

From: [Stephen.Mills](#)
To: [Sandy.Silver](#)
Subject: Fwd: FW: Decision Bodies' determinations regarding YESAB Project No. 2017-0083: BMC's KZK Project
Date: Saturday, January 16, 2021 10:22:39 AM
Attachments: [Blakes January 15, 2021 letter re KZK Project.pdf](#)

FYI

Sent from my mobile device

----- Forwarded message -----

From: Samantha.Paterson
Date: January 16, 2021 at 10:19:20 AM MST
Subject: FW: Decision Bodies' determinations regarding YESAB Project No. 2017-0083: BMC's KZK Project
To: Stephen.Mills
Cc: Angela.Troke



Blake, Cassels & Graydon LLP
 Barristers & Solicitors
 Patent & Trade-mark Agents
 595 Burrard Street, P.O. Box 49314
 Suite 2600, Three Bentall Centre
 Vancouver BC V7X 1L3 Canada
 Tel: 604-631-3300 Fax: 604-631-3309

Roy Millen*

Partner

Dir: 604-631-4220

roy.millen@blakes.com

January 15, 2021

VIA EMAIL

Reference: 190432/1

*Law Corporation

David Carter, Regulatory Manager
 Fish and Fish Habitat Protection
 Pacific and Yukon Region
 Fisheries and Oceans Canada
 Suite 200, 401 Burrard Street
 Vancouver, BC V6C 3L6

Rinaldo Jeanty, Director
 General Explosives Safety and Security Branch
 Lands and Minerals Sector
 Natural Resources Canada
 550 Booth Street
 Ottawa, ON K1A 0E4

Keith Maguire, Director
 Major Projects Yukon
 Executive Council Office
 Government of Yukon
 1191 Front Street
 Whitehorse, YK Y1A 0K5

RE: Final Screening Report and Recommendation ("Final Report") of the Yukon Environmental and Socio-Economic Assessment Board ("Board")

Dear Sirs/Mesdames:

76(1)

Blakes

76(1)

51236504.8

Blakes

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Blakes

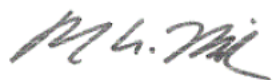
76(1)

51236504.8

The logo for the law firm Blakes, written in a stylized, cursive script.

76(1)

Yours truly,

A handwritten signature in dark ink, appearing to read "R. W. Millen".

Roy W. Millen

cc. RRDC Chief and Council (via BMC)
LFN Chief and Council (via BMC)
YESAB (via BMC)
client

76(1)

51236504.8

From: [Amanda Leslie](#)
To: larry.bagnell@parl.gc.ca
Cc: [Sandy.Silver](#); [premier](#); Melanie.Joly@parl.gc.ca; [Emily.Farrell](#); Dan.Vandal@parl.gc.ca; carolyn.bennett@parl.gc.ca; [Ranj.Pillai](#); [Kim.Stavert](#); [Stephen.Mills](#); [Paul.Moore](#)
Subject: From Mr. Brad Thrall - Support of YESAB's Positive Final Draft Screening Report for BMC Minerals Ltd. - KZK Project in S.E. Yukon
Date: Tuesday, January 19, 2021 7:12:41 AM
Attachments: [YPG Support Letter for BMC_Hon. Larry Bagnell FNL.pdf](#)
[ATT00001.htm](#)

*** External email: Do not click on links or attachments except from trusted senders. ***

Good morning Mr. Bagnell.

Attached here, please find a letter in support of the Yukon Environmental and Socio-economic Assessment Board's positive *Final Draft Screening Report* for BMC Minerals Ltd. Kudz Ze Kayah Project.

From Mr. Brad Thrall. Chair of the Yukon Producers' Group and President of Alexco Resource Corp.

Thank you and best regards,
Amanda



YUKON PRODUCERS' GROUP

Delivery via email

Hon. Larry Bagnell
Member of Parliament for the Yukon
Parliamentary Secretary to the Minister of Economic Development and Official Languages
(Canadian Northern Economic Development Agency)
Suite 204 - 204 Black Street
Whitehorse, Yukon Y1A 2M9

**Re: Support for YESAB's Positive Final Draft Screening Report
for BMC Minerals Ltd. Kudz Ze Kayah Project in Southeast Yukon**

Dear. Mr. Bagnell,

On behalf of the **Yukon Producers' Group**, I am reaching out to garner your support and advocacy for the BMC Minerals Ltd. (BMC Minerals) Kudz Ze Kayah (KZK) Project to proceed to the final phase of permitting and licensing, as was recommended by the Yukon Environmental and Socio-economic Assessment Board (YESAB) on October 21, 2020.

As you are aware, YESAB's positive *Final Draft Screening Report* recommends that BMC Minerals' proposed mine development at the company's 100 per cent-owned KZK Property in Southeast Yukon be allowed to proceed under s. 58(1)(b) of YESAA.

The result of a rigorous environmental and socio-economic review process spanning almost four years, the YESAB *Final Draft Screening Report* details recommended mitigation and monitoring measures for BMC Minerals to undertake; which will be subsequently regulated within the Project's permitting and licensing phases by the applicable territorial and/or federal regulators.

The Project is currently in the Decision Body-evaluation phase in which Yukon and Canada review the recommendations, consult with affected First Nations and then either sign a Decision Document accepting the report or refer the Project back to YESAB for additional assessment. Our concern is the federal government may be considering the latter action.

Alexco Resource Corp. Alkan Air Ltd. ALX Exploration & Mining Supplies
Cobalt Construction Inc. Minto Explorations Pelly Construction Ltd.
Victoria Gold Corp. Western Copper and Gold Corp.

Further delays, such as a Decision Body returning YESAB's recommendations for the KZK Project back to the board, will have dire consequences for the Project and for the Yukon's exploration and mineral development investment climate.

The BMC Minerals' team is, and has always been, committed to comprehensive and meaningful consultation with the Project's affected Kaska Nation governments, communities and citizens since acquiring the property in 2015. It should be noted that BMC Minerals met with Kaska First Nations before purchasing the property and these conversations helped convince BMC Minerals that the Yukon (and the KZK Property) was the best option of several around the world the company considered.

The Yukon Producers' Group, whose membership is made of Alexco Resource Corp., Victoria Gold Corp, Minto Explorations, Western Copper and Gold Corp., Pelly Construction Ltd., Alkan Air Ltd., Cobalt Construction Inc., and ALX Exploration and Mining Supplies, has long advocated for a timely, efficient and consistent assessment and permitting process in the territory and appreciates YESAB's best efforts to balance, within its mandate and recommendations, what is best for the territory.

Returning the KZK Project to YESAB at this stage in the process would not serve to promote certainty; particularly during this time of significant global disruption.

A Project's ability to work through the Yukon's environmental and socio-economic review process is critical to certainty for all Yukon citizens, businesses and governments and we sincerely hope the recommendations in YESAB's *Draft Final Screening Report* are accepted by Canada's applicable Decision Bodies. This will allow the KZK Project to move into the permitting phase; one that provides significant opportunity, and mandates obligation, for consultation with First Nations, regulators, stakeholders and the public.

I encourage you to reach out to discuss this matter further at your convenience and thank you in advance for your faith in, and commitment to, certainty within the Yukon's environmental and socio-economic review process.

Sincerely,



Brad Thrall
Chair, Yukon Producers' Group
President, Alexco Resource Corp.
T: 604.633.4888
E: bthrall@alexcoresource.com

Alexco Resource Corp. Alkan Air Ltd. ALX Exploration & Mining Supplies
Cobalt Construction Inc. Minto Explorations Pelly Construction Ltd.
Victoria Gold Corp. Western Copper and Gold Corp.

CC:

Hon. Melanie Joly, Minister Responsible for the Canadian Northern Economic Development Agency

Hon. Sandy Silver, Yukon Premier

Hon. Dan Vandal, Minister of Northern Affairs

Hon. Carolyn Bennett, Minister of Crown-Indigenous Relations

Hon. Ranj Pillai, Minister of Yukon Energy, Mines & Resources and Economic Development

Stephen Mills, Deputy Minister, Yukon Executive Council Office

Paul Moore, Deputy Minister, Yukon Energy, Mines & Resources

Alexco Resource Corp. Alkan Air Ltd. ALX Exploration & Mining Supplies
Cobalt Construction Inc. Minto Explorations Pelly Construction Ltd.
Victoria Gold Corp. Western Copper and Gold Corp.

Amanda Leslie

Yukon Producers' Group
867.334.4770

From: [Stephen.Mills](#)
To: [Angela.Troke](#)
Subject: ISSUE ALERT KZK Referral Draft 2021-01-19_sp
Date: Wednesday, January 20, 2021 10:38:08 AM
Attachments: [ISSUE ALERT KZK Referral Draft 2021-01-19_sp.doc](#)

Please have comments addressed.

DRAFT [remove on final version]

ISSUE ALERT

EXECUTIVE COUNCIL OFFICE

Formatted: English (Canada)

Issue: Government of Canada decision bodies are referring the recommendation issued by the Yukon Environmental and Socio-economic Assessment Board's Executive Committee (EC) ~~in the final screening report~~ for the BMC Minerals Kudz Ze Kayah Project back to the EC for reconsideration. The Yukon government (YG) ~~prefers to accept~~ is satisfied with and supports the recommendation ~~and have the project proceed to the regulatory process~~ issued by the EC.

Date: January 20, 2021

Other departments affected: Energy Mines and Resources

Background:

- On October 21, 2020, the EC released the final screening report for the Kudz Ze Kayah ~~Project which~~ Project, which recommended the project proceed ~~to the regulatory phase of development~~ subject to specific terms and conditions.
- YG, Fisheries and Oceans Canada and Natural Resources Canada are decision bodies and are required to prepare decision document(s) for the project.

74(1)(a), 76(1)

- YG is satisfied the EC level screening is appropriate for a project of this scale and the recommendation issued by the EC is adequate.

Commented [S1]: 74(1)(a)

Messages:

DRAFT [remove on final version]

- The Government of Yukon does not agree with the decision to refer the project back to the Executive Committee for reconsideration.
- We feel the YESAA process has resulted in a comprehensive review and analysis of the project, and the recommendation to proceed with additional mitigations and monitoring is reasonable.
- We remain committed to consulting on the project to ensure potential impacts to Kaska Nations asserted rights are addressed.

Spokesperson: Premier Sandy Silver

Reviewed by: Keith Maguire, Director of Major Projects Yukon
Samantha Paterson, ADM of Corporate Programs and Intergovernmental Relations
Jeff Ford, ADM

Approved by: Stephen J. Mills, Deputy Minister

Circulate to:

- ☐ Cabinet Communications
- ☐ ECOinfo
- ☐ Other [list]

From: [Stephen.Mills](#)
To: [Sandy.Silver](#)
Cc: [Janet.Moodie](#); [Emily.Farrell](#)
Subject: Regulatory Consultation
Date: Thursday, January 21, 2021 9:28:09 AM
Attachments: [Regulatory Consultation.docx](#)

Additional information provided to Canada about the consultation processes during the regulatory phase.

Regulatory Consultation

Below is a summary of steps in regulatory consultation that would take place following a positive Decision on a Screening Report. The steps outlined below demonstrate the depth of consultation that has to be conducted in a major mine licencing process.

Under the Quartz Mine Licencing:

- During assessment, a technical staff member from the Mineral Resources Branch is a member of the 'Corporate Project Team'. They will advise and assist the team in identifying any regulatory items that can and should be addressed during the licencing phase. Examples include specific limitations to activities, timing windows for activities, and operational plan terms that direct a company to monitor, avoid, or and/or take specific actions to reduce an impact.
- Following assessment, as the regulator of the Quartz Mine Licensing process, the Mineral Resources Branch will often enter into an agreement (consultation plan, memorandum of understanding, or letter of understanding) with individual rights-bearing groups with respect to what Mineral Resources Branch consults on and how to engage throughout the life of the project. For example, a consultation plan could include the format, timing, content, and mechanism for how input of certain types are utilized, and when inputs influence plan development and approval. A consultation plan is signed by all affected parties, then implemented. It, in and of itself, does not replace the direct discussions on impacts to rights, and mitigations recommended to those impacts.
- Consultation, per an agreed plan, directly addresses impacts to rights that arise from the specific development plans associated with a licence, or a project agreement constructed to address a recommendation.
- Once Mineral Resources Branch receives a Quartz Mining Application for a major project, and after the issuance of a decision document, all required development/environmental plans (which comprise the application) are sent to each rights-bearing group for review and comment. If a meeting is requested or additional review time is requested in advance of submitting comments, this will be accommodated to the best of Mineral Resources Branch's ability. Once comments are received, Mineral Resources Branch will also arrange a workshop with the rights-bearing group and company, if deemed necessary, to discuss any concerns raised and changes that the company needs to make before Mineral Resources Branch can draft the licence. Where input is not directly used, this is communicated back, with rationale as to why it was not incorporated (most often this is due to that input already being considered and utilized in an earlier step, or different form, such as a different plan).
- A draft licence is written once Mineral Resources Branch has received adequate plans. The draft licence is sent out to the rights-bearing groups for review and comment. With this draft licence, Mineral Resources Branch also sends out the draft security determination along with its consultant's report(s). A meeting may be required to discuss the security determination and confirm terms and conditions in the licence.

Regulatory Consultation

- Once Mineral Resources Branch comes to agreement on the Quartz Mine Licence terms and security amount, the licence is finalized and a copy sent to both the company and rights-bearing groups.
- Throughout the course of the licence, the Quartz Mine Licence will often require updates to the plans based on activities Mineral Resources Branch know will be occurring, additional research that Mineral Resources Branch wants completed, or in the case of the closure plan, on a regular schedule to maintain adequate financial security throughout the life of the project. Each of these plan reviews are sent to the rights-bearing group for review and comment, and to arrange meetings between parties or bilaterally with the rights-bearing group as warranted. As an example, Reclamation and Closure Plans and cost estimates are reviewed every two years.
- The Director of Mineral Resources Branch is the delegated authority for approval of development/environmental plans. A rights-bearing group does not have approval authority via the Quartz Mine Licencing. However, their input, and the use and consideration of that input is communicated.
- Consultation can take the form of letters exchanged, direct engagement by the regulator with a rights-bearing group's appointees, or with the community directly. In direct community meetings, summaries of what was heard are developed and confirmed with the group representatives.
- Input submitted by a rights-bearing group to the Assessment (via the engagement windows provided by the Screening Committee) is also referred to and considered. While there is often overlap between what was heard in the YESAA process, and the regulatory process, there are new issues surfaced following assessment that need to be addressed in this last phase.

Under the Water Licence (Non-settled First Nations¹):

- The Yukon Water Board relies on an application for a water licence and interventions made in writing and during a public hearing process in its deliberations before issuing a water licence.
- The Yukon Water Board sends notifications of public comment periods to all First Nations if the project is in their traditional territory, going above what the Waters Act requires.
- Any party may identify themselves as an intervener in the Yukon Water Board process, including any First Nation. The Yukon Water Board receives input from interveners during the public comment stage and additionally when public hearings are held. All are treated equally once they intervene due to natural justice procedural fairness.
- The Yukon Water Board advertises the opportunity to make representations before the board and makes all application information available through the Online Registry, Waterline. Annual reports and inspection reports are also posted publicly on Waterline.

¹ The Yukon Water Board has additional obligations under Chapter 14 of the UFA for self-governing First Nations

Regulatory Consultation

- The Yukon Water Board follows the two-year requirement for Reclamation and Closure updating, including costing. A paper or public hearing is conducted, where previous interveners may be invited to comment on the revised plans. This Reclamation and Closure Plan should be the same plan submitted to Mineral Resources Branch on the same schedule. A rights-bearing group may offer input during this public process.
- Should anyone express concern about activities on a site that appear to be contrary to plans, terms or conditions, the Yukon Water Board may request an Inspector to specifically inspect and report on activity by the proponent.
- Requests to amend an existing water licence may trigger a new assessment (giving interveners a clear path for input), or a hearing of some nature that presents interveners a path for input.

From: [Samantha.Paterson](#)
To: [Stephen.Mills](#)
Subject: KZK Materials
Date: Thursday, January 21, 2021 1:35:10 PM
Attachments: [Communications strategy KZK 2021_01_21.doc](#)
[Letter - 2021_01_21 YG Response to screening report.docx](#)
[ISSUE ALERT KZK Referral Draft 2021-01-19_sp \(002\) \(004\).doc](#)

Hi there,

As discussed. I've added my comments to the Communications strategy and the letter is undergoing thorough legal review.

S.



