

**Tahltan – Province Government-to-Government Red Chris Mine Management Agreement**

**This Agreement is dated the 24<sup>th</sup> day of January, 2017**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

**IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA,**

**as represented by the Minister of Energy and Mines**

**(the "Province")**

**AND:**

**TAHLTAN NATION,**

**as represented by the Tahltan Central Government**

**("Tahltan")**

**(hereinafter each referred to as a "Party", together referred to as the "Parties")**

**Whereas:**

- A. The Red Chris Mine (the "Mine") is located within Tahltan Territory.
- B. Tahltan has identified outstanding issues and concerns regarding the 2005 Environmental Assessment Certificate for the Mine.
- C. Tahltan has identified the need to collaboratively address operational, technical and regulatory matters related to the development, construction and operation of the Mine, including addressing and implementing measures related to the tailings impoundment.
- D. Through this Agreement, Tahltan and the Province are establishing a project specific relationship regarding the development, construction, operation and closure of the Mine, environmental management of the Mine, as well as the monitoring and enforcement of technical and environmental measures related to the Mine.
- E. This Agreement is an interim step towards the Parties shared commitment to negotiate a land and resource decision-making agreement to amend or replace the Shared Decision Making Agreement that realigns and strengthens their relationship on a government-to-government basis and is respectful of Tahltan stewardship responsibilities in Tahltan Territory.

**NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:**

**1.0 Definitions**

**1.1 In this Agreement:**

**“Aboriginal Rights”** means asserted or determined Aboriginal rights, including Aboriginal title, recognized and affirmed by section 35(1) of the *Constitution Act*, 1982;

**“Agreement”** means this Red Chris Management Agreement, including all of its appendices and schedules;

**“Annual Auditing Cycle”** means the cycle as described in section 6.2;

**“Annual Planning Cycle”** means the cycle as described in Schedule A;

**“Annual Roll-up Report”** means the report as described in section 6.3;

**“Application Review Procedures”** means the process for engagement on Provincial Authorizations set out in Schedule A and depicted in Appendix 1;

**“BCEAO”** means the British Columbia Environmental Assessment Office;

**“Chief Inspectors Report”** means the Chief Inspector of Mine’s Investigation Report on Mount Polley dated January 30, 2015;

**“Dispute”** means any disagreement regarding the interpretation or implementation of this Agreement, but does not include a disagreement that relates to engagement on Provincial Authorizations under the Application Review Procedures or a disagreement that arises during compliance and enforcement activities undertaken by the Province;

**“Dispute Resolution”** means the process set out in section 10.1 which the Parties will use to attempt to resolve disagreement regarding the interpretation or implementation of this Agreement;

**“EA”** means environmental assessment;

**“Effective Date”** means the date upon which this Agreement has been signed off by the Parties’ duly authorized representatives;

**“Executive”** means the individuals identified in section 4.3;

**“FLNRO”** means the Ministry of Forests, Lands, and Natural Resource Operations;

**“Incident”** means an unusual accident or unexpected event that has resulted in a hazard or poses a threat that could affect Tahltan or the environment.

**“Independent Panel”** means the Mount Polley Independent Expert Engineering Investigation and Review Panel;

**“Issue Resolution”** means the process referred to in section 10.2 and set out in the Application Review Procedures, which the Parties will use to attempt to resolve disagreements that arise during the implementation of the Application Review Procedures;

**“MEM”** means the Ministry of Energy and Mines;

**“MOE”** means the Ministry of Environment;

**“Mine”** means the Red Chris Mine including:

- a. all works, undertakings, facilities and activities approved by *Mines Act* Permit M-240 and *Environmental Management Act* Effluent Discharge Permit 105017 and located in the area depicted as the “Mine Area” in the map attached as Schedule B to this Agreement;
- b. all access roads and transmission line right of ways associated with the Mine, for which RCDC holds a permit, authorization or other form of tenure as of the date of this Agreement, and all associated infrastructure, operating sites and facilities;
- c. any changes, modifications, or alterations to the works, undertakings and facilities set out in (a) and (b); and
- d. all matters relating to the exploration, planning, permitting, construction, maintenance, repair, operation and reclamation of the Mine described in (a) to (c);

**“Principals”** means the individuals identified in section 4.2;

**“Provincial Authorizations”** means all authorizations, permits, licences, approvals, Crown land dispositions, agreements, completed processes and other decisions, whatsoever entered into or otherwise taken by the Province, in relation to the Mine;

**“RCDC”** means the Red Chris Development Company Ltd, the ‘operator’ of the Mine, as defined in the *Mineral Tax Act, RSBC 1996, c 291*;

**“Red Chris Mine Forum”** means the forum as described in section 4.0;

**“Red Chris Monitoring Committee”** means the committee pursuant to *Mines Act* Permit M-240;

**“Tahltan People”** means the collective of persons who hold and are entitled to exercise Tahltan Aboriginal Rights in Tahltan Territory;

**“Tahltan Territory”** means the traditional territory of Tahltan located within British Columbia, as identified for illustrative purposes on the map attached at Schedule C; and

**“Terms of Reference”** means the terms of reference developed by the Parties for the Red Chris Mine Forum under section 4.5.

