

FORM 4

No. S.C.

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

TLICHO GOVERNMENT

APPLICANT

- and -

MACKENZIE VALLEY ENVIRONMENTAL IMPACT REVIEW BOARD

RESPONDENT

**ORIGINATING NOTICE
APPLICATION FOR JUDICIAL REVIEW**

TAKE NOTICE that an application will be made before the presiding Judge in Chambers at the Courthouse in the City of Yellowknife in the Northwest Territories on Friday the 1st day of October, 2010, at 10:00 in the morning or so soon thereafter as counsel may be heard on the matter, for an order:

1. For directions on whether any other party needs to be given notice of the application and served with this Originating Notice, and for directions respecting setting down the Application for Judicial Review for a Special Chambers hearing and the filing of pre-hearing briefs;
2. An Order in the nature of *certiorari* quashing the decision of the Respondent, the Mackenzie Valley Environmental Impact Review Board (the "Review Board") published August 27, 2010, denying the Request submitted by Tlicho Government on May 28, 2010, for a Ruling that environmental assessment EA0809-004 respecting Fortune Minerals Limited, NICO Project (the "Proposal") is premature and will therefore be postponed and placed in abeyance until all essential components of the Proposal are included in applications accepted as complete by the Wek'eezhii Land and Water Board ("WLWB");
3. A Declaration that the Review Board does not have jurisdiction to conduct the environmental assessment of the Proposal ("EA0809-004") in accordance with the Terms of Reference that it issued on November 30, 2009 ("TOR");
4. An Order remitting to the Review Board, for reconsideration on the basis of the Court's Reasons, its decision to not exercise its administrative discretion to

adjourn EA0809-004 until all essential components of the Proposal are included in applications accepted as complete by the WLWB;

5. An interlocutory injunction requiring the Review Board to suspend EA0809-004 until the Court decides this application;
6. Costs; and
7. Such further and other relief as this Honourable Court may deem just.

AND FURTHER TAKE NOTICE that the following are a concise statement of the grounds on which relief is claimed in this proceeding:

1. The Proposal is for a cobalt-gold-bismuth mine and mill, for which Fortune Minerals Limited ("Fortune") holds mineral claims and mining leases, which pre-existed the Tlicho Agreement and are located on Tlicho Lands, approximately 50 km northeast of Whati and 90 km north of Behcheko.
2. Fortune acknowledges that the Proposal could not be viable without year-round road access from the mine site to Highway 3. Fortune proposes to meet those access requirements by two different roads (the "access roads"): (1) a spur road that it would construct, to connect the mine site to (2) a year-round industrial highway to connect to Highway 3, that it anticipates that the Government of the Northwest Territories ("GNWT") would construct, by relocating the existing winter road to Whati and Gameti to an all-land route, and then constructing a new year-round, industrial highway on that route.
3. There is no access agreement for either road, and no discussions have been entered into for such agreements.
4. There is currently a moratorium on developments on Tlicho Lands, pursuant to the *Tlicho Lands Protection Law*. The Tlicho Government is currently engaged in the development of its Land Use Plan for Tlicho Lands.
5. In order to proceed with its Proposal, Fortune requires water licences and land use permits for the components of the Proposal. Fortune's original applications to the WLWB for such authorizations included the access roads as components of the Proposal. The WLWB ruled those applications incomplete on April 24, 2008, because Fortune did not have access agreements with Tlicho Government for various components that would be built on Tlicho Lands off the mine site, including the access roads.
6. Fortune then reconfigured its applications in November, 2008, bringing some components of the Proposal onto its site, and entirely eliminating the access roads from the Proposal. The WLWB accepted the new applications as complete, which were then referred by the Department of Indian Affairs and Northern

Development, ("DIAND") to the Review Board for environmental assessment under the *Mackenzie Valley Resource Management Act* ("MVRMA").

7. During consultations by the Review Board respecting the Terms of Reference for the environmental assessment, Tlicho Government advised the Review Board of the facts in paragraphs 3 and 4 above, commented that the proposed access roads were speculative, and recommended that those should therefore be excluded from consideration in the environmental assessment.
8. The TOR were issued by the Review Board on November 30, 2009, and included the access roads in the matters for assessment, as follows:

Fortune has stated that the NICO Project requires all-season road access from the NICO mine site to Highway 3. Fortune anticipates that the Government of the Northwest Territories will apply to build an all-land road from Highway 3 to Whati and Ganeti in the near future (referred to in this document as the "potential realignment of the winter road through the Wek'eezhii Settlement Area"). This road would be used in part for the NICO Project. A short stretch of road (approximately 25 km) from the NICO mine site to this anticipated road would be constructed and maintained by Fortune and is within the scope of this development.