Communications strategy

Project title:	Kudz Ze Kayah Decision Making	Decision body:	<i>Deputy Minister, Executive Council Office</i>
Department:	Executive Council Office	Affected departments:	Energy Mines and Resources
Analyst:	Carleen Kerr	CRC date:	N/A

Issue or initiative

Government of Canada decision bodies are referring the recommendation issued by the Yukon Environmental and Socio-economic Assessment Board's Executive Committee (EC) for the BMC Minerals Kudz Ze Kayah Project (the Project) back to the EC for reconsideration. The Yukon government (YG) disagrees with this approach and is satisfied with and supports the recommendation issued by the EC.

Government priority

This initiative supports the following enduring priorities:

- Yukoners are supported by an accountable government:
 - Our government is fiscally responsible
 - We practice good governance
- Yukoners have good jobs and live in a sustainable environment.
 - Environmental quality: We develop and manage our natural resources responsibly

Premier Silver's October 10, 2019 mandate letter also states: "In collaboration with the Minister of Energy, Mines and Resources, work with partners to ensure Yukon's socio-economic and environmental assessment and regulatory regime effectively address concerns related to development projects without unnecessary duplication."

Desired communications outcomes

That Yukoners and partners are aware of and understand Yukon government's support for the Executive Committee screening process for the Kudz Ze Kayah project and our commitment to consult with Kaska Nations throughout the regulatory process.

Key public messages

- The Government of Yukon does not agree with the decision to refer the project back to the Executive Committee for reconsideration.
- We feel the YESAA process has resulted in for a comprehensive review and analysis of the project, and the recommendation to proceed with additional mitigations and monitoring is reasonable.
- We remain committed to continued consultation with Kaska Nations through the subsequent regulatory process.

Communications context

This matter is high profile and has received significant media coverage since the company began advancing the project proposal and purchased the property in 2015. This comprehensive coverage has included process stories on timelines and extensions, business analysis of the project, and correspondence on the project from numerous parties including the Liard First Nation (LFN), Liard Aboriginal Women's Society, and Ross River Dena Council (RRDC).

While many Yukoners are supportive of the project and its economic benefits to the territory, others fear the impact it will have on the environment, women and Finlayson caribou herd.

In a December 2, 2020 letter from BMC the company indicated its support for the acceptance of the screening report and recommendation by the decision bodies. The company also committed to supporting the implementation of the 30 recommendations and six monitoring requirements proposed by the EC.

74(1)(a), 76(1)

Target audience

Members of the public, the Yukon Environmental and Socio-Economic Assessment Board (YESAB), BMC Minerals, LFN, RRDC, Pelly Banks First Nation (PBFN), Canadian decision bodies and the general public.

Risks and challenges

74(1)(a), 76(1)

Strategic approach

74(1)(a), 76(1)

Timing

The recommendation by Canadian decision bodies to have the Project reconsidered by the EC is expected Friday, January 22. ~~imminent~~.

Additional communications costs


None identified.

Appendix 1

Audience analysis

Audience	Reaction	Targeted message
74(1)(a), 76(1)		

74(1)(a), 76(1)



January 21, 2021

Laura Cabott, Chair of the Board
Executive Committee
Yukon Environmental and Socio-Economic Assessment Board
200 – 309 Strickland Street
Whitehorse, YT, Y1A 6L2

VIA EMAIL: yesab@yesab.ca

RE: YG decision on Executive Committee Screening Report for the Kudz Ze Kayah Project (YESAB File No. 2017-0083)

This letter is to confirm that the Government of Yukon has concluded our consideration of the recommended mitigations and monitoring for the Kudz Ze Kayah project (the Project).

As you are aware the decision bodies received the Executive Committee's Screening Report and Recommendation on October 21, 2020. Since this time, the decision bodies which include Natural Resources Canada, the Department of Fisheries and Oceans Canada and Yukon government, have considered whether to accept the recommendation and issue a decision document or refer the recommendation back to the Executive Committee for reconsideration.

74(1)(a), 76(1)

We look forward to the Executive Committee's prompt review of the Project in manner that is consistent with the process identified in YESAA and the Executive Committee rules.

If there are any questions about this letter, please contact Keith Maguire, Director, Major Projects Yukon (keith.maguire@yukon.ca or 867-332-0213.

Sincerely,

ISSUE ALERT

EXECUTIVE COUNCIL OFFICE

Issue: Government of Canada decision bodies are referring the recommendation issued by the Yukon Environmental and Socio-economic Assessment Board's Executive Committee (EC) for the BMC Minerals Kudz Ze Kayah Project back to the EC for reconsideration. The Yukon government (YG) is satisfied with and supports the recommendation issued by the EC.

Date: January 20, 2021

Other departments affected: Energy Mines and Resources

Background:

- On October 21, 2020, the EC released the final screening report for the Kudz Ze Kayah Project, which recommended the project proceed subject to specific terms and conditions.
- YG, Fisheries and Oceans Canada and Natural Resources Canada are decision bodies and are required to prepare decision document(s) for the project.

74(1)(a), 76(1)

- YG is satisfied the EC level screening is appropriate for a project of this scale and the recommendation issued by the EC is adequate.

Messages:

- The Government of Yukon does not agree with the decision to refer the project back to the Executive Committee for reconsideration.
- We feel the YESAA process has resulted in a comprehensive review and analysis of the project, and the recommendation to proceed with additional mitigations and monitoring is reasonable.
- We remain committed to consulting on the project to ensure potential impacts to Kaska Nations asserted rights are addressed.

Spokesperson: Premier Sandy Silver

Reviewed by: Keith Maguire, Director of Major Projects Yukon
Samantha Paterson, ADM of Corporate Programs and
Intergovernmental Relations

Jeff Ford, ADM

Approved by: Stephen J. Mills, Deputy Minister

Circulate to:

- ☐ Cabinet Communications
- ☐ ECOinfo
- ☐ Other [list]

From: [Samantha.Paterson](#)
To: [Stephen.Mills](#)
Cc: [Angela.Troke](#)
Subject: Communications Package for Cabinet Offices - KZK
Date: Thursday, January 21, 2021 7:32:51 PM
Attachments: [Letter - 2021_01_21 YG Response to screening report KZK.docx](#)
[ISSUE ALERT KZK Referral 2021-01-21.doc](#)
[Communications strategy KZK 2021_01_21.doc](#)
[image001.png](#)

Good Evening Stephen,

Attached are the above-noted as reviewed and endorsed (along with legal advice) by EMR.



Sam

Assistant Deputy Minister
Executive Council Office
T 867-334-5161 | Yukon.ca

January 22, 2021

Ms. Laura Cabott, Chair of the Board
Executive Committee
Yukon Environmental and Socio-economic Assessment Board
200 – 309 Strickland Street
Whitehorse, YT, Y1A 6L2
VIA EMAIL: yesab@yesab.ca

Dear Ms. Cabott,

RE: Executive Committee Screening Report for the Kudz Ze Kayah Project (YESAB File No. 2017-0083)

This letter is to address the decision by federal decision bodies to refer the recommendation regarding the above-noted back to the Executive Committee for reconsideration.

As you are aware, decision bodies received the Executive Committee's Screening Report and Recommendation on October 21, 2020. Since this time, decision bodies (which include Natural Resources Canada, the Department of Fisheries and Oceans Canada and the Yukon government) have considered whether to accept the recommendation and issue a decision document or refer the recommendation back to the Executive Committee for reconsideration.

74(1)(a), 76(1)

The Yukon government was prepared to accept the recommendations and issue a decision document. It is our view that the YESAA process has resulted in a comprehensive review and analysis of the Project, and the recommendation to proceed with additional mitigations and monitoring is reasonable. However, due to Canada's decision, we cannot issue a decision document accepting the recommendations at this time.

We look forward to the Executive Committee's prompt review of the Project in a manner that is consistent with the process identified in YESAA and the Executive Committee rules. If there are any questions about this letter, please feel free to contact Keith Maguire, Director, Major Projects Yukon at keith.maguire@yukon.ca or 867-332-0213.

Sincerely,

Premier Sandy Silver

ISSUE ALERT

EXECUTIVE COUNCIL OFFICE

Issue: Government of Canada decision bodies are referring the recommendation issued by the Yukon Environmental and Socio-economic Assessment Board's Executive Committee (EC) for the BMC Minerals Kudz Ze Kayah Project back to the EC for reconsideration. The Yukon government (YG) is satisfied with and supports the recommendation issued by the EC.

Date: January 20, 2021

Other departments affected: Energy Mines and Resources

Background:

- On October 21, 2020, the EC released the final screening report for the Kudz Ze Kayah Project, which recommended the project proceed subject to specific terms and conditions.
- YG, Fisheries and Oceans Canada and Natural Resources Canada are decision bodies and are required to prepare decision document(s) for the project.
- 74(1)(a), 76(1)

- YG is satisfied the EC level screening is appropriate for a project of this scale and the recommendation issued by the EC is adequate.

Messages:

- The Government of Yukon does not agree with the decision to refer the project back to the Executive Committee for reconsideration.
- We feel the YESAA process has resulted in a comprehensive review and analysis of the project, and the recommendation to proceed with additional mitigations and monitoring is reasonable.
- We remain committed to consulting on the project to ensure potential impacts to Kaska Nations asserted rights are addressed.

Spokesperson: The Honourable Ranj Pillai (Cabinet)
Keith Maguire, Director of Major Projects Yukon (Official)

Reviewed by: Keith Maguire, Director of Major Projects Yukon

Samantha Paterson, ADM of Corporate Programs and Intergovernmental Relations

Jeff Ford, ADM of Strategic Corporate Services

Approved by: Stephen J. Mills, Deputy Minister

Circulate to:

- ☐ Cabinet Communications
- ☐ ECOinfo
- ☐ Other [list]



Communications strategy

Project title:	Kudz Ze Kayah Decision Making	Decision body:	<i>Deputy Minister, Executive Council Office</i>
Department:	Executive Council Office	Affected departments:	Energy Mines and Resources
Analyst:	Carleen Kerr	CRC date:	N/A

Issue or initiative

Government of Canada decision bodies are referring the recommendation issued by the Yukon Environmental and Socio-economic Assessment Board's Executive Committee (EC) for the BMC Minerals' Kudz Ze Kayah Project (the Project) back to the EC for reconsideration. The Yukon government (YG) disagrees with this approach and is satisfied with and supports the recommendation issued by the EC.

Government priority

This initiative supports the following enduring priorities:

- Yukoners are supported by an accountable government:
 - Our government is fiscally responsible
 - We practice good governance
- Yukoners have good jobs and live in a sustainable environment.
 - Environmental quality: We develop and manage our natural resources responsibly

The Premier's October 10, 2019 mandate letter also states: "In collaboration with the Minister of Energy, Mines and Resources, work with partners to ensure Yukon's environmental and socio-economic assessment regulatory regime effectively address concerns related to development projects without unnecessary duplication."

Desired communications outcomes

That Yukoners and partners are aware of and understand the Yukon government's support for the Executive Committee screening process for the Kudz Ze Kayah project and our commitment to consult with Kaska Nations throughout the regulatory process.

Key public messages

- The Government of Yukon does not agree with the decision to refer the project back to the Executive Committee for reconsideration.
- We feel the YESAA process has resulted in a comprehensive review and analysis of the project, and the recommendation to proceed with additional mitigations and monitoring is reasonable.
- We remain committed to continued consultation with Kaska Nations through the subsequent regulatory process.

Communications context

This matter is high profile and has received significant media coverage since the company began advancing the project proposal and purchased the property in 2015. This comprehensive coverage has included process stories on timelines and extensions, business analysis of the project, and correspondence on the project from numerous parties including the Liard First Nation (LFN), Liard Aboriginal Women's Society, and Ross River Dena Council (RRDC) and more recently, from the group identifying itself as the Pelly Banks First Nation.

While many Yukoners are supportive of the project and its economic benefits to the territory, others have expressed concern on the potential impact it will have on the environment, women and Finlayson caribou herd.

In a December 2, 2020 letter from BMC, the company indicated its support for the acceptance of the screening report and recommendation by the decision bodies. The company also committed to supporting the implementation of the 30 recommendations and six monitoring requirements proposed by the EC.

74(1)(a), 76(1)

Target audience

Members of the public, the Yukon Environmental and Socio-economic Assessment Board (YESAB), BMC Minerals, LFN, RRDC, Government of Canada decision bodies and the general public.

Risks and challenges

74(1)(a), 76(1)

Strategic approach

74(1)(a), 76(1)

Spokespersons

Officials – Keith Maguire, Director of Major Projects Yukon

Ministerial – The Honourable Ranj Pillai, Minister of Energy, Mines and Resources

Timing

The recommendation by Canada's decision bodies to have the Project reconsidered by the EC is expected Friday, January 22.

Additional communications costs

None identified.

Appendix 1**Audience analysis**

Audience	Reaction to YG expressing disagreement with Canada	Targeted message
74(1)(a), 76(1)		

From: [Samantha.Paterson](#)
To: [Angela.Troke](#)
Cc: [Paul.Moore](#); [Stephen.Mills](#)
Subject: Communications Package - KZK
Date: Friday, January 22, 2021 11:11:14 AM
Attachments: [image001.png](#)
[Communications strategy KZK 2021_01_22.doc](#)
[Issue alert KZK 2021_01_22.doc](#)
[Letter - KZK 2021_01_22.docx](#)

As discussed – here you go Angie.

Please advise the Premier and Minister's offices that the documents are still draft, legal is reviewing the letter and we are still speaking with Canada.

Thank you!



Sam

Assistant Deputy Minister
Executive Council Office
T 867-334-5161 | [Yukon.ca](#)



Communications strategy

Project title:	Kudz Ze Kayah Decision Making	Decision body:	<i>Deputy Minister, Executive Council Office</i>
Department:	Executive Council Office	Affected departments:	Energy Mines and Resources
Analyst:	Carleen Kerr	CRC date:	N/A

Issue or initiative

Government of Canada decision bodies are referring the recommendation issued by the Yukon Environmental and Socio-economic Assessment Board's Executive Committee (EC) for the BMC Minerals' Kudz Ze Kayah Project (the Project) back to the EC for reconsideration. The Yukon government (YG) disagrees with this approach and is satisfied with and supports the recommendation issued by the EC.

Government priority

This initiative supports the following enduring priorities:

- Yukoners are supported by an accountable government:
 - Our government is fiscally responsible
 - We practice good governance
- Yukoners have good jobs and live in a sustainable environment.
 - Environmental quality: We develop and manage our natural resources responsibly

The Premier's October 10, 2019 mandate letter also states: "In collaboration with the Minister of Energy, Mines and Resources, work with partners to ensure Yukon's environmental and socio-economic assessment regulatory regime effectively address concerns related to development projects without unnecessary duplication."

Desired communications outcomes

That Yukoners and partners are aware of and understand the YG's support for the Executive Committee screening process for the Kudz Ze Kayah project and our commitment to consult with Kaska Nations throughout the regulatory process.

Key public messages

- The Government of Yukon does not agree with the decision to refer the project back to the Executive Committee for reconsideration.
- We feel the YESAA process has resulted in a comprehensive review and analysis of the project, and the recommendation to proceed with additional mitigations and monitoring is reasonable.
- We remain committed to continued consultation with Kaska Nations through the subsequent regulatory process.

Communications context

This matter is high profile and has received significant media coverage since the company began advancing the project proposal and purchased the property in 2015. This comprehensive coverage has included process stories on timelines and extensions, business analysis of the project, and correspondence on the project from numerous parties including the Liard First Nation (LFN), Liard Aboriginal Women's Society, and Ross River Dena Council (RRDC) and more recently, from the group identifying itself as the Pelly Banks First Nation.

While many Yukoners are supportive of the project and its economic benefits to the territory, others have expressed concern on the potential impact it will have on the environment, women and Finlayson caribou herd.

In a December 2, 2020 letter from BMC, the company indicated its support for the acceptance of the screening report and recommendation by the decision bodies. The company also committed to supporting the implementation of the 30 recommendations and six monitoring requirements proposed by the EC.

74(1)(a), 76(1)

Target audience

Members of the public, the Yukon Environmental and Socio-economic Assessment Board (YESAB), BMC Minerals, LFN, RRDC, Government of Canada decision bodies and the general public.

Risks and challenges

74(1)(a), 76(1)

Strategic approach

74(1)(a), 76(1)

Spokespersons

Officials – Keith Maguire, Director of Major Projects Yukon

Ministerial – The Honourable Ranj Pillai, Minister of Energy, Mines and Resources

Timing

The recommendation by Canada's decision bodies to have the Project reconsidered by the EC is expected Friday, January 22.

Within six days of referral back to the Executive Committee for reconsideration, the Executive Committee will publish a notice of the referral on the YESAB Online Registry.

The notice will invite interested persons and member of the public to comment on the recommendations of the Executive Committee or the referral back for a period of at least 21 days to a maximum of 35 days.

Following the public comment period the Executive Committee will make any new recommendation within 21 days.

In summary the Executive Committee process to consider the referral back for reconsideration will take approximately 48-62 days as per the Rules for Screening Conducted by the Executive Committee.

