



May 25, 2022

Mr. Boyd Clark  
Advisor/Band Manager  
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GENERAL DELIVERY  
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Dear Mr. Clark:

**ABORIGINAL CONSULTATION: APPROVAL OF THE WILDLIFE MANAGEMENT AND MONITORING PLAN FOR PHASE 1 OF THE CANADIAN ZINC PRAIRIE CREEK ALL-SEASON ROAD PROJECT**

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The Government of Northwest Territories (GNWT) Department of Environment and Natural Resources (ENR) is in receipt of Acho Dene Koe First Nation's (ADKFN) correspondence of December 17, 2021, regarding comments on the Wildlife Management and Monitoring Plan (WMMP) for Phase 1 of the Canadian Zinc (CZN) Prairie Creek All-Season Road Project.

ADKFN has raised a concern that the Environmental Assessment (EA1415-01) and post-EA regulatory process for the Prairie Creek All-Season Road project are flawed, as they fail to acknowledge that ADKFN's rights and interests are impacted by this project. ENR notes that several attempts were made by the Crown during the EA and post-EA regulatory process to encourage ADKFN's participation in these processes. The following is a record of correspondence with ADKFN during the EA process:

- 1) June 05, 2014: Consultation and EA participation letter from Canadian Northern Economic Development Agency (CNEDA) to ADKFN providing notification that an EA for the project had been triggered and that the project occurred near the community of Fort Liard. This letter outlined that the Crown relies on the consultative process of the Review Board and Mackenzie Valley Land and Water Board (MVLWB), and notified ADKFN that Interim Resource Management Assistance funding was available to support their participation in the EA.
- 2) May 01, 2015: Consultation letter from GNWT Department of Lands to ADKFN providing notification that the Minister of Lands does not have decision-making authority because the project is partially on federal land, and that AANDC has decision-making authority. The letter notified ADKFN that the GNWT would rely on the Mackenzie Valley Environmental Impact Review Board (MVEIRB) process to ensure its duty to consult is met with respect to any aspects of the project within its jurisdiction.

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- 3) June 27, 2016: Letter to ADKFN from the Department of Lands encouraging their participation at Traditional Knowledge and Culture Workshops (during the technical review phase of the EA). The letter specifically encouraged ADKFN to use the session as an opportunity to raise concerns about potential impacts from the project on Aboriginal and/or Treaty rights.
- 4) September 12, 2017: Letter from CNEDA to ADKFN providing notification about the Report of Environmental Assessment (REA) and of MVEIRB's recommendation that the project be approved. The letter requested feedback on whether the EA process addressed the concerns that ADKFN identified about impacts to their Aboriginal and/or Treaty rights.
- 5) November 06, 2017: Letter from ADKFN to CNEDA regarding an invitation to comment on the REA. In the letter ADKFN acknowledges there had been continued consultation with CZN since 2014, maintaining a positive relationship between ADKFN and CanZinc, and that a number of ADKFN's concerns had been addressed. The letter stated that ADKFN had a number of community members and businesses that would like to be involved in the project, including in environmental monitoring and road construction. ADKFN expressed concern regarding increased level of traffic on the Fort Liard Highway, including dust, air quality, wildlife collisions, use of pesticides/herbicides on roadside vegetation, impacts to care and maintenance of the highway, and negative impacts to ADKFN members that have cabins located near the highway. ADKFN requested that CanZinc continue to consult with ADKFN to address and accommodate their interests relating to the project and provide information on proposed mitigations.
- 6) October 10, 2018: Follow up letter from CNEDA to ADKFN acknowledging the points raised in ADKFN's November 06, 2017, response letter. The letter stated that "We have considered your concerns and conclude that the combination of the Report's measures and existing government programs are likely to function to address your concerns in a satisfactory way. We are happy to provide further information regarding these programs". The letter concluded that concerns about potential adverse impacts to Aboriginal and/or Treaty rights had been addressed, recognized that consultation is an ongoing process, and noted that there were further opportunities to participate in the post-EA phase.