The scope of development for this EA does not include the construction or general operation of the potential realignment of the winter road through the Wek'eezhii Settlement Area, which has not been proposed at this time, and which is not expected to be proposed, constructed or primarily operated by Fortune. The Review Board expects that the potential realignment of the winter road through the Wek'eezhii Settlement Area will undergo appropriate environmental scrutiny once applications for that road have been received. However, Fortune's use of the potential realignment of the winter road through the Wek'eezhii Settlement Area is required for the NICO Project, and is included in the scope of development. (emphasis added)

9. On May 28, 2010, Tlicho Government filed a Request for a Ruling by the Review Board that EA0809-004 is premature and would therefore be postponed and placed in abeyance until all essential components of the Proposal are included in applications accepted as complete by the WLWB.
10. The Review Board denied the Tlicho Government's Request for Ruling and published its Decision and Reasons on August 27, 2010.
11. In deciding not to administratively suspend EA0809-004 as requested, the Review Board exercised its discretion improperly, because:
 - a. It did not consider all relevant factors, including earlier submissions by Tlicho Government respecting the hypothetical nature of the access roads,

the practical problems that would undermine the effectiveness of assessing impacts from the Proposal because of the hypothetical nature of the access roads, and the submission of DIAND that a temporary administrative suspension was an acceptable option for the Review Board; and

- b. It considered irrelevant or improper factors, including fairness to Fortune instead of fairness to all affected parties including Tlicho Government, and it wrongly assumed that the requested adjournment would mean an indefinite rather than a temporary postponement.

12. In deciding that the Review Board has jurisdiction to conduct EA0809-004 in accordance with the TOR, the Review Board erred in law, because:

- a. It relied on the definition of **development** - ("any undertaking or part or extension of an undertaking...") - to conclude that the *MVRMA* authorizes the environmental assessment of a **hypothetical** project;
- b. It failed to conduct a purposive analysis of the *MVRMA*;
- c. It failed to conclude that the *MVRMA* **does not** authorize the environmental assessment of a hypothetical development;
- d. It relied on Fortune's access rights under chapter 19 of the Tlicho Agreement, including related dispute resolution mechanisms, to conclude that the proposed spur road is **not** hypothetical;
- e. It failed to recognize the speculative and hypothetical nature of the industrial highway that Fortune anticipates the GNWT will build to connect the spur road to Highway 3, because a relocated winter road and that highway would **not** be authorized under whatever access rights Fortune may have, and could not be built without agreement of the Tlicho Government;
- f. It failed to recognize that the moratorium on development on Tlicho Lands and the ongoing Tlicho Land Use Planning Process are legally effective measures authorized for the use, management and protection of Tlicho Lands under the Tlicho Agreement, and therefore the *MVRMA* does not authorize an environmental assessment based on TOR that **assume** that the access roads will be built as anticipated or required by Fortune;
- g. It included the access roads in the scope of Fortune's "proposed development" after Fortune intentionally eliminated them from its Proposal;
- h. It included the access roads in the scope of the development although neither of them is an existing or reasonably foreseeable development; and
- i. It included the access roads in the environmental assessment although it recognized that if applications for such roads are filed in the future that would modify or expand the scope of the development, those applications would be subject to screening and a possible new environmental assessment.

AND FURTHER TAKE NOTICE that in support of the application will be read the Affidavit of Dr. John B. Zoe, sworn September 21, 2010, copies of which are served with this Originating Notice.

Dated at Toronto, Ontario, on September 20, 2010 and taken out by Arthur Pape, Solicitor for Tlicho Government, whose address for service is:

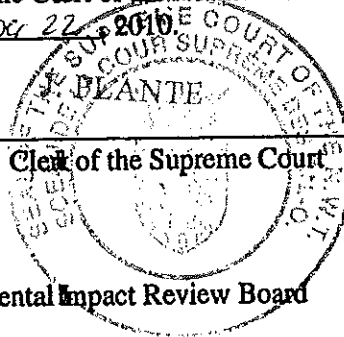
Arthur Pape,
c/o Sheldon Toner, Dragon Toner Law Office
5016-50th Avenue, P.O. Box 996
Yellowknife, NT X1A 2N7

Pape Salter Teillet,
Barristers and Solicitors

Per: 

Agent for Solicitors for the Applicant Tlicho Government

ISSUED out of the office of the Clerk of the Supreme Court of the Northwest Territories, at Yellowknife, Northwest Territories, on September 22, 2010