Appendix 1**Audience analysis**

Audience	Reaction to YG expressing disagreement with Canada	Targeted message
74(1)(a), 76(1)		

ISSUE ALERT

EXECUTIVE COUNCIL OFFICE

Issue: Government of Canada decision bodies are referring the recommendation issued by the Yukon Environmental and Socio-economic Assessment Board's Executive Committee (EC) for the BMC Minerals Kudz Ze Kayah Project back to the EC for reconsideration. The Yukon government (YG) is satisfied with and supports the recommendation issued by the EC.

Date: January 20, 2021

Other departments affected: Energy Mines and Resources

Background:

- On October 21, 2020, the EC released the final screening report for the Kudz Ze Kayah Project, which recommended the project proceed subject to specific terms and conditions.
- YG, Fisheries and Oceans Canada and Natural Resources Canada are decision bodies and are required to prepare decision document(s) for the project. The current stage in the process requires all decision bodies to determine whether to accept the EC recommendation or to refer it back for reconsideration.

74(1)(a), 76(1)

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- Within six days of referral back to the Executive Committee for reconsideration, the Executive Committee will publish a notice of the referral on the YESAB Online Registry.

- The notice will invite interested persons and member of the public to comment on the recommendations of the Executive Committee or the referral back for a period of at least 21 days to a maximum of 35 days.
- Following the public comment period the Executive Committee will make any new recommendation within 21 days.
- In summary the Executive Committee process to consider the referral back for reconsideration will take approximately 48-62 days as per the Rules for Screening Conducted by the Executive Committee.

Messages:

- The Government of Yukon does not agree with the decision to refer the project back to the Executive Committee for reconsideration.
- We feel the YESAA process has resulted in a comprehensive review and analysis of the project, and the recommendation to proceed with additional mitigations and monitoring is reasonable.
- We remain committed to consulting on the project to ensure potential impacts to Kaska Nations asserted rights are addressed.
- The Government of Yukon will work with all parties to best ensure that at the end of this referral back period, we can move forward.

Spokesperson: The Honourable Ranj Pillai (Cabinet)
Keith Maguire, Director of Major Projects Yukon (Official)

Reviewed by: Keith Maguire, Director of Major Projects Yukon

Samantha Paterson, ADM of Corporate Programs and Intergovernmental Relations

Jeff Ford, ADM of Strategic Corporate Services

Approved by: Stephen J. Mills, Deputy Minister

Circulate to:

- ☐ Cabinet Communications
- ☐ ECOinfo
- ☐ Other [list]

January 22, 2021

Ms. Laura Cabott, Chair of the Board
Executive Committee
Yukon Environmental and Socio-economic Assessment Board
200 – 309 Strickland Street
Whitehorse, YT, Y1A 6L2
VIA EMAIL: yesab@yesab.ca

Dear Ms. Cabott,

**RE: Executive Committee Screening Report for the Kudz Ze Kayah Project (YESAB
File No. 2017-0083)**

This letter is to address the decision by federal decision bodies to refer the recommendation regarding the above-noted back to the Executive Committee for reconsideration.

As you are aware, decision bodies received the Executive Committee's Screening Report and Recommendation on October 21, 2020. Since this time, decision bodies (which include Natural Resources Canada, the Department of Fisheries and Oceans Canada and the Yukon government) have considered whether to accept the recommendation and issue a decision document or refer the recommendation back to the Executive Committee for reconsideration.

74(1)(a), 76(1)

The Yukon government was prepared to accept the recommendations and issue a decision document. It is our view that the YESAA process has resulted in a comprehensive review and analysis of the Project, and the recommendation to proceed with additional mitigations and monitoring is reasonable. However, due to Canada's decision, we cannot issue a decision document accepting the recommendations at this time.

We look forward to the Executive Committee's prompt review of the Project in a manner that is consistent with the process identified in YESAA and the Executive Committee rules. If there are any questions about this letter, please feel free to contact Keith Maguire, Director, Major Projects Yukon at keith.maguire@yukon.ca or 867-332-0213.

Sincerely,

Premier Sandy Silver

From: [Samantha.Paterson](#)
To: [Stephen.Mills](#); [Paul.Moore](#)
Cc: [Angela.Troke](#)
Subject: KZK draft letter
Date: Friday, January 22, 2021 12:14:48 PM
Attachments: [Letter - 2021_01_21 YG Response to screening report KZK \(lah comments\).docx](#)

As reviewed by our legal counsel – comments and edits left in for your consideration.

S.



January 22, 2021

Ms. Laura Cabott, Chair of the Board
Executive Committee
Yukon Environmental and Socio-economic Assessment Board
200 – 309 Strickland Street
Whitehorse, YT, Y1A 6L2
VIA EMAIL: yesab@yesab.ca

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74(1)(a), 76(1)

73(a), 74(1)(a)

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Sincerely,

Premier Sandy Silver

From: [Samantha.Paterson](#)
To: [Stephen.Mills](#); [Paul.Moore](#)
Subject: Letter - 2021_01_22 YG Response to screening report KZK (lah comments 2)
Date: Friday, January 22, 2021 2:32:21 PM
Attachments: [Letter - 2021_01_22 YG Response to screening report KZK \(lah comments 2\).docx](#)
Importance: High

Good Afternoon,

Please see the attached with supplemental language provided by our legal counsel.

I look forward to your thoughts.

S.



January 22, 2021

Ms. Laura Cabott, Chair of the Board
Executive Committee
Yukon Environmental and Socio-economic Assessment Board
200 – 309 Strickland Street
Whitehorse, YT, Y1A 6L2
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74(1)(a), 76(1)

73(a), 74(1)(a)

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74(1)(a), 76(1)

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If there are any questions about this letter, please feel free to contact Keith Maguire, Director, Major Projects Yukon at keith.maguire@yukon.ca or 867-332-0213.

Sincerely,

Premier Sandy Silver

From: [Samantha.Paterson](#)
To: [Paul.Moore](#); [Stephen.Mills](#)
Subject: RE: Letter - 2021_01_22 YG Response to screening report KZK (lah comments 2)
Date: Friday, January 22, 2021 2:50:43 PM
Attachments: [Letter - 2021_01_22 YG Response to screening report KZK.docx](#)

Here it is, changes accepted and extra paragraph deleted.

S.

From: Paul.Moore
Sent: January 22, 2021 2:42 PM
To: Samantha.Paterson ; Stephen.Mills
Subject: RE: Letter - 2021_01_22 YG Response to screening report KZK (lah comments 2)
Thanks. Good improvements. I like it.
Paul

From: Samantha.Paterson <Samantha.Paterson@yukon.ca>
Sent: January 22, 2021 2:32 PM
To: Stephen.Mills <Stephen.Mills@yukon.ca>; Paul.Moore <Paul.Moore@yukon.ca>
Subject: Letter - 2021_01_22 YG Response to screening report KZK (lah comments 2)
Importance: High

Good Afternoon,

Please see the attached with supplemental language provided by our legal counsel.

I look forward to your thoughts.

S.

January 22, 2021

Ms. Laura Cabott, Chair of the Board
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Yukon Environmental and Socio-economic Assessment Board
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74(1)(a), 76(1)

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To: [Stephen.Mills](#); [Paul.Moore](#)
Subject: RE: Letter - 2021_01_22 YG Response to screening report KZK (lah comments 2)
Date: Friday, January 22, 2021 3:00:48 PM
Attachments: [Letter - 2021_01_22 YG Response to screening report KZK.docx](#)

OK – reinserted.

S.

From: Stephen.Mills
Sent: January 22, 2021 2:56 PM
To: Samantha.Paterson ; Paul.Moore
Subject: RE: Letter - 2021_01_22 YG Response to screening report KZK (lah comments 2)
 74(1)(a), 76(1)

From: Samantha.Paterson <Samantha.Paterson@yukon.ca>
Sent: January 22, 2021 2:51 PM
To: Paul.Moore <Paul.Moore@yukon.ca>; Stephen.Mills <Stephen.Mills@yukon.ca>
Subject: RE: Letter - 2021_01_22 YG Response to screening report KZK (lah comments 2)
 Here it is, changes accepted and extra paragraph deleted.
 S.

From: Paul.Moore <Paul.Moore@yukon.ca>
Sent: January 22, 2021 2:42 PM
To: Samantha.Paterson <Samantha.Paterson@yukon.ca>; Stephen.Mills <Stephen.Mills@yukon.ca>
Subject: RE: Letter - 2021_01_22 YG Response to screening report KZK (lah comments 2)
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Sent: January 22, 2021 2:32 PM
To: Stephen.Mills <Stephen.Mills@yukon.ca>; Paul.Moore <Paul.Moore@yukon.ca>
Subject: Letter - 2021_01_22 YG Response to screening report KZK (lah comments 2)
Importance: High
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74(1)(a), 76(1)

Premier Silver to Laura Cabott
January 22, 2021
Page 2

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Sincerely,

Premier Sandy Silver

From: [Samantha.Paterson](#)
To: [Stephen.Mills](#)
Subject: Letter - 2021_01_22 YG Response to screening report KZK
Date: Friday, January 22, 2021 3:20:02 PM
Attachments: [Letter - 2021_01_22 YG Response to screening report KZK.docx](#)

Here you go!

S.

January 22, 2021

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Yukon Environmental and Socio-economic Assessment Board
200 – 309 Strickland Street
Whitehorse, YT, Y1A 6L2
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74(1)(a), 76(1)

Premier Silver to Laura Cabott
January 22, 2021
Page 2

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Sincerely,

Premier Sandy Silver

From: [Stephen.Mills](#)
To: [Samantha.Paterson](#); [Paul.Moore](#)
Cc: [Angela.Troke](#)
Subject: Letter - 2021_01_22 YG Response to screening report KZK (002)_Final
Date: Friday, January 22, 2021 3:32:17 PM
Attachments: [Letter - 2021_01_22 YG Response to screening report KZK \(002\)_Final.docx](#)

This is the final draft. Please confirm your agreement.

January 22, 2021

Ms. Laura Cabott, Chair of the Board
Executive Committee
Yukon Environmental and Socio-economic Assessment Board
200 – 309 Strickland Street
Whitehorse, YT, Y1A 6L2
VIA EMAIL: yesab@yesab.ca

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74(1)(a), 76(1)

Premier Silver to Laura Cabott
January 22, 2021
Page 2

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Sincerely,

Premier Sandy Silver

From: [Stephen.Mills](#)
To: [Emily.Farrell](#); [Janet.Moodie](#); [Jason.Cunning](#)
Subject: Fwd: Letter - 2021_01_22 YG Response to screening report KZK (002)_Final
Date: Friday, January 22, 2021 3:44:39 PM
Attachments: [Letter - 2021_01_22 YG Response to screening report KZK \(002\)_Final.docx](#)

This is the final draft.

Sent from my mobile device

----- Forwarded message -----

From: Stephen.Mills
Date: January 22, 2021 at 3:32:16 PM MST
Subject: Letter - 2021_01_22 YG Response to screening report KZK (002)_Final
To: Samantha.Paterson ,Paul.Moore
Cc: Angela.Troke

This is the final draft. Please confirm your agreement.

January 22, 2021

Ms. Laura Cabott, Chair of the Board
Executive Committee
Yukon Environmental and Socio-economic Assessment Board
200 – 309 Strickland Street
Whitehorse, YT, Y1A 6L2
VIA EMAIL: yesab@yesab.ca

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74(1)(a), 76(1)

Premier Silver to Laura Cabott
January 22, 2021
Page 2

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Sincerely,

Premier Sandy Silver

From: [Angela.Troke](#)
To: [Emily.Farrell](#); [Kim.Stavert](#)
Cc: [Phyllis.Rowsell](#); [Ilze.Pretorius](#)
Subject: RE: KZK Communications Package
Date: Friday, January 22, 2021 3:44:53 PM
Attachments: [Letter - 2021_01_22 YG Response to screening report KZK \(002\) Final.docx](#)
[image001.png](#)

Good afternoon,

Please see the updated YG response to YESAB regarding the screening report on KZK. Emily please confirm if you will apply Premiers signature and send out once approved or will I.

Thanks,

Angie

From: Angela.Troke
Sent: January 22, 2021 11:15 AM
To: Emily.Farrell ; Kim.Stavert
Cc: Phyllis.Rowsell ; Ilze.Pretorius
Subject: KZK Communications Package
Importance: High

Good Morning,

Please see the attached documents for Min. Pillai and Premier's review. Please note these are in draft as legal personal are still reviewing and 76(1)

Thanks,

Angie



Angie Troke

Executive Assistant to the Deputy Minister
Executive Council Office | Deputy Minister's Office
T 867-667-5421 | F 867-393-6214 | Yukon.ca | A-8

January 22, 2021

Ms. Laura Cabott, Chair of the Board
Executive Committee
Yukon Environmental and Socio-economic Assessment Board
200 – 309 Strickland Street
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74(1)(a), 76(1)

Premier Silver to Laura Cabott
January 22, 2021
Page 2

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Sincerely,

Premier Sandy Silver

From: [Stephen.Mills](#)
To: [Angela.Troke](#)
Cc: [Paul.Moore](#); [Samantha.Paterson](#)
Subject: Letter - 2021_01_22 YG Response to screening report KZK _Final Version
Date: Friday, January 22, 2021 4:12:27 PM
Attachments: [Letter - 2021_01_22 YG Response to screening report KZK _Final Version.docx](#)

This is the final version for signature. It is not to be sent until I let you know.

Thanks,

Stephen

January 22, 2021

Ms. Laura Cabott, Chair of the Board
Executive Committee
Yukon Environmental and Socio-economic Assessment Board
200 – 309 Strickland Street
Whitehorse, YT, Y1A 6L2
VIA EMAIL: yesab@yesab.ca

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Premier Silver to Laura Cabott
January 22, 2021
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Sincerely,

Premier Sandy Silver

From: [Stephen.Mills](#)
To: [Jason.Cunning](#); [Emily.Farrell](#); [Janet.Moodie](#)
Subject: FW: Letter - 2021_01_22 YG Response to screening report KZK_Final Version
Date: Friday, January 22, 2021 4:13:12 PM
Attachments: [Letter - 2021_01_22 YG Response to screening report KZK_Final Version.docx](#)

FYI

From: Stephen.Mills
Sent: January 22, 2021 4:12 PM
To: Angela.Troke
Cc: Paul.Moore ; Samantha.Paterson
Subject: Letter - 2021_01_22 YG Response to screening report KZK_Final Version
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January 22, 2021

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Yukon Environmental and Socio-economic Assessment Board
200 – 309 Strickland Street
Whitehorse, YT, Y1A 6L2
VIA EMAIL: yesab@yesab.ca

Dear Ms. Cabott,

**RE: Executive Committee Screening Report for the Kudz Ze Kayah Project (YESAB
File No. 2017-0083)**

This letter is to address the decision by federal decision bodies to refer the recommendation regarding the above-noted back to the Executive Committee for reconsideration.

As you are aware, decision bodies received the Executive Committee's Screening Report and Recommendation on October 21, 2020. Since this time, the decision bodies - Natural Resources Canada, the Department of Fisheries and Oceans Canada and the Yukon government - have considered whether to accept the recommendation and issue a decision document or refer the recommendation back to the Executive Committee for reconsideration.

The Yukon government was prepared to accept the recommendation and issue a decision document. It is our view that the YESAA process has resulted in a comprehensive review and analysis of the Project, and the recommendation to proceed with additional mitigations and monitoring is reasonable. However, due to Canada's decision, we cannot issue a decision document accepting the recommendation at this time.

We look forward to the Executive Committee's prompt completion of the Project screening in a manner that is consistent with the process identified in YESAA and the Executive Committee rules. Yukon government will, of course, give full and fair consideration to the new recommendation of the Executive Committee.

Premier Silver to Laura Cabott
January 22, 2021
Page 2

If there are any questions about this letter, please feel free to contact Keith Maguire, Director, Major Projects Yukon at keith.maguire@yukon.ca or 867-332-0213.

Sincerely,

Premier Sandy Silver

From: [Angela.Troke](#)
To: [Stephen.Mills](#)
Subject: RE: Letter - 2021_01_22 YG Response to screening report KZK _Final Version
Date: Friday, January 22, 2021 4:21:54 PM
Attachments: [Letter - 2021_01_22 YG Response to screening report KZK _Final Version.pdf](#)

As requested.

