will consult with NLG in respect of any authorization, permit, licence and land dispositions or other statutory decision related to the construction, operation or reclamation of the Kitsault Project that may adversely affect residents of Nisga'a Lands, Nisga'a Lands or Nisga'a interests set out in the Nisga'a Treaty, not otherwise captured in subparagraph 2.d., in the following manner:

- i. with respect to the operational discharge permit under the *Environmental Management Act*, through a water working group involving representatives from NLG, the Ministry of Environment and other ministries as appropriate;
- ii. with respect to any applications related to the Kitsault Project, requiring decisions under the *Mines Act* or *Mineral Tenures Act* or *Forest Act* that will be reviewed by the Northwest Mine Development Review Committee, NLG will be a member on this Committee; and
- iii. with respect to any applications related to the Kitsault Project, requiring decisions under the *Mines Act* or *Mineral Tenures Act* or *Forest Act* that will not be reviewed by the Northwest Mine Development Review Committee, NLG will be consulted directly by the Ministry of Energy and Mines or other ministries as appropriate.

3. Consensus

- a. NLG and British Columbia will strive to achieve consensus in respect of the matters contemplated in the collaborative processes set out in subparagraphs 2.d and 2.f and in accordance with the Guiding Principles set out in paragraph 1. In the event that consensus is not achieved, NLG and British Columbia agree that, in any instance of disagreement, the parties will take the following steps:
 - i. exchanging substantive rationales setting out their respective positions on the issues under discussion; and
 - ii. raising such matters to the Chief Executive Officer of NLG and an appropriate senior executive of British Columbia as necessary, including discussing the appropriateness of involving a technical expert or mediator in accordance with subparagraph 3. b.
- b. If, notwithstanding the Parties' efforts under subparagraph 3.a, NLG and British Columbia are unable to achieve consensus with respect to a substantive matter contemplated in the collaborative processes set out in subparagraphs 2.d and 2.f and in relation to potential impacts to residents of Nisga'a Lands, Nisga'a Lands or Nisga'a interests set out in the Nisga'a Treaty, either Party may, subject to the agreement of the other Party (to be discussed in accordance with clause 3.a.ii), such agreement not to be unreasonably withheld or delayed, request that a technical expert or mediator, as appropriate, be retained to assist the Parties.

- c. NLG and British Columbia acknowledge the importance of timeliness in respect of the collaborative processes set out in subparagraphs 2.d, 2.f and the shared objective of achieving consensus as set out in this paragraph 3.
- d. NLG and British Columbia will, as appropriate and as agreed to by the Parties, incorporate the approaches to collaboration and consensus set out in this Agreement into the NSP.

OTHER MATTERS

4. Revenue Sharing

- a. NLG and British Columbia will execute an agreement on a mineral tax revenue sharing agreement for the Kitsault Mine (the "Kitsault ECDA") on the same day as this Agreement.
- b. NLG and BC will within 45 days of the Effective Date, negotiate and attempt to conclude an ECDA framework on mineral tax revenue sharing agreement for the KSM, Brucejack, and any future mining projects based on existing provincial mandates and where applicable in substantially the same form as the Kitsault ECDA (the "Umbrella ECDA").
- c. NLG and British Columbia acknowledge that the negotiation of the Kitsault ECDA and Umbrella ECDA will be confidential, but the Kitsault ECDA and Umbrella ECDA themselves will not be confidential.

5. Funding

- a. Within 30 days of the Effective Date, British Columbia will provide to NLG \$100,000, to support NLG participation in the processes contemplated in subparagraph 2.d, and a further \$100,00.00 for the same purpose, within the first 30 days after the first anniversary of the Effective Date.
- b. Within 30 days of the Effective Date, British Columbia will provide to NLG \$100,000, to support NLG participation in the negotiation of the agreements contemplated in subparagraphs 2.a, 4.a and 4.b.

6. Nass River Bridge

- a. NLG will, within 30 days of Effective Date, consent to the work plan to replace the Nass River Bridge.