TO: Mackenzie Valley Environmental Impact Review Board
200 Scotia Centre
5102 - 50th Avenue, P.O. Box 938
Yellowknife, NT X1A 2N7

AND TO: Fortune Minerals Limited
140 Fullarton Street, Suite 1902
London, ON N6A 5P2

I hereby certify that the foregoing is a true copy of the original of which it purports to be a copy


CLERK OF THE SUPREME COURT

AND TO: Attorney General for the Northwest Territories
Minister of Justice,
4904-49th Street,
Courthouse 6th Floor,
Yellowknife, NT

AND TO: Department of Justice Canada
Northwest Territories Regional Office
2nd Floor, Joe Tobie Building
5020 – 48th Street, P.O. Box 8
Yellowknife, NT X1A 2N1

AND TO: North Slave Métis Alliance
P.O. Box 2301
Yellowknife, NT Z1A 2P7

AND FURTHER TAKE NOTICE that the Rules of the Supreme Court of the Northwest Territories contains the following rule:

598.(1) On receiving an originating notice endorsed in accordance with rule 595, the person in respect of whose decision or act relief is claimed shall return forthwith to the Clerk

- (a) the judgment, order or decision, as the case may be;
- (b) the process commencing the proceeding;
- (c) the evidence and all exhibits filed, if any;
- (d) all things touching the matter;
- (e) the originating notice served on the person; and
- (f) a certificate in the following form:

"Pursuant to the accompanying originating notice, I hereby return to the Honourable Supreme Court the following papers and documents;

- (a) the judgment, order or decision, as the case may be, and the reasons for it;
- (b) the process commencing the proceeding;
- (c) the evidence taken at the hearing and all exhibits filed;

(d) all other papers or documents touching the matter.

And I hereby certify to the Honourable Supreme Court that I have enclosed in this return all the papers and documents in my custody relating to the matter set forth in the originating notice".

(2) The certificate required by subrule (1) has the same effect as a return to a writ of *certiorari*.

(3) Where the proceedings are not in the possession of the person required to transmit them, that person shall, in lieu of the certificate required by subrule (1), so state and explain the circumstances.

(4) Where the proceedings have not been received by the Clerk before the application for judicial review is heard, the Clerk shall return a certificate stating that fact.

(5) The Court may dispense with the return of the evidence or exhibits or part of the evidence or exhibits.

(6) Notwithstanding the requirements of this rule, the parties may agree on what constitutes the record for the purpose of the application for judicial review.

SICV2010 000 157
S.C. No.

**IN THE
SUPREME COURT OF
THE NORTHWEST
TERRITORIES**

NOTICES TO RESPONDENTS:

You are hereby notified that the Applicant may enter judgment in accordance with this Notice, or such judgment as the Applicant may be entitled to in accordance with the practice of the Supreme Court of the Northwest Territories, without any further notice to you unless you or your agent or solicitor appear at the place and on the time and date specified.

Between:

TLICHO GOVERNMENT
Applicant

- and -

**MACKENZIE VALLEY
ENVIRONMENTAL IMPACT
REVIEW BOARD**
Respondent

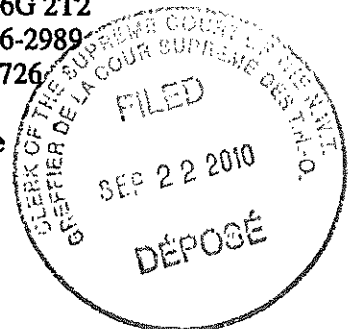
ORIGINATING NOTICE

PAPE SALTER TEILLET
c/o Sheldon Toner,
Dragon Toner Law Office
5016 – 50th Avenue, P.O. Box 996
YELLOWKNIFE, NT X1A 2N7
Telephone: 867-873-6000
Fax: 867-873-6006

- and -

PAPE SALTER TEILLET
546 Euclid Avenue
TORONTO, ON M6G 2T2
Telephone: 416-916-2989
Fax: 416-916-3726

Arthur Pape



No. S.C.