From: Stephen.Mills
Sent: January 22, 2021 4:12 PM
To: Angela.Troke
Cc: Paul.Moore ; Samantha.Paterson
Subject: Letter - 2021_01_22 YG Response to screening report KZK _Final Version
This is the final version for signature. It is not to be sent until I let you know.
Thanks,
Stephen

January 22, 2021

Ms. Laura Cabott, Chair of the Board
Executive Committee
Yukon Environmental and Socio-economic Assessment Board
200 – 309 Strickland Street
Whitehorse, YT, Y1A 6L2
VIA EMAIL: yesab@yesab.ca

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Premier Silver to Laura Cabott
January 22, 2021
Page 2

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Sincerely,

A handwritten signature in blue ink, appearing to be 'SS' or 'S.S.', with a stylized, cursive flourish.

Premier Sandy Silver

From: [Stephen.Mills](#)
To: [Sandy.Silver](#)
Subject: Fwd: FW: letter
Date: Friday, January 22, 2021 4:32:35 PM
Attachments: [Letter - 20210122 - Federal Decision Bodies to YESAB RE KZK Report Referral FINAL.pdf](#)

FYI

Sent from my mobile device

----- Forwarded message -----

From: Paul.Moore
Date: January 22, 2021 at 4:12:57 PM MST
Subject: FW: letter
To: Stephen.Mills

Stephen,
No sure if you've seen this yet but there is the federal letter.
Paul

From: Tremblay, Jean-Francois (NRCAN/RNCAN)
Sent: January 22, 2021 4:02 PM
To: Paul.Moore
Subject: letter

*** External email: Do not click on links or attachments except from trusted senders. ***



Fisheries and Oceans
Canada
Pacific Region
Ecosystem Management Branch
200 – 401 Burrard Street
Vancouver, B.C. V6C 3S4

Pêches et Océans
Canada



Natural Resources Canada
Canada
Lands and Minerals Sector
Explosives Safety and Security Branch
588 Booth Street
Ottawa, O.N. K1A 0E7

0077
Ressources naturelles
Canada

January 22, 2021

Executive Committee
c/o Laura Cabott, Chair of the Board
Yukon Environmental and Socio-Economic Assessment Board
200 – 309 Strickland Street
Whitehorse, YT, Y1A 6L2

VIA EMAIL: laura.cabott@yesab.ca

Referral for Reconsideration of the Executive Committee's Screening Report and Recommendation for the Kudz Ze Kayah Project (YESAB File No. 2017-0083)

Dear Executive Committee,

Pursuant to s. 76(1)(b) of the *Yukon Environmental and Socio-economic Act* (YESAA), Fisheries and Oceans Canada and Natural Resources Canada, being the Federal Decision Bodies (FDBs) for the Kudz Ze Kayah Project (KZK Project), are writing to refer the Screening Report and Recommendation back to the Executive Committee for reconsideration. FDBs have outlined the reasons for the referral back below, to assist the Executive Committee with their reconsideration.

The Executive Committee has recommended that the project be allowed to proceed without a review under YESAA, subject to the implementation of specified terms and conditions. The Screening Report and Recommendation identifies that the project will have, or is likely to have, significant adverse environmental or socio-economic effects, but that these can be eliminated, controlled or mitigated by the recommended terms and conditions.

FDBs acknowledge the significant amount of work carried out to date by the Executive Committee and the Board's support staff throughout the KZK Project screening and in preparing the assessment Screening Report and Recommendation.

As is outlined in further detail below, FDBs are referring the Screening Report and Recommendation back to the Executive Committee for further work in the following specific reasons:

- 1: Insufficient explanation of the supporting analysis as to why the recommended mitigation measures sufficiently eliminate, control or mitigate the associated significant adverse effects.
- 2: Insufficient explanation regarding how First Nation interests, including from a rights perspective, were considered within the analysis presented in the Screening Report and Recommendation.

The FDBs are of the view that the Report and Recommendation would benefit from a focused reconsideration process within the parameters set by YESAA and the *Rules for Screenings Conducted by the Executive Committee* (the Rules). FDBs have noted the timelines that are applicable to the process under YESAA and the Rules, and look forward to a revised Report and Recommendation in the next month and a half to two months. After which FDBs will be required to ensure they have met consultation requirements and make a decision by early May 2021 under the statutory requirements.

Role of the federal decision bodies

As you are aware, at this stage of the YESAA process, the FDBs had to determine whether to accept the recommendation and issue a decision document, or refer the recommendation back to the Executive Committee for further reconsideration¹. In reviewing the Screening Report and Recommendation received for the KZK Project, the FDBs have given full and fair consideration to the scientific information, traditional knowledge and other information that is provided with the recommendation.² The FDBs have also consulted with Liard First Nation and Ross River Dena Council as required by s. 74(2) of YESAA.

Federal decision body review process

FDBs began their review of the Screening Report and Recommendation for the KZK Project upon receipt of the Report from the Executive Committee on October 21, 2020. As part of the FDB review, and in keeping with our consultation obligations under common-law and s. 74(2) of YESAA, potentially affected First Nations were invited to share their views of the Screening Report and Recommendation with FDBs such that their views could be considered by FDBs within their decision-making process.

FDBs invited views from Liard First Nation (LFN) and Ross River Dena Council (RRDC) in Yukon, Dease River First Nation and Kwadacha First Nation in British Columbia, as well as Dehcho First Nations and Naha Dehe Dene Band in the Northwest Territories.

How consultation informed the decision to refer the Screening Report and Recommendation back for reconsideration

RRDC and LFN provided views in response. RRDC has indicated that their community has been facing on-going challenges due to the COVID-19 pandemic, and this has impeded their ability to engage in the necessary meetings and discussions at the community level. RRDC also indicated the importance of further discussions with BMC, Canada and the Government of Yukon regarding how specific terms and conditions contained in the Screening Report and Recommendation are to be fulfilled, particularly considering that the KZK Project is in the heart of caribou country. LFN has indicated that they do not support the recommendation. They are of

¹ S. 76(1), YESAA.

² S. 74(1), YESAA.

the view that there is no evidence that the proposed terms and conditions will mitigate the adverse effects “on the Kaska right to hunt the Finlayson Caribou Herd.”

The FDBs have considered these comments in considering whether to accept the Screening Report and Recommendation or refer the Screening Report and Recommendation back for reconsideration.

Areas requiring enhancement to improve the analytical basis for the Recommendation

1: Insufficient explanation of the supporting analysis as to why the recommended mitigation measures sufficiently eliminate, control or mitigate the associated significant adverse effects

The Screening Report and Recommendation does not sufficiently articulate how conclusions were reached in the consideration of impact mitigation. For a number of key issues the Executive Committee has not clearly outlined how the recommended terms and conditions were arrived at and why the Executive Committee believes recommended terms and conditions will be effective to mitigate the significant adverse effects identified. This explanation, particularly in the case of potential significant adverse effects, is critical information for decision bodies to understand what mitigation is being put forward and why (see examples provided in Annex A).

To enable FDBs to better understand the rationale supporting the recommendation, including the identified terms and conditions, we request that the Executive Committee more clearly identify the following in their Screening Report and Recommendation:

- An explanation of how the Executive Committee assessed impact mitigation in developing their recommended terms and conditions under s. 58(1)(b) of YESAA.
- An explanation in the case of each Valued Environmental and Socio-Economic Component (VESEC) the process used to identify recommended terms and conditions. For example, why was each term and condition selected? How individually or collectively does the Executive Committee see them working to reduce or otherwise mitigate potentially significant adverse effects?
- An explanation of how any knowledge or information gaps have impacted the analysis. For example, how did the Executive Committee assess the level of certainty or risk associated with each VESEC as a result of any knowledge or information gaps, including the analysis of Proponent mitigations, significance determination, and recommended terms and conditions?
- An explanation, as per Reason 2 below, as to how First Nation interests, including from a rights perspective, has informed this analysis.

These key questions above specifically apply to those VESECs where there has been a determination of significant adverse effects, including Water Resources (Water Quality, Aquatic Life), Wildlife (Caribou), Traditional Land Use, Economy (Impacts of Mine Closure), and Human Health and Safety (Personal Safety). Examples are provided in the annex to demonstrate these key questions on two VESECs.

2: Insufficient explanation regarding how First Nation interests, including from a rights perspective, were considered within the analysis presented in the Screening Report and Recommendation

The Screening Report and Recommendation does not expressly delineate whether and how First Nation interests, including from a rights perspective, have been considered within the assessment (see examples provided in Annex B).

The FDBs request that the Executive Committee more clearly identify:

- How the consideration of s. 42(1)(g) and (g.1) of YESAA have informed the assessment of each VESEC where it has been determined that there could be significant adverse effects, including any related Traditional Knowledge;
- Whether and how any asserted Aboriginal rights have informed or guided the choice of each of these VESECs;
- Whether and how asserted Aboriginal rights have been considered in determining the significance of the likely adverse effects of the project on identified VESECs; and,
- In the context of any proposed mitigation measures, whether and how the above has informed the identification of the specific terms and conditions.

Thank-you for your consideration of these important matters. The FDBs look forward to working with all parties and participants in tackling next steps.

Sincerely,



David Carter, Regional Manager
Fish and Fish Habitat Protection Program
Ecosystem Management Branch
Fisheries and Oceans Canada



Rinaldo Jeanty, Director General
Explosives Safety and Security Branch
Lands and Minerals Sector
Natural Resources Canada

c.c. Keith Maguire, Director, Major Projects Yukon, Government of Yukon

Allan Nixon, Vice-President of External Affairs, BMC Minerals (No. 1) Ltd.

Chief Stephen Charlie and Council, Liard First Nation

Travis Stewart, Land and Resources Director, Liard First Nation

Chief Jack Caesar and Council, Ross River Dena Council

Lisa Dyer, Director General, Northern Projects Management Office, Canadian Northern Economic Development Agency

Dionne Savill, Regional Director General, Yukon Regional Office, Crown-Indigenous Relations and Northern Affairs Canada

Saul Schneider, Regional Director, Pacific and Yukon Region, Environment and Climate Change Canada

Brenda Woo, Regional Manager, Environmental Health Program, Health Canada

Anita Champagne Gudmundson, Regional Manager, Environmental Programs, Prairie and Northern Region, Transport Canada

Annex A

Examples of analytical gaps related to impact mitigation:

- In the case of traditional land use, how does the Executive Committee consider Recommended Mitigations #12 to #15 to effectively eliminate, control, or mitigate significant adverse effects to traditional harvesting, and Traditional Knowledge transmission and cultural continuity? How do the acknowledged gaps in the traditional land use information and first-hand Traditional Knowledge affect the Executive Committee's analysis?
- In the case of the Finlayson Caribou Herd, how does the Executive Committee consider Recommended Mitigations #10 and #11 to effectively eliminate, control, or mitigate a reduction or downward pressure on the already-declining population?

Annex B

Examples of analytical gaps related to First Nation interests:

- In keeping with the application of YESAB's 2018 Information Bulletin on the *Consideration of Aboriginal and Final Agreement Rights in YESAB Assessments*, Section 1.2 of the Screening Report and Recommendation notes "*Aboriginal rights and title are considered as contextual factors when characterizing project effects and determining the significance for these for the purposes of environmental assessment*," (p. 21) but how the Executive Committee has done so is not explicit within the analysis presented in the Screening Report and Recommendation.
- It is not always clear whether and how First Nation interests, including from a rights perspective, have informed the selection, assessment and/or significance determination of individual VESECs. For example, the consideration of established or asserted Aboriginal rights and title is not included in the list of contextual factors that inform the threshold of significance in Section 1.4 (p. 23) of the Screening Report and Recommendation. It is also not clear whether and how First Nation interests, including from a rights perspective, have informed the assessment of impact mitigation and/or selection of the identified terms and conditions.
- The Executive Committee acknowledges that very little primary data on Traditional Land Use had been made available to them. The Executive Committee further notes that the assessment would have benefitted from additional first-hand accounts of potential Project effects and information from the LFN and RRDC to further clarify the important values and traditional land uses associated with the area. In light of this acknowledgement, it is even more important for FDBs to understand how the Executive

Committee has assessed and considered the interests of First Nations as required by s. 42(1)(g.1) of YESAA.

The following two subject matter examples are shared to further illustrate why the FDBs require further information regarding the above noted bullets:

- **Fish and Fish Habitat:** The EC has determined that the Project could have significant adverse effects on fish and fish habitat in Geona and Finlayson Creeks given significant adverse effects predicted for water quality in these waterbodies. LFN and RRDC have both raised concern about loss of these waterbodies as fishing grounds. The FDBs would like to better understand whether and how this information has informed the recommendation.
- **Caribou:** The EC determined that the Project is likely to further reduce the already declining population of the Finlayson Caribou Herd (FCH), which is considered a significant adverse effect and puts the sustainability of the herd at risk. Both LFN and RRDC have expressed concern over the Project's impact to caribou and their harvesting rights. The EC recommended two measures and two monitoring programs to mitigate the significant adverse effects. FDBs would like to better understand whether and how this information has informed the selection of these terms and conditions.

From: [Angela.Troke](#)
To: [Emily.Farrell](#)
Cc: [Phyllis.Rowsell](#)
Subject: RE: KZK Communications Package
Date: Friday, January 22, 2021 4:41:47 PM
Attachments: [image001.png](#)
[image002.png](#)

Yes thanks! I have the final version ready with Premier's signature and converted to PDF, just waiting for the thumbs up from Stephen to hit send.

From: Emily.Farrell
Sent: January 22, 2021 4:39 PM
To: Angela.Troke
Cc: Phyllis.Rowsell

Subject: RE: KZK Communications Package

I think Stephen let you know as there was a final draft sent my way from him, but you can please apply Premier's signature to the final version. Thanks!
e



Emily Farrell
Ministerial Advisor to Premier Sandy Silver
Cabinet Office | Government of Yukon
T 867-393-7142 | Yukon.ca

From: Angela.Troke <Angela.Troke@yukon.ca>
Sent: Friday, January 22, 2021 3:45 PM
To: Emily.Farrell <Emily.Farrell@yukon.ca>; Kim Stavert <Kim.Stavert@yukon.ca>
Cc: Phyllis.Rowsell <Phyllis.Rowsell@yukon.ca>; Ilze.Pretorius <Ilze.Pretorius@yukon.ca>
Subject: RE: KZK Communications Package

Good afternoon,
Please see the updated YG response to YESAB regarding the screening report on KZK. Emily please confirm if you will apply Premiers signature and send out once approved or will I.
Thanks,
Angie

From: Angela.Troke
Sent: January 22, 2021 11:15 AM
To: Emily.Farrell <Emily.Farrell@yukon.ca>; Kim Stavert <Kim.Stavert@yukon.ca>
Cc: Phyllis.Rowsell <Phyllis.Rowsell@yukon.ca>; Ilze.Pretorius <Ilze.Pretorius@yukon.ca>
Subject: KZK Communications Package
Importance: High

Good Morning,
Please see the attached documents for Min. Pillai and Premier's review. Please note these are in draft as legal personal are still reviewing and 76(1)

Thanks,
Angie



Angie Troke
Executive Assistant to the Deputy Minister
Executive Council Office | Deputy Minister's Office
T 867-667-5421 | F 867-393-6214 | Yukon.ca | A-8

From: [Angela.Troke](#)
To: [Stephen.Mills](#)
Date: Friday, January 22, 2021 5:52:22 PM
Attachments: [Letter - 2021_01_22 YG Response to screening report KZK - Final Version.pdf](#)
[image002.png](#)

**Angie Troke**

Executive Assistant to the Deputy Minister
Executive Council Office | Deputy Minister's Office
T 867-667-5421 | F 867-393-6214 | Yukon.ca | A-8

January 22, 2021

Ms. Laura Cabott, Chair of the Board
Executive Committee
Yukon Environmental and Socio-economic Assessment Board
200 – 309 Strickland Street
Whitehorse, YT, Y1A 6L2
VIA EMAIL: yesab@yesab.ca

Dear Ms. Cabott,

RE: Executive Committee Screening Report for the Kudz Ze Kayah Project (YESAB File No. 2017-0083)

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If there are any questions about this letter, please feel free to contact Keith Maguire, Director, Major Projects Yukon at keith.maguire@yukon.ca or 867-332-0213.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sandy Silver".

Sandy Silver
Premier

From: [Angela.Troke](#) on behalf of [Sandy.Silver](#)
To: [YESAB.Reception](#)
Subject: Executive Committee Screening Report for the Kudz Ze Kayah Project
Date: Friday, January 22, 2021 5:53:51 PM
Attachments: [Letter - 2021_01_22 YG Response to screening report KZK - Final Version.pdf](#)
[image001.png](#)

Good afternoon,

Please see the attached letter from Premier Silver.