## **2.0 Purpose**

2.1 The purpose of this Agreement is to establish the:

- a. Red Chris Mine Forum;
- b. Application Review Procedures; and
- c. process for Tahltan participation in monitoring compliance and auditing of all permit conditions and EA requirements related to the Mine;

for the life of the Mine, subject to any amendment of this Agreement under section 13.2 or termination of this Agreement under section 13.5.

## **3.0 Principles**

3.1 The Parties agree to the following principles to guide their relationship regarding the Mine under this Agreement:

- a. establishing a regulatory review process that is designed to encourage and increase the likelihood of consensus recommendations to support decision-making about the Mine is the best pathway to addressing and resolving issues and concerns that may arise regarding the development, construction, operation and closure of the Mine;
- b. early, comprehensive, open and transparent sharing of information, concerns and ideas is fundamental for consensus-building and effective and efficient decision-making regarding the Mine;
- c. Tahltan has stewardship roles, responsibilities and standards to fulfill in Tahltan Territory. Tahltan knowledge, including cultural, environmental, social and spiritual knowledge and values, must inform aspects of the development, construction, operation and closure of the Mine;
- d. effective and robust compliance monitoring and enforcement are critical to meeting the purposes of this Agreement; and
- e. Tahltan has an ongoing central and regular role in the compliance monitoring and auditing of the Mine.

## **4.0 Red Chris Mine Forum**

4.1 The Parties agree to establish a bilateral Tahltan – Province Red Chris Mine Forum which includes two levels of engagement comprised of the Principals and the Executive.

4.2 The following Principals will meet annually in accordance with the Terms of Reference, or as required for Dispute Resolution or Issue Resolution:

- a. President of the Tahltan Central Government, Chief of the Iskut Band and Chief of the Tahltan Band, as appropriate;
  - b. Deputy Minister of MEM;
  - c. Deputy Minister of MOE;
  - d. Deputy Minister of FLNRO; and
  - e. Associate Deputy Minister of BCEAO.
- 4.3. The following Executive members will meet in accordance with the Terms of Reference, or as required for Dispute Resolution or Issue Resolution
- a. senior representatives of the Tahltan Central Government;
  - b. Assistant Deputy Minister of MEM;
  - c. Assistant Deputy Minister of MOE;
  - d. Assistant Deputy Minister of the Ministry of FLNRO; and
  - e. Assistant Deputy Minister of the BCEAO.
- 4.4 The purposes of the Red Chris Mine Forum are to:
- a. provide a forum for discussions of issues arising from the operation of the Mine to ensure the Mine is developed, constructed, operated and closed consistent with high environmental and mining standards and respectful of Tahltan and their Aboriginal Rights;
  - b. oversee the Annual Auditing Cycle under section 6.2;
  - c. oversee the Annual Planning Cycle as set out in Schedule A;
  - d. oversee the implementation of the Application Review Procedures set out in Schedule A, and assist in resolving disagreements through the Issue Resolution process set out in Schedule A;
  - e. ensure that Tahltan concerns in relation to the Mine are discussed, actions are identified and appropriate steps are taken with the intention of meaningfully addressing those concerns, including through urgent or critical intervention.
  - f. establish a process for ensuring adequate resources for all Parties are available to address those concerns of critical or emergency nature;
  - g. ensure Tahltan knowledge and values are appropriately, respectfully, and meaningfully reflected and considered in the management and decision-making regarding the Mine;
  - h. make linkages to broader initiatives which can assist in addressing Tahltan issues or concerns about stewardship of the larger area in which the Mine operates (e.g. water quality, wildlife); and
  - i. oversee the implementation of the Independent Panel and Chief Inspector's Report that relate to the ongoing development, construction, operation and closure of the Mine.

- 4.5 The Parties will develop, within 90 days of the Effective Date of this Agreement, Terms of Reference for both levels of the Red Chris Mine Forum that set out the:
- a. roles and responsibilities of the Principals and Executive levels of the Red Chris Mine Forum;
  - b. procedures the Principals and the Executive levels will use to fulfill their responsibilities;
  - c. the frequency of meetings, the means of identifying which Principals or Executive members are required to attend particular meetings, and when delegates may be invited to attend meetings; and
  - d. other matters as identified and agreed to by the Parties.

4.6 The Red Chris Mine Forum may agree to invite RCDC to provide information to the Forum, or participate in the work of the Forum as identified in the Application Review Procedures, or as otherwise may be determined appropriate or needed by the Red Chris Mine Forum.

#### **5.0 Application Review Procedures**

5.1 The Parties agree to use the Application Review Procedures set out in Schedule A for Provincial Authorizations and proposed amendments to existing Provincial Authorizations for the Mine, subject to section 5.2.

5.2 The Parties agree the Application Review Procedures do not apply to any Provincial Authorizations that may be required where the proposal meets the modification thresholds under section 8.1 of the Reviewable Projects Regulation, BC Reg 370/2002, unless otherwise agreed to by the Parties in writing.

- 5.3 Either Party may elect to opt out of the Application Review Procedures:
- a. after initial receipt and review of an application for a Provincial Authorization or amendment to existing Provincial Authorizations; or
  - b. in the event that the Parties determine the application falls outside the scope of the Application Review Procedures;

in accordance with the Application Review Procedures.