- b. Within 30 days of the Effective Date, British Columbia will provide to NLG \$25,000 for initiatives to support Nisga'a citizens who may be temporarily impacted by the replacement of the Nass River Bridge.

LITIGATION

7. In consideration of the above:
 - a. NLG will, within five days of the Effective Date, file a Notice of Discontinuance with the court registry in respect of the Petition and provide to British Columbia a copy of such Notice of Discontinuance.
 - b. NLG and British Columbia agree to each be responsible for their own costs in respect of the Petition and the Notice of Discontinuance.
 - c. NLG hereby releases and forever discharges British Columbia from all actions, causes of action, claims, proceedings, debts, duties, demands, interest, fines, costs, expenses and compensation of whatsoever amount and kind which it ever may have had, has or may ever have against British Columbia in respect of:
 - i. any decision made by British Columbia in respect of the Kitsault Project before the effective date that has impacted or may potentially impact Nisga'a interests as set out in the Nisga'a Final Agreement;
 - ii. any obligations of British Columbia owing to the Nisga'a Nation, under the Nisga'a Final Agreement or otherwise, in respect of the Kitsault Project, before the Effective Date; and
 - iii. the Petition.
 - d. For greater certainty, the Parties agree that the release provided by NLG under subparagraph 7.c is not intended to restrict in any way the ability of NLG to ensure compliance with Chapter 10 of the Nisga'a Treaty in respect of any matter other than the decisions or obligations, as of the Effective Date, of British Columbia in respect of the Kitsault Project or in any way relating to the Petition.

IMPLEMENTATION OF AGREEMENT

8. If there is a disagreement about the implementation or interpretation of this Agreement, the Chief Executive Officer of NLG and the Deputy Minister of the Ministry of Aboriginal Relations and Reconciliation (and such other

representatives of the Parties as may be appropriate) will meet to discuss the disagreement.

CONFIDENTIALITY and COMMUNICATIONS

9. This Agreement will not be confidential and may be communicated by either Party to third parties.

TERMINATION

10. Either Party may terminate this Agreement for any reason by providing the other Party with three months written notice of its intention to do so.

GENERAL

11. This Agreement is not a treaty or a land claims agreement within the meaning of section 25 and 35 of the *Constitution Act, 1982*.
12. The Parties do not intend anything in this Agreement to constitute, or be interpreted or construed as, an amendment to the Nisga'a Treaty or any provision set out therein.
13. In entering into this Agreement NLG and British Columbia make no admission of fact whatsoever with regard to the Petition, any judicial proceedings related thereto or any other proceedings between the Parties that may arise in respect of the Kitsault Project.
14. No waiver of any provision of this Agreement will have any legal effect unless such waiver is expressed in writing and has been duly executed by the Party making the waiver in the same manner as this Agreement was executed by that Party.
15. All references in this Agreement to a statute of British Columbia include every amendment to it, every regulation made under it, and any laws enacted in substitution for, or in replacement of it.
16. The attached appendices form part of this Agreement:
 - a. Appendix A: Minutes of Settlement
 - b. Appendix B: NSP Term Sheet
 - c. Appendix C: Principles for Collaboration in Environmental Assessments
17. The insertion of headings and recitals are solely for convenience and in no way modify or explain the scope or meaning of any part of this Agreement.

18. There will be no presumptions that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.
19. This Agreement constitutes the entire agreement between the Parties in respect of the settlement of those matters of the Disagreement as between NLG and British Columbia and supersedes all prior expectations, understandings, communications and representations, whether verbal or written, between the Parties in respect thereof.
20. In the event that any one or more provisions contained in this Agreement are determined to be invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions hereof shall not be affected or impaired.
21. This Agreement will be governed by and construed and interpreted in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.
22. This Agreement may be amended or supplemented only by written agreement duly executed by the Parties in the same manner as this Agreement was executed.
23. The Parties agree to do such things, execute such further documents and take such further measures as may be reasonably necessary to carry out and implement the terms, conditions, intent and meaning of this Agreement.
24. This Agreement and any other documents executed under it may be executed in any number of counterparts with the same effect as if the Parties had executed, signed or endorsed the same as the one document and all the counterparts so executed, signed or endorsed shall be constructed together as if they had been on the same document.
25. Time is of the essence of this Agreement.

