

EAO's Assessment of a Request to Vary the Act and an Application for Certificate Extension

KSM PROJECT

REQUESTED BY

KSM MINING ULC

NOVEMBER 16, 2021

Pursuant to Section 31 and Section 46 of the *Environmental Assessment Act*, S.B.C. 2018, c.51



EAO

Environmental
Assessment Office

ACRONYMS AND ABBREVIATIONS

Act	<i>Environmental Assessment Act</i> , S.B.C. 2018, c. 51
Application	Application to amend the Environmental Assessment Certificate
B.C.	British Columbia
Certificate	Environmental Assessment Certificate #M14-01
COVID	the COVID-19 pandemic
CPD	Certified Project Description of the Environmental Assessment Certificate
DFO	Department of Fisheries and Oceans
EA	Environmental Assessment
EAO	Environmental Assessment Office
ECCC	Environment and Climate Change Canada
FLNRORD	Ministry of Forests, Lands, Natural Resource Operations and Rural Development
EMLI	Ministry of Energy, Mines and Low Carbon Innovation
ENV	Ministry of Environment and Climate Change Strategy
km	kilometre
KSM	Kerr-Sulphurets-Mitchell Project
KSM Mining	KSM Mining ULC
MOTI	Ministry of Transportation and Infrastructure
MTT	Mitchell-Treaty Tunnels
NLG	Nisga'a Lisims Government
PTMA	Process and Tailings Management Area
SEITC	Southeast Alaska Indigenous Transboundary Commission
TSKLH	Tsetsaut Skii km Lax Ha

1.0 OVERVIEW

On July 29, 2014, provincial ministers issued Environmental Assessment Certificate #M14-01 (Certificate) for the Kerr-Sulphurets-Mitchell Project (KSM) to Seabridge Gold Inc. KSM was approved by federal authorities on January 8, 2015 following a comprehensive study under the *Canadian Environmental Assessment Act*, 1992. KSM is located approximately 65 kilometres (km) northwest of Stewart and 35 km northeast of the British Columbia (B.C.)-Alaska border. KSM would extract up to 130,000 tonnes of gold, copper, silver, and molybdenum ore per day over a mine life of up to 52 years. KSM Mining's original application for a Certificate indicated that KSM would employ approximately 1800 people during its five-year construction phase and create approximately 1040 jobs through the remainder of its mine life.

On October 1, 2018, the Certificate was amended to change the holder of the Certificate (Holder) from Seabridge Gold Inc. to KSM Mining ULC (KSM Mining). A five-year extension of the Certificate was granted on March 21, 2019¹. The *Environmental Assessment Act* (Act) allows one certificate extension for up to five years. The Certificate will now expire on July 29, 2024, if the project is not substantially started by then.

KSM Mining submitted a request for an emergency variance of the Certificate deadline to extend it by at least two years on the basis that the global COVID-19 pandemic (COVID), the resulting provincial and national state of emergency, and the associated health orders issued by the Province of B.C. would make it difficult to meet the existing deadline in the Certificate. KSM Mining asked that the Minister of Environment and Climate Change Strategy (Minister) use [Section 46](#) of the Act (Emergency Variance) to vary the Act to allow for the EAO to consider whether to grant a further Certificate extension under [Section 31](#)(2) of the Act. Section 46 allows the Minister to issue an order to vary the requirements of the Act in response to an emergency and where the variance is in the public interest.

The Environmental Assessment Office (EAO) conducted a process to review both the request from KSM Mining for the Emergency Variance and Certificate extension (collectively referred to as the Second Extension Request).

2.0 REVIEW PROCESS

2.1. Request

On March 30, 2020 (see letter [here](#)) and April 29, 2020 (see letter [here](#)), KSM Mining wrote to the provincial government expressing concerns that COVID, the resulting provincial state of emergency, and the associated health orders issued by the Province of B.C. would make it difficult to meet the deadline in the certificate. On March 30, 2020 the Holder asked for a further extension of at least one year, and on April 29, 2020, the Holder asked for the extension to be four years.

On May 25, 2020, the Acting Chief Executive Assessment Officer (CEAO) wrote to KSM Mining (see letter [here](#)), stating that there was an ongoing emergency related to COVID and that, in order to consider using Section 46 to allow for a further extension of the Certificate, the Minister must be satisfied that the challenges the project currently face are directly related to the emergency and that the variance would be in the public interest. The Acting CEAO identified additional information to determine whether a further extension to the Certificate is warranted. In response to this request, KSM Mining submitted [Additional Information](#) on July 3, 2020. The EAO informed KSM Mining that it may apply for an extension by meeting the requirements of the Certificate Extension Policy, including conducting any required consultation.

¹ See the [EAO's Summary Evaluation Report for an Extension of an Environmental Assessment Certificate](#) (2019) (EAO's First Extension Report) for a summary of this review process.

The requests were publicly posted on the EAO's website and Indigenous nations were notified on July 20, 2020. KSM Mining submitted an [Application for an Extension](#) (Second Extension Application) on August 6, 2020 requesting an extension of at least two years. On August 21, 2020, the EAO began conducting a process, including engagement with technical advisors and Indigenous nations and a 14-day public comment period, to review the Second Extension Request, with consideration of a Certificate extension for up to two years, as described further below.

On May 7, 2021, the EAO requested further details (see letter [here](#)) and clarifications from KSM Mining on why the 2020 field and construction seasons were critical for reaching the 2024 substantial start deadline, the effect of COVID on investors, and to clarify the importance of securing additional funding in advancing project construction. KSM Mining provided a response on June 1, 2021 (see letter [here](#)).

2.2. Technical and Indigenous Reviewers

The EAO invited the following government agencies to participate in the review as technical advisers:

- Environment and Climate Change Canada (ECCC);
- Health Canada;
- Department of Fisheries and Oceans (DFO);
- Ministry of Energy, Mines and Low Carbon Initiatives (EMLI);
- Ministry of Environment and Climate Change Strategy (ENV);
- Ministry of Forest, Lands, Natural Resource Operations and Rural Development (FLNRORD);
- Northern Health;
- Ministry of Transportation and Infrastructure (MOTI);
- District of Stewart;
- Regional District of Kitimat-Stikine;
- City of Terrace; and
- Alaska Department of Natural Resources.

The EAO engaged with the Nisga'a Nation, as represented by Nisga'a Lisims Government (NLG), in accordance with the province's obligations under the Nisga'a Final Agreement (the Nisga'a Treaty), as certain project components of KSM are located within the Nass Area where the Nisga'a Nation has constitutionally protected treaty rights as set out in the Nisga'a Treaty.

The EAO also invited the following Indigenous groups, whose traditional territory overlaps the proposed mine site or other project components of KSM, to participate in the review:

- Tahltan Nation represented by Tahltan Central Government (Tahltan);
- Gitanyow Nation, represented by the Gitanyow Hereditary Chiefs (Gitanyow);
- Simiget'm Gitwangak on behalf of Lax Behlit and Xsu Gwin Yookhl of Gitxsan Nation;
- Gasa Lax Loobit of Gitxsan Nation; and
- Tsetsaut Skii km Lax Ha (TSKLH).

Gitxsan Hereditary Chiefs² also submitted a letter to the EAO indicating their support for the extension request following direct engagement with KSM Mining.

² While the original Section 11 Order for KSM identified "the wilps of the Gitxsan First Nation (as identified by the Gitxsan Hereditary Chiefs Office)", B.C. does not recognize the Gitxsan Hereditary Chiefs Office as a rights-holding body for Gitxsan. Therefore, the EAO engaged directly with the wilp hereditary chiefs, or their identified representatives identified above, for the review of the Second Extension Request.

Technical advisers and Indigenous nations (Technical and Indigenous Reviewers) were invited to review and provide comments on the Second Extension Application and other submissions from KSM Mining as well as on the draft decision materials (including a draft of this report and draft additional Certificate conditions). The purpose of this engagement was to understand whether reviewers had comments on any changes to the Project since the Certificate was issued, if reviewers had any concerns with the EAO granting an extension request, and if reviewers had comments on KSM Mining's request to grant an Emergency Variance because of COVID.

Of the Technical and Indigenous Reviewers, ECCC, Northern Health, NLG, Gitanyow, Tahltan and TSKLH submitted comments, which are discussed in sections 4 and 5. In addition, FNLROD (Archaeology) and DFO noted they had no objections or concerns with the extension. EMLI, ENV and FLNRORD (Ecosystems) confirmed that they reviewed the Second Extension Application and had no comments. The Alaska Department of Natural Resources stated that it did not need to participate in the review as it does not view the process as changing the potential impacts of the project that were fully reviewed previously with its participation, but that it would review the EAO's draft materials.

The remaining Technical and Indigenous Reviewers chose not to participate in the review or did not provide comments.

The Holder provided responses to all Technical and Indigenous Reviewers comments in a [Comment Response Report](#), submitted on February 9, 2021 and provided additional clarifications in [Supplementary Information Regarding the Comment Response Report](#) on April 10, 2021. A full record of comments (including comments received after February 9, 2021) is available in the [Technical and Indigenous Reviewer Comment Tracking Table](#).

2.3. Public and Other Participants

There are no explicit requirements under the Act for public participation in the review of an application for an extension or for an Emergency Variance; however, in appropriate circumstances the CEAO of the EAO may involve the public in any review process. In this case, the CEAO chose to hold a 14-day public comment period based on two key considerations: first, varying the Act (which would be required to allow for the second extension) is an extraordinary power; and second, Section 46 sets out that the variance may be made in response to an emergency and where the variance is in the public interest. Therefore, holding a public comment period was determined to be potentially useful to inform considerations related to public interest.