#### **6.0 Compliance, Monitoring and Enforcement**

6.1 The Parties agree that Tahltan will have an ongoing active and central role in EA certificate and permit compliance monitoring of the Mine, in accordance with sections 6.2 through 6.6 of this Agreement.

- 6.2 The Parties agree to develop and implement a robust Annual Auditing Cycle to monitor the implementation of, and compliance with, permit conditions, EA certificate conditions, and other provincial requirements which:
- a. builds on the work of the Red Chris Monitoring Committee;
  - b. tracks the status of all permit conditions, EA certificate conditions and other provincial requirements;
  - c. reports on Mine permit and EA certificate compliance and enforcement oversight in an Annual Roll-up Report as described in section 6.3;

- d. monitors implementation of measures regarding the tailing impoundments, including third party reviews;
  - e. informs future monitoring and potential studies, as agreed to by the Parties; and
  - f. is informed and guided by the audit framework of the Mining Association of Canada.
- 6.3 The Province will provide Tahltan with an Annual Roll-up Report of compliance issues that arose in relation to the operation of the Mine during the previous year, identifying all inspection reports and materials produced by the Province or submitted to the Province, summarizing issues of particular significance, and setting out how those issues were, or are being, addressed and monitored for follow-up.
- 6.4 Upon request by Tahltan:
- a. the Province will provide Tahltan with inspection reports and materials identified in the Annual Roll-up Report;
  - b. the Parties will meet to discuss the Annual Roll-up Report and any government or third party reports pertaining to the Mine;
  - c. the Province will provide Tahltan with general information about the regulation of worker health and safety, including regulation under the *Mines Act*, RSBC 1996, c 293, and the Health, Safety and Reclamation Code for Mines in British Columbia, 2008; and
  - d. the Parties agree to meet to discuss issues related to worker health and safety.
- 6.5 The Parties agree that Tahltan will be provided the opportunity to directly participate in environmental, geotechnical and reclamation inspections to be determined jointly by the Parties under section 6.6.
- 6.6 The Province agrees to assign an inspector who is the main contact for Tahltan in relation to the Mine, and who is responsible for:
- a. engaging with, and facilitating discussions with, the other mines inspectors responsible for inspecting the Mine;
  - b. ensuring MEM, MOE, and BCEAO coordination with Tahltan on monitoring compliance; and
  - c. conducting environmental, geotechnical and reclamation inspections accompanied by Tahltan.
- 7.0 Emergency Intervention**
- 7.1 The Parties agree that where environmental concerns or situations arise during operations that are of an urgent or critical nature, immediate steps must be taken to respond to the concern or situation.
- 7.2 The Parties agree that, notwithstanding any other provision of this Agreement and consistent with the priorities described in section 7.5, either Party may make a

decision with respect to any emergency measure, exceptional circumstance in response to an Incident.

- 7.3 The Parties agree that in the event of an Incident, the Province will contact the Tahltan appointed designate responsible for the Mine within 24 hours or as soon as practicable, and may also contact the following as directed by the Tahltan appointed designate responsible for the Mine or as appropriate:
- a. President, Tahltan Central Government;
  - b. Chief, Iskut Band Council; and
  - c. Chief, Tahltan Band Council.

These contacts may be amended from time to time upon written notice from Tahltan.

- 7.4 The Parties acknowledge that RCDC has reporting responsibilities with respect to accidents and dangerous occurrences as per part 1.7.1 (1(b)) of the the Health, Safety and Reclamation Code for Mines in British Columbia, 2008, and the Mine's Operation, Maintenance and Surveillance Manual.
- 7.5 In the event of an Incident, the Parties agree that the priorities are to ensure the health, safety and security of all personnel and to address any immediate ongoing harm to the environment.

## **8.0 Assessments and Studies**

- 8.1 The Parties share the objective that the Mine must meet high standards for construction, operations, and closure, including environmental management (i.e. "world class" standards).
- 8.2 The Parties agree that certain studies and assessments will need to be designed and implemented regarding the Mine to support the purposes of this Agreement.
- 8.3 The Red Chris Mine Forum will identify necessary studies to be commissioned or undertaken.
- 8.4 The Parties agree to assess funding requirements on an as required basis and that funding may come from a variety of sources.

## **9.0 Tahltan Land and Resource Management Capacity**

- 9.1 The Parties agree that Tahltan land and resource management capacity is required for Tahltan to effectively fulfill the range of Tahltan responsibilities under this Agreement and to implement and achieve the purposes and objectives of this Agreement.
- 9.2 Tahltan capacity for this and all other government-to-government agreements will be funded under the comprehensive land and resources agreement currently under negotiation with the Province.
- 9.3 In the absence of a comprehensive land and resource agreement between Tahltan and the Province, the Parties will review, on an annual basis from the date of the



previous year's payment, capacity requirements for Tahltan and potential funding opportunities to implement this Agreement.

## **10.0 Dispute Resolution**

10.1 The Parties agree to use the following Dispute Resolution process for disagreements that arise with respect to the interpretation and implementation of this Agreement, other than disagreements that arise during the implementation of the Application Review Procedures and disagreements that arise during compliance and enforcement activities undertaken by the Province:

a. Step #1 – Referral to Executive

The Parties will attempt to resolve the disagreement at the Executive level of the Red Chris Mine Forum and, depending on the nature of the dispute, may seek advice from appropriate technical advisors, professional advisors and Elders; and

b. Step #2 – Referral to Principals

Where the Parties are unable to resolve the disagreement at the Executive level of the Red Chris Mine Forum, the Parties will attempt to resolve the disagreement at the Principals level of the Red Chris Mine Forum.