Thank you,

Angela Troke on behalf of,



Hon. Sandy Silver

Premier

Minister of Finance

Minister of Executive Council Office

Cabinet Office | Government of Yukon

T 867-393-7007 | Yukon.ca

January 22, 2021

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Yukon Environmental and Socio-economic Assessment Board
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Whitehorse, YT, Y1A 6L2
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Sandy Silver
Premier

From: [Angela.Troke](#)
To: [Stephen.Mills](#); [Samantha.Paterson](#); [Keith.Maguire](#)
Subject: FW: Executive Committee Screening Report for the Kudz Ze Kayah Project
Date: Friday, January 22, 2021 5:56:01 PM
Attachments: [Letter - 2021_01_22 YG Response to screening report KZK - Final Version.pdf](#)
[image001.png](#)

FYI when I entered yesab@yeasab.ca the email address automatically changes to YESAB.Reception@yesab.ca

From: Angela.Troke **On Behalf Of** Sandy.Silver

Sent: January 22, 2021 5:54 PM

To: YESAB.Reception

Subject: Executive Committee Screening Report for the Kudz Ze Kayah Project

Good afternoon,

Please see the attached letter from Premier Silver.

Thank you,

Angela Troke on behalf of,



Hon. Sandy Silver

Premier

Minister of Finance

Minister of Executive Council Office

Cabinet Office | Government of Yukon

T 867-393-7007 | Yukon.ca

January 22, 2021

Ms. Laura Cabott, Chair of the Board
Executive Committee
Yukon Environmental and Socio-economic Assessment Board
200 – 309 Strickland Street
Whitehorse, YT, Y1A 6L2
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Sandy Silver
Premier

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To: [Stephen.Mills](#); [Samantha.Paterson](#); [Keith.Maguire](#)
Subject: RE: Executive Committee Screening Report for the Kudz Ze Kayah Project
Date: Friday, January 22, 2021 5:57:30 PM
Attachments: [image001.png](#)

Sorry yesab@yesab.ca as indicated in the letter.

From: Angela.Troke
Sent: January 22, 2021 5:56 PM
To: Stephen.Mills ; Samantha.Paterson ; Keith.Maguire
Subject: FW: Executive Committee Screening Report for the Kudz Ze Kayah Project
FYI when I entered yesab@yesab.ca the email address automatically changes to YESAB.Reception@yesab.ca

From: Angela.Troke **On Behalf Of** Sandy.Silver
Sent: January 22, 2021 5:54 PM
To: YESAB.Reception <YESAB.Reception@yesab.ca>
Subject: Executive Committee Screening Report for the Kudz Ze Kayah Project

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Thank you,

Angela Troke on behalf of,



Hon. Sandy Silver

Premier

Minister of Finance

Minister of Executive Council Office

Cabinet Office | Government of Yukon

T 867-393-7007 | Yukon.ca

From: [Stephen.Mills](#)
To: [John.Bailey](#)
Subject: Fwd:
Date: Friday, January 22, 2021 6:17:21 PM
Attachments: [Letter - 2021_01_22 YG Response to screening report KZK - Final Version.pdf](#)
[image002.png](#)

FYI

Sent from my mobile device

----- Forwarded message -----

From: Angela.Troke
Date: January 22, 2021 at 5:52:22 PM MST
Subject:
To: Stephen.Mills



Angie Troke

Executive Assistant to the Deputy Minister
Executive Council Office | Deputy Minister's Office
T 867-667-5421 | F 867-393-6214 | Yukon.ca | A-8

January 22, 2021

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Sincerely,

A handwritten signature in blue ink, appearing to read "Sandy Silver".

Sandy Silver
Premier

CONFIDENTIAL

Information Note

Kudz Ze Kayah Mine Project Screening Report Decision Considerations

Executive Council
Office

Current Status

- Yukon government (YG) is preparing to accept the Yukon Environmental and Socio-economic Assessment Board Executive Committee's (EC) final screening report which includes 30 recommended mitigations and six recommended monitoring programs, subject to consultation with Kaska Nations.
- YG as a decision body, in consultation with Canada and Kaska Nations, is required to either issue a decision document accepting the recommendations or refer the recommendations back to the EC for reconsideration.
- On December 11th, 2020, YG and Canada notified the EC that the decision bodies are extending the decision timeline to January 22, 2021 to accept the recommendations and issue a decision document or to refer the report back to the EC for reconsideration.
- The extension was made in response to a request from the Ross River Dena Council (RRDC) to extend the period to provide their views on the final screening report to January 8, 2021. The extension will allow additional time for the decision bodies consider RRDC's comments and to continue consultation with all Kaska Nations.
- The original date to refer the report back to the EC for reconsideration was December 12, 2020 and the original deadline to accept the recommendations and issue a decision document was January 11, 2021.
- On December 17, 2020 the decision bodies sent a joint letter informing RRDC of the decision to extend the decision making timeline, and highlighting the importance of receiving RRDC's views by January 8, 2021.

Current Issues and Proposed Approaches

- 1) Canada's preference is to refer the recommendation back to the EC for reconsideration.
 - YG has confirmed we are working towards accepting the recommendations subject to FN's views identified through consultation.

CONFIDENTIAL

Information Note

Kudz Ze Kayah Mine Project Screening Report Decision Considerations

Executive Council
Office

- After considering YG's position, Canada has indicated its preferred approach is to refer the recommendation back to the EC for reconsideration for the following reasons:
 - a) Canada views the report as lacking rationale to describe how the EC considered impacts to asserted Kaska rights. They expect that the EC should have clearly identified how FN comments were considered as part of values identification and significance determination.
 - b) Canada is not clear how the report recommended mitigations and monitoring will mitigate impacts to asserted Kaska rights.
 - c) Canada has indicated they, as a decision body for the Project, have a constitutional obligation to consult with affected First Nations on potential impacts of the Project on asserted Kaska rights. They are relying on the YESAA process (and perhaps YG) to discharge their consultation duties, recognizing that they have limited regulatory authority to execute their duties once the assessment is complete.
 - d) Canada does not have confidence in the EC's significance determination rationale nor that the recommended mitigations and monitoring programs have sufficient rationale to address significant adverse effects identified.
 - The decision bodies have agreed to continue to meet with meetings currently scheduled on December 22, 2020, January 5, 2021 and January 7, 2021 to work towards a coordinated response to the report.
 - Canada has committed to providing YG a written summary of their concerns about the report on December 18, 2021 to inform the future discussions.
- 2) LFN's proposed Project reconciliation agreement with Canada.
- In a November 19, 2020 letter from LFN to Canada, LFN proposed and provided a draft Project specific reconciliation agreement for Canada's consideration. YG has been provided a copy of the letter but not of the proposed reconciliation agreement.

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Information Note

Kudz Ze Kayah Mine Project Screening Report Decision Considerations

Executive Council
Office

- LFN has indicated that it is waiting for a response from Canada before engaging further in consultation with YG.
- Canada and LFN were attempting to schedule a meeting to discuss the reconciliation agreement further. LFN requested that YG not attend the meeting. Canada has not been successful in meeting with LFN yet.
- MPY has indicated our concern that Canada's consideration of a reconciliation agreement with LFN for the project is impacting YG's consultation with LFN.
- On December 16, 2020 Canada replied to LFN's November 19, 2020 letter, and have committed to sharing a copy of the letter with YG after "a couple of days" to allow YG time to consider the letter first. YG has not yet seen the letter, but expects to receive a copy on December 18, 2020.
- YG understands that the letter indicates that Canada will not consider a Project reconciliation agreement with LFN.

3) YG Consultation with LFN

- In a November 19, 2020 letter from Liard First Nation (LFN) to YG, LFN indicated its dissatisfaction with the consultation process on the Kudz Ze Kayah process amongst other things and suggested a meeting to discuss the conduct of mutual consultation.
- YG met with LFN and Canada on Thursday December 3 regarding the timelines for decision bodies to refer the recommendations back to the EC. Both YG and NPMO confirmed that the deadline was (at the time) December 12.
- LFN indicated it "was concerned" about the timeline as LFN had thought the deadline to refer back was December 5.
- LFN was unwilling to discuss its views or conclusions on the screening report at the meeting.
- To date LFN has been unwilling to meet, after repeated attempts to confirm meeting dates.
- YG is preparing a written response to LFN's November 19, 2020 letter. Currently the letter will:

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Information Note

Kudz Ze Kayah Mine Project Screening Report Decision Considerations

Executive Council
Office

- request LFN's views on the screening report (and possibly on YG's approach to our review of the report),
 - summarize consultation to date,
 - summarize consultation issues raised to date
 - Encourage the development of a joint plan going forward considering LFN's Kaska-centric independent peer review process and the development of a consultation/work plan.
- YG intends to respond to LFN before December 23, 2021.

BMC Support

- In a December 2, 2020 letter from BMC the company indicated its support for the acceptance by the decision bodies of the 30 recommendations and six monitoring requirements proposed by YESAB. It also committed to supporting the implementation of the recommendations.

Background:

- The Yukon Environmental and Socio-economic Assessment Board Executive Committee issued the final screening report on October 21, 2020 for the Kudz Ze Kayah Mine Project (the Project). The Executive Committee (the EC) has recommended that the Project proceed subject to specific terms and conditions.
- The final screening report includes 30 recommended mitigations and 6 recommended monitoring programs. Many of the recommendations were amended or added since the draft screening report was released November 20, 2019 with 16 recommendation mitigations and 4 recommended monitoring programs.
- Yukon government (YG), Fisheries and Oceans Canada (DFO) and Natural Resources Canada (NRCan) are decision bodies and are required to prepare a decision document(s) for the Project.
- Section 76(1) of the Yukon Environmental and Socio-economic Assessment Act. (YESAA) requires that the decision body(ies), (a) issue a decision document

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Information Note

Kudz Ze Kayah Mine Project Screening Report Decision Considerations

Executive Council
Office

accepting the recommendation, or (b) refer the recommendation back to the Executive Committee for reconsideration.

- If a decision body refers the recommendation back, every other decision body is required to discontinue its consideration of the recommendation.
- Decision bodies have a 52-day period (45 plus seven days) to refer the project back to the Executive Committee for reconsideration and 81 (60 plus 21 days) to accept the recommendation as specified in the *Decision Body Time Periods and Consultation Regulations*.
- Section 46.1 of YESAA identifies that a decision body that does not perform a duty or function within the period provided for under YESAA does not terminate their authority to do so. (i.e. the authority of a decision body is not invalidated if a YESAA deadline is missed).
- Section 74(1) of YESAA requires a decision body to give “full and fair consideration” of the information provided with the recommendation. Section 74(2) of the YESAA requires a decision body to consult with affected First Nation(s) without final agreements.
- The Minister of the Executive Council Office (the Premier) is the YG authority for issuing a decision document for an Executive Committee screening. Major Projects Yukon is coordinating the review of the final screening report and recommendations by YG expert departments to inform decision-making.

From: [Keith.Maguire](#)
To: [John.Fox](#)
Subject: FW: BMC Session Note
Date: Monday, October 5, 2020 12:58:20 PM
Attachments: [image001.png](#)
[image001.png](#)
[Session NoteKudz Ze Kayah Mine Project 2020_10_5.docx](#)

Hi John, attached is the current version of the session note. The note will be required to be updated once we receive the screening report from the Executive Committee which we are expecting next week.

Keith

From: Jasmina.Randhawa

Sent: October 5, 2020 10:13 AM

To: John.Fox

Cc: Keith.Maguire

Subject: Re: BMC Session Note

Yes we do have one - Keith can you send to John please?

On October 5, 2020 at 9:58:07 AM PDT, John.Fox <John.Fox@gov.yk.ca> wrote:

Hi Jasmina

Did ECO prepare a session note for BMC, if you did, could you share it with me.



John Fox
 Assistant Deputy Minister
 Oil, Gas and Mineral Resources
 Department of Energy, Mines and Resources
 T 867-667-5461 | C 867-334-6510 | F 867-667-8601 | Yukon.ca

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Session Briefing Note

Fall 2020

Executive Committee Screening of the Kudz Ze Kayah Mine Project (BMC Minerals)

Executive Council
Office

Recommended response:

- We are encouraged by the Yukon Environmental and Socio-economic Assessment Board's Executive Committee announcement that they have sufficient information to prepare a final recommendation for the Kudz Ze Kayah Mine project and are looking forward to the screening report outcomes and recommendations.
- The Yukon government will continue to consult with Kaska First Nations on the Kudz Ze Kayah project in a way that meets our obligations and supports our commitment to build strong relationships with First Nations.

Additional response:

- The Yukon government, along with Canada and BMC Minerals, have provided support to Liard First Nation to review and comment on the draft screening report.
- Our government supports responsible mineral resource development and is committed to finding efficiencies in the assessment and regulatory review of projects.

Context—this may be an issue because:

- The Liard First Nation (LFN), the Liard Aboriginal Women's' Society (LAWS) expressed concerns that the draft screening report (DSR) does not consider information from LFN's ongoing independent review process.
- BMC, as well as other proponents of projects of Executive Committee screenings, are likely concerned about YESAB's departure from its established timelines and about the impact of this and other potential delays on their project schedules.

Background:

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Session Briefing Note

Fall 2020

Executive Committee Screening of the Kudz Ze Kayah Mine Project (BMC Minerals)

Executive Council
Office

Project Information

- Kudz Ze Kayah (KZK) is a proposed open pit and underground copper, lead, zinc, gold and silver mine. BMC purchased the property from Teck Resources (formerly Cominco) in January 2015 and has been working on-site since July 2015. The project is proposed to have an approximately 20-month construction period followed by a 10-year operation phase.
- The project is located in the Ross River Area of Kaska asserted Traditional Territory, 115 km southeast of Ross River and 24 km southwest of the Robert Campbell Highway near Finlayson Lake. It is adjacent to the Wolverine Mine.
- Access to the project is via a 24 km gated, all-weather gravel road that connects to the Robert Campbell Highway. BMC has a surface lease for the road.

Consultation with First Nations

- 76(1)

YESAA Executive Committee Screening Process

- During the review of the draft screening report (DSR), LFN, LAWS and the federal NPMO, on behalf of the Federal Decision Bodies Fisheries and Oceans Canada and Natural Resources Canada, submitted comments to YESAB expressing concern that

CONFIDENTIAL**Session Briefing Note****Fall 2020****Executive Committee Screening of
the Kudz Ze Kayah Mine Project
(BMC Minerals)**Executive Council
Office

the DSR does not consider the KZK Kaska-Centric Independent Peer Review process results.

- On February 14, 2020, the Executive Committee extended the public comment period on the DSR to May 31, 2020. BMC has expressed frustration with the extension of the public comment period beyond the timelines allowed for in the Executive Committee Rules.
- At the conclusion of the public comment period, the Executive Committee issued information request #6 related to caribou and cumulative effects. BMC responded to the information request on July 24, 2020.
- On August 12, 2020, the Executive Committee notified Yukon government (YG) that they had sufficient information to make a recommendation for the project. LFN has indicated they are preparing a letter objecting to that determination.
- The Executive Committee have indicated that the screening report will be finalized by October 12, 2020. However, the Executive Committee may extend the period to prepare the screening report an additional 30 days (up to November 12, 2020).

Approved by:_____
Deputy Minister, Executive Council Office_____
Date

From: [Keith.Maguire](#)
To: [Jasmina.Randhawa](#)
Cc: [Staci.Magnuson](#); [Sevn.Bohnet](#)
Subject: RE: 2020_10_07 info note KZK Mine Project
Date: Tuesday, October 13, 2020 5:00:24 PM
Attachments: [2020-10-13 Letter to MPY - FSR Extension.pdf](#)
[FW Extension of time - KZK.msg](#)
[2020_10_13 info note KZK Mine Project.docx](#)

Hi Jasmina, See attached an updated info note for the Premier. Also attached is a letter notifying MPY that the ExCom is taking additional time. However we've also received an email from the senior assessment officer indicating that the ExCom won't likely take all the time. Not exactly clear, but at least they are giving us a heads up.

Keith

From: Jasmina.Randhawa
Sent: October 13, 2020 9:49 AM
To: Keith.Maguire
Cc: Staci.Magnuson
Subject: FW: 2020_10_07 info note KZK Mine Project

Morning,

See Stephen's comment/request.

Thanks,

Jasmina

From: Stephen.Mills <Stephen.Mills@gov.yk.ca>
Sent: October-13-20 9:45 AM
To: Angela.Troke <Angela.Troke@gov.yk.ca>; Jasmina.Randhawa <Jasmina.Randhawa@gov.yk.ca>
Subject: 2020_10_07 info note KZK Mine Project
 Please see comment.

YESAB

Yukon Environmental and
Socio-economic Assessment Board

File No. 2017-0083
Via Email

October 13, 2020

Sevn Bohnet
Major Projects Manager
Major Projects Yukon
Executive Council Office
Government of Yukon
PO Box 2703
Whitehorse, Yukon Y1A 2C6

Dear Mr. Bohnet,

**Re: Kudz Ze Kayah Mine (Assessment No. 2017-0083)
Extension of Time to Prepare Recommendation**

This is to notify you that pursuant to s. 59 of the Screening Rules, the Executive Committee has extended the period for completing the Screening Report for the Kudz Ze Kayah Mine project. The Executive Committee will issue the Screening Report before November 13, 2020.

