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WATSON LAKE

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Re: Review of MV2015L2-0003 Cantung Water Licence Modification Management Plans, Failure Modes and Effects Analysis, and Closure and Reclamation Planning Processes

A. Background

Liard First Nation is a member of the Kaska Nation. The Kaska share a common culture based on our clan system and traditional laws, a common language with distinct dialects, and a common history grounded in our stories and myths, the oral traditions of our Elders, and cooperation in international trade and the defense of Kaska lands. LFN and our Kaska brothers and sisters at Ross River, Dease River and Kwadacha have traditionally occupied an area of approximately 240,000 km² of land in what today includes the Northwest Territories, the Yukon and British Columbia (see **Figure 1: Map of Kaska Traditional Territory**). As shown on the map of Kaska traditional territory, the Cantung Mine and the Nahanni Range Road lie entirely within Kaska traditional territory.¹ Early European accounts of trade and contact with the Kaska in the 1800s referred to our ancestors as the *Nahanni*. These European traders and explorers recognized the *Nahanni* of their day as having a distinct language not spoken in the Mackenzie valley. In those times we traded as middlemen between Russians on the Pacific coast and the Slavey and Beaver First Nations who would in turn trade with the Hudson's Bay Company.²

The Crown's relatively recent imposition of colonial political borders has not diminished the Kaska claim to our traditional territory. LFN hold Kaska Aboriginal rights and title in the Project-affected area. LFN has a strong and temporally deep connection to the Flats, the Flat and Nahanni Rivers, and areas encompassing and surrounding Cantung. Anything that happens at Cantung impacts Kaska rights

¹ Map. Schedule 'A' to Statement of Claim, *Kaska Nation v. Canada and Government of the Northwest Territories*, Yellowknife Registry, S1 CV201 0000036.

² Refer to LFNs homepage for more information about our history: <https://liardfirstnation.ca/new-history/>

exercises, and the mine's presence has had a significant negative impact on Kaska people who once relied on the area for our traditional well-being and way of life.

As we have explained to Canada over the many years of this project, including during the minimal consultation offered by the Northern Contaminated Sites Program ("**NCSP**") during the last three years:

The pass was an important thoroughfare for Kaska people visiting close relations in what is now the Northwest Territories, and also served as part of an important international trade route. As with most roads in Kaska territory, the Nahanni Range Road follows a traditional Kaska trail. The Flats also provided good caribou hunting, which made it a key stop for Kaska families following their annual and multi-annual rounds. Cantung itself impacted both goat and caribou movements, changing their migration patterns so that they now go around the back side of the mountain rather than through the Flats to areas where Kaska traditionally harvested them. Because of the Cantung mine, families – including my own – were displaced from an area we had traditionally used and occupied for generations. We also lost the use of the Flat River as a source of fish and drinking water, and of Flat Lakes for winter seasonal use. Canada has never apologized for this.

There are also hot springs in the immediate area of the mine. Those hot springs were both an important spiritual waypoint for those travelling to the Nahanni for spiritual activities, and a refuge in survival and emergency situations.

In the 50 years the Cantung site has been occupied, Canada has never considered our vision for what the area should look like, and the Kaska are still awaiting accommodation for the resulting harms, which are ongoing. LFN has an inherent interest in seeing these lands returned to healthy natural conditions so that our members know they can safely return. For this to happen, Cantung regulatory and reclamation planning must incorporate a solid understanding of how the mine affected and continues to affect Kaska values, and how LFN wants to see those values restored and reinvigorated in the area.

B. Historical mine approvals, Cantung sale, and the need to embrace reconciliation as a focus of remediation and closure planning

Historical Crown decisions to approve the construction, operation and remediation and closure of mines in Kaska territory are shocking in their incompetence. Without ever meaningfully recognizing Kaska rights or implementing meaningful mitigations or accommodations, Canada approved three mines affecting the Kaska north of 60 degrees. In all three cases, proponents abandoned their operations and fled from their responsibilities, leaving the remediation and closure in the hands of Canadian taxpayers and the Kaska.

Canada continues to repeat this pattern of dismissing and avoiding Kaska rights issues in the face of our repeated offers to reconcile this shameful history. Its consultation on the proposed Cantung sale made it very clear that LFN's views did not matter.

LFN understands that Canada is no longer seeking a buyer for Cantung, and that the project is finally moving towards closure and reclamation. When Canada and the Government of the Northwest Territories ("**GNWT**") decided to attempt to reopen Cantung, LFN hired experienced, well-qualified experts to investigate Cantung's prospects for successfully reopening and becoming a profitable mining operation. LFN also consulted with private sector actors with considerable mineral exploration, mining and mine remediation experience. Those experts confirmed LFN's own view that nothing had changed

that would give any assurance that Cantung could successfully resume production as an operating mine. Worse, it appeared to LFN that attempting to reopen this failed mine could set the stage for a subsequent failure, resulting in even more Crown remediation and closure liability. Despite this discouraging advice, LFN continued to engage in good faith with Canada until Canada itself acknowledged that the mine will not reopen.

At minimum, this latest attempt to reopen Cantung has been a colossal waste of valuable time. Canada incurred millions of dollars of unnecessary expense, a bill that will ultimately be paid by Canadian taxpayers. Canada's decision also redirected LFN public service capacity away from planning the remediation of this doomed mining property, further delaying closure and the resumption of Kaska Aboriginal rights exercises, including the enjoyment of Kaska Aboriginal title. This delay represents a further incremental harm to LFN citizens and our exercise and enjoyment of Kaska rights, adding to the list of Crown actions for which reconciliation is needed.