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

TLICHO GOVERNMENT

APPLICANT

- and -

MACKENZIE VALLEY ENVIRONMENTAL IMPACT REVIEW BOARD

RESPONDENT

AFFIDAVIT OF DR. JOHN B. ZOE

I, **JOHN B. ZOE**, MAKE OATH AND SAY AS FOLLOWS:

1. My name is John B. Zoe. I am a Tlicho First Nation citizen. I was born and raised in the community of Behchoko in the Northwest Territories. From 1992 to 2005, I served as the Tlicho Chief Negotiator for the land claims negotiations that resulted in the Tlicho Land Claims and Self-Government Agreement (the "Tlicho Agreement" or the "Agreement"). In October of 2005 I was appointed to be the Tlicho Executive Officer, and I served in that capacity until January 11, 2010. Since then I have served as Senior Advisor to the Tlicho Government. In these capacities, I have personal knowledge of the matters to which I hereinafter depose, except where stated to be on information and belief, and as to these last said matters I verily believe them to be true.
2. The Tlicho Agreement has had legal force and effect since August 4, 2005. Under the Agreement, the Tlicho Government is vested with title, which it holds on behalf of the Tlicho First Nation, to the approximately 39,000 square kilometres that

comprise Tlicho Lands, including the mines and minerals within, upon or under those lands. A map from page 19 of the Agreement, which shows the approximate outline of Tlicho Lands, is attached as Exhibit “A” to this Affidavit.

3. Fortune Minerals Limited (“Fortune”) proposes to develop a cobalt-gold-bismuth mine and mill on Tlicho Lands, approximately 90 km north of Behchoko, 50 km northeast of Whati and 10 km northeast of Hislop Lake (the “Proposal”). Fortune proposes to do that on the basis of its mineral claims and mining leases which pre-existed the Tlicho Agreement and are therefore listed as “existing interests” in Part 2 of the Appendix to Chapter 18 of the Agreement.
4. Fortune has always acknowledged that its Proposal could not be viable without year-round industrial highway access from the mine site to Highway 3. That road access is required for various reasons, but particularly for trucks to haul industrial equipment and fuel north to the mine site, and to transport ore south, where it would be transported by rail to Saskatchewan, for processing.
5. Fortune has said that those access requirement would be satisfied by two different roads (the “access roads”). First, Fortune proposes to itself construct a spur road from the mine site for approximately 25 km, to connect to a new highway. Second, Fortune anticipates that the Government of the Northwest Territories would relocate the existing winter road to Whati and Gameti to an all-land route, and then construct a new year-round, industrial highway on that route, to connect to Highway 3. A map developed by Fortune and recently presented at a Tlicho Government workshop in Whati, shows the access roads contemplated by Fortune, and is attached as Exhibit “B” to this Affidavit.
6. Both access roads would be entirely located on Tlicho Lands, and each would require an access agreement with the Tlicho Government.
7. Because Fortune has “existing interests” that are listed in Part 2 of the Appendix to Chapter 18 of the Agreement, it can rely on the access rights in Chapter 19 of the Agreement, including the right to invoke dispute resolution mechanisms if the parties

fail to negotiate an agreement. It is my understanding that those access rights may apply to the proposed spur road, but they would **not** apply to either the relocation of the existing winter road to Whati and Gameti or the construction of a year-round industrial highway to connect to Highway 3, both of which Fortune anticipates would be undertaken by GNWT.

8. There is no access agreement for either road, and no discussions with Tlicho Government have been entered into for such agreements.
9. There is currently a moratorium on developments on Tlicho Lands, pursuant to the *Tlicho Lands Protection Law*. That law was originally enacted on August 4, 2005 and later amended on October 25, 2006, November 8, 2007 and October 29, 2009, extending the moratorium into 2011. The *Tlicho Lands Protection Law* and the amendments to that law are attached as Exhibit “C” to this Affidavit.
10. The Tlicho Assembly established the moratorium for Tlicho Lands to provide time to establish regulations to guide the Tlicho Government’s exercise of its authority under Chapter 7 of the Agreement, to enact laws for the use, management, administration and protection of Tlicho Lands. In order to provide a basis for those regulations, Tlicho Government’s Lands Protection Department was mandated to develop a Land Use Plan designed to protect Tlicho Lands, foster Tlicho culture and traditional way of life, set the patterns for future developments on Tlicho Lands and outline how development should occur. That work is still underway.
11. From the perspective of Tlicho Government, discussions about the access roads that Fortune requires would be premature at this time, because those proposed roads raise a number of complex issues for Tlicho Government respecting the proper use, management and protection of large areas of Tlicho Lands. Those issues have not yet been resolved through the Land Use Planning process or community discussions, including the need to protect historic sites and trails, the need to protect the Bathurst Caribou herd and its wintering range in the area, and considerations of the potential socio-economic and cultural effects of a year-round industrial highway to Whati and Gameti.