The Parties have executed this Agreement on the day and year written below.

Mitchell Stevens
For Nisga'a Nation

July 31, 2014
Date

[Signature]
Witness

July 31, 2014
Date

John Rustad
For Her Majesty the Queen in right
of the Province of British Columbia

July 31, 2014
Date

May Red
Witness

July 31, 2014
Date

APPENDIX "A" MINUTES OF SETTLEMENT

Minutes of Settlement

Guiding Principles

- British Columbia ("BC") and the Nisga'a Nation, as represented by Nisga'a Lisims Government ("NLG"), recognize the importance of their treaty relationship and the significance of the Nisga'a Final Agreement ("Nisga'a Treaty").
- BC and NLG are committed to working as treaty partners in the collaborative process described below in meeting the Chapter 10 obligations set out in the Nisga'a Treaty as guided by the Minutes of Settlement.
- BC and NLG agree that the environmental assessment processes under the *Environmental Assessment Act* are to be predictable, practical, expeditious, and reflective of Chapter 10 of the Nisga'a Treaty.
- Parties agree that there are third party interests that must be considered in the collaborative process described below.
- Parties recognize that BC will be the ultimate decision-maker for making provincial statutory decisions.
- Parties intend the guiding principles set out above and the collaborative process set out below to apply to provincial environmental assessments which are subject to the Nisga'a Treaty. Parties intend to take the best practices and procedures developed from the collaborative process described below to inform those other environmental assessments.
- NLG and BC will endeavour to add Canada as a party in view of the tripartite nature of the Nisga'a Treaty and ensuring a coordinated approach between BC and Canada with respect to federal aspects of environmental assessments.

Collaborative Process for Kitsault Mine

- BC and NLG will jointly coordinate and administer the following:
 - review of management plans under condition 34 of the Kitsault Environmental Assessment Certificate ("EAC"),
 - review of Site Specific Water Quality Objectives (Condition 4 of the EAC),
 - review of Aquatic Effects Monitoring Program under Condition 22 of the EAC, and
 - review of the Marine Environmental Monitoring Program under Condition 23 of the EAC.

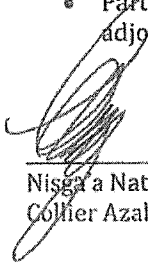
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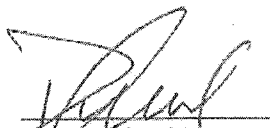
September 12, 2013

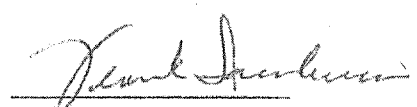
- BC will enhance the role of NLG with respect to the following:
 - Kitsault Mine Review Committee, and
 - Kitsault Water Quality Working Group.
- BC and NLG will strive to achieve consensus regarding this collaborative process.
- If consensus has not been achieved, in any instances of disagreement, the parties agree that:
 - a technical expert or mediator may be requested by either party to assist as appropriate, and
 - parties will exchange substantive rationales regarding the issue under disagreement.
- BC and NLG agree to the importance of timeliness in this collaborative process.

Matters Still to Be Addressed

- BC and NLG will negotiate a revenue-sharing agreement.
- Parties will address capacity funding for example through a Strategic Engagement Agreement/General Protocol or Economic and Community Development Agreement.
- BC and NLG will negotiate the application of these collaborative principles to non-EAO decisions (i.e. General Protocol).
- BC will review the matter of the Nass River Bridge.
- BC and NLG agree that Justice Iacobucci will, to the extent required, be requested to assist the parties in finalizing a letter of understanding regarding the Minutes of Settlement and the final resolution of the dispute.
- Parties agree that the injunction hearing set for September 23, 2013 will be adjourned.