The CIRNAC-administered NCSP's disregard of Canada's comprehensive reconciliation mandate has resulted in an equally comprehensive failure to consult deeply or meaningfully with LFN over the last five years. Canada's own evaluation of the NCSP was deeply critical of the program's ability to carry out consultations effectively:³

- "While meaningful consultation and engagement has the potential to support reconciliation and socio-economic development, and reduce overall project risk, there was little evidence that this had occurred over the evaluation period. Many external respondents expressed general dissatisfaction with consultation and engagement, and the appropriate human and financial resources to design and implement meaningful consultation and engagement were not apparent."⁴
- "While contaminated site remediation offers billions in potential revenue to remediate contaminated sites and support socio-economic development of the North, there is limited evidence that this promise has been realized by Indigenous and northern communities and businesses. There are a number of barriers to achieving this potential. These are longstanding and well-known issues that require comprehensive response."⁵
- "There has been some reticence to fully embrace common industry project management best practices. Remediation also remains a primarily technical exercise, and project teams do not have adequate consultation, engagement and socio-economic expertise and Indigenous background."⁶

LFN engaged with Crown-Indigenous Relations and Northern Affairs Canada's ("CIRNAC") NCSP team with the expectation that it would embrace reconciliation as a fundamental goal of reclaiming Cantung. Despite the conclusions and recommendations of its own evaluation, NCSP has not changed course. This is not reconciliation, but instead its opposite.

³ Crown-Indigenous Relations and Northern Affairs Canada (Evaluation Branch), "Evaluation of the Northern Contaminated Sites Program" (June 2021), online: https://www.rcaanc-cirnac.gc.ca/ForcePDFDownload?url=https%3a%2f%2fwww.rcaanc-cirnac.gc.ca%2fdAM%2fdAM-CIRNAC-RCAANC%2fdAM-AEV%2fSTAGING%2ftexte-text%2fev_ncsp21_1628679495032_eng.pdf.

⁴ *Ibid* at v.

⁵ *Ibid*.

⁶ *Ibid* at 11.

In light of these historical and recent experiences, LFN is seeking immediate, formal, extensive and customized participation in all planning, discussion and decision-making about the future of the Cantung Mine, particularly those aspects of the Project that directly or indirectly affect the potential for the resumption of Kaska rights exercises. This includes the MVLWB processes for reviewing and commenting on existing water licences and land use permits, the federal Closure and Reclamation Planning (“CRP”) process, and matters related to access roads and downstream impacts.

C. New care and maintenance water licence application

LFN understands that North American Tungsten Corp. (“NATC” or the “proponent”) intends to apply for a new water licence in early 2023 that would cover ongoing Cantung care and maintenance activities. LFN generally supports the continuation of care and maintenance activities, as well as the aggressive and collaborative identification of progressive reclamation activities to reduce site risks until the CRP process is complete and final closure and reclamation can begin. LFN believes that these proactive interim steps can be enabled through consent agreements.

In the meantime, however, we are gravely concerned about the conduct of early engagement on the water licence application.

NATC wrote to us on November 8, 2022 to notify us of the proposed early 2023 application date. The court-appointed monitor Vicki Chan sent a follow-up email on December 9, 2022 saying that the NATC planned to file the application in January 2023, and that LFN could expect to see draft application materials in the first two weeks of January 2023. The proponent provided these highly technical materials on December 23, 2022, while LFN’s offices were closed for the holiday break, and offered to meet with LFN during the weeks of January 16 or 23 to discuss. Additional information was provided as of January 13, 2023, with no clear plan for engagement and no commitment to developing one.

The timeline for review of materials – developed without prior engagement with LFN – is both highly problematic and emblematic of the overall approach on Cantung. We do not see how NATC can meet the MVLWB’s expectations for early engagement under these conditions. Yet we now understand that the MVLWB could deem the application to be complete very soon after its submission. Accordingly, LFN rejects this timeline as both unreasonable and unworkable. We ask that the MVLWB consult with us on the adequacy of engagement and consultation efforts before accepting NATC’s new water licence application as complete.

Furthermore, we invite the MVLWB to adapt its procedures as needed to take advantage of reconciliation opportunities. Bilateral engagements with Canada and the MVLWG are needed to set reasonable expectations and timelines in relation to the provision of information to LFN, the production and sharing of related analyses, and other important aspects of licensing and Crown decision-making. LFN also remains open to direct, meaningful dialogue with other affected Indigenous groups.

LFN also seeks greater engagement with Canada in the lead-up to a new water licence application. We do not believe that an application should be filed without clear evidence that prior consultation with LFN has been sufficiently deep and meaningful to advance reconciliation. Inadequate engagement and consultation with LFN and the lack of Kaska input on project impacts and design are substantial and recurring themes in Cantung’s history. This unacceptable conduct is also reminiscent of the treatment LFN experienced when Canada approved the failed mines in Kaska territory. Perpetuating inappropriate conduct toward LFN compounds harms to Kaska rights, brings about cultural offence, and deepens Canada’s reconciliation “debt.” Rushing toward licensing without confirmation that LFN has had a

reasonable opportunity to contribute its extensive Western science and Kaska knowledge would be shocking and would fundamentally compromise all parties' ability to achieve reconciliation.

Relatedly, LFN understands from NATC and CIRNAC that they currently plan to apply for a Type B rather than a Type A Water Licence. LFN will defer comment on this until we have more information and have been meaningfully engaged. We note, however, that any water licencing process for a project this important to affected Indigenous groups needs both technical sessions and a public hearing. Both will be critical factors in LFN's decision to support a Type B application rather than a Type A application.

D. Towards a reconciliation-focused approach to Cantung closure and reclamation planning

Cantung presents a unique opportunity for reconciliation, but seizing that opportunity requires agreement on a Closure and Reclamation Plan (“**CRP**”) process that prioritizes the full and meaningful resumption of LFN section 35 rights practices in the Cantung-affected area as soon as possible. Achieving this goal will require its explicit integration into final closure objectives, alongside the development of appropriate implementation activities that can be monitored and adapted to ensure that this foundational goal is being achieved.