12. In order to proceed with its Proposal, Fortune requires water licences and land use permits for the components of the Proposal. Fortune originally applied to the Wek'eezhii Land and Water Board ("WLWB") for such authorizations in November of 2007, and its applications included the access roads as components of the Proposal.
13. On April 24, 2008, the WLWB ruled that Fortune's applications were incomplete and would not be processed, because Fortune did not have access agreements with Tlicho Government for various components of its Proposal included in the application, that would be built on Tlicho Lands off the mine site, including the access roads. Fortune did not appeal or dispute the ruling. The April 24, 2008 letter from the WLWB to Fortune, explaining that, is attached as Exhibit "D" to this Affidavit.
14. Fortune then reconfigured its applications and re-submitted them to the WLWB in November, 2008. In those applications, Fortune brought some components of the Proposal onto its site, and entirely eliminated the access roads from the Proposal. The Land Use Application explains that a separate application would be made for the all-weather access roads to the site. No such application has ever been filed. The new applications were filed with the Board under a covering letter of November 5, 2008, and that letter and the new Land Use Permit application are attached as Exhibit "E" of this Affidavit.
15. The WLWB accepted the new applications as complete, and those were then referred by the Department of Indian Affairs and Northern Development, ("DIAND") to the Review Board for environmental assessment, pursuant to provisions of the *Mackenzie Valley Resource Management Act* ("MVRMA").
16. During consultations by the Review Board respecting the Terms of Reference for the environmental assessment ("TOR"), Tlicho Government advised the Review Board several times, about its concerns respecting the role that the proposed access roads should play in the environmental assessment. In an initial letter of June 1, 2009, consultant Joe Murdock of Arktis Consultants Inc., noted that there were no formal plans to develop and construct an access road to Tlicho Lands to the NICO site. In a follow-up letter of July 23, 2009, Mr. Murdock noted that the Review Board had

asked Fortune for information respecting the route of the access roads for its project, and warned that any response by Fortune would be spatially speculative and subject to significant change, because agreements and commitments did not exist between GNWT and/or Fortune with Tlicho Government. He also advised that the Review Board and other parties should be aware that Tlicho Government was completing a Land Use Plan to develop, manage and conserve Tlicho Lands. Mr. Murdock's letters of June 1, 2009 and July 23, 2009 are attached as Exhibits "F" and "G" to this Affidavit.

17. In a subsequent letter to the Review Board on October 22, 2009, Eddie Erasmus, Director of the Tlicho Government Lands Protection Department, said that until the moratorium on Tlicho Lands was lifted, there was no possibility of discussing the access roads in the environmental assessment, and therefore the spur road for the Proposal and the "imaginary road" that would connect to Highway 3 should be removed from consideration in the environmental assessment. That letter also advised that the Tlicho Land Use Planning process was ongoing, that it would need to be completed before the moratorium would be lifted, and that the TOR should include the need for any proposed development to be consistent with the Land Use Plan. The letter of October 22, 2009 from Eddie Erasmus is attached as Exhibit "H" to this Affidavit.
18. The TOR were issued by the Review Board on November 30, 2009, and included the access roads in the matters for assessment, as follows:

Fortune has stated that the NICO Project requires all-season road access from the NICO mine site to Highway 3. Fortune **anticipates** that the Government of the Northwest Territories **will apply** to build an all-land road from Highway 3 to Whati and Gameti in the near future (**referred to in this document as the "potential realignment of the winter road through the Wek'eezhii Settlement Area"**). This road would be used in part for the NICO Project. A short stretch of road (approximately 25 km) from the NICO mine site to this **anticipated road** would be constructed and maintained by Fortune and is within the scope of this development.

The scope of development for this EA does not include the construction or general operation of the potential realignment of the winter road through

the Wek'eezhii Settlement Area, which has not been proposed at this time, and which is not expected to be proposed, constructed or primarily operated by Fortune. The Review Board expects that the potential realignment of the winter road through the Wek'eezhii Settlement Area will undergo appropriate environmental scrutiny once applications for that road have been received. However, Fortune's use of the potential realignment of the winter road through the Wek'eezhii Settlement Area is required for the NICO Project, and is included in the scope of development. (emphasis added)

The TOR are attached as Exhibit "I" to this Affidavit.

19. On May 28, 2010, Tlicho Government filed a Request for a Ruling by the Review Board that EA0809-004 is premature and would therefore be postponed and placed in abeyance until all essential components of the Proposal are included in applications accepted as complete by the WLWB (the "Request for Ruling"). The Request for Ruling was based on both discretionary and jurisdictional grounds, and is attached as Exhibit "J" to this Affidavit.