 Nisga'a Nation
 Collier Azak


 British Columbia
 Doug Caul


 Mediator
 Justice Frank Iacobucci

CONFIDENTIAL

September 12, 2013

APPENDIX "B"
NSP TERM SHEET

Negotiation Term Sheet

For the

Nass Stewardship Protocol (the Protocol)

Between:

the Province of BC (the Province)

and

Nisga'a Nation

PURPOSE

This document sets out the common understanding of the Parties with respect to the scope and content of the Nass Stewardship Protocol, which will have the elements set out below.

TIMELINE

1. The Parties will establish a work plan to guide subsequent negotiations within 30 days of the Effective Date of the Settlement Agreement.
2. The Parties will negotiate and attempt to reach agreement on the matters set out below within 90 days of the finalization of the work plan.

NASS STEWARDSHIP PROTOCOL

1. The Protocol will operate within the existing legislative framework and the Nisga'a Final Agreement (Nisga'a Treaty).
2. The Parties will develop a common understanding of how key terms will be applied in the operational context of the Protocol, e.g. "project", "decision", "application", "indicator" and "activity".
3. The Parties will to the full extent possible take advantage of existing structures and processes to implement the consultation, including assessment processes, set out in the Protocol.
4. In developing the Protocol, the Parties will be informed by any lessons learned from existing strategic engagement agreements and the current review of strategic engagement agreements being undertaken by British Columbia.

5. The Parties will periodically review the effectiveness of the Protocol within the context of defined and objective criteria as agreed to by the Parties from time to time.
6. Each Party will bear its own costs for the implementation of the Protocol.
7. The Protocol will be comprised of Parts A, B, and C below.

Part A - Landscape Level Monitoring and Assessment Process (LMA)

1. The LMA will enable the Parties to carry out landscape level discussions to:
 - a. exchange the Parties' knowledge of activities planned for the coming year;
 - b. develop appropriate mitigation measures more strategically;
 - c. make resource decisions more efficiently within the Nass Area and the Nass Wildlife Area; and
 - d. report out on any identified applications, decisions, projects, or stages of projects that the Parties agree to exempt from the engagement model of the Protocol.
2. The LMA will be based on the following principles:
 - a. monitoring and assessment is an ongoing process, using the relevant available information;
 - b. indicators may, where agreed to by the Parties and as appropriate, be used as a proxy for measuring the impacts of authorized activities on Nisga'a rights as set out in the Nisga'a Treaty;
 - c. indicators will be jointly developed by the Parties;
 - d. an annual report will be prepared each year to identify any changes in the conditions of the indicators and provide key information for the two governments, their decision-makers and, as appropriate, proponents; and
 - e. the Parties will continuously improve the LMA process, adding, deleting or modifying indicators or other components over time to reflect the shared understanding of the Parties.

Part B – Engagement Model

1. Elements of the Engagement model may include:
 - a. a categorization of types of natural resource (forestry, mining, energy and other natural resource) applications, decisions, projects, or stages of projects;
 - b. provisions that will set out the referral process for identified applications, decisions, projects, or stages of projects to the appropriate level of consultation, including assessment of impacts, based on those categories and/or the location of the project relative to Nisga'a Lands or potential impacts on Nisga'a rights as set out in the Nisga'a Treaty; and

- c. specification of levels of consultation, including assessment of impacts, set out in 1.b. above, will set out defined steps and target timelines for those steps, and the information to be provided.

Part C - Support Forum

1. The support forum will meet annually to:
 - a. oversee the implementation of the Protocol;
 - b. facilitate the flow of referral applications and information concerning those applications;
 - c. discuss LMA strategic land and resource matters;
 - d. proactively seek to resolve implementation issues at a senior operational level;
 - e. assess the effectiveness and efficiency of LMA processes under the Stewardship model; and
 - f. undertake other work as may be agreed to by the Parties.
2. The Protocol will set out the mandate and responsibilities of the forum, representation, operating principles/parameters, and other matters as agreed to by the Parties.
3. The Parties may establish a new body as the support forum or use existing structures established in the Nisga'a Treaty to carry out the duties of the support forum.