In that spirit, we want to highlight our unease with overall management and planning for the site. By identifying our existing concerns, LFN hopes to start a dialogue that will help Canada and the Board take reconciliation obligations more seriously and create the conditions necessary to achieve reconciliation with LFN.

To date, our experience does not inspire confidence in Canada's commitment to prioritizing reconciliation in the Cantung remediation and closure planning. As the water licensing process moves ahead on aggressive and unrealistic timelines and with minimal input from LFN, NATC and CIRNAC have yet to develop a meaningful engagement process with LFN that includes a coherent plan for integrating Kaska Indigenous knowledge and values. The ongoing Community Working Group (“**CWG**”) process has proven to be an ineffective mechanism for fulfilling Canada's comprehensive mandate for reconciliation with Indigenous peoples and nations. At most, these meetings provide opportunities to receive initial notifications about plans and decisions, or to receive related information. They leave minimal space for the kind of engagement that would enable Indigenous decision-makers to consider providing free, prior and informed consent.

LFN has offered ample guidance about how to improve consultation and engagement efforts. It is critical that Canada and the Mackenzie Valley Land and Water Board (“**MVLWB**” or “the **Board**”) collaborate with LFN to quickly develop reconciliation processes that enable us to take advantage of rare reconciliation opportunities without delay. It is likewise vital that ongoing CRP processes be adjusted to incorporate Kaska worldviews, take account of our priorities, rights and title, and where possible, contribute to the restoration of sustainable Kaska rights practices.

Moving forward, LFN expects the proponent and Crown decision-makers to meaningfully consult with affected Indigenous groups and incorporate their valued components and traditional knowledge into site planning. Only such a reconciliation-focused approach can provide the independent assurance LFN needs to consider providing free, prior, informed consent for a plan that reverses past harms to LFN citizens' exercises of Kaska Aboriginal rights, including title. LFN's Kaska-Centric Independent Peer Review (“**KCIPR**”) process is the primary mechanism for providing that independent assurance to our

government and our citizens, so the integration of KCIPR into MVLWB and Crown decision-making processes will be critical.

With respect to Canada, only a written reconciliation agreement can create the necessary certainty and clarity for all participants in the CRP process, and reassure LFN that the federal government will fulfill its constitutional duties and follow its comprehensive reconciliation policies. Until then, Cantung reconciliation will remain a missed opportunity. **We expect the next bilateral engagements with Canada to focus on advancing Canada’s reconciliation policies through the collaborative development of a reconciliation agreement that enables and ensures the resumption of meaningful exercises of Kaska Aboriginal rights at Cantung in the future.**

E. Who is the real proponent?

LFN has repeatedly raised concerns with CIRNAC about the need for Canada to acknowledge its primary responsibility for Cantung’s reclamation and closure.

We understand that NATC’s bankruptcy proceedings are under a court-ordered stay until April 30, 2023. This stay of proceedings has been successively renewed since 2016. We are not aware of any steps that have been taken with the court to inform them that the sale of the project did not proceed as was represented to the court during the last renewal. Alvarez & Marsal Canada Inc. are the court-appointed monitors for NATC during this stay, and CIRNAC has the responsibility for funding and overseeing the quality of their work. Based on our experience of situations like this, Cantung is now effectively a Crown project where the Crown is making all the meaningful decisions. Maintaining a monitor over what is effectively a shell corporation makes no sense now that Crown governments have finally acknowledged the lack of potential for a sale of NATC or its assets. We are concerned that continuing to have a monitor prop up the shell corporation that is NATC does nothing but create confusion about who is responsible for meaningful consultations and, ultimately, reclamation and closure.

Indeed, continued reliance on the company that abandoned this mine – or on a trustee whose fiduciary duties do not lie with Canadian taxpayers or the Kaska – is counterproductive and even provocative from a reconciliation perspective, given LFN and LFN’s citizens’ experiences with NATC during Cantung operations.

LFN believes it is in the best interests of all parties to deal with the ownership and liabilities of the site in a transparent and forthright fashion *before* starting serious discussions around reclamation and ultimate closure. Leaving ownership and liability questions unanswered adds layers of unnecessary complexity to what is already a complex process. We encourage Crown agents to expedite the resolution of these questions so we can all have clarity about Cantung’s real proponent, and who will ultimately be responsible for closure and reclamation so that responsibility is fulfilled sooner rather than later. It would be inappropriate for the bankruptcy court’s ruling to be based on representations about the status of this mine that has now changed and attempt to avoid Crown statutory responsibilities for a site that has been effectively abandoned.

F. FMEA and ROA: Slow down and get these right

Based on information LFN received from Canada during CWG meetings and a single bilateral session, Canada has taken initial steps in the CRP process. We are concerned that substantive CRP steps are being taken without any agreement on a Crown-Kaska consultation process. We are also concerned that

even at this early stage, the scope of reclamation and closure planning is unworkably narrow in light of the scope and scale of Cantung's infringements of Kaska rights and title.

LFN did a preliminary review of the July 2022 draft of the Failure Modes and Effects Assessment ("FMEA") document, and attended NATC and CIRNAC's joint one-day technical session on August 17, 2022. The FMEA and discussions about it focused solely on the Cantung Mine's tailings containment areas ("TCAs").

During CWG meeting #17 on November 28, 2022, NATC and Canada informed LFN that a revised draft FMEA was on the way, and somewhat ominously called the review of this draft the "final review" (Slide 19 from CWG meeting #17). LFN objected to that plan during the meeting. We received the revised draft on December 14, 2022, just as our offices were shutting down for the holidays. NATC later informed us that the draft would be considered final by mid-January 2023.