10.2 The Parties agree to use the Issue Resolution process where disagreements arise during the implementation of the Application Review Procedures.

## **11.0 Freedom of Information and Protection of Privacy Act**

11.1 The Province's obligation to provide information to Tahltan under sections 6.3, 6.4, 6.6, and 7.3 does not include information that is excepted from disclosure under the *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 205.

## **12.0 Project-Specific Agreement**

12.1 The Parties agree that this Agreement establishes a project-specific relationship regarding the Mine that replaces the obligations to engage on Provincial Authorizations in accordance with the Shared Decision Making Agreement entered into on March 14, 2016, and for greater certainty, does not apply to, or establish a precedent in relation to, any other proposed or existing project or activity in Tahltan Territory.

12.2 Subject to either Party opting out under section 5.3, the Parties agree the process set out in the Application Review Procedures is the process that the Province intends to rely on to satisfy its duty to consult on proposed new Provincial Authorizations or amendments to existing Provincial Authorizations for the Mine, and, where required, identify measures to accommodate potential adverse impacts on Tahltan Aboriginal Rights.

12.3 It is understood that:

- a. a final government-to-government land and resource decision-making agreement, as committed to in the September 2014 Memorandum of Understanding between the Province and Tahltan, will inform this Agreement and may result in its amendment or termination;

- b. while the activities under this Agreement may inform the development of a final government-to-government agreement, it is not the intention of either Party that this Agreement limit in any way the structures, processes, and understandings to be achieved in a final government-to-government agreement;
- c. Tahltan has been express in its view that the structures, processes and understandings in this Agreement are not sufficient to meet Tahltan goals in a final government-to-government agreement;
- d. Notwithstanding section 12.2, there is no acknowledgement by Tahltan of the adequacy of any engagement under this Agreement, including the Application Review Procedures, for the purposes of Crown consultation and accommodation regarding Provincial Authorizations;
- e. nothing in this Agreement interferes with the ability of Tahltan to bring legal proceedings with respect to its Aboriginal Rights and the Crown's duty to consult and accommodate with respect to the Mine; and
- f. for greater certainty Tahltan do not acknowledge the adequacy of any provincial policy or guideline regarding consultation and accommodation with First Nations, and nothing in this Agreement or the Application Review Procedures shall be interpreted as indicating that it does.

### **13.0 Term and Amendment**

- 13.1 The term of this Agreement will be will be for the duration of the life of the Mine.
- 13.2 This Agreement may be amended by agreement of the Parties and in writing at any time.
- 13.3 The Parties will review this Agreement one year after its Effective Date to determine any improvements.
- 13.4 The Parties will enter into renewal discussions six months prior to the expiry date of the term of this Agreement.
- 13.5 This Agreement may be terminated prior to the end of the term by mutual agreement of the Parties, or by either Party providing 90 days written notice and reasons for terminating.

### **14.0 Representations and Warranties**

- 14.1 Tahltan represents and warrants to the Province, on which the Province will rely in entering into this Agreement, the following:
  - a. the Tahltan Central Government is a duly incorporated and subsisting society under the *Society Act*;
  - b. the Tahltan Central Government has the legal power, capacity and authority to enter into this Agreement and act for, and on behalf of, Tahltan People with respect to Tahltan Aboriginal Rights and to make the acknowledgements and representations in this Agreement;
  - c. the Tahltan Central Government has obtained, or had the opportunity to obtain, the advice of their own financial, legal, tax and other professional advisors with respect to this Agreement;

- d. the Tahltan Central Government enters into this Agreement for, and on behalf of, all Tahltan People;
  - e. Tahltan has provided true or certified copies of the Tahltan Central Government Directors' Resolution approving this Agreement and providing authority for the authorized signatories to sign this Agreement, and that such resolution has not been varied, amended, repealed or replaced; and
  - f. this Agreement is a valid and binding obligation of the Tahltan.
- 14.2** The Province represents and warrants to Tahltan that it has the authority to enter into this Agreement and to carry out its obligations in accordance with the terms of this Agreement and this Agreement is a valid and binding obligation of the Province.
- 15.0 Interpretation**
- 15.1** This Agreement is to be interpreted so that all the provisions are given as full effect as possible.
- 15.2** This Agreement will be governed by and construed in accordance with the applicable laws of British Columbia and Canada.
- 15.3** If any part of this Agreement is void or unenforceable at law, it shall be severed from this Agreement and the rest of the Agreement shall remain in effect and fully enforceable.
- 15.4** If any part of this Agreement is void or unenforceable at law, the Parties agree to negotiate and attempt to reach agreement, to the extent reasonably possible and as their respective interests may require, on a replacement for the severed part with a view to achieving the intent of the Parties as expressed in this Agreement. The Parties may agree to refer the matter to Dispute Resolution.
- 15.5** All headings in this Agreement are for convenience only and do not form a part of this Agreement and are not intended to interpret, define, limit, enlarge, modify or explain the scope, extent or intent of this Agreement or any of its provisions.
- 15.6** In this Agreement, words in the singular include the plural and words in the plural include the singular unless the context or any specific definition otherwise requires.
- 15.7** The use of the word "including" is to be read as not limiting the generality of the preceding term or phrase.
- 15.8** In this Agreement, any reference made to a statute includes all regulations made under that statute and any amendments or replacements.
- 15.9** No term, condition, covenant or other provision of this Agreement will be considered to have been waived by the Parties unless such waiver is expressed in writing by the Parties.
- 15.10** All references in this Agreement to a designated section or other subdivision or to an appendix are to the designated section or other subdivision of, or appendix to, this Agreement.
- 15.11** Any reference to a corporate entity includes and is also a reference to any corporate entity that was a predecessor to, or that is a successor to, such entity.