The extended period is required by the Executive Committee to finalize its recommendation as the Screening Report includes a change in a significance determination from the Draft Screening Report in regards to caribou. Considering the amount of submitted materials relevant to this change, the Executive Committee requires some additional time to give full and fair consideration to all information in front of it.

The proposal can be accessed through the YESAB Online Registry (YOR). If you have any questions, please contact Andrew Reid, the Senior Assessment Officer assigned to this project at andrew.reid@yesab.ca, by telephone at 867-668-6420 or in person at 200 – 309 Strickland Street, Whitehorse, Yukon.

Sincerely,



Laura Cabott
Executive Committee
Member



Lawrence Joe
Executive Committee
Member



Bryony McIntyre
Executive Committee
Member

From: Sevn.Bohnet []
To: Keith.Maguire [Keith.Maguire@gov.yk.ca]
Subject: FW: Extension of time - KZK
Date: Tuesday, October 13, 2020 14:19:09

FYI

From: Andrew.Reid <Andrew.Reid@yesab.ca>
Sent: October 13, 2020 2:12 PM
To: Sevn.Bohnet <Sevn.Bohnet@gov.yk.ca>
Subject: Extension of time

Good afternoon,

You'll be getting a letter shortly from the executive committee that states it is taking more time to prepare the final recommendation for the Kudz Ze Kayah project. While the letter specifies the maximum time limit, we do hope to finish shortly. I'll try to give you a couple days heads up when we're ready, as we are quite close.

Andrew

Andrew Reid
Senior Assessment Officer
Yukon Environmental and Socio-economic Assessment Board
867-668-6420
Andrew.reid@yesab.ca
www.yesab.ca

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Information Note

Kudz Ze Kayah Mine Project (BMC Minerals)

Executive Council
Office

Issue:

- The Yukon government (YG), Fisheries and Oceans Canada (DFO) and Natural Resources Canada (NRCan) are decision bodies for the Kudz Ze Kayah Mine Project (the Project). The decision bodies are required to prepare a decision document(s) for the Project once a screening report with recommendations is issued by the Executive Committee of the Yukon Environmental and Socio-economic Assessment Board (YESAB).

Context:

- Section 76(1)(b) of the *Yukon Environmental and Socio-economic Assessment Act* (YESAA) requires that if the decision body(ies) do not accept the recommendations in the screening report, the report will be referred back to the Executive Committee for reconsideration.
- Decision bodies have a 52 day period (45 days plus 7 days) to refer the project back to the Executive Committee for reconsideration according to the *Decision Body Time Periods and Consultation Regulations* (SOR/2005/380).
- Section 78(1) of YESAA requires YG to consult with Canada with the goal of issuing conforming decision documents with the federal decision bodies.
- YG will continue consultation with Kaska Nations when considering whether to accept, reject or vary the recommendations in the final screening report. Consultation on the decision document will form a part of ongoing consultation with Kaska Nations on the project.
- The Executive Committee has indicated that the screening report will be issued sometime around October 19, 2020, although they sent a letter

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Information Note

Kudz Ze Kayah Mine Project (BMC Minerals)

Executive Council
Office

notifying YG that the screening report will be issued before November 13, 2020.

- Assuming the final screening report is issued next week on October 19, 2020, Yukon government in consultation with Canada and Kaska Nations will be required to determine if the report recommendations should be accepted, varied or rejected by **December 10, 2020**. (in accordance with the *Decision Body Time Periods and Consultation Regulations* noted above)

Status of engagement with Canada on the screening of the Kudz Ze Kayah Mine project:

- While DFO and NRCan are federal decision bodies for the project, the Northern Project Management Office (NPMO), Canadian Northern Economic Development Agency (CanNor) is coordinating the federal roles.
- In a letter from BMC to CanNor dated September 3, 2020, BMC identified their concerns with Canada's perceived approach to consultation. CanNor responded by letter to those concerns.
- Canada's regulatory roles for the project include the issuance of a Fisheries Act Authorization, Permit for Use of Explosives, and Explosives Magazine Permit. Many of the matters identified in consultation with affected First Nations are beyond the regulatory authority of federal regulators.

Status of Consultation with Kaska Nations about the Kudz Ze Kayah Mine project.

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Information Note

Kudz Ze Kayah Mine Project (BMC Minerals)

Executive Council
Office

- YG is continuing consultations with Ross River Dena Council, Liard First Nation, Kwadacha Nation and Dease River First Nation regarding potential impacts of the project on asserted Aboriginal rights.
- YG sent letters to the Kaska Nations on September 16, 2020 to inform them of the coming decision phase and YG's intent to consult with them.
- YG and Canada are preparing letters to Kaska Nations once the screening report is issued and will both be consulting with Kaska Nations in the decision phase.
- 76(1)

- In LFN's submission to the Executive Committee on June 1, 2020, LFN provided three initial reports based on their KCIPR process. They requested the Executive Committee extend the public comment period to **November 8, 2020** to allow the completion of the KCIPR work.

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Information Note

Kudz Ze Kayah Mine Project (BMC Minerals)

Executive Council
Office

- On August 12, 2020 the Executive Committee announced it had determined there is sufficient information to conclude the screening and make its recommendation.
- 76(1)
- At the end of April, Yukon government sent letters to Daylu Dena Council and Kaska Dena Council confirming that YG will consult with the four Kaska rights-bearing groups the Liard First Nation, Ross River Dena Council, the Dease River First Nation and the Kwadacha Nation. The First Nations have not responded.

Background: Executive Committee Screening Process

- On August 14, the YESAB determined they had sufficient information to prepare a final screening report. YESAB has indicated that the screening report will be issued by October 12, 2020.
- BMC Minerals (NO.1) Ltd. (BMC) submitted information response #6 on July 24, 2020.
- Information request #6 requested additional information related to the Finlayson Caribou Herd (7 questions) and climate change (1 question). YESAB issued the information request after reviewing comments provided during an extended public

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Information Note

Kudz Ze Kayah Mine Project (BMC Minerals)

Executive Council
Office

review of the Draft Screening Report that began November 20, 2019 and concluded on May 31, 2020.

- The public comment period was extended in response to requests from the Liard First Nation and the Liard Aboriginal Womens' Society.
- The Premier received a letter from BMC on May 28 seeking clarity on YG's consultations process and timelines with affected First Nations. The Premier responded by letter on August 12, 2020 outlining YG's approach.

Background Kudz Ze Kayah Project Description

- Kudz Ze Kayah (KZK) is a proposed open pit and underground copper, lead, zinc, gold and silver mine. BMC purchased the property from Teck Resources (formerly Cominco) in January 2015 and has been working on-site since July 2015. The project is proposed to have an approximately 20-month construction period followed by a 10-year operation phase.
- The project is located in the Ross River Area of Kaska asserted Traditional Territory, 115 km southeast of Ross River and 24 km southwest of the Robert Campbell Highway near Finlayson Lake. It is adjacent to the Wolverine Mine.
- Access to the project is via a 24 km gated, all-weather gravel road that connects to the Robert Campbell Highway. BMC has a surface lease for the road.

From: [Jasmina.Randhawa](#)
To: [Keith.Maguire](#)
Cc: [Staci.Magnuson](#); [Sevn.Bohnet](#)
Subject: RE: 2020_10_07 info note KZK Mine Project
Date: Wednesday, October 14, 2020 8:18:30 AM
Attachments: [2020_10_14 info note KZK Mine Project.docx](#)

Thanks Keith. The formal letter is helpful because it gives a more specific time frame of when the report will be issued by. Before we had that it was going to be one to two weeks past the deadline, but this letter lets us know it could be up to a month.

Based on that, I've made some edits in the attached and also have asked a couple clarifying questions on dates, make sure you scroll all the way down, I have a comment on page 4 or 5 as well.

Also, please make sure the session note is updated based on the receipt of this letter and the clearer timeline.

Jasmina

From: Keith.Maguire
Sent: October-13-20 5:00 PM
To: Jasmina.Randhawa
Cc: Staci.Magnuson ; Sevn.Bohnet
Subject: RE: 2020_10_07 info note KZK Mine Project

Hi Jasmina, See attached an updated info note for the Premier. Also attached is a letter notifying MPY that the ExCom is taking additional time. However we've also received an email from the senior assessment officer indicating that the ExCom won't likely take all the time. Not exactly clear, but at least they are giving us a heads up.

Keith

From: Jasmina.Randhawa <Jasmina.Randhawa@gov.yk.ca>
Sent: October 13, 2020 9:49 AM
To: Keith.Maguire <Keith.Maguire@gov.yk.ca>
Cc: Staci.Magnuson <Staci.Magnuson@gov.yk.ca>
Subject: FW: 2020_10_07 info note KZK Mine Project

Morning,

See Stephen's comment/request.

Thanks,

Jasmina

From: Stephen.Mills <Stephen.Mills@gov.yk.ca>
Sent: October-13-20 9:45 AM
To: Angela.Troke <Angela.Troke@gov.yk.ca>; Jasmina.Randhawa <Jasmina.Randhawa@gov.yk.ca>
Subject: 2020_10_07 info note KZK Mine Project
Please see comment.

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Information Note

Kudz Ze Kayah Mine Project (BMC Minerals)

Executive Council
Office

Issue:

- The Yukon government (YG), Fisheries and Oceans Canada (DFO) and Natural Resources Canada (NRCan) are decision bodies for the Kudz Ze Kayah Mine Project (the Project). The decision bodies are required to prepare a decision document(s) for the Project once a screening report with recommendations is issued by the Executive Committee of the Yukon Environmental and Socio-economic Assessment Board (YESAB).

Context:

- Section 76(1)(b) of the Yukon Environmental and Socio-economic Assessment Act (YESAA) requires that if the decision body(ies) do not accept the recommendations in the screening report, the report will be referred back to the Executive Committee for reconsideration.
- Decision bodies have a ~~52-day~~ 52-day period (45 days plus 7 days) to refer the project back to the Executive Committee for reconsideration according to the *Decision Body Time Periods and Consultation Regulations* (SOR/2005/380).
- Section 78(1) of YESAA requires YG to consult with Canada with the goal of issuing conforming decision documents with the federal decision bodies.
- YG will continue consultation with Kaska Nations when considering whether to accept, reject or vary the recommendations in the final screening report. Consultation on the decision document will form a part of ongoing consultation with Kaska Nations on the project.
- The Executive Committee ~~has indicated that the screening report will be issued sometime around~~ had originally indicated the screening report

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Information Note

**Kudz Ze Kayah Mine Project
(BMC Minerals)**

Executive Council
Office

would be issued around October 19, 2020. On October 13, 2020 the Executive Committee notified YG via letter, although they sent a letter notifying YG that the screening report will be issued before November 13, 2020.

- Assuming the final screening report is issued next week on October 19, 2020, Yukon government in consultation with Canada and Kaska Nations will be required to determine if the report recommendations should be accepted, varied or rejected by **December 10, 2020** (in accordance with the *Decision Body Time Periods and Consultation Regulations* noted above).

Commented [J1]: Does this date change now that we know the November 13 date?

Status of engagement with Canada on the screening of the Kudz Ze Kayah Mine project:

- While DFO and NRCan are federal decision bodies for the project, the Northern Project Management Office (NPMO), Canadian Northern Economic Development Agency (CanNor) is coordinating the federal roles.
- In a letter from BMC to CanNor dated September 3, 2020, BMC identified their concerns with Canada's perceived approach to consultation. CanNor responded by letter to those concerns.
- Canada's regulatory roles for the project include the issuance of a Fisheries Act Authorization, Permit for Use of Explosives, and Explosives Magazine Permit. Many of the matters identified in consultation with affected First Nations are beyond the regulatory authority of federal regulators.

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Information Note

**Kudz Ze Kayah Mine Project
(BMC Minerals)**

Executive Council
Office

Status of Consultation with Kaska Nations about the Kudz Ze Kayah Mine project.

- YG is continuing consultations with Ross River Dena Council, Liard First Nation, Kwadacha Nation and Dease River First Nation regarding potential impacts of the project on asserted Aboriginal rights.
- YG sent letters to the Kaska Nations on September 16, 2020 to inform them of the coming decision phase and YG's intent to consult with them.
- YG and Canada are preparing letters to Kaska Nations once the screening report is issued and will both be consulting with Kaska Nations in the decision phase.
- 76(1)

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Information Note

Kudz Ze Kayah Mine Project (BMC Minerals)

Executive Council
Office

- In LFN's submission to the Executive Committee on June 1, 2020, LFN provided three initial reports based on their KCIPR process. They requested the Executive Committee extend the public comment period to **November 8, 2020** to allow the completion of the KCIPR work.
- On August 12, 2020 the Executive Committee announced it had determined there is sufficient information to conclude the screening and make its recommendation.
- 76(1)

Commented [J2]: Is this date correct? The public comment period is extended to next month? That seems confusing...

- At the end of April, Yukon government sent letters to Daylu Dena Council and Kaska Dena Council confirming that YG will consult with the four Kaska rights-bearing groups the Liard First Nation, Ross River Dena Council, the Dease River First Nation and the Kwadacha Nation. The First Nations have not responded.

Background: Executive Committee Screening Process

- On August 14, the YESAB determined they had sufficient information to prepare a final screening report. YESAB has indicated that the screening report will be issued by October 12, 2020.

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Information Note

Kudz Ze Kayah Mine Project (BMC Minerals)

Executive Council
Office

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- Information request #6 requested additional information related to the Finlayson Caribou Herd (7 questions) and climate change (1 question). YESAB issued the information request after reviewing comments provided during an extended public review of the Draft Screening Report that began November 20, 2019 and concluded on May 31, 2020.
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- Access to the project is via a 24 km gated, all-weather gravel road that connects to the Robert Campbell Highway. BMC has a surface lease for the road.

From: [Sevn.Bohnet](#)
To: [Keith.Maguire](#)
Subject: RE: 2020_10_07 info note KZK Mine Project
Date: Wednesday, October 14, 2020 9:13:53 AM
Attachments: [2020_10_14 info note KZK Mine Project - SB.docx](#)

Hi Keith,
 Attached is the revised note based on Jasmina's feedback. I accepted most of her revisions but left one change and a reply to her comment for your review/final edit. See attached. I will update the Session note now and route it to you.

From: Jasmina.Randhawa
Sent: October 14, 2020 8:18 AM
To: Keith.Maguire
Cc: Staci.Magnuson ; Sevn.Bohnet
Subject: RE: 2020_10_07 info note KZK Mine Project

Thanks Keith. The formal letter is helpful because it gives a more specific time frame of when the report will be issued by. Before we had that it was going to be one to two weeks past the deadline, but this letter lets us know it could be up to a month.

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Also, please make sure the session note is updated based on the receipt of this letter and the clearer timeline.

Jasmina

From: Keith.Maguire <Keith.Maguire@gov.yk.ca>
Sent: October-13-20 5:00 PM
To: Jasmina.Randhawa <Jasmina.Randhawa@gov.yk.ca>
Cc: Staci.Magnuson <Staci.Magnuson@gov.yk.ca>; Sevn.Bohnet <Sevn.Bohnet@gov.yk.ca>
Subject: RE: 2020_10_07 info note KZK Mine Project

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Keith

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Sent: October 13, 2020 9:49 AM
To: Keith.Maguire <Keith.Maguire@gov.yk.ca>
Cc: Staci.Magnuson <Staci.Magnuson@gov.yk.ca>
Subject: FW: 2020_10_07 info note KZK Mine Project

Morning,

See Stephen's comment/request.

Thanks,

Jasmina

From: Stephen.Mills <Stephen.Mills@gov.yk.ca>
Sent: October-13-20 9:45 AM
To: Angela.Troke <Angela.Troke@gov.yk.ca>; Jasmina.Randhawa <Jasmina.Randhawa@gov.yk.ca>

Subject: 2020_10_07 info note KZK Mine Project
Please see comment.

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Information Note

Kudz Ze Kayah Mine Project (BMC Minerals)

Executive Council
Office

Issue:

- The Yukon government (YG), Fisheries and Oceans Canada (DFO) and Natural Resources Canada (NRCan) are decision bodies for the Kudz Ze Kayah Mine Project (the Project). The decision bodies are required to prepare a decision document(s) for the Project once a screening report with recommendations is issued by the Executive Committee of the Yukon Environmental and Socio-economic Assessment Board (YESAB).

