

NLAKA'PAMUX NATION TRIBAL COUNCIL

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March 14, 2025

Sent via e-mail: Alex.MacLennan@gov.bc.ca

BC Environmental Assessment Office
836 Yates St
Victoria BC V8W 1L8

Attention: Alex MacLennan, Chief Executive Assessment Officer and Associate Deputy Minister

Dear Mr. MacLennan:

Re: NNTC Notice of Non-Consent and Referral to Dispute Resolution Facilitator - Highland Valley Copper Mine Life Extension Project

I am writing in relation to the assessment being carried out by the Environmental Assessment Office (EAO) for Teck Highland Valley Copper Partnership's (HVC) application to extend current operations at the Highland Valley Copper mine in the Nlaka'pamux Homeland (HVC MLE Project).

Background

The Nlaka'pamux Nation Tribal Council (NNTC) is conducting a Recognition Based Environmental Assessment of the HVC MLE Project pursuant to our inherent jurisdiction (RBEA). The RBEA process reflects Nlaka'pamux jurisdiction and laws and is designed to inform NNTC's decision of whether to provide our free, prior and informed consent to the HVC MLE Project.

The RBEA is being coordinated with the EAO's environmental assessment for the HVC MLE Project in order for NNTC and the EAO to communicate and share information regarding their respective assessment and decision-making processes, reduce duplication in their respective processes, and coordinate assessment requirements and timelines where possible. This coordination has included implementing the NNTC-EAO Highland Valley Copper Partnership Mine Life Extension Process Agreement (Process Agreement), working together through the NNTC-EAO Working Group (Working Group), and engaging on areas of non-consensus through the Nlaka'pamux Nation Tribal Council-British Columbia Shared Decision-Making Board (Shared Decision-Making Board).

NNTC is also participating in the EAO's assessment of the HVC MLE Project as a Participating Indigenous Nation.

Notice of Non-Consent

The EAO asked Participating Indigenous Nations to provide their notices of consent or non-consent (Consent Notices) with respect to the EAO's recommendations to the Ministers by November 22, 2024, only four days after receiving the final draft referral materials.

As well as this timeframe being problematic for the internal governance processes required for Indigenous governments to determine whether to provide their free, prior and informed consent to a project of this magnitude, it did not support the coordination of the RBEA and the provincial assessment. NNTC and the EAO were still working together on November 22, 2024, to complete collaborative work under the Process Agreement, including the preparation of the Working Group's technical report (Technical Report) and the report for the Shared Decision-Making Board (Board Report).

On November 12, 2024, I wrote to the EAO to advise that more time was needed to provide NNTC's Consent Notice. I raised the risk of potential confusion being caused by a Consent Notice coming into the provincial system before our bilateral process under the Process Agreement was complete and proposed to provide NNTC's Consent Notice following the meeting of our respective leadership at Step 8 of the RBEA.

NNTC is aware that HVC's application will shortly be referred to the Ministers under section 29 of the Act. We are therefore providing notice that we have not reached consensus with the EAO on the referral materials and recommendations, and NNTC does not consent to the Ministers issuing the environmental assessment certificate for the HVC MLE Project.

Referral to Dispute Resolution

NNTC is also providing notice that we are referring the CEAO's pending decision under section 29 of the Act to a dispute resolution facilitator pursuant to section 5 of the Act and the *Environmental Assessment Dispute Resolution Facilitator Regulation*, BC Reg 204/2024.

Pursuant to subsection 29(3) of the Act, before making a recommendation under subsection 29(2)(b)(i), the CEAO must seek to achieve consensus with Participating Indigenous Nations with respect to the recommendation.

Recognizing the collaborative efforts that have been made by both NNTC and the EAO to coordinate our assessment and decision-making processes for the HVC MLE Project, outstanding areas of non-consensus remain in relation to the EAO's assessment report and recommendations. In our view, dispute resolution is needed to help achieve consensus prior to the documents and recommendations being referred to the Ministers for decision.

The outstanding areas of non-consensus include those set out in the Technical Report, dated November 15, 2024. The Technical Report describes the results of the Working Group's collaborative work, including conditions, regulatory instruments, and other mitigation measures intended to address the effects of the HVC MLE Project.

The remaining areas of non-consensus were described in section 9.2 of the Technical Report, and include:

1. Forestry permits and removal of old growth
2. Water quality, water treatment, and water quantity
3. Water quantity - downstream Nlaka'pamux users (pukaist) plus drought mitigation
4. Wildlife studies and offsetting
5. Fish offsetting
6. nwha.pEETn / resources

In addition, the following consensus recommendations were made by the Working Group to address impacts from the HVC MLE Project, but have yet to be addressed:

1. Endorse the Working Group areas of consensus (as outlined in section 9.1 of the Technical Report)
2. Support a commitment to Nlaka'pamux ash hkhem/Knowledge fund to support knowledge and cultural heritage
3. Support the development/scoping of a cumulative effects assessment of the Highland Valley, with an emphasis on watershed sustainability

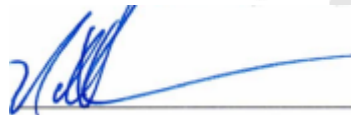
These consensus recommendations were set out at section 10.0 of the Technical Report.

Despite further meetings between NNTC and the EAO since November, there are both areas of non-consensus and consensus recommendations that remain outstanding.

NNTC and the EAO have also not reached consensus on the extent to which the matters set out at section 11.0 of the Technical Report can be addressed by the regulatory process.

Pursuant to subsection 5(5)(b) of the Act, NNTC requests that the CEAO take part in the dispute resolution process.

Chief Matt Pasco



Tribal Chair, Nlaka'pamux Nation Tribal Council

Encl. HVC MLE Project NNTC-BC Working Group Technical Report, November 15, 2024