20. Submissions respecting the Request for Ruling were submitted to the Review Board by Fortune, DIAND, the North Slave Metis Alliance ("NSMA") and Tlicho Government. Those submissions are attached as Exhibits to this Affidavit, as follows:

Fortune submission, June 10, 2010 - Exhibit "K";
DIAND submission, July 8, 2010 - Exhibit "L";
NSMA submission, July 8, 2010 - Exhibit "M";
Tlicho Government reply submission, July 15, 2010 - Exhibit "N";
Additional Fortune submission, July 19, 2010 - Exhibit "O";
Additional Tlicho Government reply submission, July 23, 2010 - Exhibit "P".

21. The Review Board denied the Tlicho Government's Request for Ruling and published its Reasons on August 27, 2010. Those Reasons are attached as Exhibit "Q" to this Affidavit.

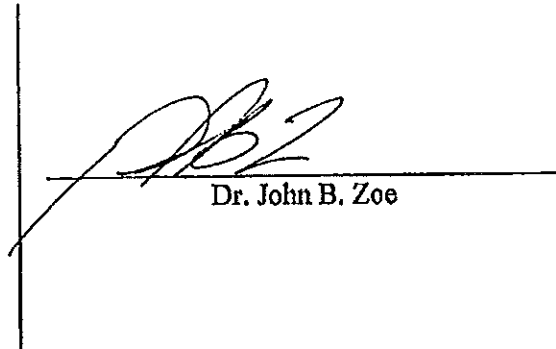
22. I make this affidavit in support of the Tlicho Government's application for judicial review, and for no improper purpose.

SWORN BEFORE ME

in the city of Yellowknife,
in the Northwest Territories
on this 11th day of September 2010.



A Commissioner for taking Oaths in NWT.



Dr. John B. Zoe

J.M. Alala Chiasson
A NOTARY PUBLIC IN AND FOR THE
NORTHWEST TERRITORIES. MY COMMISSION
DOES NOT EXPIRE BEING A SOLICITOR

SICV2010000157
S.C. No.

NOTICES TO RESPONDENTS

You are hereby notified that the Applicant may enter judgment in accordance with this Notice, or such judgment as the Applicant may be entitled to in accordance with the practice of the Supreme Court of the Northwest Territories, without any further notice to you unless you or your agent or solicitor appear at the place and on the time and date specified.

**IN THE
SUPREME COURT OF
THE NORTHWEST
TERRITORIES**

Between:

TLICHO GOVERNMENT
Applicant

- and -

**MACKENZIE VALLEY
ENVIRONMENTAL IMPACT
REVIEW BOARD**
Respondent

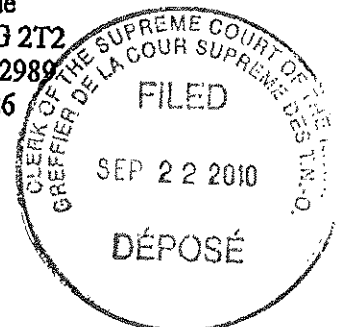
AFFIDAVIT OF DR. JOHN B. ZOE

PAPE SALTER TEILLET
c/o Dragon Toner Law Office
5316 - 50th Avenue, P.O. Box 996
YELLOWKNIFE, NT X1A 2N7
Telephone: 867-873-6000
Fax: 867-873-6006

- and -

PAPE SALTER TEILLET
546 Euclid Avenue
TORONTO, ON M6G 2T2
Telephone: 416-916-2989
Fax: 416-916-3726

Arthur Pape



This is Exhibit "A" referred to in the
affidavit of Dr. John B. Zoe
sworn before me, this 21st
day of September 2010