Context:

- Section 76(1)(b) of the *Yukon Environmental and Socio-economic Assessment Act* (YESAA) requires that if the decision body(ies) do not accept the recommendations in the screening report, the report will be referred back to the Executive Committee for reconsideration.
- Decision bodies have a 52-day period (45 days plus 7 days) to refer the project back to the Executive Committee for reconsideration according to the *Decision Body Time Periods and Consultation Regulations* (SOR/2005/380).
- Section 78(1) of YESAA requires YG to consult with Canada with the goal of issuing conforming decision documents with the federal decision bodies.
- YG will continue consultation with Kaska Nations when considering whether to accept, reject or vary the recommendations in the final screening report. Consultation on the decision document will form a part of ongoing consultation with Kaska Nations on the project.
- The Executive Committee had originally indicated the screening report would be issued around October 19, 2020. On October 13, 2020 the

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Information Note

Kudz Ze Kayah Mine Project (BMC Minerals)

Executive Council
Office

Executive Committee notified YG via letter, that the screening report will be issued before November 13, 2020.

- Yukon government in consultation with Canada and Kaska Nations will be required to determine if the report recommendations should be accepted, varied or rejected by December 10, 2020 within the 52-day period after receipt of the final recommendation report (in accordance with the Decision Body Time Periods and Consultation Regulations noted above).

Commented [J1]: Does this date change now that we know the November 13 date?

Commented [S2]: 74(1)(a)

Status of engagement with Canada on the screening of the Kudz Ze Kayah Mine project:

- While DFO and NRCan are federal decision bodies for the project, the Northern Project Management Office (NPMO), Canadian Northern Economic Development Agency (CanNor) is coordinating the federal roles.
- In a letter from BMC to CanNor dated September 3, 2020, BMC identified their concerns with Canada's perceived approach to consultation. CanNor responded by letter to those concerns.
- Canada's regulatory roles for the project include the issuance of a Fisheries Act Authorization, Permit for Use of Explosives, and Explosives Magazine Permit. Many of the matters identified in consultation with affected First Nations are beyond the regulatory authority of federal regulators.

Status of Consultation with Kaska Nations about the Kudz Ze Kayah Mine project.

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Information Note

Kudz Ze Kayah Mine Project (BMC Minerals)

Executive Council
Office

- YG is continuing consultations with Ross River Dena Council, Liard First Nation, Kwadacha Nation and Dease River First Nation regarding potential impacts of the project on asserted Aboriginal rights.
- YG sent letters to the Kaska Nations on September 16, 2020 to inform them of the coming decision phase and YG's intent to consult with them.
- YG and Canada are preparing letters to Kaska Nations once the screening report is issued and will both be consulting with Kaska Nations in the decision phase.
- 76(1)

- In LFN's submission to the Executive Committee on June 1, 2020, LFN provided three initial reports based on their KCIPR process. They requested the Executive Committee extend the public comment period to **November 8, 2020** to allow the completion of the KCIPR work.

Prepared for: Premier Sandy Silver

Prepared by: Major Projects Yukon, ECO

Date Prepared: October 13, 2020

Last Updated: October 14, 2020

Page 3 of 5

Commented [J3]: Is this date correct? The public comment period is extended to next month? That seems confusing...

Commented [S4R3]: 7
6

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Information Note

Kudz Ze Kayah Mine Project (BMC Minerals)

Executive Council
Office

- On August 12, 2020 the Executive Committee announced it had determined there is sufficient information to conclude the screening and make its recommendation.
- 76(1)

- At the end of April, Yukon government sent letters to Daylu Dena Council and Kaska Dena Council confirming that YG will consult with the four Kaska rights-bearing groups the Liard First Nation, Ross River Dena Council, the Dease River First Nation and the Kwadacha Nation. The First Nations have not responded.

Background: Executive Committee Screening Process

- On August 14, the YESAB determined they had sufficient information to prepare a final screening report. YESAB has indicated that the screening report will be issued by October 12, 2020.
- BMC Minerals (NO.1) Ltd. (BMC) submitted information response #6 on July 24, 2020.
- Information request #6 requested additional information related to the Finlayson Caribou Herd (7 questions) and climate change (1 question). YESAB issued the information request after reviewing comments provided during an extended public

Prepared for: Premier Sandy Silver

Prepared by: Major Projects Yukon, ECO

Date Prepared: October 13, 2020

Last Updated: October 14, 2020

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CONFIDENTIAL

Information Note

Kudz Ze Kayah Mine Project (BMC Minerals)

Executive Council
Office

review of the Draft Screening Report that began November 20, 2019 and concluded on May 31, 2020.

- The public comment period was extended in response to requests from the Liard First Nation and the Liard Aboriginal Womens' Society.
- The Premier received a letter from BMC on May 28 seeking clarity on YG's consultations process and timelines with affected First Nations. The Premier responded by letter on August 12, 2020 outlining YG's approach.

Background Kudz Ze Kayah Project Description

- Kudz Ze Kayah (KZK) is a proposed open pit and underground copper, lead, zinc, gold and silver mine. BMC purchased the property from Teck Resources (formerly Cominco) in January 2015 and has been working on-site since July 2015. The project is proposed to have an approximately 20-month construction period followed by a 10-year operation phase.
- The project is located in the Ross River Area of Kaska asserted Traditional Territory, 115 km southeast of Ross River and 24 km southwest of the Robert Campbell Highway near Finlayson Lake. It is adjacent to the Wolverine Mine.
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Prepared for: Premier Sandy Silver

Prepared by: Major Projects Yukon, ECO

Date Prepared: October 13, 2020

Last Updated: October 14, 2020

Page 5 of 5

From: [Keith.Maguire](#)
To: [Jasmina.Randhawa](#)
Cc: [Staci.Magnuson](#); [Sevn.Bohnet](#)
Subject: RE: 2020_10_07 info note KZK Mine Project
Date: Wednesday, October 14, 2020 10:58:26 AM
Attachments: [2020_10_14 info note KZK Mine Project.docx](#)

Hi Jasmina,

Attached is a updated note with a couple of responses to your questions as well. Keith

From: Jasmina.Randhawa
Sent: October 14, 2020 8:18 AM
To: Keith.Maguire
Cc: Staci.Magnuson ; Sevn.Bohnet
Subject: RE: 2020_10_07 info note KZK Mine Project

Thanks Keith. The formal letter is helpful because it gives a more specific time frame of when the report will be issued by. Before we had that it was going to be one to two weeks past the deadline, but this letter lets us know it could be up to a month.

Based on that, I've made some edits in the attached and also have asked a couple clarifying questions on dates, make sure you scroll all the way down, I have a comment on page 4 or 5 as well.

Also, please make sure the session note is updated based on the receipt of this letter and the clearer timeline.

Jasmina

From: Keith.Maguire <Keith.Maguire@gov.yk.ca>
Sent: October-13-20 5:00 PM
To: Jasmina.Randhawa <Jasmina.Randhawa@gov.yk.ca>
Cc: Staci.Magnuson <Staci.Magnuson@gov.yk.ca>; Sevn.Bohnet <Sevn.Bohnet@gov.yk.ca>
Subject: RE: 2020_10_07 info note KZK Mine Project

Hi Jasmina, See attached an updated info note for the Premier. Also attached is a letter notifying MPY that the ExCom is taking additional time. However we've also received an email from the senior assessmen officer indicating that the ExCom won't likely take all the time. Not exactly clear, but at least they are giving us a heads up.

Keith

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Sent: October 13, 2020 9:49 AM
To: Keith.Maguire <Keith.Maguire@gov.yk.ca>
Cc: Staci.Magnuson <Staci.Magnuson@gov.yk.ca>
Subject: FW: 2020_10_07 info note KZK Mine Project

Morning,

See Stephen's comment/request.

Thanks,

Jasmina

From: Stephen.Mills <Stephen.Mills@gov.yk.ca>
Sent: October-13-20 9:45 AM
To: Angela.Troke <Angela.Troke@gov.yk.ca>; Jasmina.Randhawa <Jasmina.Randhawa@gov.yk.ca>
Subject: 2020_10_07 info note KZK Mine Project

Please see comment.

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Information Note

Kudz Ze Kayah Mine Project (BMC Minerals)

Executive Council
Office

Issue:

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Commented [K1]: 74(1)(a)

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Information Note

Kudz Ze Kayah Mine Project (BMC Minerals)

Executive Council
Office

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Commented [K3R2]: 74(1)(a)

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Information Note

Kudz Ze Kayah Mine Project (BMC Minerals)

Executive Council
Office

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- 76(1)

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Commented [J4]: Is this date correct? The public comment period is extended to next month? That seems confusing...

Commented [K5R4]: 74(1)(a)

Prepared for: Premier Sandy Silver

Prepared by: Major Projects Yukon, ECO

Date Prepared: October 13, 2020

Last Updated: October 13, 2020

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Information Note

Kudz Ze Kayah Mine Project (BMC Minerals)

Executive Council
Office

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- 76(1)

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Date Prepared: October 13, 2020

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CONFIDENTIAL

Information Note

Kudz Ze Kayah Mine Project (BMC Minerals)

Executive Council
Office

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Prepared for: Premier Sandy Silver

Prepared by: Major Projects Yukon, ECO

Date Prepared: October 13, 2020

Last Updated: October 13, 2020

Page 5 of 5

From: [Jasmina.Randhawa](#)
To: [Keith.Maguire](#)
Cc: [Staci.Magnuson](#); [Sevn.Bohnet](#)
Subject: RE: 2020_10_07 info note KZK Mine Project
Date: Wednesday, October 14, 2020 11:01:23 AM
Attachments: [2020_10_14 info note KZK Mine Project.docx](#)

Thanks! Clean version attached.

From: Keith.Maguire
Sent: October-14-20 10:58 AM
To: Jasmina.Randhawa
Cc: Staci.Magnuson ; Sevn.Bohnet
Subject: RE: 2020_10_07 info note KZK Mine Project

Hi Jasmina,

Attached is a updated note with a couple of responses to your questions as well. Keith

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Sent: October 14, 2020 8:18 AM
To: Keith.Maguire <Keith.Maguire@gov.yk.ca>
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Cc: Staci.Magnuson <Staci.Magnuson@gov.yk.ca>; Sevn.Bohnet <Sevn.Bohnet@gov.yk.ca>
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Keith

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Sent: October 13, 2020 9:49 AM
To: Keith.Maguire <Keith.Maguire@gov.yk.ca>
Cc: Staci.Magnuson <Staci.Magnuson@gov.yk.ca>
Subject: FW: 2020_10_07 info note KZK Mine Project

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From: Stephen.Mills <Stephen.Mills@gov.yk.ca>

Sent: October-13-20 9:45 AM

To: Angela.Troke <Angela.Troke@gov.yk.ca>; Jasmina.Randhawa <Jasmina.Randhawa@gov.yk.ca>

Subject: 2020_10_07 info note KZK Mine Project

Please see comment.

CONFIDENTIAL

Information Note

Kudz Ze Kayah Mine Project (BMC Minerals)

Executive Council
Office

Issue:

- The Yukon government (YG), Fisheries and Oceans Canada (DFO) and Natural Resources Canada (NRCan) are decision bodies for the Kudz Ze Kayah Mine Project (the Project). The decision bodies are required to prepare a decision document(s) for the Project once a screening report with recommendations is issued by the Executive Committee of the Yukon Environmental and Socio-economic Assessment Board (YESAB).

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Information Note

Kudz Ze Kayah Mine Project (BMC Minerals)

Executive Council
Office

- Yukon government in consultation with Canada and Kaska Nations will be required to determine if the report recommendations should be accepted, varied or rejected within 52 day of receiving the report. (in accordance with the *Decision Body Time Periods and Consultation Regulations* noted above).

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Information Note

Kudz Ze Kayah Mine Project (BMC Minerals)

Executive Council
Office

- YG sent letters to the Kaska Nations on September 16, 2020 to inform them of the coming decision phase and YG's intent to consult with them.
- YG and Canada are preparing letters to Kaska Nations once the screening report is issued and will both be consulting with Kaska Nations in the decision phase.
- 76(1)

- In LFN's submission to the Executive Committee on June 1, 2020, LFN provided three initial reports based on their KCIPR process. They requested the Executive Committee extend the public comment period to November 8, 2020 to allow the completion of the KCIPR work.
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Information Note

Kudz Ze Kayah Mine Project (BMC Minerals)

Executive Council
Office

- 76(1)

- At the end of April, Yukon government sent letters to Daylu Dena Council and Kaska Dena Council confirming that YG will consult with the four Kaska rights-bearing groups the Liard First Nation, Ross River Dena Council, the Dease River First Nation and the Kwadacha Nation. The First Nations have not responded.

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- BMC Minerals (NO.1) Ltd. (BMC) submitted information response #6 on July 24, 2020.
- Information request #6 requested additional information related to the Finlayson Caribou Herd (7 questions) and climate change (1 question). YESAB issued the information request after reviewing comments provided during an extended public review of the Draft Screening Report that began November 20, 2019 and concluded on May 31, 2020.
- The public comment period was extended in response to requests from the Liard First Nation and the Liard Aboriginal Womens' Society.

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Information Note

Kudz Ze Kayah Mine Project (BMC Minerals)

Executive Council
Office

- The Premier received a letter from BMC on May 28 seeking clarity on YG's consultations process and timelines with affected First Nations. The Premier responded by letter on August 12, 2020 outlining YG's approach.

Background Kudz Ze Kayah Project Description

- Kudz Ze Kayah (KZK) is a proposed open pit and underground copper, lead, zinc, gold and silver mine. BMC purchased the property from Teck Resources (formerly Cominco) in January 2015 and has been working on-site since July 2015. The project is proposed to have an approximately 20-month construction period followed by a 10-year operation phase.
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- Access to the project is via a 24 km gated, all-weather gravel road that connects to the Robert Campbell Highway. BMC has a surface lease for the road.

From: [Keith.Maguire](#)
To: [John.Fox](#)
Cc: [Todd.Powell](#); [Sevn.Bohnet](#)
Subject: SN and Info note for KZK
Date: Friday, October 23, 2020 8:44:06 AM
Attachments: [2020_10_22 info note KZK Mine Project.docx](#)
[image001.png](#)
[SN 2020_10_22 Kudz Ze Kayah Mine Project.docx](#)

Hi John,

I've attached two notes related to KZK. The session note was approved and is now a part of the ECO briefing binder. The info note was used to brief the Premier on the project. It has since been updated to reflect that the screening report has been received and that LFN submitted comments on October 13.

As an FYI we met yesterday with the corporate project team (the small core team) that includes Andrea K., AR, ENV and MPY. We'll have a broader internal meeting early next week.

Once we have some better understanding of the recommendations we will be preparing further briefing materials.

Keith



Keith Maguire

Director

Executive Council Office | Major Projects Yukon
C 867-332-0213 | Yukon.ca

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Information Note

Kudz Ze Kayah Mine Project (BMC Minerals)

Executive Council
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Issue:

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- Section 78(1) of YESAA requires YG to consult with Canada with the goal of issuing conforming decision documents with the federal decision bodies.
- YG will continue consultation with Kaska Nations when considering whether to accept, reject or vary the recommendations in the final screening report. Consultation on the decision document will form a part of ongoing consultation with Kaska Nations on the project.
- The Executive Committee has issued the screening report October 21, 2020.

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Information Note

Kudz Ze Kayah Mine Project (BMC Minerals)

Executive Council
Office

- Yukon government in consultation with Canada and Kaska Nations will be required to determine if the report recommendations should be accepted, varied or rejected by Monday **December 14, 2020**. (in accordance with the *Decision Body Time Periods and Consultation Regulations* noted above)

Status of engagement with Canada on the screening of the Kudz Ze Kayah Mine project:

- While DFO and NRCan are federal decision bodies for the project, the Northern Project Management Office (NPMO), Canadian Northern Economic Development Agency (CanNor) is coordinating the federal roles.
- In a letter from BMC to CanNor dated September 3, 2020, BMC identified their concerns with Canada's perceived approach to consultation. CanNor responded by letter to those concerns.
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Information Note

Kudz Ze Kayah Mine Project (BMC Minerals)

Executive Council
Office

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- 76(1)

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Information Note

Kudz Ze Kayah Mine Project (BMC Minerals)

Executive Council
Office

- LFN provided a letter to YESAB on October 13, 2020 with two attached reports outlining concerns about impacts to caribou and economic viability of the project.

- 76(1)

- At the end of April, Yukon government sent letters to Daylu Dena Council and Kaska Dena Council confirming that YG will consult with the four Kaska rights-bearing groups the Liard First Nation, Ross River Dena Council, the Dease River First Nation and the Kwadacha Nation. The First Nations have not responded.

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CONFIDENTIAL**Session Briefing Note****Fall 2020****Executive Committee Screening of
the Kudz Ze Kayah Mine Project
(BMC Minerals)**Executive Council
Office**Recommended response:**

- We are encouraged ~~by the~~that the Yukon Environmental and Socio-economic Assessment Board's- Executive Committee ~~announcement that they have sufficient information to prepare a~~issued a final screening report recommendation for the Kudz Ze Kayah Mine project and are ~~looking forward to the screening report outcomes and considering the~~-recommendations in the report.
- The Yukon government will continue to consult with Kaska First Nations on the Kudz Ze Kayah project in a way that meets our obligations and supports our commitment to build strong relationships with First Nations.