APPENDIX "C"
PROCESS FOR COLLABORATION IN
ENVIRONMENTAL ASSESSMENTS

1. The process set out below apply to projects ("EAC Projects"):
 - a. that require an environmental assessment certificate under sections 6, 7 or 10 of the *Environmental Assessment Act*, S.B.C. 2002, c. 43 ("Act");
and
 - b. that are subject to Chapter 10 of the Nisga'a Treaty.

2. In respect of the assessments required under paragraphs 8(e) and 8(f) of Chapter 10 of the Nisga'a Treaty for EAC Projects, EAO and NLG will collaborate and, in accordance with paragraph 3 of the Settlement Agreement, strive to reach consensus on:
 - a. EAO's direction to the proponent:
 - i. under the order issued under section 11 of the Act;
 - ii. regarding the selection of the valued components (as a component of the application information requirements pursuant to section 11(2)(c) of the Act);
 - iii. regarding the information to be collected to inform the assessments required under paragraphs 8(e) and 8(f) of Chapter 10 of the Nisga'a Treaty (provided through specific work plans or as a component of the application information requirements); and
 - iv. regarding the methodology to be applied in respect of the assessments required under paragraphs 8(e) and 8(f) of Chapter 10 of the Nisga'a Treaty;
 - b. whether, at the screening phase and before the application has been accepted for 180 days of review in accordance with section 16 of the Act and section 2 of the *Prescribed Time Limits Regulation*, sufficient information to conduct and complete the assessments required under paragraphs 8(e) and 8(f) of Chapter 10 of the Nisga'a Treaty has been provided by a proponent; and
 - c. the section of the Assessment Report addressing the assessments required under paragraphs 8(e) and 8(f) of Chapter 10 of the Nisga'a

Treaty, including the analysis of effects and the conclusions set out therein.

3. NLG and EAO will collaborate and attempt to conclude a compliance and enforcement framework that will include, at a minimum:
 - a. communication protocols between NLG and EAO for both routine and urgent compliance issues;
 - b. protocols for the conduct of compliance inspections and enforcement response;
 - c. opportunities for joint training between NLG and EAO; and
 - d. the acknowledgement that NLG and EAO will develop compliance management plans (CMPs) for each EAC Project after certification. The CMP will define on a project-by-project basis, including for EAC Projects with existing EACs, the following elements:
 - i. communication protocols between NLG and EAO;
 - ii. the EAC conditions of interest to the NLG;
 - iii. the means by which EAO and NLG will work together to collaborate and strive to reach consensus on compliance verification and enforcement activities for those conditions of interest to the NLG; and
 - iv. opportunities for joint inspections between EAO and NLG.
4. In respect of the effects assessment required under paragraph 8(f) of Chapter 10 of the Nisga'a Treaty:
 - a. the assessment will focus on the EAC Project's effects on the existing and future economic, social and cultural well-being of Nisga'a citizens;
 - b. NLG and EAO will collaborate and strive to reach consensus on the application of the ESCIA Guidelines for conducting the assessments required under paragraph 8(f) of Chapter 10;
 - c. NLG and EAO will consider, and the conclusions reached in respect of such effects will take into account, any mitigation measures proposed by the proponent;
 - d. NLG and EAO will collaborate and strive to reach consensus on any direction to be given to a proponent to consider a number of "development scenarios" in order to put into context the impacts of such proponent's EAC Project on the existing and future economic, social and cultural well-being of Nisga'a citizens given the other possible "development scenarios"; and
 - e. proponents will also consider effects on NLG expenditures based on information provided to proponents by NLG (e.g. direct cost impacts to

NLG for monitoring, project-related education and training or other economic development strategies, and mitigation of social and cultural impacts or other such effects).