A 14-day public comment period on the Second Extension Request began on November 19 and ended on December 3, 2020. Comments were invited on the information presented by KSM Mining in its Second Extension Request including how the effects of COVID have affected the Holder's ability to meet the deadline in the Certificate, as well as on whether an Emergency Variance may be in the public interest. Issues raised in these submissions are discussed in Section 6. The Holder responded to public comments in its Comment Response Report, noted above.

The EAO also directly engaged with the Southeast Alaska Indigenous Transboundary Commission (SEITC), as described in Section 6.

3.0 SECOND EXTENSION REQUEST APPLICATION

3.1. Emergency Variance Request

In its Second Extension Application, KSM Mining noted that COVID has resulted in the longest state of emergency and the most significant negative economic effects in recent B.C. and Canadian history. KSM Mining was of the view that an Emergency Variance to extend the duration of the Certificate would be in the public interest and noted the following key points in support of its request:

- COVID slowed down vital permitting efforts which are required in advance of the work of required to achieve a substantially started decision;

- New safety requirements imposed by COVID severely limited the Holder's ability to mount and execute the field programs scheduled for 2020, forcing delays to the planned start of project construction;
- COVID seriously disrupted capital markets, and KSM Mining's financial advisors expected that it might require 18 to 24 months after the end of COVID emergency conditions before financial markets stabilized;
- COVID temporarily depressed the copper market, effectively putting new investments such as the copper intensive KSM on hold until market conditions normalized.

Through the extension request letters of March 30 and April 29, 2020, the Second Extension Application, Comment Responses, Report, and other information submitted through the course of the review to the EAO, KSM Mining provided information on the impact COVID had on securing financing for the Project and the relationship of financing to overall project development plans. This included submissions from BMO Capital Markets (BMO), Grant Thornton International Ltd. (Grant Thornton), and a collection of news articles within its Comment Response Report. KSM Mining also provided details on its plans for advancing the Project and how they had been impacted by COVID, how a two-year extension would reduce the timing risk of the Certificate and why the extension is in the public interest.

3.1.1. Financing

KSM Mining noted that a Final Feasibility Study has not been initiated at KSM because the size and complexity of the project requires a major company partner that would bring the financial and technical capabilities and the experience needed to complete development and operate in a sustainable and responsible manner. KSM Mining described how COVID interrupted negotiations with two prospective partners. As of February 2020, the two potential partners indicated they would plan to share a proposed transaction framework in March 2020; however, in March 2020, shortly following the declaration of COVID as a global pandemic, advanced discussions with the two potential partners were suspended. KSM Mining, supported by the submissions from BMO and Grant Thornton noted the following with respect to the continuing challenges posed by COVID in securing an investor:

- Potential partners remain focused on their own operations during this period of economic uncertainty associated with COVID and that large-scale mergers and acquisitions were not a priority for prospective partners as companies exercise caution in ensuring sufficient cash and credit reserves;
- Extensive site verification visits are a standard part of due diligence associated with negotiating a partner transaction and quarantine requirements and restrictions at the international border continue to present an obstacle to advancing partner negotiations; and
- COVID-19 pandemic continues to have an impact on global financial markets, resulting in increased uncertainty and volatility.

Information provided by KSM Mining also described the unique, substantial investment required by a financial partner to support the development of KSM. BMO described that while there has been ongoing investment in mining exploration, there have been very few major acquisitions or investments at the level required for KSM since the onset of COVID.

KSM Mining stated that it requires C\$600M-C\$750M to complete the Final Feasibility Study and the work to advance Project construction, particularly to a point to achieve a milestone of being substantially started³ (described below). KSM Mining acknowledged that the Project cannot be substantially started without raising the funds required but expressed

³ Under [Section 31](#) of the Act, a Certificate must specify a deadline by which the Holder of the certificate, in the reasonable opinion of the Minister, must have substantially started the project. If the project has been substantially started by the specified deadline, the Certificate remains in effect for the life of the project, subject only to suspension or cancellation for the reasons listed under [Section 56](#) of the Act. If the project has not substantially started by the specified deadline, the EAC expires. The term "substantially started" is not defined in the Act, but the courts have provided guidance on its meaning. Ultimately, the determination is made on a case-by-case basis considering all relevant facts related to the project, the Act, relevant case law, and the EAO's Substantially Started Policy.

confidence that it could raise the capital needed for its current plans. KSM Mining stated that raising the additional funds would be a challenge but not the “primary barrier” to reaching its substantial start goals (see KSM Mining’s June 1, 2021 letter). KSM Mining described how it has adjusted its construction plans to seek to be substantially started potentially prior to completion of the Final Feasibility Study and reaching agreement with a partner.

3.1.2. Impact of COVID on Construction Plans

In its May 25, 2020 letter, KSM Mining noted that Indigenous communities were very concerned about COVID and had taken steps to protect their people from outside sources of infection. Concerns regarding the potential impact of COVID spreading from workers servicing KSM camps were expressed by the Gitanyow and Tahltan Nations, and KSM Mining was committed to minimizing their risk of a spread. In subsequent submissions, KSM Mining described that the start of the 2020 field programs was delayed in order to identify and put in place measures to respond to the B.C. government COVID requirements and safeguard the well-being of contractors, employees and the communities in which KSM Mining works. The scope of programs was substantially reduced to comply with pandemic restrictions. The camp capacity was reduced by 50%, which resulted in reduced scope for environmental field programs; and a reduction in the Mitchell Treaty Tunnels (MTT) drilling program. KSM Mining also stated that COVID had imposed delays in *Fisheries Act* authorizations because COVID has seriously interrupted the review and consultation processes of both government and Indigenous nations, but subsequently clarified in its June 1, 2021 letter that receipt of these permits was not a critical issue at this time.

KSM Mining explained how the delays in the MTT drilling program related to its overall plans to advance the project. KSM Mining stated that the Final Feasibility Study would provide a basis for detailed construction plans; however, in the absence of a major partner and the completion of a Final Feasibility Study, KSM Mining was focusing on the construction activities that could go ahead in advance of these plans and were identified by KSM Mining as being necessary to meet the milestone of being substantially started. The key activities identified by KSM Mining included: (i) building camps in the Process and Tailings Management Area (PTMA) and the Mitchell Valley; (ii) construction of the Treaty Creek Access Road into the PTMA and up to the Saddle area and commencement of construction of the Mitchell-Treaty Tunnels (MTT) in these locations; and (iii) construction of the Coulter Creek Access Road and commencement of construction of the MTT in the Mitchell Valley. These components are described in sections 3, 4 and 5 of the [Certified Project Description](#) within Schedule A of the Certificate.

KSM Mining submitted information indicating that it could complete construction of the camps and roads identified above by the current Certificate deadline but could not begin construction of the MTT. KSM Mining indicated that it was of the view that advancing construction beyond camps and road to include other components, such as the MTT, was an important aspect of demonstrating being substantially started and part of the critical path for the construction timeline.

KSM Mining noted that it currently holds permits entitling it to commence construction on the MTT portals and the initial 100 metres of the tunnels, but not the entire length of the MTT between the portals. EMLI has advised KSM Mining that it must submit information regarding the composition of the rock along the MTT route as part of its application for the permit to construct the MTT beyond the portals. To obtain the required data, KSM Mining expects it will have to drill 40 geotechnical holes along the MTT route and at the MTT portals, which were planned for 2020 and 2021. As a result of a late start in the field work due to the COVID-related restrictions and subsequent reduced workforce, only seven holes were drilled in 2020. With COVID restrictions still in place, KSM Mining estimates that it will take until 2023 to complete drilling of the balance of the holes, two years later than originally planned. The resulting data then needs to be assembled and analysed, reports prepared and then detailed engineering of the design of the tunnels needs to be completed. All of this information will then be submitted with the permit applications for constructing the MTT beyond the portals.

Due to these COVID-related delays, KSM Mining’s permit application for the MTT route is not expected to be able to be submitted until after the current expiry date of the Certificate. KSM Mining noted that the water treatment plants need to be constructed before construction of the MTT portals can begin and it did not anticipate receiving permits for the water treatment plants and other infrastructure at the MTT portals until after the current expiry date of the Certificate.

KSM Mining stated that lost time due to the pandemic cannot be made up because of the conditions at the Project site and the time requirements for permitting. Snow-free conditions during which data collection and drilling work can occur are only present from approximately June to October and the site is currently only accessible by helicopter, which is often too dangerous on many winter days. In addition, COVID restrictions reduced the capacity at the camp (and therefore the workforce) by 50% for the 2020 field season and this is expected to remain in place for the 2021 field season as well.

3.1.3. Impact of an Extension

KSM Mining stated that it was difficult to say definitively that a two-year extension would completely eliminate the timing risk to the Certificate, noting the uncertainty associated with achieving a substantially started determination and permitting timelines. KSM Mining did note that a two-year extension would restore them to the position prior to COVID and reduce concerns of potential investors associated with the project losing its Certificate. Because construction planning extends three to five years into the future, KSM Mining expressed the importance of having a decision now to plan work programs and give potential partners greater certainty with respect to an investment in KSM.

3.1.4. Public Interest

KSM Mining noted that the initial issuance of the Certificate reflected a determination that the KSM Project was in the public interest and expressed its view that the Certificate extension in 2019 was indicative that it remained in the public interest. KSM Mining expressed that the Project would bring substantial economic benefits in jobs and tax revenue and is well positioned to advance reconciliation with Indigenous groups and these benefits continue for the greater than 50-year life of the Project. KSM Mining noted the support letters from NLG, Tahltan, Gitksan Hereditary Chiefs, and expressed the view that these reflected the benefits that would accrue to them and their members through the development and operation of KSM.

Given the risks caused by COVID that the Certificate might expire before KSM is substantially started, KSM Mining submitted that it is in the public interest to provide a two-year extension in order to keep the advancement of a project that has been determined to be in the public interest proceeding.