**15.12** There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.

**16.0 General Provisions**

**16.1** This Agreement is not a treaty or land claim agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

**16.2** This Agreement does not establish, create, expand, amend, define, affirm, recognize, limit, deny, abrogate, extinguish, replace or derogate from any Aboriginal Rights.

**16.3** British Columbia acknowledges and enters into this Agreement on the basis that Tahltan has Aboriginal Rights within Tahltan Territory.

**16.4** This Agreement does not change or affect the position either Party has, or may have, regarding its jurisdiction, responsibilities and decision-making authority.

**16.5** This Agreement does not affect or fetter the discretion of any decision-making authority.

**16.7** Except as contemplated herein, this Agreement does not limit the position either Party may take in any legal or administrative proceedings or in any discussions or negotiations between the Parties.

**16.8** Nothing in this Agreement is to be construed as an acceptance of, or admission by, a Party of the position of the other Party.

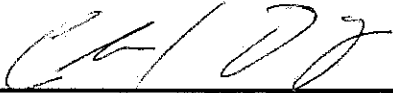
**16.9** Nothing in this Agreement limits, waives or restricts Tahltan's right to seek recognition of Tahltan Aboriginal Rights to the Mine area, or remedies flowing from those Aboriginal Rights, whether through court application or otherwise.

**16.10** This Agreement may be executed in counterparts and by facsimile by the Parties.

**16.11** The following are the schedules and appendices to this Agreement:

- Schedule A Tahltan – Province Red Chris Mine Application Review Procedures  
Appendix 1 Province and Tahltan Mine Application Review Procedures  
Process Map
- Schedule B Mine Site Map
- Schedule C Tahltan Territory Map

**For the Tahltan Central Government:**



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Chad Day, President

**Witness:**



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Chief Marie Quock for the Iskut Band

**Witness:**



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Chief Rick Mclean for the Tahltan Band

**For the Province of British Columbia:**



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Minister Bill Bennett

## Schedule A – Application Review Procedures

### Schedule A

#### Tahltan– Province Red Chris Mine Application Review Procedures

- 1.0 Introduction**
- 1.1** The Mine is located in the Tahltan Territory within 20 km of the community of Iskut.
- 1.2** Given the current operation of the Mine, the Parties, in a spirit of cooperation and partnership, commit to implementing the following Application Review Procedures for proposed Provincial Authorizations for the life of the Mine.
- 2.0 Scope**
- 2.1** Subject to section 2.5, the Application Review Procedures apply to proposed Provincial Authorizations for the Mine, including amendments to existing Provincial Authorizations, that require decisions by provincial ministries or agencies, including, but not limited to:
- a. MEM
    - i. *Mines Act*, RSBC 1996, c 293;
    - ii. *Health, Safety and Reclamation Code for Mines in British Columbia*, 2008; and
    - iii. *Mineral Tenure Act*, RSBC 1996, c 292;
  - b. FLNRO
    - i. *Land Act*, RSBC 1996, c 245;
    - ii. *Water Act*, RSBC 1996, c 483;
    - iii. *Water Regulation*, BC Reg 204/88;
    - iv. *Forest Act*, RSBC 1996, c 157;
    - v. *Forest Practices Code of BC Act*, RSBC 1996, c 159;
    - vi. *Forest and Range Practices Act*, SBC 2002, c 69; and
    - vii. *Heritage Conservation Act*, RSBC 1996, c 187;
  - c. MOE
    - i. *Environmental Management Act*, SBC 2003, c 53; and
  - d. BCEAO
    - Environmental Assessment Act*, SBC 2002, c 43, except for any proposed expansions of the Mine that are subject to modifications thresholds of section 8.1 of the *Reviewable Projects Regulation*, BC Reg 370/2002, and any proposed expansions as agreed to by the Parties.
- 2.2** The Parties will negotiate and seek to reach agreement on a project charter or project schedule for each proposed Provincial Authorization, or for groups of proposed Provincial

Authorizations, that are informed by these Application Review Procedures. A process map of the Application Review Procedures is attached as Appendix 1.

- 2.3 Project charters and project schedules will outline procedural steps and timelines and identify the roles and responsibilities of Tahltan, the relevant provincial agencies, and RCDC and the appropriate structure the Parties will use to engage in the Application Review Procedures.
- 2.4 The Parties acknowledge that the scope and scale of proposed Provincial Authorizations may vary, and the Parties will determine which actions under the Application Review Procedures are appropriate, depending on the scope and scale of the Provincial Authorizations proposed, and will identify those steps in the project charter and schedule.
- 2.5 Where the Parties choose not to use these Application Review Procedures in accordance with section 4.1, the Parties:
  - a. may identify and seek to reach agreement upon an alternate process to address the proposed Provincial Authorization(s); and
  - b. will proceed with their respective decision-making processes in accordance with applicable laws and policies.