LFN rejects any suggestion that the FMEA is nearly ready to be finalized, or that it should ever be truly final. The FMEA must be considered a living document that can always be revised in response to additional inputs, especially from affected Indigenous groups.

Revisions need to start now. Our review of the draft revised FMEA found it technically conventional and too narrowly focused on the TCAs. Consideration of Kaska Aboriginal rights and title is completely absent, as is any evidence that our values and interests were taken into account. As a result, the FMEA is culturally biased, limiting its value in a CRP process that should meaningfully incorporate the views and expectations of affected Indigenous groups. Given that the FMEA document will directly influence the scope and design of the CRP, we must take the time to get it right.

We have provided comments on the existing FMEA and areas of required improvement in Appendix 1: LFN Comments on Failure Modes and Effects Analysis to this letter. Identified deficiencies should be addressed prior to the FMEA's completion, and only after substantial revisions to its scope and meaningful engagement with LFN. Scope revisions will require more Indigenous community engagement than the October 2022 "socio-cultural engagement" in which LFN did not participate. That work needs to be developed, guided and executed by LFN with appropriate capacity funding and time.

Relatedly, the November 28, 2022 presentation at CWG meeting #17 also referred to a draft Remedial Options Analysis ("ROA") to be finalized in winter 2022/23. As our representative at that meeting stated, LFN rejects the idea that the ROA can be "finalized" prior to meaningful and extensive engagement with Kaska. The proposed timeframe seems designed to ensure that Kaska knowledge and ways of knowing will be omitted from this critical exercise, as has been the case with all past Cantung RCPs produced by NATC.

Methodologies for developing CRP objectives and options and incorporating Kaska knowledge must be agreed on by those responsible, including LFN. LFN's Kaska knowledge protocols can pave the way for respectful sharing of cultural information, knowledge, analysis and applications. KCIPR work with Kaska traditional knowledge holders has continued through the pandemic, and we are now preparing to bring that knowledge to discussions about the CRP and LFN's closure objectives. Pre-empting these critical cultural contributions is exactly the sort of mistake Canada made when it originally approved so many failed mines.

G. Additional CRP process comments: Addressing cross-jurisdictional issues relevant to Cantung closure and reclamation

Cross-jurisdictional issues are not addressed in any of the materials provided to date. NATC, CIRNAC, the MVLWB, and the GNWT must coordinate with the Yukon Government to develop a transboundary responsibility plan that addresses how the GNWT and the Yukon (which both have jurisdiction over certain essential components of the Cantung project) will address transboundary issues.

LFN is deeply concerned both about impacts to Kaska lands and resource use in the NWT at and around the mine site and impacts from the project and its future management on the Nahanni Range Road. This road, which originates in the Yukon and extends into the NWT, is a part of Cantung's critical mine infrastructure that has fundamentally changed the physical, biophysical and human environment for LFN members and other Kaska on both sides of the border.

LFN wants to avoid project splitting by ensuring that any final CRP for Cantung considers the ultimate disposition and management of the Nahanni Range Road. LFN also notes that the wildlife species we rely on for the exercise of Kaska rights do not respect the border, and the Cantung Mine has affected their abundance, diversity, distribution and population health on both the Yukon and NWT sides. These transboundary issues need to be considered in the MVLWB and CRP processes, and the sooner they are clarified, the better. Indeed, this complex transboundary issue (yours, not ours) raises concerns about whether Canada's assessment processes need to be initiated as well.

H. Additional CRP process comments: Alternative means and closure objectives

LFN is concerned about how the knowledge gaps and limitations described above will affect the CRP process from start to finish. So far, LFN has repeatedly experienced inadequate consultation and a lack of consideration of Kaska perspectives and goals. Nor is this the only project where we face similar issues; our Nation is involved in no fewer than five ongoing closure and reclamation planning projects in Kaska territory. All these projects share the same flaws: processes are rushed unnecessarily, avoid respectful inclusion of Kaska knowledge and ways of knowing, and fail to promote and prioritize the resumption of Indigenous rights exercises affected by mining, mine failure and remediation. Most unfortunately, CRP processes typically fail to realize the enormous reconciliation potential unique to reclamation and closure projects. The Cantung CRP process appears headed in the same direction.

Final closure and reclamation must enable LFN members to return to the area and meaningfully continue their traditional land and resource use activities and knowledge transmission for all time, and to enjoy Kaska Aboriginal title. For this to happen, LFN members need to be confident that the area is healthy: that water is safe to drink; that animals, fish and berries can be safely eaten; and that they will face no hazards from the above-ground or underground facilities (e.g., from the TCAs, from waste piles, from underground adits, etc.). The conditions required to restore and sustain Kaska rights must be understood and clearly expressed in the CRP. Understanding and fulfillment of these conditions is entirely dependent on Kaska experts being meaningfully engaged in culturally and politically appropriate ways. They are the only living source of this knowledge and way of knowing. This will require clear statements of closure goals and options that unequivocally call for measures designed to restore Kaska rights.

Because the Cantung mine development, operation, failure and now closure continue to have widespread harmful effects that go far beyond the mine footprint, the assessment and licensing processes must consider and address all facets of the Cantung project. For example, this would include (but not be limited to) management of the TCAs and other waste management facilities, the mine site and associated infrastructure, water management systems, downstream and cumulative effects, and the cumulative effects attributable to the Nahanni Range Road.

Accordingly, the scope of the CRP process should be expanded to include a multi-party alternative means assessment focused on closing the Cantung Mine project in ways that assure the resumption of meaningful Kaska Aboriginal rights exercises. We would expect that it involves and be led by all significantly affected Indigenous groups and responsible authorities. Expected outcomes would include the collaborative development of CRP goals, principles, objectives, criteria, options, monitoring and adaptability based upon evidence of actual success.