KSM Mining also noted that development of the project would support provincial objectives of advancing Indigenous participation on the minerals sector; developing the mine in an environmentally responsible manner and providing raw materials necessary for the clean technology sector; and utilizing the Northwest Transmission Line, which would result in KSM Mining making payments that would go towards construction costs of the transmission line.

In addition, KSM Mining expressed that it is not in the public interest for the KSM Project to have to seek a new EA Certificate. KSM Mining stated that it expected it would receive approval if required to apply again, but this would involve a lengthy interruption in the advancement of the Project. KSM Mining noted that B.C. has indicated that it wants the provincial economy to bounce back strongly after COVID and KSM Mining is of the view that KSM offers an excellent opportunity to ensure stronger economic performance of the province.

3.2. Second Extension Application

KSM Mining provided the information required under the EAO's [Certificate Extension Policy](#), which included whether new information has come to light since the Certificate was granted that could change the conclusions reached in the EAO's assessment of the project; past work and plans to advance the project; and engagement conducted. While KSM Mining identified a number of changes in legislation, policy, scientific and technical practices and Indigenous interests, it was of the view that none of these changes would have a material effect on the conclusions of the EAO's 2014 Assessment Report and no changes or additions to the Certificate conditions were required.

KSM Mining noted that it received a licence under the federal *International Rivers Improvement Act* to alter the natural flow of the Unuk River and Schedule 2 of the Metal Mining Effluent Regulation was amended to authorize deposition of tailing into North Treaty Creek and South Teigen Creek. KSM Mining obtained provincial authorizations to undertake

limited site construction and has addressed Certificate conditions relating to pre-construction aspects of the project, including water management and quality, traffic and access management and wildlife.

KSM Mining stated that it has been actively advancing KSM since the original EA approval in 2014 to improve its performance and keep up with advancements in the mining field. The additional higher-grade resources discovered at the Project should make it more profitable and allow KSM to reduce the environmental footprint by reducing the volume of waste rock. KSM Mining established an Independent Geotechnical Review Board (IGRB) promptly after the Mt. Polley tailings dam breach occurred and before this became a requirement in the B.C. and undertook a “best available tailings technology” review to confirm the decision in the Certificate. As concerns regarding climate change have grown, KSM Mining noted that it has worked with BC Hydro to increase the use of hydroelectric power at the Project to reduce carbon emissions. KSM Mining stated that the environmental data it has continued to collect at the Project show that the data on which the EA decision was made is current and reliable. KSM Mining was of the view that the concern about an EA decision becoming stale does not apply to the KSM Certificate and noted that the project still requires significant provincial permits before beginning full project construction and operation.

4.0 ISSUES AND EFFECTS

Comments raised by Indigenous and technical reviewers, SEITC and the public during the Second Extension Request relating to the procedural, environmental and socio-economic issues are described below. Further details on comments received during the public comment period and from SEITC are described in section 6.

4.1. Emergency Variance Issues

Gitanyow provided memos from Ecojustice on October 16, 2020 (see letter [here](#)), April 8, 2021 (see letter [here](#)) and July 26, 2021 (see letter [here](#)) regarding the authority for, and appropriateness of, varying the Act to allow for a second extension. Comments received during the public comment also questioned the rationale KSM Mining provided regarding the severity of impacts of COVID on the Project. They noted that the copper prices have rebounded since the extension was requested and gold and silver have reached record high prices during COVID; that the mineral exploration and mining have been designated as essential service; other mining companies have no difficulties adjusting to safety measures; and that KSM Mining has continued to pursue authorizations and field operations at the KSM site. KSM Mining provided responses to these comments in its Comment Response Report supported by a memo from Blakes, Cassels & Graydon LLP (Blakes), submissions from BMO and Grant Thornton, and news articles about the mining industry struggling with COVID and mining mergers and acquisitions. The issues discussed in these submissions are summarized below.

Ecojustice, on behalf of Gitanyow, expressed the view that, under the Act, the time period to substantially start a project cannot be extended more than once, referring to Section 31 of the Act that states: the Chief Executive Assessment Officer may “...extend the deadline specified in the environmental assessment certificate, on one occasion only.” Ecojustice noted that KSM Mining was seeking to use a general provision on Section 46 of the Act to override the prohibition on extending the substantial start deadline, which would constitute a reviewable error. Ecojustice noted the B.C. Court of Appeal Decisions relating to the Prosperity Gold-Copper Project (Prosperity), where the court confirmed the position of the Minister that the specific provision in the *Environmental Assessment Act* (2002) governing the extension of deadlines in EACs could not be overridden by the general power provided under the Act (2002) to extend time limits. Ecojustice questioned whether the Minister has jurisdiction under Section 46 of the Act to disregard the prohibition against more than one Certificate extension. In the final submission from Ecojustice, they further express the view that a decision to override a provision of the Act would be more appropriately taken by the Lieutenant Governor in Council under the provisions of Section 77(2)(h) of the Act.

Ecojustice further submitted that, even if the Certificate deadline could be extended a second time, it was of the view that the circumstances faced by KSM Mining due to COVID do not amount to an emergency warranting a variation of the

statutory process. Ecojustice was of the view that an emergency was a situation, often unexpected, that necessitated immediate action or relief and that a challenging financial situation would not meet these criteria.

Regarding the financial situation, Ecojustice expressed the view that, while KSM began seeking an extension in March 2020, much has changed since that time and it would be unreasonable to consider the situation an emergency. Ecojustice noted that metals prices are significantly improved (including to record high prices for gold) and the company's stock price has also rebounded above pre-COVID levels. Ecojustice noted that COVID has had significant positive effects on mining exploration and other mining companies have maintained operations during COVID. Ecojustice noted that mining fell into the category of "essential workers" and pointed to positive public statements made by KSM Mining, which stated that mine development effort were continuing despite the pandemic. Ecojustice also noted that KSM Mining has continued to pursue approvals under the *Fisheries Act*.

Ecojustice acknowledged that the pandemic was an emergency and that the pandemic had impacted KSM Mining. Ecojustice expressed the view that use of emergency powers under the Act for the financial challenges faced by KSM would set a dangerous precedent, potentially allowing other projects to request relief from the requirements in the Act, its regulations or project Certificate conditions in other future provincial emergency situations. Ecojustice expressed the view that the question that needed to be answered is whether "the pandemic had adversely impacted KSM in a manner akin to an emergency preventing the substantial start of the project."

Blakes, on behalf of KSM Mining, noted that it did not view the Prosperity case as being of significant value to interpreting the Minister's power to issue emergency variation orders because neither the request nor the CEAO's decision considered the use of the Minister's emergency powers in the Prosperity case. In addition, Blakes stated, any ambiguity regarding the general power to extend time limits under the Act (2002) was resolved by the Act (2018), which expressly states that the ability to extend time limits does not apply to Certificate deadlines.

Regarding the definition of an emergency, Blakes disagreed that it need be an urgent, short-term situation, noting that different interpretations of the word emergency exist across legislation and court decisions. Blakes was of the view that the emergency powers in the Act ought to be interpreted broadly in a manner which permits the CEAO to consider a second extension to the Certificate deadline. This would be consistent with a plain language reading of Section 46 and the open-ended, qualitative language (including consideration of the public interest) in this Section of the Act. Blakes noted that while it received its Certificate under the Act (2002), under the current Act, proponents now have up to 15 years to substantially start a project so considering a time limit of 12 years for KSM (if KSM Mining receives a two-year extension) would not set a dangerous precedent or undermine the purpose of the Act.

In response to the questions raised regarding the financial situation, KSM Mining, supported by submissions from Blakes, BMO and Grant Thornton, stated that the project's size requires a joint venture partner, investment negotiations with potential partners have been disrupted, and partners have indicated they cannot continue until the global economy is stabilized. Companies continue to make conservative choices to preserve capital, despite the recovery and growth in metals prices. Shareholders are cautious about spending large sums of money on mergers and acquisitions and companies are focused on safe operations and employee well-being. These facts, combined with travel restrictions, have contributed to difficulty in engaging potential investors for KSM since COVID began, according to the submissions.

The EAO notes that, as described in section 2.1, the Acting CEAO stated on May 25, 2020 that there was an ongoing emergency related to COVID and that, in order to consider using Section 46 to allow for a further extension of the Certificate, the Minister must be satisfied that the challenges the Project currently face are directly related to the emergency and that the variance would be in the public interest. The EAO also notes that COVID continues as a public health emergency in many parts of Canada and the World, and international travel remains highly restricted. The EAO is, therefore, of the view that COVID has been an emergency since March 2020.

The EAO notes the views provided by Ecojustice regarding the use of Sections 46 and 77 of the Act and has conveyed them to the decision-maker for their consideration. As these are matters of legal interpretation, the EAO is not in a position to render an opinion. However, the EAO notes that KSM Mining has requested a decision under Section 46 and the EAO has sought to consult with Indigenous nations and other parties on the full extent of potential effects associated with a decision under this section of the Act.

The EAO does not share the view of Ecojustice regarding the decision-maker needs to consider whether “the pandemic had adversely impacted KSM in a manner akin to an emergency preventing the substantial start of the project.” Rather, the EAO would draw the decision-maker’s attention to the specific language in Section 46 of the Act (emphasis added):

46(1) If the minister considers that

(a) there is or will be an emergency or other comparable circumstance that warrants or will warrant the variation of one or more provisions of this Act or the regulations, as the provisions apply to or in respect of a specified reviewable project or a specified category of reviewable projects, and

(b) the variation is in the public interest,

the minister may order a variation that the minister considers necessary to respond to the emergency or other circumstance.

4.2. Extension Issues and Effects

4.2.1. Health and Social Effects

Northern Health raised that Stewart and Terrace⁴ service a large number of projects and fluctuating workforces. Many other resource projects are under development in the regional study area of KSM, some of which were not approved or active while KSM underwent its initial EA. Northern Health requested that KSM Mining consider that medical infrastructure in a remote region is already limited and prone to fluctuations in service capacity and asked that KSM Mining carefully consider the evolving medical capacity in the region around the project. Northern Health recommended that KSM Mining consider new guidelines relating to managing COVID in industrial camps.