A COMMISSIONER FOR TAKING AFFIDAVITS

LAND CLAIMS AND SELF-GOVERNMENT AGREEMENT

AMONG

THE TŁİCHŦ

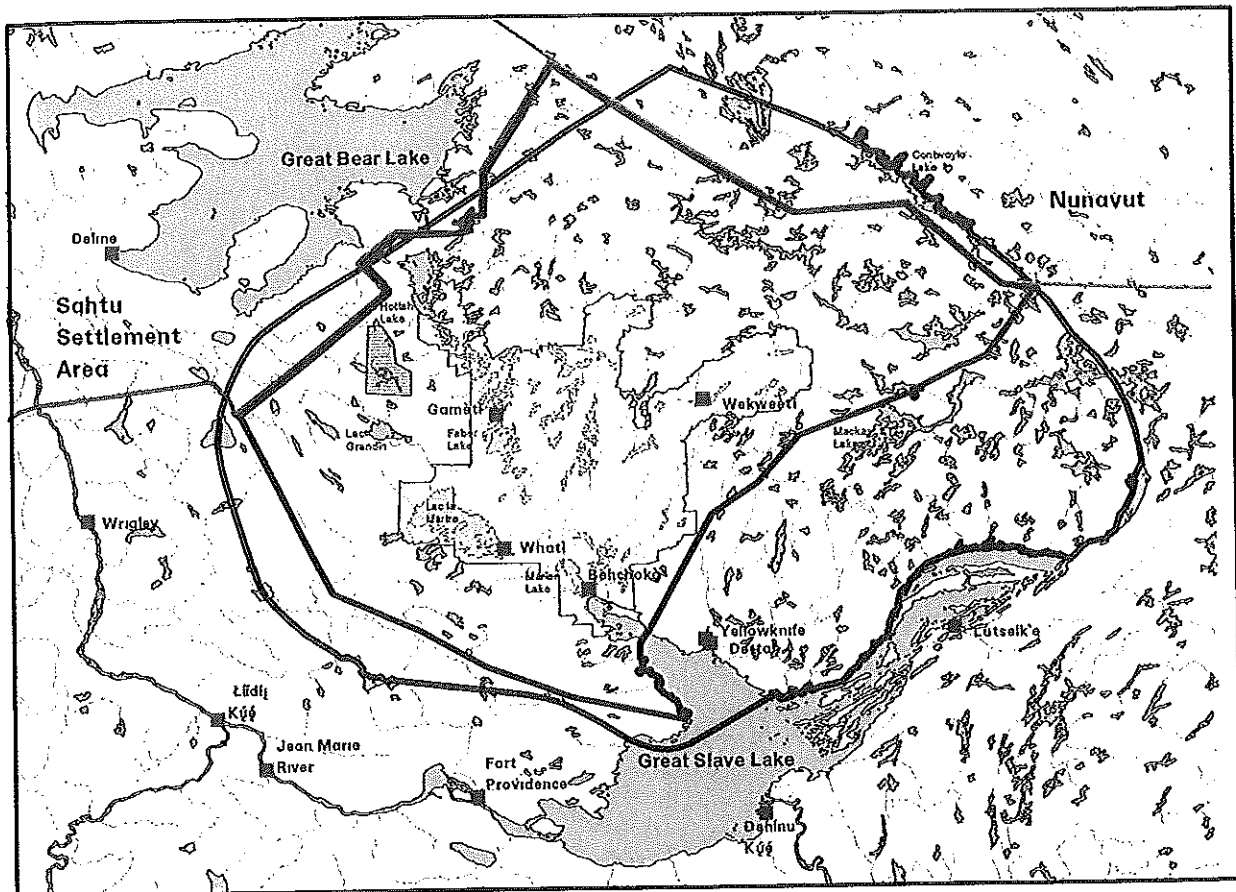
AND

THE GOVERNMENT OF THE NORTHWEST TERRITORIES



AND

THE GOVERNMENT OF CANADA

ṂQWHÌ GOGHA DÈ ṆITLÈÈ, WEK'ÈEZHÌ,
ṬḤQ̣ LANDS AND EZQDZÌTÌ

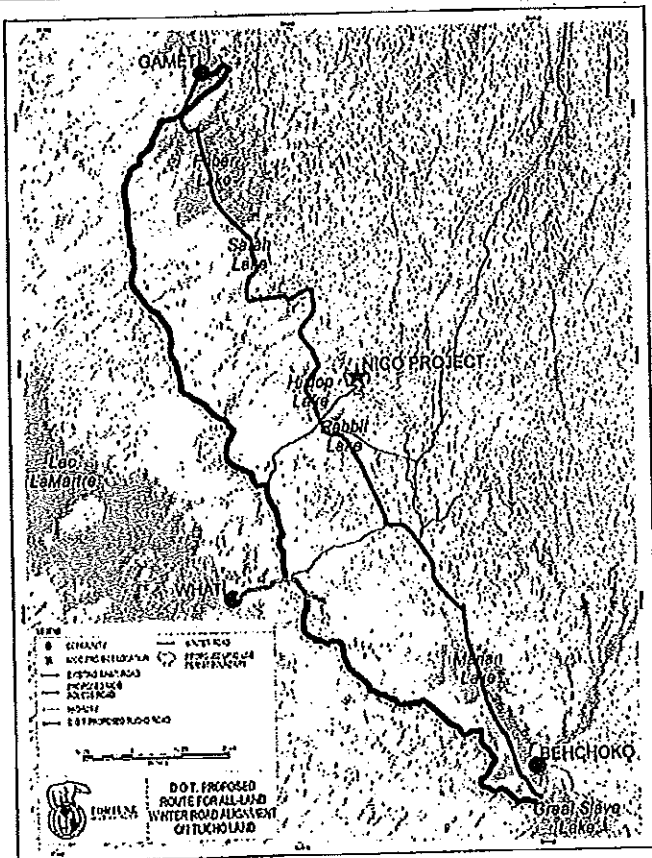


Legend

- Ṃqwhì Gogha Dè Ṇitlèè boundary
- Wek'èezhì boundary
- Nunavut boundary
- Sahtu Settlement Area boundary
-  Ṭḥq̣ Lands
-  Ezqdzìtì