LFN urges CIRNAC and the NCSP to work with all affected Indigenous groups and responsible authorities to find ways of addressing other Indigenous interests associated with the Cantung Mine.

I. Summary and closure

LFN looks forward to engaging meaningfully in CRP development and associated water licensing processes, and expects these processes to be the primary mechanisms for reconciling Canada's harmful decisions related to the Cantung mine. LFN's fundamental goals are the resumption of safe, sustainable and meaningful Kaska Aboriginal rights practices and the landscape-level reversal of adverse effects from the now-abandoned mine.

The CRP needs to be understood first and foremost as an instrument for meaningful reconciliation between the Crown and LFN. Realizing this vision will require a written agreement between LFN and Canada that focuses on reconciling the harms caused by Crown decisions to plan, authorize, build, operate and now permanently close the Cantung Mine. LFN is committed to working in good faith with Canada and the MVLWB to achieve this goal.

To date Canada has been unwilling to acknowledge and engage on the past impacts of its massive unjustified infringement on Kaska rights and title. It is imperative that this unwillingness does not carry forward into the remediation planning process for the Cantung Mine. The sooner the CRP process is adapted to reflect reconciliation best practices and incorporate Kaska Indigenous perspectives, the more smoothly that process will run and the more likely it will achieve reconciliation, including the resumption of Kaska Aboriginal Rights exercises.

For LFN members and other Kaska citizens, the exercise of Kaska rights contributes to their well-being and to the continuity of Kaska culture. That well-being and cultural continuity are directly tied to the development of compatible closure objectives and goals for Cantung. Accordingly, LFN is actively appealing to the MVLWB, CIRNAC and all other responsible Crown authorities to promote meaningful engagement, acceptable reconciliation practices, and understanding of Indigenous rights and interests directly and indirectly affected by the Cantung project. LFN members historically and actively used important portions of the Mackenzie watershed and have extensive oral histories of use and occupation of the Cantung Mine area. It is LFN's expectation that the parties responsible for implementing Parts 4 and 5 of the *Mackenzie Valley Resource Management Act* ("**MVRMA**") will fulfill the promises of the MVRMA by taking full account of – and vigorously protecting – the rights and interests of all Indigenous peoples who use a portion of the Mackenzie Valley.

J. LFN requests and recommendations include the following:

1. LFN seeks formal and customized participation as an affected Aboriginal Rights holder in processes related to the future of the Cantung Mine, including MVLWB processes and planning processes of responsible federal and territorial authorities.
2. Interim care and maintenance activities should continue while the CRP process proceeds, and such activities should be enabled through a consent agreement with LFN.
3. LFN asks the MVLWB to consult with us on the adequacy of engagement and consultation efficacy before accepting NATC's water licence application as complete.
4. LFN seeks consultation with Canada and the MVLWB for the purpose of setting reasonable expectations and timelines in relation to the provision of information to LFN, the production and sharing of related analyses, and other aspects of licensing and Crown decision-making.
5. LFN seeks consultation with Canada and the MVLWB on how to adjust existing process or develop new processes that provide for the integration of Kaska worldviews, valued components and traditional knowledge at all stages of site planning, and ensure full consideration of Kaska rights, titles, interests and priorities. Such consultation should address how the Kaska-Centric Independent Peer Review ("KCIPR") process can be integrated into or run in parallel with the water licensing and CRP processes.
6. LFN asks that Canada promptly conclude our negotiations of a reconciliation agreement with LFN that takes advantage of the unique reconciliation opportunity presented by the remediation of Cantung resulting in the full and meaningful resumption of LFN section 35 rights practices in the Cantung area, and provide for the explicit integration of this goal into final closure objectives and plans.
7. LFN believes that all parties would benefit from clarity about the ultimate responsibility for Cantung's remediation and closure. In our view, Canada is the real proponent in all but name, and we ask it to acknowledge its primary responsibility for the site and address ownership and liability questions before continuing serious discussions about reclamation and closure. This matter continues to be discussed in bilateral consultations with Canada with the expectation that it will be resolved quickly.
8. The FMEA is not ready to be finalized without the comprehensive consideration of effects on Kaska Aboriginal rights, and should be considered a living document, always subject to revision based on new input or information.
9. The scope of the FMEA is too narrow and must be revised following meaningful engagement with LFN and other affected Indigenous groups, supported by appropriate capacity funding and time. Other deficiencies of the draft FMEA (identified in Appendix 1: LFN Comments on Failure Modes and Effects Analysis) should be corrected only after such engagement.
10. Similarly, the ROA cannot be finalized prior to meaningful and extensive engagement with the Kaska. Canada should directly consult with LFN about developing a meaningful remedial options analysis development process, and not issue any ROA until after such consultation has been effective and meaningful, including the incorporation of Kaska-centric closure objectives currently under development by LFN.

11. NATC, CIRNAC, the MVLWB, and the GNWT must coordinate with the Yukon Government to develop a transboundary responsibility plan that addresses how the GNWT and the Yukon (which both have jurisdiction over certain essential components of the Cantung project) will address transboundary issues.
12. The scope of the CRP process should be expanded to include a multi-party alternative means assessment focused on closing the Cantung Mine project in ways that assure the resumption of meaningful Kaska Aboriginal Rights. This part of the CRP process should involve all significantly affected Indigenous groups and responsible authorities. Expected outcomes would include the collaborative development of CRP goals, principles, objectives, criteria, options, and alternatives, on the understanding that the adoption of mitigations, monitoring programs and adaptive management plans must be based on evidence that these measures can succeed and have succeeded on other projects.