Northern Health also noted that improvements in social impact assessment and management methods have improved during the over six years since the original EA was conducted particularly regarding gender-based analysis, health services, emergency response and community/socio-economic health-related impacts. Northern Health recommended that new data be gathered to continue to inform the Holder’s social and economic mitigation measures.

KSM Mining committed to prepare a Health and Medical Services Plan prior to commencement of Construction and noted its commitment to following Northern Health’s [Health and Medical Services Plan Best Management Guide for Industrial Camps](#) and other relevant guidance when the project moves into permitting and operations. KSM Mining noted that it had reviewed the EAO’s [Human and Community Well-Being](#) guidelines and that recruitment and hiring practices consider diversity and pay equity. Prior to commencing Construction and Operations, KSM Mining stated it would collect additional data to support the development of KSM human resource policies that consider matters related to gender as well as mining industry, provincial, federal and regional data. The implementation of these policies would be monitored and adaptively managed.

The EAO considered the concerns raised by Northern Health, the commitments of KSM Mining to collect additional data and the size of the workforce proposed for KSM. The EAO also considered that it has become a common practice for Certificates to include additional conditions targeted at mitigating effects to the human environment, including effects

⁴ Terrace and Smithers are the nearest larger (greater than 1000 people) population centres to KSM.

associated with large worker populations. The EAO also noted the changes in understanding regarding the management of communicable disease and risks that have occurred since 2014 and particularly since the COVID pandemic.

Therefore, the EAO is proposing the addition of Certificate conditions, that would require the Holder to prepare two new plans, should the CEAO extend the KSM Certificate: a Health and Medical Services Plan and a Community Effects Management Plan. These plans would have to be developed in consultation with Northern Health, local governments, Tahltan, NLG, and TSKLH. The Health and Medical Services Plan would require that potential effects on local health and medical services be monitored and mitigated and that Northern Health Guidance regarding communicable diseases, COVID and overdose prevention be followed. The Community Effects Management Plan would require monitoring and mitigation of effects of the Project on local communities, consideration of vulnerable populations and gender-based analysis, and establishment of a grievance-resolution process for local communities and the public to raise project-related social and economic issues or concerns. In recognition that construction is intended to slowly ramp up, both plans would be required to be prepared when a combined total of 500 or more project employees or contractors occupies one or more Project work camps.

During the review, Northern Health also expressed a desire to be involved in the review and preparation of several specific plans that would mitigate or monitor impacts to human health. As a result, the EAO is also recommending that the Holder be required to consult with Northern Health on existing Certificate plans for human health monitoring and spill prevention and emergency response to allow them to engage on these plans relevant to their mandate. With the addition of these conditions, the EAO is satisfied that potential health and social concerns around KSM raised during the review of the Second Extension Request would be adequately addressed and the requested extension would not change the assessment of impacts from the EA.

4.2.2. Air Quality and Greenhouse Gas Emissions

ECCC commented that ambient air quality standards have been updated since the Certificate was issued. The Canadian Ambient Air Quality Standards (CAAQS) are health and environmental-based air quality objectives to protect human health and the environment and are drivers for air quality improvement across Canada. The CAAQS are specific, numerical measures of the ambient concentration of certain common air pollutants and are applicable throughout Canada.

ECCC also noted new requirements under the *Impact Assessment Act* for a Strategic Assessment of Climate Change (SACC). The SACC requires projects to assess climate change effects and plan for net-zero emissions by 2050. KSM, as a previously assessed project, would not be subject to these requirements; however, ECCC noted the magnitude and lifespan of the project⁵, and encouraged KSM Mining to apply the principles and objectives of the SACC and develop a Greenhouse Gas (GHG) management plan.

KSM Mining responded that, during permitting, it will update the project's air quality model. The model rerun will incorporate an updated emissions inventory (e.g., mining equipment, point sources and fugitive emissions). Model results will be compared to current federal and provincial air quality standards to inform measures to mitigate air quality effects.

Regarding GHGs, KSM Mining will update the project GHG emissions assessment for each phase (Construction, Operations, Closure and Post-closure). KSM Mining noted that power for the project would be provided by the Northwest Transmission Line (via a new transmission line constructed along the Treaty Creek Access Road). Diesel generators will supply construction power until the transmission line is operational and KSM Mining is committed to electrify the project site to reduce reliance on diesel fuel. KSM Mining stated that it is evaluating options to reduce GHG emissions associated with the Project which take into account GHG sources, emerging technologies and best practices as recommended by ECCC. These options include complete electrification of the mine.

⁵ During the EA, KSM was estimated to have a mine life of 52 years and emit an average of 164,725 tonnes of carbon dioxide equivalent per year.

The EAO notes that electric power will be the primary source of power for the project with three small-scale hydro electric facilities (within water management facilities of the project) providing supplementary power. The EAO and ECCC were satisfied that new information on air quality standards would be taken into account during permitting.

Regarding GHGs, the EAO notes that the Province currently has legislated GHG reduction targets and a suite of legislative, regulatory and policy tools to ensure it will achieve targets. Federally legislated GHG reduction targets are also in place. The EAO is satisfied that concerns raised during the review of the Second Extension Request around air quality and GHG for KSM have been adequately addressed and the requested extension would not change the assessment of effects from the EA.

4.2.3. Wildlife and Migratory Birds

ECCC recommended that KSM Mining update the Wildlife Effects Management Plan (WEMP) required under the Certificate to include guidance on mitigation and monitoring procedures during all phase of the project to reflect federal guidance and applicable recovery strategies for species added to Schedule 1, Wildlife Species at Risk, of the *Species at Risk Act* (SARA) following the issuance of the Certificate in 2014: Bank swallow, Western toad, Little brown myotis, and Northern myotis. ECCC further noted that the Second Extension Application had identified management and monitoring plans measures during Construction and Operations for breeding birds, including Bank swallow and Barn swallow, which are listed as Threatened under Schedule 1 of SARA. ECCC pointed to section 33 of SARA, which prohibits damaging or destroying the residence of the listed threatened, endangered, or extirpated species. This would include barn swallow nests during spring and summer breeding season. ECCC also noted that it was unclear how KSM Mining intended to mitigate impacts to bats and recommended that this information be incorporated into the WEMP and noted that ECCC should be consulted on issues related to SARA-listed species and is available to provide advice on the development of appropriate measures within the management plan. ECCC recommended that Bank swallow and Northern myotis be included in the WEMP and appropriate measures for their protection be designed in consideration of federal guidelines, as wildlife baseline studies conducted more than 10 years are outdated and unreliable to indicate species presence.

KSM Mining responded that wildlife baseline studies included the new Schedule 1 species and that a Wildlife Management and Monitoring Plan (WMMP) has been prepared that addresses the requirements of the WEMP (section 10.1 of the CPD and condition 27 of the [Table of Conditions](#) in Schedule B of the Certificate). The plan was updated and is being reviewed by FLNRORD and Indigenous nations. KSM Mining noted it would provide the WMMP to ECCC once complete. Regarding swallows, KSM Mining stated that Bank swallows were not detected in baseline studies and with limited structures on site, suitability for Barn swallows is low. KSM Mining noted that it has committed, in the WMMP, to conducting pre-construction surveys, consistent with ECCC's guidelines regarding surveys: nests on buildings will not be destroyed and for nests in other locations, a suitable buffer will be established around active nesting areas. The WMMP also will include a bat monitoring program for project infrastructure during Construction, Operations, and Closure and mitigations that include: covering vents with mesh to prevent bats from entering; pre-clearing surveys in construction occurs during the hibernation and breeding period; and maintaining a buffer if hibernacula or maternity roosts are identified in the project wildlife local study area.

The EAO considered the existing Certificate requirement for a wildlife management plan that must be submitted to the satisfaction of FLNRORD and is satisfied that concerns raised during the review of the Second Extension Request around wildlife and migratory birds for KSM have been adequately addressed and the requested extension would not change the assessment of effects from the EA.

4.2.4. Water Quality and Climate Change Impacts

Gitanyow provided comments reiterating the water quality concerns from the Certificate extension review process conducted in 2018/2019 (First Extension Request), which expressed the view that new data collected since 2014 should

be incorporated into water quality baseline studies to inform predictions on water quality and downstream impacts, including to Gitanyow. In addition, climate change effects, including increased water temperature and the effect of glacial melting should be incorporated into hydrological and water quality models. Gitanyow was of the view that these additional analyses were important to determine if KSM Mining would be able to meet Certificate condition 8 regarding water quality or if additional mitigation measures (e.g., water treatment plan or additional water storage pond) would be required. Gitanyow noted that, if additional mitigations were required, this would result in an effect not assessed in the original EA and require an amendment to the Certificate. Commenters during the public comment period and SEITC also raised concerns about the ability of KSM Mining to treat water for selenium.

KSM Mining responded that, as stated for the First Extension Request, it continues to collect and augment the project's baseline dataset, which will be incorporated into its permit applications for mine construction. To prepare for permitting, model updates must be undertaken and incorporated into permit applications and updated management plans. KSM Mining further noted that it has compared the pre-EA surface water quality and hydrology baseline data (2007-2012) with the post-EA water quality data (2013-2019) and found that found baseline hydrometric data comparable and no substantive changes to surface water quality data with respect to the potential downstream water quality effects. With respect to Gitanyow's concerns related to climate change, KSM Mining noted that it expanded its glacier monitoring program in 2019 to include the Treaty glacier in the PTMA and also expanded glacier monitoring in the mine site area.