### 3.0 Purpose

- 3.1 The Parties agree that the purpose of the Application Review Procedures is to set out a procedural framework to:
  - a. guide engagement on proposed Provincial Authorizations for the life of the Mine in the area depicted in the Mine Site Map in Schedule B, which includes all of the mining leases related to the Mine and its operation;
  - b. integrate Tahltan assessment processes and the Application Review Procedures; seek to develop consensus recommendations to support the Parties' respective decision-making processes; and
  - c. implement a comprehensive and accountable issue tracking system ("Issue Tracking System") that:
    - i. identifies and documents issues raised during the Application Review Procedures;
    - ii. monitors and records how they are addressed;
    - iii. identifies the most appropriate processes and structures to address the issues, under the Application Review Procedures or any other venue as mutually agreed upon by the Parties in a project charter or project schedule; and
    - iv. helps inform the feedback and Application Review Procedures.
- 3.2 The Parties agree to undertake an Annual Planning Cycle that reviews the Mine's short, medium, and long term plans for new Provincial Authorizations or amendments to existing Provincial Authorizations, including those for the upcoming year and reviews actions taken to date.



- 3.3 The Parties acknowledge the need to engage with RCDC throughout the Application Review Procedures.
- 4.0 Review Junctures
- 4.1 Phase 1: Pre-Application - Project Proposal Initiation Phase ("Phase 1")
- a. When the Province or Tahltan are made aware of an initial idea or concept raised by RCDC and are able to share this information, Tahltan will undertake an initial scoping of the idea or concept .
  - b. Initial scoping will likely include some or all of the following steps:
    - i. the Provincial agency provides notification and information to Tahltan about the idea or concept;
    - ii. Tahltan reviews the idea or concept and conducts a preliminary issues scoping exercise;
    - iii. Tahltan identifies issues regarding Tahltan's review of the idea or concept with Tahltan leadership, including the outcome of scoping exercise;
    - iv. Tahltan development of an initial scoping report with recommendations regarding the idea or concept;
    - v. Tahltan provide RCDC and the Province with the initial scoping report with recommendations; and
    - vi. where possible, the Parties will seek to meet jointly with RCDC to discuss the initial scoping report with recommendations.
  - c. Following the initial scoping by Tahltan under section 4.1(a), or within 30 days of receipt of information from the Province under section 4.1 (b), whichever is sooner, either Party may elect to opt out of the Application Review Procedures by providing written notice to the other Party.
  - d. The Parties will determine whether the proposal falls within the scope of the Application Review Procedures as described in section 2.1.
  - e. Where the Parties determine the Provincial Authorization is within the scope of the Application Review Procedures, the Parties will meet to determine which actions under the Application Review Procedures are appropriate, based on the scope and scale of the review and any potential impacts.
  - f. The proposed steps under section 4.1(e) should include the following information:
    - i. appropriate level of, and reasonable time for, community engagement in relation to the scope and scale of the authorizations proposed;
    - ii. respective roles and involvement in community engagement; and
    - iii. linkages to a Tahltan set of tools for community engagement.

**4.2 Phase 2: Pre-Application Joint Development of Application Technical Information Requirements and Screening Criteria or EA Amendment Requirements Phase ("Phase 2")**

- a. The development of Joint Application Technical Information Requirements ("JAIR") screening criteria for permitting or EA amendment requirements are iterative processes which will be undertaken jointly by the Parties with input from RCDC.
- b. Phase 2 includes an overview of provincial application requirements or EA amendment requirements based on general technical guidance materials, legislative requirements, and an overview of additional Tahltan requirements, to ensure a quality application upon submission.
- c. During Phase 2, the Parties will draft a project schedule and project charter with RCDC, in accordance with the scope and steps agreed to under section 4.1 (e). The project schedule will include reasonable time to ensure community engagement is built into high quality and timely decision-making. The project charter for each respective Provincial Authorization, or group of Provincial Authorizations, will outline the respective roles and responsibilities of all Parties involved in the review of the required authorizations.
- d. Where both an EA amendment application and a related permit application are being considered, the Parties will attempt to coordinate the related reviews in a common project schedule and project charter, as appropriate.
- e. The Parties will seek to reach consensus on the process steps, and will record their agreement in a project charter or a project schedule. Where the Parties are unable to reach agreement on a project charter or a project schedule, they may trigger Issue Resolution.
- f. Participation in the Application Review Procedures do not preclude or prevent Tahltan from engaging with and providing input directly to relevant regulatory authorities within the timelines established in the agreed to project charter or project schedule.
- g. The Parties will participate in technical meetings, community meetings, or other meetings, as required in accordance with a project charter or project schedule, in order to identify and further refine technical application information requirements.
- h. If the identified additional information requirements of either of the Parties cannot reasonably be made available before moving to Phase 3, the Parties may advance to Phase 3 with explicit acknowledgement and documentation of the outstanding information and any agreed to steps to ensure the information is developed or collected in a timely manner, where the Parties determine it is necessary for it to make recommendations regarding the proposed amendment.
- i. The Province will provide a response in relation to any outstanding Tahltan information needs, requests, comments, concerns, or recommendations as part of

the comprehensive feedback and review process. These will be documented in the Issue Tracking System.