LFN is thankful for the opportunity to present our concerns and comments to the MVLWB and Canada on the upcoming water licencing and the FMEA and other Cantung CRP processes. LFN hopes that our early expression of concern about these processes to date shows our interest in meaningfully engaging with other participating governments and regulatory bodies in these processes. We also hope that an improved engagement and consultation process will result in a positive resolution to the long history of the Cantung Mine.

LFN look forward to discussing these matters further. Please contact me by email at travis.stewart@liardfirstnation.ca or by phone at 867-536-7901 to continue this discussion.

Yours sincerely,
Liard First Nation



Travis Stewart
Director, LFN Lands and Resources

cc. North American Tungsten, c/o Alvarez & Marsal
Tom Isaac, Justice Canada
Madeline Benjamin, CIRNAC
John Ketchum, NWT Geological Survey
Scott Milton, Yukon Highways and Public Works
Yukon Environmental and Socio-economic Assessment Board

Figure 1: Map of Kaska Traditional Territory

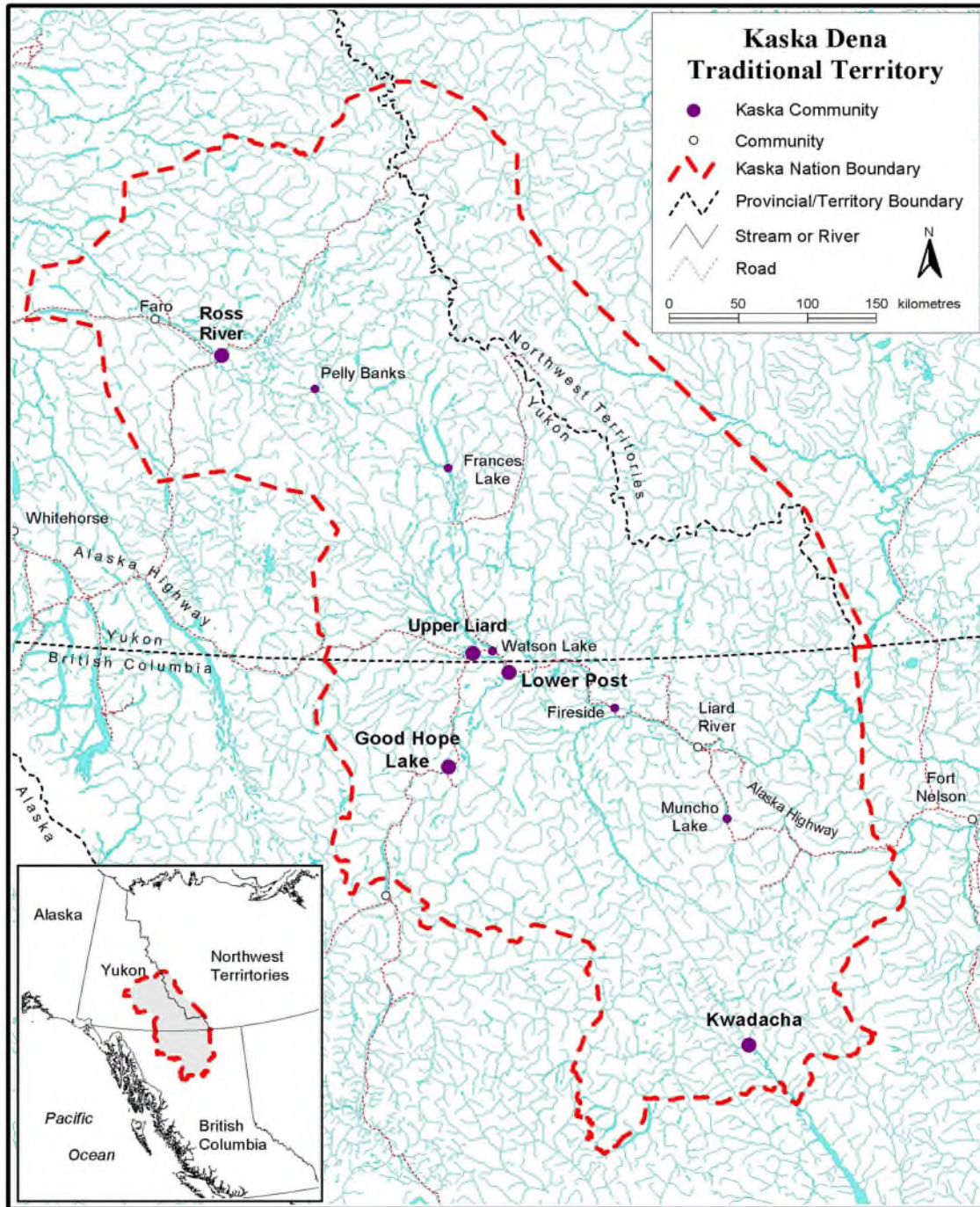


Figure 1. Map of Kaska traditional territory. The Nahanni Range Road is visible east and northeast of Frances Lake, with its terminus at the Cantung Mine. The project area can be seen to lie entirely within Kaska traditional territory.

Appendix 1: LFN Comments on Failure Modes and Effects Analysis

i. Introduction

LFN has reviewed the draft FMEA for its technical merits and its capacity to contribute to a successful CRP process. A successful mine closure of the Cantung Mine is an incredible reconciliation opportunity for Canada and for LFN if modern and progressive reconciliation practices and policies are employed in designing and implementing closure activities. At minimum, a CRP must result in assurances that LFN citizens' exercises of Kaska rights remain meaningful. The MVLWB CRP approval process must require clear, measurable ways of ensuring that those rights can be resumed, are meaningfully sustained, and can be exercised in their preferred manner. Without this constitutionally-supported goal becoming the primary final closure objective, reconciliation of the Crown's past decisions and its role in the closure of Cantung will not achieve reconciliation.