During the First Extension Request, the EAO requested that the Ministry of Environment and Climate Change Strategy (ENV) and EMLI (the Ministry of Energy Mines and Petroleum Resources, at the time) review the memo from Gitanyow to determine if this information would be considered in the joint *Mines Act* and *Environmental Management Act* permit application process. ENV responded that climate and glacier changes and associated changes to water quality, quantity and flow would be considered in the permitting process in consultation with Indigenous groups. The joint permitting process would involve a detailed review of the water models, including sources and changes in water supply and water quality (see section 5.2 of the EAO's First Extension Report). The EAO notes that this remains accurate; the EAO has spoken with EMLI and can confirm that B.C. would engage Gitanyow in the upcoming permitting process in a manner that is consistent with the Gitanyow Huwilt Recognition and Reconciliation Agreement.

With regard to the potential need for an amendment if modeling shows additional water quality mitigation is required, the EAO notes that should a new component or other change be proposed for the project as a result of changes during permitting, KSM Mining would need to request an amendment to its Certificate and provide an assessment of the effects associated with the requested change. The EAO would engage Gitanyow on any proposed amendment to the Certificate with the potential to impact Gitanyow's Indigenous interests (this would include amendments with the potential to impact water quality downstream in Gitanyow's territory) and seek their views on the effect of the change to Gitanyow and its Indigenous interests.

Regarding its ability to treat selenium, KSM Mining stated that it has already demonstrated its ability to treat selenium at the Project site as was reported in 2015 to the EAO. KSM Mining piloted the viability of SELEN IXTM for selenium removal in 2014 (Condition 18 of the Certificate). Approximately 115,000 litres of water from Mitchell Creek was transported to Richmond, B.C., where it was modified to represent the range of expected water quality and conditions for seepage from the project. The pilot demonstrated the capability of SELEN IXTM to remove selenium to below 1 parts per billion (ppb). KSM Mining further noted that, subsequent to 2015, the SELEN IXTM has been trialed at many sites through Canada and the USA and most recently a SELN IXTM water treatment plant was installed at a B.C. mine site in late 2019. Condition 21 of the Certificate requires the selenium water treatment plant to be commissioned and constructed at a throughput of 500 litres per second by the end of the fifth year of operation.

At the conclusion of the First Extension Request, the EAO was satisfied that concerns relating to climate and glacier changes and associated changes to water quality were considered during the EA and that the Certificate conditions 6 (Geochemistry and Water Quality), 8, 9, 11 (Water Management/Treatment and Monitoring), 16 and 17 (Selenium Management/Treatment), and CPD 10.2 (Aquatic Effects Monitoring Plan) provided for any new information, mitigation

and adaptive management to be adequately considered in the development of these plans which are required to satisfy permit requirements. The EAO considers these conclusions to remain valid and the requested extension would not change the assessment of effects from the EA. The EAO is aware that Gitanyow was not satisfied with this conclusion during the First Extension Request and that this remains an outstanding concern of Gitanyow. Gitanyow's views will be considered by the CEAO in her consideration of the Second Extension Request.

4.2.5. Risks of Dam Failure

Gitanyow and a commenter during the public comment period submitted comments outlining its concerns that KSM Mining's projection of a tailings dam failure relies on out-of-date information and modeling, and that these deficiencies are preventing Gitanyow from accurately informing Gitanyow members on the characteristics and impacts of a tailings dam failure event. Gitanyow also submitted a follow-up memo on this topic including review of the draft this report on July 26, 2021 (see letter [here](#)). Gitanyow described that it was attempting to undertake a visual representation of a potential tailings dam failure at the proposed mine to better inform its members on the potential risks associated with the project. The first stage in this initiative was a review of the data and assumptions behind the original dam break and inundation study in the EA conducted by Lynker Technologies (Lynker). In this review, Lynker identified several concerns with the original analysis including: the size of the simulated release, the flood events that it was compared to, the modeling of flood characteristics and model sensitivity analyses. Gitanyow noted that the deficiencies identified in the review prevented it from moving to the second stage in the initiative because Gitanyow's expert advisers were of the view that a visual representation based on the original modeling would not be accurate.

KSM Mining provided a response memo to these comments prepared by Klohn Crippen Berger Ltd. (KCB). Based on a review of Lynker's comments, KCB was of the view that the original study was consistent with current practices and provides a defensible assessment of the potential consequences of a hypothetical failure. KCB noted that several of Lynker's suggestions were not consistent with good practice. KSM Mining also noted that it voluntarily conducted a best available technology study in 2016 to re-evaluate its proposed tailings management strategy as a consequence the Mt. Polley dam breach, following the receipt of its Certificate. The 2016 study found that the tailings management strategy proposed in the EA Application is the most appropriate to minimize physical, geochemical, biophysical and social risks over the life of the project. The study was independently reviewed by a former member of the Mount Polley Independent Expert Engineering Investigation and Review Panel (Dr. Dirk van Zyl), who supported the study's conclusions.

The EAO sought the input from a Professional Engineer in the Geotechnical team of EMLI on the Lynker memo and KCB response. EMLI noted that KSM has not yet received permits; therefore, before construction, KSM Mining would need to submit a *Mines Act* Permit Application that uses modern analyses and methods that are the standard of practice at the time of permitting. This would include a new alternatives assessment considering best available technologies. If the mine is permitted, a dam safety inspection would be required annually and a dam safety review would be required every five years, during Operations, Care and Maintenance, and Closure, by an independent engineer, under the *Health, Safety and Reclamation Code for Mines in British Columbia* (Mines Code).

All reports required by the Mines Code, including those discussed above, are posted publicly on the [B.C. Mine Information website](#). In addition, the current *Mines Act* permit M-245 (available [here](#)) for KSM, which authorizes early works for the project, includes a requirement that KSM Mining provide all material reports and plans relevant to the permit, including annual monitoring reports, updated management plans and material changes to the approved Reclamation and Closure Plan to NLG, Tahltan, TSKLH and Gitanyow. EMLI noted that permitting for the full mine or tailings dam would also include a condition requiring KSM Mining to share all documents with Indigenous nations, including Gitanyow.

The EAO notes Gitanyow's and members of the public's ongoing concerns regarding the impacts of a dam failure, and the disagreement with aspects of the assessment to date. During the upcoming permitting process, the EAO is satisfied there will be thorough consideration of the information and assumptions in the modelling for a dam failure event, including the provision of updated information and modelling from KSM Mining and the requested extension would not change the

assessment of effects from the EA. The EAO also considered the requirements under the *Mines Act* and Mines Code for safety reviews and inspections to be conducted by an independent engineer and shared with Gitanyow and the public. The EAO has spoken with EMLI and can confirm that B.C. would engage Gitanyow in the upcoming permitting process in a manner that is consistent with the Gitanyow Huwilp Recognition and Reconciliation Agreement. The EAO is of the view that, for the purposes of informing the variance and extension decisions, a new tailings dam analysis is not required.

4.2.6. Transboundary Effects

SEITC and commenters during the public comment period expressed the view that meteorology, geohazards, water quality, water quantity, terrestrial, wetlands, fish and aquatic, wildlife, archaeology, social, and traditional knowledge data in areas potentially affected by KSM on the Alaska side of the border are missing. SEITC submitted that this information could change the conclusions reached in the EAO's assessment of the project and ultimately the request for an extension. SEITC noted this new information could include new scientific and technical information or a new best management practice and new information regarding Indigenous interests. SEITC stated that, until consultation occurs, this will remain an undefined risk, and that the EAO's approach to consultation is inconsistent with the UN Declaration.

Regarding the potential for water quality effects in Alaska, KSM Mining noted from the [Recommendations of the Executive Director for the KSM Project \(2014\)](#), that the EAO concluded there would be no significant adverse effects to surface or groundwater quality or quantity, fish or aquatic habitats, taking into account the conditions in the Certificate to mitigate downstream water quality effects. As a result of this conclusion, the EAO also concluded that there would be no significant adverse effects to fish and aquatic habitat from degradation of water quality. The EAO also stated that no residual effects were predicted for water quality in the Unuk River in Alaska. KSM Mining noted that this conclusion was also reached by the Canadian Environmental Assessment Agency.

Regarding baseline data collection in Alaska, KSM Mining submitted that it initiated comprehensive baseline data collection in 2007 and this data collection continues today resulting in a comprehensive dataset extending over 14 years of effort. KSM Mining stated that baseline data has not been collected beyond the BC/Alaska border because it has no authority under Canadian and US laws to collect baseline data within Alaska. KSM Mining noted that it has offered Alaskan Tribal representatives funding to do water quality sampling in the lower Unuk River area; however, the Tribes did not accept or respond to this offer. KSM Mining noted it has shared, and will continue to share, its Unuk River baseline data with the State of Alaska.

Regarding the potential for new information, KSM Mining noted that, to prepare for permitting, model updates must be undertaken (e.g., surface water quality model, site wide water balance model, groundwater model) and model results considered in the *Mines Act* and *Environmental Management Act* applications and inform management plans. KSM Mining stated that model updates will incorporate all relevant data that has been collected for the Project. Permit applications would also take into account recommendations from the KSM Project Independent Geotechnical Review Board, established by KSM Mining in 2015, with respect to the design of major infrastructure.

The EAO notes that the original EA reached conclusion regarding the impacts of KSM up to the Alaska-B.C. border, and that while some residual effects were predicted, these effects were not found to be significant. The EAO notes that it has been monitoring the work being undertaken under the State of Alaska and the Province of B.C.'s Memorandum of Understanding and Statement of Cooperation for the protection of transboundary waters, including the recent reports from the Technical Working Group. The Technical Working group includes B.C. and Alaska government representatives, as well as representatives from B.C. Indigenous nations and Alaska tribes. The Technical Working Group has released several reports, including recently released a data report titled *British Columbia and Alaska Joint Water Quality Program for Transboundary Waters Data Report 2021*. The report summarizes the results of the B.C. and Alaska Transboundary Rivers Sampling Program activities from August 2017 to September 2019 and builds on the B.C. and Alaska Transboundary Rivers Sampling Program 2019 Status Report. The EAO is of the view that this additional baseline information supports the conclusions of the original EA.

