



Reasons for Decision of the Chief Executive Assessment Officer

IN THE MATTER OF AN APPLICATION TO DESIGNATE THE
GIBALTARE MINE EXPANSION AS REVIEWABLE UNDER THE
ENVIRONMENTAL ASSESSMENT ACT (2018) BY XATŚŪLL FIRST
NATION

MARCH 18, 2025



EAO

Environmental
Assessment Office



1.0 CONTEXT

I have considered the application to designate a project as reviewable (Designation Application) under the [Environmental Assessment Act, 2018](#) (the Act) from Xat'sūll First Nation (the Applicant), requesting that the Minister of Environment and Climate Change Strategy (now the Ministry of Environment and Parks (MEP)) designate the Gibraltar Mine Expansion as reviewable under Section 11 of the Act. The Minister has delegated the powers and duties under Section 11 to the Chief Executive Assessment Officer (CEAO) of the Environmental Assessment Office (EAO).

Gibraltar Mine is an open pit copper-molybdenum mine located in south-central British Columbia, approximately 19 kilometres north of the community of McLeese Lake and situated on the traditional territories of Xat'sūll and ʔEsdilagh First Nations and the Tsilhqot'in National Government.

In making my decision, I have considered the EAO's Evaluation of Application to Designate the Gibraltar Mine Expansion as Reviewable under the Act (Designation Report), as well as supporting information submitted by the review participants described in the Designation Report. This document outlines the reasons for my decision.

The Designation Application was reviewed by the EAO who engaged with the following groups:

- Xat'sūll First Nation
- ʔEsdilagh First Nation
- Tsilhqot'in National Government
- Gibraltar Mines Ltd.

2.0 NATURE AND SCOPE OF THE DECISION

In deciding on a Designation Application for an eligible project, the Minister must consider:

- (a) whether the applicant is an Indigenous nation;
- (b) whether the eligible project could have effects on an Indigenous nations and the rights recognized and affirmed by Section 35 of the *Constitution Act, 1982*;
- (c) whether the potential effects of the eligible project would be equivalent to or greater than potential effects of a project in the prescribed category of the RPR; and
- (d) whether an assessment of the eligible project is consistent with the purposes of the EAO, as set out in Section 2 of the Act.

A decision to decline to designate a project as reviewable would not authorize the project to proceed, as the project would continue to be subject to permitting or authorizations' processes appropriate for the type of project or activity.

3.0 REVIEW PROCESS

I acknowledge that the EAO worked closely with the Ministry of Mining and Critical Minerals (MCM) and the Major Mines Office to ensure all information was reviewed and to confirm whether the concerns of the Applicant were also within the scope of the Major Mines Office's coordinated authorizations process. The draft Designation Report was shared with the Proponent to verify project information and ensure completeness.

I am confident the EAO conducted its review in accordance with established processes and legal obligations. Consultation with Xat'sūll First Nation, T'silhqot'in National Government, and ʔEsdilagh First Nation was undertaken in good faith through a fair, open, and transparent process. The EAO addressed questions, provided updates, and incorporated feedback throughout the review. All First Nations were given adequate time and multiple opportunities to participate, including the ability to review and provide feedback on the Designation Report.

I extended the timelines for a decision beyond the 30-day application review period time limit under Section 38 of the Act to facilitate a high level of engagement with the Applicant, respond to additional incoming questions and information requests, and allow for sufficient time for review and feedback of the Designation Report by the Applicant and other potentially affected Indigenous Nations.

4.0 KEY CONSIDERATIONS

4.1. If the Project is an Eligible Project

To consider if the Gibraltar Mine Expansion can be designated as a reviewable project, I must first consider if the expansion is an eligible project for the purpose of Section 11 of the Act. Section 11(1) of the Act defines an "eligible project" as a project that is not substantially started and is not a reviewable project under a regulation under the Reviewable Project Regulation (RPR). Only an eligible project can be designated as a reviewable project under Section 11.

4.1.1 If the Gibraltar Mine Expansion is an Eligible Project

I agree with the conclusion in Sections 4.0 and 6.0 of the Designation Report that the proposed Gibraltar Mine Expansion is an eligible project for consideration under Section 11 of the Act. As outlined in the Designation Report, the proposed expansion has not substantially started and would not require an assessment under the RPR.

4.1.2 The Scope of the Designation Request

I agree with the conclusion in the Designation Report that only Phase 1 of the proposed expansion is eligible for consideration. While future expansions at Gibraltar Mine may be proposed, the analysis and decision must be based on sufficient information currently available, which is limited to Phase 1.