LFN believes that the FMEA of the Tailings Containment Areas ("TCAs") has been developed using conventional and dated industry practices and finds this approach disappointing. Those methodologies leave no opportunity, conceptually or in detail, to incorporate LFN perceptions of risk as measured against values that LFN holds significant or even vital. These cultural biases and technical deficiencies compromise the value and efficacy of the predominantly technical work undertaken by Canada and reviewed in a report and recent workshop.

Even the narrow TCA analysis raises concerns for LFN. Below, LFN identifies several concerns from our review of the FMEA. We highlight these to draw attention to the knowledge gaps and limitations evident in the FMEA. It is LFN's contention that the final FMEA and the scope and design of the CRP process require consideration of these points before the process advances further.

ii. Summary of key issues identified in the FMEA

1. **The FMEA is limited to the TCAs.** While the future management of the TCAs is obviously critical to closure and reclamation, there are other aspects of the Cantung Mine for which risks need to be characterized, including the Nahanni Range Road, waste management areas, town and infrastructure sites, water management areas and systems, and the airstrip.
2. **Missing failure mode – Flat River meandering.** The Flat River meanders throughout the valley adjacent to the TCAs. Meanders are the natural curves in a river that are caused when a river erodes its banks in one location and deposits the eroded sediments at a downstream location. This is a natural and gradual process that has clearly occurred in the vicinity of the Cantung TCAs. On this basis, it can be assumed that future meandering of the Flat River has the potential to compromise the TCAs over the long term and could result in significant environmental impacts. The FMEA has not considered this potential failure mode, so the assessment may underestimate the risks associated with leaving the TCAs in their current locations. This failure mode needs to be included in the final FMEA.
3. **Future mitigations over-reliant on rosy predictions.** The FMEA was assessed through two timeframes: a) Short Term, spanning the next 10 years; and b) Long Term, spanning the subsequent 100 years. Under the Long-Term scenario, the FMEA assumed that any emerging concerns related to the TCAs (e.g., localized structural failures) will be identified and mitigated through regular monitoring and care/maintenance of the site. Based on this "active management" assumption, none of the failure modes were predicted to progress to

a stage where significant consequences might occur over the long term. This has the effect of underestimating the long-term risks associated with the TCAs, and could result in the selection of remedial options that are insufficiently robust over the long term. The FMEA should be revised to determine the consequences if failure modes are not actively managed in the future. LFN and our members have and will continue to exercise rights in this area and expect to increase use to match pre-contact use, whether or not Canada allocates adequate funds for future active management of the site. It is the Kaska who will bear the brunt of any failure to actively manage the site in the future when needed.

4. **Social/community consequences not adequately considered.** One of the criteria used to assess potential TCA risks focuses on consequences linked to social/community interests. The assessment criteria for social/community consequences were extracted directly from generic risk assessment guidance, without considering the input of affected communities such as LFN. Further, the FMEA scoring against the criteria was performed by NATCs consultant, Tetra Tech, without the involvement of affected communities. This approach – and the lack of Indigenous knowledge available to Tetra Tech – raises grave concerns about the likely quality and comprehensiveness of the final RCP. This deficiency was noted by representatives of the Nahᓃᓴ Dehé Dene Band (“**NDDB**”) in a written submission and at multiple points during the meeting. LFN and NDDB technical teams have since met and have an interest in further collaboration and sharing of perspectives and information on the FEMA and other matters. LFN has for years consistently noted that its primary interest is in ensuring that the RCP gives assurance that LFN citizens’ exercises of Kaska rights and enjoyment of Kaska title will remain meaningful. Any assessment of social/community interest risks is, by definition, an exercise that must be led by LFN. Putting the future of Kaska rights in the hands of a non-Kaska party like Tetra Tech is ridiculous and wholly inconsistent with international standards on the acquisition, analysis and application of Indigenous knowledge. Under these circumstances, the only solution LFN has confidence in is for it to lead this assessment and submit it to the MVLWB in the form of a written report that can be applied in an agreed-upon RCP process. This approach will take far less time than it took to prepare the fundamentally flawed assessment undertaken by Canada.
5. The final FMEA should be revised to include alternative strategies proposed by all affected Indigenous groups. For its part, LFN would prefer to see a wider analysis of failure modes beyond simply the TCAs, as part of an overall visioning exercise for the Cantung site. Without such an exercise, the proper ultimate land use objectives and associated closure objectives and criteria – critical elements to all aspects of closure and reclamation planning, including the FMEA – cannot be appropriately integrated. In addition, the expedited timeline sought by NATC and Canada for the “socio-cultural” aspect of the FMEA is quite short in comparison to the time that was taken to complete the technical analysis behind closed doors. LFN cannot be rushed into any such important work; the Crown must allow additional time for LFN to provide more extensive input, without hiding behind a shell company as the imagined proponent. We did not have the time or the established procedures to effectively engage our people, including our Elders and knowledge keepers, within the narrow window provided for the October 2022 “socio-cultural” input process. Accordingly, any updates to the FMEA that include reference to that aspect will be missing LFN input unless timelines are adjusted.