4.2.7. United Nations Declaration on the Rights of Indigenous Peoples

Gitanyow expressed the view, during the First Extension Request, that the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) and the proposed (at the time) new EA legislation constitutes new information. Gitanyow noted that this issue remains unaddressed for the current process. Commenters during the public comment period also voiced concerns about this issue.

The EAO notes that the Act is now in force and was developed to be consistent with the UN Declaration. The EAO further notes B.C.'s commitment to implement the UN Declaration and the passage of the *Declaration of the Rights of Indigenous Peoples Act* in 2019. Section 2(2)(ii)(A) of the Act indicates that a purpose of the EAO is to support reconciliation with Indigenous peoples in B.C. by supporting the implementation of the UN Declaration. The EAO has made efforts to understand, document and respond to the issues raised by all Indigenous groups during the course of this review. Consistent with the previously referenced purpose of the Act, and the requirement set out in Section 31(5) of the Act to seek to achieve consensus in relation to extension decision, the EAO has been engaging in meaningful consultation with the Indigenous nations regarding the Second Extension Request to attempt to achieve consensus on issues of concern and ultimately the decision to be made consistent with article 32(2) of the UN Declaration. Additional information regarding the engagement undertaken by KSM Mining and the EAO is described in section 5.0.

The EAO is satisfied that concerns raised during the review of the Second Extension Request regarding the UN Declaration have been adequately addressed and the requested extension would not change the assessment of impacts from the EA.

5.0 INDIGENOUS NATION ENGAGEMENT

5.1. KSM Mining-Led Engagement

KSM Mining had discussions starting in March 2020 with Tahltan and the NLG regarding the Second Extension Request. KSM Mining also discussed the proposed Certificate extension with Gitanyow, Gitxsan Hereditary Chiefs and TSKLH. KSM Mining also wrote to Tahltan, NLG, Gitanyow, Gitxsan Hereditary Chiefs and TSKLH to inform them of the request and provided the draft application for review and comment. Further details on the communications sent from KSM Mining to Indigenous nations are provided in the Second Extension Application. KSM Mining did not receive comments from Indigenous nations on the Application.

KSM Mining received a letter of support for the extension from the Office of the Gitxsan Hereditary Chiefs on July 10, 2020. KSM Mining received a letter from NLG on March 18, 2021 stating that they are working to ensure that the rights and interests of the Nisga'a Nation, as set out in the Nisga'a Final Agreement, are sufficiently addressed in the extension application process and they do not oppose the request for a two-year extension of the Certificate.

5.2. EAO-Led Engagement

The EAO wrote to Indigenous nations, as described in section 2.2, on July 20, 2020 to advise them of the request from KSM Mining for an Emergency Variance and to inform them of the upcoming process to review both the rationale from KSM Mining regarding the effects of COVID on the ability to meet the Certificate deadline and on the application to extend the Certificate. Following the receipt of KSM Mining's Second Extension Application, the EAO wrote to these Indigenous nations again on August 21, 2020 inviting them to participate in the review of the Second Extension Application and inviting them to provide comments on the Second Extension Request. Of these nations, only Gitanyow provided detailed technical comments. As directed by the EAO, KSM Mining responded to these comments as part of its Comment Response Report, which the EAO provided to Indigenous nations. The EAO provided a draft of referral materials to Indigenous nations for review and comment. The EAO sought to achieve consensus on the findings and conclusions of this report, pursuant to Section 31(5) of the Act.

NLG provided comments to the EAO on September 18, 2020 stating that they had no comments on the Second Extension Application but reserved the right to provide comments later in the process. The EAO had a follow-up conversation with the NLG to discuss the process on November 2, 2020 and the NLG noted that they did not have any further comments to provide at that time but might do so on reviewing the EAO's draft report. The EAO received the March 18, 2021 letter from NLG to KSM Mining described above, indicating NLG did not oppose the extension. NLG also provided comments on the draft report on July 26, 2021, noting that it has no objections to the Application.

Tahltan wrote to the EAO on March 29, 2021, noting that its Lands Department had reviewed the application, had no concerns, and supported the proposed Certificate extension.

Gitanyow engaged extensively in the Second Extension Request and provided multiple rounds of detailed comments, which the Holder responded to as described above in section 4. The EAO also provided written responses to comments to Gitanyow and offered to meet or discuss issues further via phone or videoconference. The EAO sought to find appropriate opportunities for the consideration and resolution of Gitanyow's concerns, including as part of subsequent permitting processes.

TSKLH did not participate in the review or comment on the application, but wrote to the EAO on April 20, 2021, raising concerns about the engagement process to date and inquiring about the availability of capacity funding. TSKLH stated an extension should not be issued until meaningful consultation has occurred. The EAO suggested a call with TSKLH to understand their concerns with the request so the EAO could reflect these in the material to be provided to the decision maker. The EAO also communicated these concerns to KSM Mining, who provided a response to TSKLH regarding the efforts it made to engage TSKLH.

No comments were received from Simgiget'm Gitwangak on behalf of Lax Behlit and Xsu Gwin Yookhl of Gitxsan Nation or Gasax Loobit of Gitxsan Nation.

6.0 ENGAGEMENT WITH THE PUBLIC AND OTHER JURISDICTIONS

Eleven submissions were received during the public comment period, including the submission from SEITC, discussed below.

Comments were received supporting the extension. These commenters noted the severity of impacts from COVID, the rigour of the EA and permitting processes, and stated that allowing an extension sends an international message that the EA and permitting processes can be relied on for long-term stability. Commenters also noted the benefit of mining projects and associated jobs and revenue to the B.C. economy.

Other commenters raised a variety of concerns about the project and opposed the requested extension. One commenter submitted the Lynker memo regarding dam failure that was also submitted by Gitanyow and multiple commenters iterated support and concern for issues raised by Gitanyow, including implementation of the UN Declaration. Other concerns related to the tailings dam and the potential for downstream water quality and fisheries impacts and noted that KSM Mining has not yet met the Certificate condition of being able to effectively treat selenium. Commenters also raised concerns that meaningful engagement has not occurred with downstream Alaskan tribes and questioned the rationale KSM Mining provided regarding the severity of impacts of COVID on the Project. KSM Mining provided responses to these issues in its Comment Response Report and issues relating to the tailings dam, water quality and the UN Declaration are included in the summary of issues in section 4 above.

Regarding engagement with Alaska, KSM Mining stated it submitted information letters to over 30 Alaskan groups in 2010 and 2011 and held consultations in 2011 with Alaskan stakeholders in Alaska, which Southeast Alaska Conservation Council (SEACC) and members of various southeast Alaskan tribes attended. Over the period 2013-2016, communications and meetings between KSM Mining and SEACC took place, as well as with some Alaskan aboriginal groups, namely the Tlingit-Haida Central Council of Alaska and the Southeast Alaskan Indigenous Transboundary Tribal Council.

KSM Mining stated that it has continued to engage Alaska interests since the issuance of federal and BC environmental assessment decisions in 2014, despite the fact there was no legal obligation to consult Alaskan stakeholders.

On August 24, 2020 and September 21, 2020, SEITC sent correspondence to the Minister and Acting CEO, respectively, raising concerns about KSM and its potential for downstream impacts on member Tribal Nations of SEITC, as well as the Second Extension Request. SEITC expressed opposition to an extension and indicated interest in the review. The EAO invited SEITC to submit comments in the public comment period, offered to meet, and shared a draft of this report with SEITC with them for review and comment. The EAO did not receive a response from SEITC.

In their submission to the public comment period, SEITC expressed its view that the project's economics are fundamentally flawed and a two-year extension will not generate any additional interest by the investment community. SEITC noted the strong prices of metals stocks calls into question the statements from KSM Mining that COVID is impacting its ability to secure an investor. SEITC raised concerns around the water treatment technology proposed for KSM. SEITC's primary concerns were regarding potential transboundary effects, which are discussed in section 4.7 above.

The EAO has sought to provide opportunity for SEITC to be informed of and participate in the Second Extension Request review. In consideration of potential public interest, including initial concerns raised by SEITC, the EAO held a public comment period on the request. The EAO required KSM Mining to respond to the comments from SEITC, and the EAO also responded directly to SEITC. The EAO has posted material received throughout this process to the EAO's Project Information Centre website. The EAO has also shared a draft of this report and offered to meet with SEITC representatives to discuss any outstanding questions or concern. The EAO did not receive comments on the draft report or a response to the offer to meet regarding KSM.

7.0 EAO CONSIDERATIONS AND CONCLUSIONS

7.1. Emergency Variance

The Act clearly lays out the considerations for a decision under Section 46. In the context of this specific request, the questions to be considered can be understood to be:

- Is there an emergency or comparable circumstance that warrants varying the Act to allow for a two-year extension to the KSM Certificate?
- Is such an extension in the public interest?
- Does the requested extension address the impacts or risks caused by the emergency (or comparable circumstance) to KSM?

If a decision is made to use Section 46 to vary the requirements of the Act, then a decision may be made whether to extend the Certificate, in accordance with Section 31 of the Act and the Certificate Extension Policy.

7.1.1. Relation to the Emergency

In considering if the challenges the project currently faces are directly related to the emergency, the EAO focused on the following questions, discussed in the letter of May 25, 2020 to KSM Mining:

- Are the delays to the 2020 field season and the start of project construction resulting from COVID related to the project's inability to meet its 2024 substantial start deadline;
- How are the affected field seasons critical for reaching a 2024 substantial start, and why could the lost time not be made up in the coming years; and
- How is the lack of willingness of investors to commit to the project directly related to the COVID-19 emergency and how did this directly effect the project's ability to meet its substantial start deadline.