4.2. Section 11(4) Factors

With respect to the matters relevant to my decision, I have considered the EAO's analysis of the factors set out in Section 11(4) of the Act.

Section 11(4)(a)

I acknowledge that the Applicant is an Indigenous Nation.

Section 11(4)(b)

I agree with the assessment in Section 6.1 in the EAO's report that the proposed expansion could affect Indigenous Nations and their rights under Section 35 of the Constitution Act, 1982.

At the same time, the legal framework of the Act sets out that an environmental assessment for the Gibraltar Mine Expansion would only cover the new expansion components and activities and the effects of those. The existing operations are already authorized in accordance with the relevant regulatory requirements. As described in the EAO's Designation Report, during the authorization process, MCM is responsible for conducting an assessment of the impacts of the proposed expansion and required mitigation measures, and the affected Indigenous Nations will have the opportunity to participate, ensuring their values and concerns are considered before the project is referred to the relevant statutory decision maker.

Section 11(4)(c)

I agree with the conclusion in Section 6.2 of the Designation Report that the potential effects of the Project would not be equivalent to or greater than potential effects of a project in the prescribed category of the RPR.

To automatically require an environmental assessment in this category of the RPR, a mine operating under the *Mines Act* must:

- 1) Have a production capacity that exceeds 75,000 tonnes per year of mineral ore; **and**,
- 2) The modification will result in the disturbance of an area of land that was not previously permitted for disturbance and that is at least 50 percent of the area of land that was previously permitted for disturbance at the existing project.

As proposed, the Gibraltar expansion will occur within the area already permitted for disturbance under a *Mines Act* permit, except for a small area (7.2 Ha), which I considered in the context of the current permitted mine area of 5080 hectares.

Section 11(4)(d)

I have considered the conclusion in the EAO's report on whether an assessment of the eligible project is consistent with the purposes of the EAO, as set out in Section 2 of the Act. These purposes are:

1. Promoting sustainability by protecting the environment and fostering a sound economy and the well-being of British Columbians and their communities; and
2. Supporting reconciliation with Indigenous peoples in B.C.

I agree with the conclusions in Section 6.3 of the Designation Report and the recommendation not to designate. The environmental effects of the expansion are well within the scope of matters considered by the Major Mines Office's permitting processes. Not designating the Gibraltar Mine Expansion is aligned with the EAO's purpose of fostering economic sustainability and communities through continued employment, while other required regulatory processes ensure robust environmental protection and the safety of workers, the public and environmental values.

Regarding supporting reconciliation, as outlined in the Designation Report, the Major Mines Office (MMO) provides a framework for meaningful and ongoing consultation with Xat'sül First Nation regarding the Gibraltar Mine Expansion.

I acknowledge that the applicant was of the view that the Act explicitly supports reconciliation, and that permitting legislation does not. I do not share that perspective. Even if a project does not undergo an environmental assessment, the requirements of the *Interpretation Act*, which provides every Act and regulation must be construed as being consistent with the United Nations Declaration on the Rights of Indigenous Peoples, remains applicable in subsequent permitting processes. Reconciliation commitments are integral to the MMO's processes, ensuring that Xat'sül's section 35 rights and interests are considered throughout the project's lifecycle.

The Major Mines Authorizations Guide embeds these commitments into the MMO's consultation framework. This includes opportunities for early and continuous engagement, incorporation of Indigenous knowledge, and consensus seeking regarding the Gibraltar Mine Expansion.

5.0 CONCLUSION

I am satisfied with the level of engagement and consultation that the EAO conducted with the Applicant (Xat'sül First Nation), ?Esdilagh First Nations, Tsilhqot'in National Government and Gibraltar Mines Ltd. during the designation application review process, including how the EAO responded to the Applicant's concerns in the sections above, and as described in the Designation Report.

Having considered the EAO's Designation Report, the feedback provided by review parties, and the factors set out in Section 11(4) of the Act, I have decided to not designate the Gibraltar Mine Expansion as reviewable under the Act. I believe that the permitting process through the Ministry of Mining and Critical Minerals and Major Mines Office can fairly,

effectively, and appropriately address the concerns raised by the Applicant in their Application and that an assessment of the Gibraltar Mine Expansion under the Act is not needed.



Alex MacLennan
Chief Executive Assessment Officer &
Associate Deputy Minister

Signed this 18th day of March, 2025