With respect to the review of the WMMP for the all-season road project during the Post-EA regulatory phase, the following is a list of opportunities that ADKFN has had to submit comments:

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- 1) March 12, 2019 - April 24, 2019: ADKFN was notified through the MVLWB's Distribution List for the review of the all-season road Land Use Permit and Water Licence documents of the opportunity to submit comments on the WMMP. A summary table of comments submitted by different parties and CZN's responses was posted to the MVLWB public registry. ADKFN did not submit any comments on the WMMP during that review.
- 2) December 2019 - January 2020: Parks Canada and ENR initiated a public review of the updated Phase 1 WMMP submitted by CZN on November 12, 2019, through the MVLWB's Online Review System. ADKFN submitted a letter with comments on the WMMP on December 19, 2019. The letter highlighted that ADKFN's traditional territory overlaps with the project and outlined ADKFN's expectation "to enter full meaningful consultation with government prior to any decision that has the potential to infringe our Treaty or Aboriginal rights". ADKFN's letter also highlighted a lack of inclusion or consideration of ADKFN's Dene Knowledge within the WMMP, ADKFN's desire to participate in monitoring programs applicable to caribou, and technical comments on the methods used to monitor boreal and mountain caribou along the road alignment. CZN provided responses to ADKFN and other parties comments regarding the WMMP on January 16, 2020.
- 3) May 05, 2020: ENR submitted a letter to CZN requiring that a revised WMMP be submitted for approval by the Minister at least 60 days prior to commencement of Phase 1 activities and notifying CZN that there would likely be another opportunity for public review of the WMMP prior to ENR's decision on whether to approve it. ADKFN was copied on this letter to CZN. In the letter, ENR outlined its expectation that CZN "follow up on their January 16, 2020, commitment to further engage with ADKFN to address their concerns regarding incorporation of ADKFN's traditional knowledge into the WMMP for Phase 2 of the project and regarding the hiring of ADKFN monitors to participate in implementing the WMMP." The letter also highlighted ENR's commitment to consult Indigenous governments and Indigenous organizations prior to making a decision on approval of the WMMP.
- 4) November 02, 2021: ENR sent a consultation letter to ADKFN asking for comments on an updated version of the WMMP submitted by CZN on October 04, 2021. The letter requested ADKFN to advise ENR if any of the proposed actions to be undertaken by CZN in the WMMP has the potential to adversely impact your asserted or established Aboriginal and/or treaty rights.

The above correspondence with ADKFN, and opportunities offered to ADKFN to provide comments and recommendations on different drafts of the WMMP, demonstrate that ENR has given due consideration for ADKFN interests throughout the process and prior to rendering a decision with respect to the WMMP.

ENR agrees with ADKFN that CZN's WMMP has failed to acknowledge that a portion of the all-season road alignment traverses ADKFN's Traditional territory. CZN was initially made aware of these concerns during the December 2019 - January 2020 public review of the draft WMMP for Phase 1 of the all-season road project but did not make any changes to the more recent version of the WMMP to acknowledge ADKFN's concerns.

ENR notified CZN by e-mail on January 17, 2022, that the consultation process with Indigenous governments and Indigenous organizations regarding the WMMP had not yet concluded and encouraged CZN to continue engaging with ADKFN to address concerns outlined in ADKFN's December 17, 2021, letter to ENR.

ENR acknowledges ADKFN's concern that construction and operation of the Pioneer Winter Road and All-Season Road to the Prairie Creek Mine will increase the amount of traffic along the NWT Highway 7 / British Columbia (BC) Highway 77 corridor. ADKFN has stated that this increase in traffic may lead to more sensory disturbance to wildlife and increased risks of wildlife-vehicle collisions, and that effects monitoring should be expanded to include an assessment of impacts due to traffic disturbance and collisions along the Highway 7/77 corridor, as well as the hunting and trapping success of ADKFN members.

Within the MVEIRB Report of Environmental Assessment and Reasons for Decision for the All-Season Road Project, Section 1.3.3 (page 10-11) provides an overview of the proposed haulage route for the CZN project, including the public highway system to Fort Nelson, BC. The Developer's Assessment Report for this project outlined the expected increase in summer and winter traffic volumes along Highway 7 (Section 6.6, page 154).

Average daily traffic volumes on Highway 7, measured 2.6 km south of Fort Liard between 2009 and 2018, were between 90 and 120 vehicles per day (INF 2019). Other sections of Highway 7 north of Fort Liard had average daily traffic levels between 40 and 70 vehicles per day between 2009 and 2018 (INF 2019). Even with the addition of traffic from the CZN project, traffic volumes would be substantially lower than those reported on most other segments of the NWT highway system.