As described above in sections 4 and 6, Gitanyow, SEITC and some public commenters expressed the view that the challenges faced by KSM Mining in advancing construction of the project were not the result of COVID and that the financial and logistical impacts of COVID were not as severe as the company presented. These commenters pointed to the difficulties the company has had in securing financing prior to COVID, strong metals stock prices during COVID, and ongoing activity of other minerals exploration and mining companies.

The information KSM Mining provided regarding these questions was summarized in section 3.1.1 and 3.1.2. This information clarified that KSM Mining has identified that advancing construction of the MTT as a key component to achieving its substantial start milestones. The information presented by KSM Mining also showed how COVID has delayed KSM Mining's ability to advance work geotechnical and subsequently permitting needed to begin work on the MTT, which could jeopardize the ability of KSM Mining to achieve substantial start. KSM Mining also presented information showing that it would not be possible to make up this lost time due to the conditions at the project site.

KSM Mining also clarified the role of a financial partner in advancing the project and how COVID has impacted discussion with potential partners. This included travel restrictions preventing potential investors from visiting the project, which is part of the necessary due diligence to be conducted by potential investors, as well as information showing that mergers and acquisitions, including the type of large investment required by KSM, have been impacted by COVID as companies focus on internal operations and conserving capital in the uncertain climate created by COVID.

At the same time, KSM Mining also noted that it has identified a path to beginning construction and achieving its substantial start milestones in absence of finding a partner. KSM Mining stated that raising the additional funds would be a challenge but not a barrier to reaching its substantial start goals. The EAO therefore understands that COVID interfered with the ability of KSM Mining to negotiate agreements with potential partners, but this, on its own, has not precluded KSM Mining from achieving its substantial start milestones. The EAO notes that the impacts to on the ground operations at KSM from the late start in the field work due to the COVID-related restrictions and subsequent reduced workforce have resulted in critical delays in 2020 and 2021 to project workplans identified in reaching KSM Mining's substantial start milestones, which cannot be made up between now and 2024.

The EAO also considered how a two-year extension would affect the ability of KSM Mining to reach its substantial start milestones. KSM Mining stated that it was difficult to say definitively that a two-year extension would eliminate the timing risk to the Certificate, noting the uncertainty associated with achieving a substantially started determination and permitting timelines. The EAO, therefore, considers that an extension would be helpful to KSM Mining in offsetting the delays attributed to the COVID pandemic but would not be certain to result in KSM Mining being able to substantially start the project.

7.1.2. Public Interest

The EAO considered whether a variance under Section 46 of the Act would be in the public interest.

KSM Mining stated that an extension would be in the public interest because KSM is a major investment project for B.C. and would contribute significantly to the Canadian economy through economic activity, employment and fiscal revenues. KSM Mining noted that KSM would provide important benefits to Indigenous communities through revenue sharing agreements, educational employment and contracting opportunities. Given the risks caused by COVID that the Certificate might expire before substantially started is achieved, KSM Mining submitted that a two-year extension to allow the continued advancement of a project was in the public interest, particularly given the need for strong economic activity in the province, post-COVID.

The EAO notes that, when the original EA was conducted, the ministers weighed the balance of effects from the Project and concluded that the effects were acceptable at the time, issuing the project a Certificate. The [Reasons for Ministers' Decision](#) stated that "the EA Certificate includes legally enforceable conditions which gives us confidence to conclude that

the Project will be constructed, operated and decommissioned in a way that no significant adverse effects are likely to occur.”

The EAO acknowledges that a purpose of Act is to support reconciliation with Indigenous peoples in B.C. by supporting the implementation of the UN Declaration and that B.C. has committed to implement the UN Declaration and passed the *Declaration of the Rights of Indigenous Peoples Act*. The EAO has been engaging in meaningful consultation with the Indigenous nations regarding the Second Extension Request to attempt to achieve consensus on issues of concern and ultimately the decision to be made consistent the UN Declaration.

As described above in sections 4 and 6, Gitanyow, SEITC and some public commenters did not view an extension as being in the public interest, noting concerns regarding the risk of a large tailings dam, downstream water quality and engagement processes to date. Other public commenters supported an extension, noting the benefit of mining projects to the B.C. economy. The EAO notes that NLG did not oppose an extension and Tahltan supported an extension.

The EAO is of the view that no new information has been presented through the course of the review of the Second Extension Request of a nature or magnitude that would necessitate the Minister to re-consider the balance of effects considered in 2014, and which led Ministers to conclude that the project was in the public interest at the time of issuing the Certificate.

7.2. Effects of the Extension

Under the process set out for the review of the Second Extension Request, the CEAO will consider a Second Extension Application in accordance with Section 31 of the Act and the EAO's Certificate Extension Policy, if an Emergency Variance is issued that allows for this extension.

The EAO considered the Second Extension Application from KSM Mining, which included information regarding any new information that has come to light since the original Certificate was granted that could change the conclusions reached in the EAO's assessment of the project.

Gitanyow, SEITC and some public commenters expressed the view that new information regarding risks from the tailings dam, water quality, climate change, baseline data, and the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) could result in a change to the conclusions from the EA; and therefore, the extension request should be declined. The EAO notes that the issues identified by Gitanyow regarding water quality, climate change, baseline data and the UN Declaration were also considered in the First Extension Request and the EAO's understanding of these issues remains the same since that time. The EAO considered the information brought forward regarding these and all issues, in sections 4 and 6 of this report, and was not of the view that this information would result in a change to the effects, as assessed during the EA.

The EAO has been engaging in meaningful consultation with Indigenous nations regarding the Second Extension Request to attempt to achieve consensus on issues of concern and ultimately the decision to be made pursuant to Section 31(5) of the Act. The EAO also notes that the upcoming permitting processes would provide a venue for any new information on these issues to be thoroughly considered and addressed. These processes would include engagement with Indigenous nations on any new information and issues.

In addition, the EAO considered whether any additional conditions are appropriate in accordance with the Certificate Extension Policy, which sets out that the EAO will take into consideration, amongst other things, potential new significant adverse effects, relevant new statutes, regulations, case law, policy, practices or guidelines that have arisen since the granting of the certificate. Considering that it is now common practice for Certificates to include conditions targeted at mitigating effects to the human environment where warranted, including effects associated with large worker populations, the EAO is proposing conditions that would require the preparation of two new plans: a Health and Medical Services Plan (Condition 46.) and a Community Effects Management Plan (Condition 47.), as described in section 4.2.

In addition, the EAO is also recommending four new conditions (42. Document Review, 43. Document Updates, 44. Plan Development, and 45. Consultation) be added to the Table of Conditions in the Certificate. These conditions have been standard in Certificates since at least 2017 and are necessary to ensure the current standards for the review, development and updating of management plans apply to the Certificate, and that current requirements regarding consultation processes with Indigenous nations or other parties are followed. These conditions also establish the EAO's authority to require changes to management plans if they are determined to not be meeting objectives. These conditions would provide the EAO with an additional level of regulatory oversight to require that management plans remain current and reflect the best available science and management practices. The EAO proposes the addition of these plans considering the time that has passed since the Certificate was issued and, considering that the extension being requested is for a term that goes beyond the ten years typically allowed for under the Act (2002). Finally, the EAO is recommending an addition to the Certificate that enables the EAO to direct KSM Mining to consult with any government agency or Indigenous nation on the development of a plan within the Table of Conditions in the Certificate. This condition enables the EAO, if necessary, to adapt consultation requirements to new information on the appropriate parties to be consulted since the issuance of the Certificate. The EAO is of the view that adding these conditions in the Certificate would provide additional confidence that the conclusions of the original EA remain valid.

7.3. Conclusions

In this report, the EAO has summarized the following information:

- The information contained in KSM Mining's Request for an Emergency Variance and Extension Application and other material submitted by KSM Mining during the course of this review;
- KSM Mining's engagement with Indigenous nations;
- The EAO's engagement with Technical and Indigenous Reviewers;
- Comments on the Second Extension Application from Technical and Indigenous Reviewers, the public and SEITC, and KSM Mining's responses to those comments;
- KSM Mining's requirements under the Certificate to mitigate and monitor the effects of the Project;

The EAO is satisfied that:

- COVID has been an emergency since March 2020;
- COVID has impacted on the ground operations resulting in critical delays to KSM project works, which cannot be made up between now and 2024;
- A two-year extension would help offset the time lost due to delays imposed by COVID;
- The clarifications requested by technical reviewers were adequately and reasonably addressed by KSM Mining;
- The Emergency Variance and Second Extension would not result in a change to the effects assessed during the EA;
- The Emergency Variance and Second Extension are unlikely to cause incremental or additional negative effects to the Indigenous nations or their rights; and
- Within the scope of the Second Extension Review, and the EAO's authority, the EAO sought consensus on concerns that Indigenous nations raised with the Second Extension and draft report; and
- The provincial Crown has fulfilled its statutory and constitutional obligations owed to Indigenous nations relating to the issuance of an Emergency Variance and second extension to the Certificate.

Based on the above considerations, including the views received from Indigenous nations, the EAO presents the following **three options** for consideration by the Minister and the CEAO:

Option 1 – Issue an Order to allow for an emergency variance and issue an order to extend the Certificate

The Minister issues an order under Section 46 to vary Section 31(4) of the Act to allow for an additional extension of up to two years for the KSM Certificate.

The CEAO of the EAO issues an Order under Section 31(4) of the Act to extend the Certificate for KSM for two years, noting that all other conditions and requirements arising from the original Certificate remain in effect for the duration of the Certificate, and may impose additional conditions. If the CEAO elects to extend the Certificate for KSM, based on the above review, the EAO would recommend imposing the proposed conditions in Appendix A of this report. With the extension, the Certificate expiry date would become July 29, 2026.