6. **Overly ambitious and rosy schedule for the Remedial Planning Process.** LFN has specific process needs that must be addressed for the process to be meaningful and to accomplish the goals that have yet to be determined. Canada and LFN need to negotiate an agreement to guide and inform the process and government-to-government relationship so that the parties can produce a competent RCP and achieve reconciliation.
7. CIRNAC has provided a high-level schedule of key milestones established to guide the project through the remedial planning process. **Based on LFN's experiences with multiple contaminated site remediation projects, we consider the schedule to be unrealistically ambitious, impractical and therefore counterproductive.** Further, based on the limited information provided, it is unclear how LFN and other interested parties will be effectively engaged in such an accelerated process. The lack of clarity about outcomes, and the lack of specified approaches to reconciliation, are of grave concern. In fact, there have yet to be any discussion with LFN about what needs to be reconciled through the successful closure of this failed mine, let alone how that could be accomplished. This further reinforces the necessity for a written agreement that specifically sets out those and other important matters.
8. **The FMEA is entirely technical and shows no evidence that any factors identified by Indigenous peoples were considered.** LFN has not been included in any of the procedural aspects, such as the process for identifying unacceptable risks. There is no relation between risk and effects on Kaska Rights exercises and their resumption. None at all. This is especially significant because the identification of unacceptable risks leads to the development of measures for risk reduction and remediation, and also informs long-term investigations. These aspects have a direct impact on determining what is reclaimed and to what extent. The absence of Indigenous perspectives artificially restricts the scope of final closure and reclamation options and interferes with meaningful comparisons between them. This also increases the likelihood that impacts to Kaska rights, including Kaska title, will persist following completion of closure activities. This approach is likely to distort the RCP process to the point that Kaska rights holders will not be able to support the plan because it systematically avoids addressing impacts on their constitutional rights.
9. **The FMEA does not consider traditional knowledge.** The FMEA does not incorporate traditional knowledge or Indigenous input in any meaningful way. Traditional knowledge can aid in determining the number of species present, historical pattern shifts due to mine activities, and past and future impacts on traditional uses such as harvesting. None of these were included in the draft FMEA report. Traditional knowledge must be given consideration in the final FMEA and treated equally alongside Western science, as per the expected standard in the Mackenzie Valley land and resource management system. This needs to be rectified for all future work.
10. **The FMEA is a "closed door" technical analysis,** meaning there is no evidence that LFN or other Indigenous groups were engaged in any of the workshops or other meetings that informed the scope, methods, data analysis or conclusions. The report's lack of consideration for Indigenous involvement means that the FMEA not only has serious gaps in understanding and predictive power, but also undermines the sovereignty and decision-making authority of LFN and other affected Indigenous communities. Integration of input

from the NDDB does not exempt the proponent from its responsibility to engage with LFN on our Nation's own terms and timelines.

11. **The characterizations of risk/consequence are entirely from a non-Indigenous perspective.** Indigenous peoples and Indigenous knowledge systems have different risk calculation parameters and thresholds, and their absence here means that only half of the picture of risk emerges. There seems to be no consideration given to how site condition failure or expected risk will impact the traditional use of the site area and surrounding lands. Further, the methodological disregard of Indigenous rights (access, harvesting, cultural activities and connection to land, etc.) in the FMEA means that it cannot fully capture the degree of risk and consequences of a failure. Indigenous governments and their members need to know what areas simply will not be safe or useable in the future, including project sites like TCAs and areas downgradient and downwind of them. These locations need to be characterized based on their risks, the degree to which natural and near-natural conditions can be reclaimed over time, and the willingness of Kaska peoples to use those areas now and into the future. In general, Indigenous peoples, through long and hard experience as well as through their greater connection with the environment, have a lower tolerance for “acceptable likelihood” and set lower thresholds than non-Indigenous peoples for unacceptable failure mode consequences. This fact has not informed this FMEA as currently presented.
12. **Closure objectives and goals for end use of the area are not reflective of Indigenous goals.** The FMEA fails to address what impacts the retention of the TCAs in their current and likely future “default state” will have on the ability of Indigenous peoples to resume meaningful Section 35 rights exercises in the affected area in the future. There is no consideration of rights infringement, the ability to harvest, and the ability to occupy, use and enjoy the territory. These issues have been avoided entirely. Indeed, the whole process has infringed the governance aspects of Kaska title by proposing a future vision for the lands while shutting out LFN input.
13. **Climate change not meaningfully considered.** It is not clear that climate change has been fully considered in the FMEA. Climate change will only increase the vulnerability of the site to environmental impacts over time, in part because of the unpredictability and greater frequency of extreme weather events. Climate modeling should additionally identify the risks and potential failures arising from environmental disasters such as fires, avalanches and landslides. These natural disasters are most likely to adversely impact the tailings dams. Greater consideration needs to be given to how future climate change will affect project components in both the short and long term.
14. **FMEA study results and recommendations reflect Tetra Tech's perspectives and lack any form of verification or endorsement by impacted Indigenous peoples.** A broadly scoped alternative means assessment is urgently needed to identify closure and reclamation options for all important physical works and activities associated with Cantung.
15. **Premature determination on closure alternatives.** The FMEA suggests that its findings “will provide a basis for formulating suitable long-term closure alternatives.” This is a serious overreach; the FMEA provides a technically necessary, but by no means sufficient basis for

formulating suitable long-term closure alternatives. Many of the gaps identified herein need to be filled before that basis can be determined.

16. **Inadequate definition of failure and acceptance of status quo for the TCAs.** The absence of any Indigenous definitions of failure is a serious problem, as Indigenous peoples would like to see failure modes reflect traditional ways of measuring Kaska well-being and ways of life. For example, LFN would consider closure and reclamation a failure if the area experiences continued or worsening non-natural conditions that perpetuate alienation and loss of use of the area by Kaska peoples. This would lead to a continued infringement of the meaningful exercise of section 35 rights in the areas impacted by Cantung. In other words, Indigenous people may consider the continuation of the status quo at these TCAs a failure in and of itself – and a compensable failure at that.

iii. Closing

Finalizing the FMEA now is illogical, premature and unnecessary at this early stage of CRP development. It will need to be revisited and revised later in any case. The scope of the current draft FMEA should be revised and identified deficiencies corrected prior to the FMEA's completion, and only after meaningful engagement with all affected Indigenous groups, including LFN. Scope revisions will require more Indigenous community engagement than the "socio-cultural engagement" of October 2022, in which LFN did not participate. That work by LFN will require capacity funding and adequate time.