- j. At the end of Phase 2, if required, the Parties will develop an agenda and schedule a meeting to undertake a comprehensive feedback and review process in order to:
  - i. review outstanding issues in the Issue Tracking System;
  - ii. explore and apply any potential resolutions or solutions to these issues as may be agreed; and
  - iii. document any outstanding disagreements as to why the issue could not be resolved.
- k. The Parties agree that, where possible, the length of the comprehensive feedback and review process will not exceed 5 business days.

4.3 **Phase 3: Screening Phase - Joint Application Screening or EA Amendment Initial Review ("Phase 3")**

- a) The Parties will work together utilizing the structures identified in the project charter or project schedule on technical matters, utilizing the Red Chris Mine Forum on matters requiring further insight or oversight from senior representatives, and with communities on matters related to Tahltan engagement in Phase 3 to ensure that the application contains the JAIR, or EA amendment requirements identified in Phase 2.
- b) The Parties will develop an agreed upon schedule for meetings during Phase 3. Meetings will provide opportunities for discussion and resolution of screening issues. Meetings may include relevant resource agencies meeting with Tahltan during Phase 3.
- c) Where the Parties disagree on whether the application meets the JAIR or EA amendment requirements identified in Phase 2, or if additional information is required by either Party and cannot be made available or adequately considered within the scheduled timelines, the Parties will determine the approach to address recommendations, or consensus recommendations, for alternative approaches to address the limits of information. The approach may include advancing to the decision phase with explicit acknowledgement and documentation of differing perspectives or information gaps.
- d) The Parties will identify approaches to address recommendations or requests for timeline extensions or suspensions, or consensus recommendations for alternative approaches to address the limits to information.
- e) The Parties will provide a timely written rationale in relation to any outstanding information needs, requests, comments, concerns or recommendations as part of the comprehensive feedback and review process. These will be documented in the Issue Tracking System.

- f) At the end of Phase 3, if required, the Parties will develop an agenda and schedule a meeting to undertake a comprehensive feedback and review process in order to:
  - i. review outstanding issues in the Issue Tracking System;
  - ii. explore and apply any potential resolutions or solutions to these issues as may be agreed; and
  - iii. document any outstanding disagreements as to why the issue could not be resolved.
- g) The Parties agree that, where possible, the length of the comprehensive feedback and review process will not exceed 5 business days.

#### 4.4 Phase 4: Application Review Phase ("Phase 4")

- a. During Phase 4, the Parties will work together to:
  - i. review and discuss applications for Provincial Authorizations or amendments to Provincial Authorizations and associated technical information, including management plans, through participation in processes agreed to in the project charter or project schedule, to better understand the potential impacts of the Provincial Authorizations;
  - ii. review RCDC's responses to Tahltan comments on Provincial Authorizations and discuss whether additional responses are needed. Parties will provide information in relation to any outstanding issues which are not addressed; and
  - iii. identify potential impacts of the Provincial Authorizations including those potential impacts on Tahltan Aboriginal Rights and identify avoidance, mitigation, or other accommodation measures.
- b. The outcomes of Phase 4 will be reflected in the decision package described in section 4.6. This information will highlight any differences in views and will form part of the official record.
- c. The Province and Tahltan will each consider any assessment of the seriousness of impacts on Tahltan Aboriginal Rights undertaken through the Application Review Procedures, as well as any mitigation and accommodation measures established through that process.
- d. Where one or both Parties identify additional information as necessary for understanding potential project impacts on Tahltan Aboriginal Rights or potential mitigation or accommodation measures, and such information is not available to allow it to be adequately considered during the review, the Parties will determine the approach to address recommendations, or consensus recommendations for alternative approaches to address the limits of information, including potential plans to address the gaps. The approach may include advancing to Phase 6 with explicit acknowledgement and documentation of information gaps.

- e. The Parties will provide a timely written response in relation to any outstanding information needs, requests, comments, concerns, or recommendations as part of the comprehensive feedback and review process. These will be documented in the Issue Tracking System.
- f. At the end of Phase 4, if required, the Parties will develop an agenda and schedule a meeting to undertake a comprehensive feedback and review process in order to:
  - i. review outstanding issues in the Issue Tracking System;
  - ii. explore and apply any potential resolutions or solutions to these issues as may be agreed; and
  - iii. document any outstanding disagreements as to why the issue could not be resolved.
- g. The Parties agree that, where possible, the length of the comprehensive feedback and review process will not exceed 5 business days.

**4.5 Phase 5: Joint Drafting of Recommended Permit or EA Certificate Amendment Conditions ("Phase 5")**

- a. The Province will produce an initial draft of the proposed permit or EA certificate conditions and circulate the draft to Tahltan for their review and recommendations. The Parties will seek to reach consensus on the draft recommendations for proposed permit or EA certificate amendment conditions through the processes and structures identified in the project charter or project schedule, to the extent possible.
- b. Prior to finalizing the draft recommendations for proposed permit or EA certificate amendment conditions, the Tahltan will undertake community engagement on the results of Phase 4 and the Province and Red Chris Monitoring Committee will participate as agreed upon through the project charter and project schedule.
- c. At the end of Phase 5, if required, the Parties will develop an agenda and schedule a meeting to undertake a comprehensive feedback and review process in order to:
  - i. review outstanding issues in the Issue Tracking System;
  - ii. explore and apply any potential resolutions or solutions to these issues as may be agreed; and
  - iii. document any outstanding disagreements as to why the issue could not be resolved.
- d. The Parties agree that, where possible, the length of the comprehensive feedback and review process will not exceed 5 business days.