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Additional response:

- The Yukon government, along with Canada and BMC Minerals, have provided support to Liard First Nation to review and comment on the draft screening report.
- Our government supports responsible mineral resource development and is committed to finding efficiencies in the assessment and regulatory review of projects.
- Yukon government and Canada are decision bodies for the Kudz ze Kayah mine project. We are consulting with each other during the decision making stage with the goal of issuing a conforming decision document for the project.

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Context—this may be an issue because:

- ~~The~~ Liard First Nation (LFN), ~~the Liard Aboriginal Women's' Society (LAWS)~~ have expressed ~~concerns~~opposition to the Executive Committee completing the

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Executive Council
Office

screening report, raising their interest that information from the Kaska-Centric Independent Peer Review process be considered by the Executive Committee first that the draft screening report (DSR) does not consider information from LFN's ongoing independent review process.

- BMC, as well as other proponents of projects of Executive Committee screenings, are likely concerned about YESAB's departure from its established timelines and about the impact of this and other potential delays on their project schedules.

Background:

Project Information

- Kudz Ze Kayah (KZK) is a proposed open pit and underground copper, lead, zinc, gold and silver mine. BMC purchased the property from Teck Resources (formerly Cominco) in January 2015 and has been working on-site since July 2015. The project is proposed to have an approximately 20-month construction period followed by a 10-year operation phase.
- The project is located in the Ross River Area of Kaska asserted Traditional Territory, 115 km southeast of Ross River and 24 km southwest of the Robert Campbell Highway near Finlayson Lake. It is adjacent to the Wolverine Mine.
- Access to the project is via a 24 km gated, all-weather gravel road that connects to the Robert Campbell Highway. BMC has a surface lease for the road.

Consultation with First Nations

- On March 27, 2019, YG formally agreed to partially fund what LFN calls the Kaska Centric Independent Peer Review process. The peer review process involves LFN working with both third-party scientific reviewers and Kaska knowledge holders to define project impacts to their asserted Kaska First Nations rights.
- BMC is also providing LFN with funding for this initiative under a separate agreement, and Canada is providing funding for participation in the assessment as part of the Northern Participant Funding Program.

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- YG finalized a capacity funding agreement with Ross River Dena Council (RRDC) in December 2019. This funding is not in support of any specific project. Rather, it is anticipated that RRDC will use the funding to re-establish a Lands Department, which will enhance their capacity to engage on various projects, including KZK.

YESAA Executive Committee Screening Process

- During the review of the draft screening report (DSR), LFN, LAWS and the federal NPMO, on behalf of the Federal Decision Bodies Fisheries and Oceans Canada and Natural Resources Canada, submitted comments to YESAB expressing concern that the DSR does not consider the KZK Kaska-Centric Independent Peer Review process results.
- On February 14, 2020, the Executive Committee extended the public comment period on the DSR to May 31, 2020. BMC has expressed frustration with the extension of the public comment period beyond the timelines allowed for in the Executive Committee Rules.
- At the conclusion of the public comment period, the Executive Committee issued information request #6 related to caribou and cumulative effects. BMC responded to the information request on July 24, 2020.
- On August 12, 2020, the Executive Committee notified Yukon government (YG) that they had sufficient information to make a recommendation for the project. LFN has indicated they are preparing a letter objecting to that determination.

- ~~The Executive Committee have indicated that the screening report will be finalized by October 12, 2020. However, the Executive Committee may extend the period to prepare the screening report an additional 30 days (up to November 12, 2020). LFN submitted additional comments to the Executive Committee on October 13, 2020 updating on their Kaska-Centric Independent Peer Review results and requesting again that the screening report be delayed to allow the completion of their work. The Executive Committee have indicated that the LFN update will not affect the screening report timing.~~

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the Kudz Ze Kayah Mine Project
(BMC Minerals)**Executive Council
Office

- [The Executive Committee issued a screening report for the project on October 21, 2020. The screening report includes 30 recommendations and 6 monitoring programs.](#)

Approved by:

Deputy Minister, Executive Council Office_____
Date

From: [Allan Nixon](#)
To: [Stephen.Mills](#); [Isaak, Paula \(CANNOR\)](#)
Cc: [Paul.Moore](#); [John.Bailey](#); [Keith.Maguire](#); [Buist, Margaret \(CANNOR\)](#); [Dyer, Lisa \(CANNOR\)](#); [Sibbald, Carey \(CANNOR\)](#)
Subject: BMC Letter regarding YESAB Final Screening Report
Date: Wednesday, December 2, 2020 12:51:56 PM
Attachments: [20201202_BMCM1_Letter to Yukon and Canada Re YESAB FSR Final.pdf](#)

***** External email: Do not click on links or attachments except from trusted senders. *****

Dear Stephen and Paula,
 Attached please find a letter from Scott Donaldson regarding the YESAB Final Screening Report and Recommendations for the Kudz ze Kayah Project.
 If you have any questions please feel free to contact me directly.



Allan Nixon | Vice President – External Affairs
 BMC Minerals (No 1) LTD
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BMC MINERALS (NO.1) LTD

Stephen Mills, Deputy Minister
Executive Council Office
Government of Yukon
Box 2703
Whitehorse YT, Y1A 2C1

Paula Isaak, President
Canadian Northern Economic Development Agency
90 Sparks St., Third Floor
Ottawa ON, K1A 0H4

December 2, 2020

Dear Mr. Mills and Ms. Isaak,

Re: BMC Minerals' Kudz Ze Kayah (KZK) Project Finals Screening Report & Recommendations

In the almost four years the KZK Project has been in assessment by the Yukon Environmental and Socio-economic Assessment Board (YESAB), BMC has fully participated in the assessment process while continuing to work with Kaska First Nations, regulators, and communities to ensure our project meets the highest possible standards. Our work started long before our submission to YESAB and in the case of engagement and consultation with Kaska it started before BMC purchased the KZK Property in 2015.

With the Decision Bodies currently considering the YESAB recommendations prior to issuing a Decision Document, we wanted to provide you with our thoughts on the YESAB Final Screening Report and Recommendations (FSR) dated October 13^h. After a thorough and detailed review of the report we believe the YESAB has fairly considered and weighed the input received over the past four years from First Nations, regulators, interest groups, citizens, and BMC, to reach a balanced and comprehensive conclusion. We note that many of the recommendations reflect commitments BMC has made throughout this process and we are gratified to see our proposed approaches deemed suitable by the assessors.

BMC supports the acceptance by the Decision Bodies of the 30 recommendations and six monitoring requirements proposed by YESAB. We also recognise that implementation of some of the recommendations will require BMC, Kaska and Yukon Government to work together to ensure that the appropriate outcome is achieved for all parties, and we are committed to doing so. We were very pleased to see Recommendation # 11 in relation to the Finlayson Caribou Herd. We know this is a critical issue for the Kaska First Nations and we are pleased YESAB has recognized this. BMC will work with Kaska First Nations and governments to implement all the YESAB recommendations and we look forward to continuing to build on our collaborative and respectful relationships with all parties as we do this.

As the project moves to the permitting stage, most of these recommendations will find homes in permit conditions. For those that do not fit easily into a regulatory document, BMC believes other binding agreements, such as the Socio-Economic Participation Agreement, provide avenues to ensure the recommendations are not left orphaned by a lack of applicable act or regulation.

The FSR, and subsequent Decision Document, is just one step in a process of helping BMC achieve our goal of setting a standard of excellence for the KZK Project. Our commitment to work collaboratively with Kaska First Nations, governments, and regulators through the remainder of permitting, construction, operation, through reclamation to final closure will ensure we achieve the standard we have set.

Yours sincerely,



Scott Donaldson
President and CEO

Cc: Chief Caesar – Ross River Dena Council
Chief Charlie – Liard First Nation
Chief Manygreyhorses – Dease River First nation
Chief Van Somer – Kwadacha First Nation
Premier Silver – Government of Yukon
Minister Pillai – Government of Yukon
Minister Frost – Government of Yukon
Paul Moore – Government of Yukon
John Bailey – Government of Yukon
Keith Maguire – Government of Yukon
Margaret Buist – CANNOR
Lisa Dyer, CANNOR
Carey Sibbald – CANNOR
Laura Cabott - YESAB

From: [Lisa Spaven](#)
To: ["dan.vandal@parl.gc.ca"](#); [Sandy Silver](#)
Cc: ["carolyn.bennett@parl.gc.ca"](#); ["jonathan.wilkinson@parl.gc.ca"](#); ["bernadette.jordan@parl.gc.ca"](#); ["omar.alghabra@parl.gc.ca"](#); [Ranj.Pillai](#); [Keith.Maguire](#); ["jenel.larocque@canada.ca"](#); ["lisa.dyer@canada.ca"](#); ["saul.schneider@canada.ca"](#); ["David.Carter@dfo-mpo.gc.ca"](#); ["peter.unger@canada.ca"](#); ["rob.johnstone@canada.ca"](#); ["christopher.aguirre@tc.gc.ca"](#); ["carey.sibbald@canada.ca"](#); [Drew.Mildon](#); ["councillorts@liardfirstnation.ca"](#); ["Tom.Cove \(tom.cove@gmail.com\)"](#); ["zuneza.cove@gmail.com"](#)
Subject: Kudz Ze Kayah Mine - Request for Public Panel Review
Date: Friday, January 15, 2021 4:30:50 PM
Attachments: [2021_01_12_LTR_LFN_to_Ministers_Resp_for_YESAA_Re_Panel_Review_\(00351391xF1C2E\).pdf](#)

*** External email: Do not click on links or attachments except from trusted senders. ***

Dear Ministers,
 Please see the enclosed correspondence on behalf of Liard First Nation.
 Kind regards,

Lisa Spaven

Legal Assistant

Woodward and Co. Lawyers LLP

1022 Government Street, Suite 200

Victoria, BC V8W 1X7

Tel (250) 383-2356

Fax (250) 380-6560

lisa@woodwardandcompany.com

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Liard First Nation Executive Council Office

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WATSON LAKE

January 12, 2021

By email

The Honourable Dan Vandal, P.C., M.P.
 Minister of Northern Affairs
 Minister Responsible for YESAA
 25 Eddy Street, 7th Floor
 Gatineau, QC K1A 0H4

Premier Sandy Silver, MLA
 Premier of Yukon
 Minister Responsible for YESAA
 Box 2703
 Whitehorse, YT Y1A 2C6

Dear Ministers:

Re: Request for Public Panel Review of the Kudz Ze Kayah Mine (2017-0083)

On October 12, 2020 the Yukon Environmental and Socioeconomic Assessment Board ("YESAB") Executive Committee (the "Committee") submitted its Final Screening Report (the "Report") about the proposed Kudz Ze Kayah Mine (the "Project"). The report recommends to your governments that, without going to a panel review, the Project can proceed with mitigations despite clear, well-documented and significant harms to Kaska Aboriginal rights, including Aboriginal title. Liard First Nation is deeply alarmed by this outcome and believes that the Committee has erred in law in making its recommendation.

For the following reasons, we write to request that Canada and Yukon reject the project as it is currently proposed or, in the alternative, you consent to a public panel review of the Kudz Ze Kayah Mine project (the "Project") in accordance with ss. 60(1)(c) and 60(4) of the *Yukon Environmental and Socio-Economic Assessment Act* ("YESAA"). In the further alternative, we request that you make a joint request to the Committee for a public panel review in accordance with s. 60(2).

We make this request for the following reasons:

1. It is clear from the Committee's findings that the project will infringe the Kaska right to hunt the Finlayson Caribou Herd (the "FCH"). The Committee noted that:
 - a. The Project is uniquely situated at the intersection of late winter, calving, post-calving, rut, and early winter habitats and the seasonal movement corridors that connect them. Direct and indirect effects of habitat loss and degradation in the Project area will influence all components of the annual life cycle of the FCH.¹

¹ Screening Report at 118.

- b. Habitat loss due to the mine's footprint, including its open pit, waste storage facilities and [Water Management Ponds], will be permanent and irreversible. Beyond direct reductions in habitat loss, the effectiveness of most mitigation measures at reducing habitat disturbance during operations is largely unknown.²
 - c. [I]n the event that the Project proceeds, the FCH population will likely decline, and certainly be lower than in the event the Project does not proceed.³
2. The Executive Committee's proposed FCH-related mitigations are unproven. There is no evidence they will effectively mitigate these adverse effects or prevent the continued decline and potential extirpation of the FCH. Predicted impacts on the FCH threaten the continued viability of Kaska harvesting rights, which depend on a healthy and sustainable herd that has a harvestable surplus.

While we appreciate the Committee's attempt to design its own mitigation solutions, we believe that its confidence in those proposals is misguided, and that it erred by making a recommendation under YESAA s. 58(1)(b) to allow the Project to proceed without a review.

In particular, we draw your attention to YESAA s. 58(2), which provides that:

Irrespective of any determination made under subsection (1), the executive committee shall require a review of the project if

- (a) it determines, after taking into account any mitigative measures included in the project proposal, that the project might contribute significantly to cumulative adverse environmental or socio-economic effects in Yukon or that the project is causing or is likely to cause significant public concern in Yukon; or
- (b) it determines that the project involves technology that is controversial in Yukon or the effects of which are unknown.

This provision implements commitments in the Umbrella Final Agreement,⁴ but the Screening Report and YESAA itself provide a compelling basis for a public panel review:

- 1. The Executive Committee's FCH recommendations are not "mitigative measures included in the project proposal." As already noted, the Executive Committee added them itself.

² Screening Report at 119.

³ Screening Report at 121.

⁴ See Umbrella Final Agreement, ss 12.9.2. In particular, notice that section 12.9.2.1 requires the Executive Committee to establish a review panel if "it determines that the Project may have significant adverse environmental or socio-economic effects in the Yukon or outside the Yukon."

2. The EC concluded that adverse impacts on the FCH cannot be effectively mitigated: "[T]he FCH population will likely decline and certainly be lower than in the event the Project does not proceed."⁵
3. The scale and scope of adverse effects is unknowable based on available information: "The available information and clarity of management objectives regarding the FCH is poor as compared with herds such as the Klaza or Southern Lakes caribou, despite the existence of the Wolverine Mine and the potential for development of the Kudz Ze Kayah project, both intersecting key habitat of the FCH."⁶
4. The Project might contribute significantly to cumulative effects on the FCH and Kaska harvesting rights: "[C]aution is warranted with respect to cumulative effects, particularly given much of the present development, additional claims, and a major road, exist in close proximity to the Project."⁷
5. The Project has aroused intense concern among the Kaska, who are the members of the Yukon public most affected.
6. The Project proposes to use passive wetland filtering, an untested technology in the Yukon with unknown potential effects, to ultimately achieve closure.


Had the Executive Committee abided by YESAA's provisions, it would have determined that the Project should not proceed or that it required a panel review under s. 58(2). Given its failure to do either, LFN now asks you, as the Ministers responsible for YESAA, to either provide your consent to LFN's request to the Committee for a public panel review or request one yourselves. In the alternative, the project as currently proposed should be rejected until it can be confidently demonstrated, based in scientific evidence and grounded in Kaska knowledge and ways of knowing, that Kaska rights and title will not be extinguished by this project.

It is difficult for LFN to understand why the panel option exists in the legislation if not to address major projects like the proposed extraction of \$4.2 billion of minerals subject to Kaska title in circumstances that make serious infringement – and potential extinguishment – of Kaska harvesting rights inevitable.

We look forward to your timely response.

Yours sincerely,
Liard First Nation

Chief Stephen Charlie



⁵ Screening Report at 121.

⁶ Screening Report at 106.

⁷ Screening Report at 120.

cc. Kaska First Nations

The Honourable Carolyn Bennett, PC, MP, Minister of Crown Indigenous Relations

The Honourable Jonathan Wilkinson, PC, MP, Minister of Environment

The Honourable Bernadette Jordan, PC, MP, Minister of Fisheries and Oceans

The Honourable Omar Alghabra, PC, MP, Minister of Transport

The Honourable Ranj Pillai, MLA, Minister of Energy, Mines and Resources

Keith McGuire, Director, Major Projects Yukon

Jenel Larocque, Yukon Senior Consultation Advisor

Lisa Dyer, Director General, Northern Project Management Office

Saul Schneider, Environment and Climate Change Canada

David Carter, Department of Fisheries and Oceans Canada

Peter Unger, Senior Environmental Assessment Officer, Office of the Chief Scientist

Rob Johnstone, Deputy Director, Explosives Safety and Security Branch, Transport Canada

Christopher Aguirre, Transport Canada