Regarding increases in wildlife-vehicle collisions, subject to section 58 of the *Wildlife Act*, any person who, with a motorized vehicle, accidentally kills or seriously wounds big game or other prescribed wildlife on a highway is required to report the incident to an ENR officer within 24 hours. Any vehicle associated with the CZN project would be required to report such an incident to ENR, and ENR will remind CZN of this legislative requirement.

ENR maintains records of wildlife-vehicle collisions, and if the annual number of vehicle collisions on Highway 7 was seen to increase, ENR would consult with the Department of INF to assess whether any new actions could be implemented on the highway to mitigate this impact. Operators of vehicles related to the CZN project must report any wildlife-vehicle collisions to ENR, but it is beyond the scope of ENR's authority to require CZN to carry out any additional wildlife mitigation or effects monitoring related to its use of the public highway system.

ENR agrees with ADKFN that the checkpoint and associated signage proposed by CZN in the WMMP cannot be used to prevent or dissuade ADKFN members from accessing their traditional territory in any way. With respect to the checkpoint and associated signage proposed in the WMMP, ENR provided comments to CZN in December 2021 notifying them that sub-section 147(2) of the *Wildlife Act* states that "No person shall, without lawful authority, post a sign or notice purporting to prohibit or regulate activities in relation to wildlife or habitat." As such, CZN will be required to modify their signage so that it does not purport to prohibit anyone from hunting in the area that can lawfully do so. The signage can nonetheless encourage people to stop at the checkpoint for safety reasons, and people that do so can voluntarily fill out the proposed survey regarding their use of the road for harvesting-related activities but are not obliged to do so. ENR also recommended CZN to acknowledge all Indigenous Governments whose traditional lands overlap with the PWR and all-season road corridor on any signage including regards to traditional lands.

As indicated earlier in this letter, ENR outlined in its May 2020 letter to CZN regarding re-submission of the Phase 1 WMMP that CZN "follow up on their January 16, 2020 commitment to further engage with ADKFN to address their concerns regarding incorporation of ADKFN's traditional knowledge into the WMMP for Phase 2 of the project and regarding the hiring of Acho Dene Kue monitors to participate in implementing the WMMP." Although CZN's commitment applies to the WMMP for Phase 2 of the all-season road project, which has yet to be submitted, ENR also noted that the October 2021 version of the WMMP for Phase 1 of the project failed to acknowledge that part of the road alignment occurs within ADKFN's traditional territory.

ENR's WMMP Process and Content Guidelines and associated Annotated Table of Contents outline ENR's expectations of Proponents with respect to engagement with affected communities, Indigenous governments and Indigenous organizations during the development of a WMMP, description of such efforts within a WMMP, and consideration of Traditional Knowledge when designing mitigation and monitoring programs for a WMMP.

It is, however, beyond the scope of ENR's authority with respect to approval of a WMMP to require that a Proponent hire members of a specific Indigenous Government to conduct monitoring activities outlined in a WMMP, provide funding to a specific Indigenous Government to conduct Traditional Knowledge studies related to a WMMP, or to provide evidence that a specific Indigenous Government's Traditional Knowledge has been incorporated into a WMMP. As noted by ADKFN, CZN's WMMP references Part B of the Project's water licence as containing two conditions related to incorporation of Dene Knowledge into submissions required by the MVLWB. ENR notes, however, that the WMMP is not a submission required by the MVLWB as a condition of the water licence for the project.

In correspondence with CZN since their submission of the WMMP to ENR for approval in October 2021, ENR has continued to encourage CZN to engage with ADKFN to address their concerns related to incorporation of their Traditional Knowledge in the WMMP, hiring of ADKFN monitors, and representation of ADKFN on the Road Oversight Committee. ENR encourages ADKFN to continue discussions with CZN to find mutually agreeable approaches to address these issues.

ENR is aware that ADKFN is entering into a data sharing agreement with the Department of Lands to provide information about traditional land use within the area of the project. If ADKFN would like to enter into a similar agreement with ENR please contact Mr. James Hodson, Manager, Habitat and Environmental Assessment at [James.Hodson@gov.nt.ca](mailto:James.Hodson@gov.nt.ca).

Sincerely,



Erin Kelly, Ph.D.  
Deputy Minister  
Environment and Natural Resources

c. Distribution list

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