**4.6 Phase 6: Decision Phase ("Phase 6")**

- d. The purpose of Phase 6 is to provide a decision package to the Parties' respective decision-makers with an overview and analysis of the permit or amendment application review process, a description of the issues raised, and a description of how they were addressed,

including any outstanding points where consensus was not reached. The decision package will contain:

- i. draft permits, including recommended permit or EA certificate amendment conditions;
  - ii. a report by the Province that includes a summary of the review and the Province's conclusions as to the seriousness of impacts of the Provincial Authorization(s) on Tahltan Aboriginal Rights and the adequacy of consultation and accommodation (e.g. avoidance and mitigation) ("Provincial Report");
  - iii. a report by Tahltan that includes Tahltan's conclusions as to the seriousness of impacts of the Provincial Authorization(s) on Tahltan Aboriginal Rights and the adequacy of consultation and accommodation (e.g. avoidance and mitigation) ("Tahltan Report"); and
  - iv. any additional information as appropriate in the circumstances.
- a. The discussion and development of mitigation and accommodation measures to address impacts will be informed by the information and analysis developed during the review of the application, during community engagement processes, any information requests that remain outstanding, and the work done by Tahltan in their assessment processes.
  - b. Measures to address any identified impacts may include:
    - i. process accommodations developed by the relevant regulatory agencies, to adjust the permit or EA amendment process in response to Tahltan concerns;
    - ii. measures designed by Tahltan, the RCDC and relevant regulatory agencies in response to project impacts; or
    - iii. non-regulatory accommodations including agreements between the Parties.
  - c. The Parties will include RCDC in the discussions throughout the review process and in the discussions regarding measures to address impacts.
  - d. Tahltan will share drafts of the Tahltan Report and any other submissions related to the outcome of Tahltan's assessment processes with the Province.
  - e. The Province will share drafts of the Provincial Report, draft permits or amendments, and any other submissions related to the outcome of the review with Tahltan.
  - f. Either Party may request a meeting of each other's respective decision-makers prior to decision package submission and prior to decision, and if the Parties agree to hold such a meeting, it will be subject to the following:
    - i. the Province's decision-maker must consider matters of procedural fairness;

- ii. where matters discussed at any meeting of the Parties' decision-makers include new information or recommendations that may materially impact RCDC's or a third party's interest(s), that discussion will need to be shared with RCDC or the affected third party;
  - iii. specifics of information to be shared with RCDC or affected third parties, including how that information will be shared and Tahltan's participation in any sharing of the information with RCDC or affected third parties, will be discussed by the Parties prior to that information being shared; and
  - iv. discussions between decision-makers must not be shared publicly until the decision is announced, at which time documentation of the discussion may form a part of the public record.
- g. At the end of Phase 6, if required, the Parties will develop an agenda and schedule a meeting to undertake a comprehensive feedback and review process in order to:
- i. review outstanding issues in the Issue Tracking System;
  - ii. explore and apply any potential resolutions or solutions to these issues as may be agreed; and
  - iii. document any outstanding disagreements as to why the issue could not be resolved.
- h. The Parties agree that, where possible, the length of the comprehensive feedback and review process will not exceed 5 business days.

#### 4.7 Issue Resolution

- a. The Parties will attempt to resolve issues that arise during the implementation of the Application Review Procedures in an interest-based manner using the following tools:
- i. the Issue Tracking System to track issues identified when implementing the Application Review Procedures;
  - ii. the comprehensive feedback and review process will be used at review junctures in each Phase in order to:
    - A. review outstanding issues in the Issue Tracking System;
    - B. explore and apply any potential resolutions or solutions to these issues as may be agreed; and
    - C. document any outstanding disagreements as to why the issue could not be resolved; and
  - iii. Issue Resolution at the Red Chris Mine Forum will be used in accordance with section 4.7(b).
- b. The Parties will seek to resolve disagreements with respect to the development of a project schedule or project charter or the decision package as follows:

- i. the Parties will make reasonable efforts to meet and attempt to resolve the issue;
- ii. where the Parties are unable to resolve an issue under section 4.7(b)(i), either Party may request a meeting of the Executive level or Principals level of the Red Chris Mine Forum. The Parties will jointly identify the appropriate level and members in accordance with the terms of reference; and
- iii. where the Executive or Principal members on the Red Chris Mine Forum have made reasonable efforts but are unable to resolve the issue within 10 days:
  - A. with respect to disagreements on the process steps in a project charter or project schedule, the Parties may proceed:
    - 1. with the steps they have reached agreement on; and
    - 2. with their respective decision-making processes in accordance with applicable laws and policies; and
  - B. with respect to disagreements on the decision package, each Party may proceed with its decision-making process and the outstanding points of disagreement will be documented in writing and form part of the official record.