Option 2 – Issue an Order to allow for an emergency variance and decline to extend the Certificate

The Minister issues an order under Section 46 to vary Section 31(4) of the Act to allow for an additional extension of up to two years for the KSM Certificate.

The CEAO declines to issue an Order under Section 31(4) of the Act to extend the Certificate for KSM. Without the extension, the Certificate will expiry on July 29, 2024.

Option 3 – Do not issue an order to allow for an emergency variance

The Certificate Holder would have until July 29, 2024 to advance construction of the Project. A substantial start determination would be made around this date. If KSM was found to be substantially started, the Certificate would remain in effect for the life of the Project, subject only to suspension or cancellation for the reasons listed under Section 56 of the Act. If the project was not found to be substantially started, the Certificate Holder would have to reapply for and obtain a new environmental assessment certificate in order to proceed with the project. Under the Act, options could be considered to utilize existing information from the previous environmental assessment as appropriate.

APPENDIX A: PROPOSED CONDITIONS

1. Sections 10.4.5, 10.9.3 and 10.10.5 in the Certified Project Description in Schedule A of the Certificate are amended by adding "and the Northern Health" at the end of each of those sections.
2. The following is added to Conditions 14 and 34 of the Table of Conditions in Schedule B of the Certificate: "The plan must be developed in consultation with the Northern Health."
3. The following is added to Condition 41 in the Table of Conditions in Schedule B of the Certificate: The Proponent must develop any plan specified in this Table of Conditions in consultation with any other government agency or Indigenous nation specified by the EAO.
4. The acronyms and definitions set out in Schedule A to this order are added to the section entitled "Acronyms and Definitions" in the Table of Conditions in Schedule B of the Certificate.
5. Conditions 42 to 47, set out in Schedule A to this order, are added to the Table of Conditions in Schedule B of the Certificate.

Definitions

Qualified Person	A person who has the training, experience, and expertise in a discipline relevant to the field of practice set out in the condition.
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Acronyms

ENV	Ministry of Environment and Climate Change Strategy
EMLI	Ministry of Energy, Mines and Low Carbon Innovation
NH	Northern Health
RDKS	Regional District of Kitimat-Stikine

42. Document Review

- 42.1 The requirements within this condition apply to the plans required under conditions 9, 14, 15, 16, 17, 22, 23, 24, 25, 26, 27, 28, 32, 34, 35, 40, 46, and 47 of the Certificate.
- 42.2 The EAO may, within 45 days of receiving a plan, notify the Holder that:
- a) the EAC Holder may implement the actions in the plan with or without revisions; or
 - b) a revised plan must be provided for approval of the EAO.
- 42.3 If a notification provided by the EAO to the EAC Holder sets out revisions that are required to a plan, the Holder must change the plan in accordance with the notification.
- 42.4 If the EAO does not provide a notification to the EAC Holder within the period referred to in subsection 42.2, the Holder may implement the plan.

43. Document Updates

43.1 The requirements within this condition apply to the plans required under conditions 9, 14, 15, 16, 17, 22, 23, 24, 25, 26, 27, 28, 32, 34, 35, 40, 46, and 47 of the Certificate.

43.2 The EAC Holder may, or the EAO may require the EAC Holder to, make changes to a plan if the EAO determines that the implementation of the plan is not:

- a) meeting one or more objectives set out in the relevant condition or in the purpose and objectives set out in the plan or report as required by paragraph 44.2(a);
- b) having the effects, set out in the plan or report, that are contemplated or intended; or
- c) consistent with changes in industry best practices or technology.

44. Plan Development

44.1 The requirements within this condition apply to the plans required under conditions 9, 14, 15, 16, 17, 22, 23, 24, 25, 26, 27, 28, 32, 34, 35, 40, 46, and 47 of the Certificate.

44.2 At a minimum, the plan must include the following information:

- a) purpose and objectives of the plan;
- b) roles and responsibilities of the EAC Holder, project personnel and any contractors employed for the purposes of implementing the plan;
- c) names and, if applicable, professional certifications and professional stamps, of those responsible for the preparation of the plan;
- d) schedule for implementing the actions in the plan throughout the relevant project phases;
- e) how the effectiveness of any mitigation measures will be evaluated including the schedule for evaluating effectiveness;
- f) how the EAC Holder will implement adaptive management to address effects of the Project if monitoring required under the plan shows that those effects:
 - i. are not being mitigated to the extent contemplated in the Application; or
 - ii. are different than those predicted in the Application;
- g) schedules and methods for the submission of reporting to specific agencies and Indigenous Nations, and the form and content of those reports;
- h) process and timing for updating the plan, including any consultation with agencies and Indigenous Nations that would occur in connection with such updates;
- i) description of baseline information that will be used to support monitoring of the effectiveness of mitigation;
- j) methods, location, frequency, timing and duration of monitoring; and
- k) scope, content and frequency of reporting of the monitoring results.

45. Consultation

45.1 Where the EAC Holder is required to engage or consult a party or parties regarding the content of a plan or to develop a plan in consultation with a party or parties, the EAC Holder must, to the satisfaction of the EAO:

- a) provide written notice to each such party that:
 - i. includes a draft of the plan;
 - ii. invites the party to provide its views on the content of the plan; and
 - iii. indicates:
 - A) if a timeframe for providing views to the EAC Holder is specified in the relevant condition of this EAC, that timeframe; or
 - B) if a timeframe for providing views to the Holder is not specified in the relevant condition of this EAC, a reasonable period during which the party may submit views to the EAC Holder;
- b) undertake a full and impartial consideration of the views and other information provided by a party;
- c) provide a written explanation to each such party that provided views as to:
 - i. how the views and information provided by the party have been considered and addressed in a revised version of the plan; or
 - ii. why the views and information have not been addressed in a revised version of the plan;
- d) maintain a record of consultation with each party regarding the plan; and
- e) provide a copy of the consultation record to the EAO, the relevant party, or both, upon the written request of the EAO or the party no later than 15 days after the Holder receives the request, unless otherwise authorized by the EAO.

46. Health and Medical Services Plan

46.1 The EAC Holder must retain a Qualified Person with a minimum of five years' relevant experience in the planning and delivery of health care services in remote communities, unless otherwise authorized by the EAO, to develop a Health and Medical Services Plan.

46.2 The plan must be developed in consultation with Tahltan Nation, Nisga'a Nation, Tsetsaut Skii km Lax Ha, NH, RDKS, and District of Stewart. Following development, the Holder must provide a draft plan to the EAO, Tahltan Nation, Nisga'a Nation, Tsetsaut Skii km Lax Ha, NH, RDKS, and District of Stewart. for review a minimum of 45 days prior to when a combined total of 500 or more project employees or contractors occupies one or more Project work camps, unless otherwise authorized by the EAO.

46.3 The plan must follow the "Health and Medical Services Plan Best Management Guide for Industrial Camps" (Northern Health, March 2015, or as updated or replaced from time to time).

46.4 The plan must include at least the following:

- a) description of a process for communication and coordination with the NH, BC Ambulance Service and local health service providers on matters including, but not limited to patient care and transfer, data collection, and reporting;
- b) a communicable disease control plan that follows the "Communicable Disease Control Plan Best Management Guide for Industrial Camps" (Northern Health, 2017, or as updated or replaced from

time to time) and “Protecting Industrial Camp Workers, Contractors, and Employers Working in the Agricultural, Forestry, and Natural Resource Sectors During the COVID-19 Pandemic” (Northern Health, 2020, or as updated or replaced from time to time);

- c) overdose prevention and response measures that follow the “Health and Safety During the Opioid Overdose Emergency: Northern Health’s Recommendations for Industrial Camps” (Northern Health, August 2018, or as updated or replaced from time to time); and
- d) description of how the Holder will monitor and report on the effectiveness of the plan.

46.5 The plan, and any updates made pursuant to subsection 43.2 or paragraph 44.2(h), must be implemented, under the direction of a Qualified Person retained by the Holder and to the satisfaction of the EAO, after the plan is provided pursuant to subsection 46.2 and throughout Construction, Operations, and Closure.

47. Community Effects Management Plan

47.1 The Holder must retain a Qualified Person with a minimum of five years’ relevant experience in the management of social effects associated with industrial projects in remote communities to develop a plan for the management of social and economic effects associated with the Project.

47.2 The plan must be developed in consultation with Tahltan Nation, Nisga’a Nation, Tsetsaut Skii km Lax Ha, NH, RDKS, and District of Stewart. Following development, the Holder must provide a draft plan to the EAO, Tahltan Nation, Nisga’a Nation, Tsetsaut Skii km Lax Ha, NH, RDKS, and District of Stewart for review a minimum of 45 days prior to when a combined total of 500 or more project employees or contractors occupies one or more Project work camps, unless otherwise authorized by the EAO.

47.3 The plan must include at least the following:

- a) identification of the communities likely to experience social or economic effects associated with the Project that are to be addressed in the plan;
- b) monitoring and mitigation measures for potential adverse social and economic effects on communities identified in paragraph 47.3(a) associated with the project related to:
 - i. impacts on community services;
 - ii. impacts on population and demographics;
 - iii. impacts on crime and socially disruptive behaviour; and
 - iv. impacts on community and family well-being;
- c) description of how Project-related impacts to vulnerable populations will be minimized and gender-based analysis has been applied in the development of the plan; and
- d) description of communication, engagement and grievance-resolution processes with the public in the communities identified in paragraph 47.3(a) to address Project-related social and economic issues or concerns.

47.4 The plan, and any updates made pursuant to subsection 43.2 or paragraph 44.2(h), must be implemented, under the direction of a Qualified Person retained by the EAC Holder and to the satisfaction of the EAO, after the plan is provided pursuant to subsection 47.2 and throughout Construction, Operations, and Closure.