This is Exhibit "B" referred to in the
 affidavit of Dr. John B. Zoe
 sworn before me, this 21st
 day of September 2010

J. M. O. Giesse
 A COMMISSIONER FOR TAKING AFFIDAVITS



ROAD ACCESS

- Existing winter road over Inaak'etì (Marian Lake) to Gamètì
- Existing all-weather road between Whatì & Whatì Deè (La Martre) Falls
- Proposed all-land winter road from Behchokò to Whatì & Gamètì planned as more reliable road for community re-supply
- Fortune will assist Tìlchq & GNWT to upgrade the new winter road route between Behchokò & Whatì & the NICO mine to an all-season road

This is Exhibit "C" referred to in the
affidavit of Dr. John B. Zoe
sworn before me, this 21st
day of September, 2010

TEJCHQ GOVERNMENT

JMO Rios
A COMMISSIONER FOR TAKING AFFIDAVITS

TEJCHQ LANDS PROTECTION LAW

The Tejchq Assembly enacted this law as part of the Tejchq Omnibus Implementation Law on August 4, 2005 by unanimous consent.

Joe Rabesca, Grand Chief of the Tejchq Government, signed the Tejchq Omnibus Implementation Law on August 4, 2005.

Signature: Bertha Rabesca Zoe Date: Aug. 12/05
Certified as a True Copy by Bertha Rabesca Zoe as of August 4, 2005.
Laws Guardian, Tejchq Government

DISPOSITION

DATE OF INTRODUCTION	CONSIDERATION	CONSENSUS	EFFECTIVE DATE
August 4, 2005	August 4, 2005	August 4, 2005	August 4, 2005

TŁICHQ GOVERNMENT

TŁICHQ OMNIBUS IMPLEMENTATION LAW

The Tłichq Assembly enacted this law on August 4, 2005 by unanimous consent.

Signature: Joe Rabesca Date: Aug 4 2005
Joe Rabesca, Grand Chief of the Tłichq Government, signed this law on August 4, 2005.

DISPOSITION

DATE OF INTRODUCTION	CONSIDERATION	CONSENSUS	EFFECTIVE DATE
August 4, 2005	August 4, 2005	August 4, 2005	August 4, 2005

THĚCHQ LANDS PROTECTION LAW

Title

1. This law shall be cited as the *ThĚchq Lands Protection Law*.

Definitions

2. In this Law,

“applicant” means a person applying for a disposition under this Law.

“Assembly” has the same meaning as in the ThĚchq Constitution.

“Chief’s Executive Council” has the same meaning as in the ThĚchq Constitution.

“director” means the Director of Lands Protection.

“disposition” means a disposing of an interest in the ThĚchq Land.

“ThĚchq” has the same meaning as in the ThĚchq Agreement.

“ThĚchq Government” means the ThĚchq Government and its institutions as defined in the ThĚchq Constitution.

“ThĚchq Lands” has the same meaning as in the ThĚchq Agreement and is shown for illustrative purposes in schedule A.

Chief’s Executive Council

3. The Chief’s Executive Council is responsible for the management and protection of all ThĚchq Lands and the interest of the ThĚchq throughout MqwhĚ Gogha DĚ NgĚt’Ěe.

This Law was signed by Grand Chief Joe Rabesca on August 4, 2005

Department of Lands Protection

4. There is hereby established a department to be known as the Tłchq Lands Protection Department.
5. A director of Lands Protection shall be appointed.

Disposition

6. (1) No person may acquire an interest in Tłchq Lands except under this Law.
- (2) No disposition of an interest in Tłchq Lands is binding on the Tłchq Government until the instrument of disposition is executed by the Chief's Executive Council.

Application

7. (1) Any person over the age of 19 or a corporation may apply in the prescribed form to the director for a disposition of Tłchq Lands.
- (2) The director shall maintain a register of applications made under this section.
- (3) No later than April 30, 2006, the Chief's Executive Council shall recommend to the Assembly regulations necessary to give effect to this law and provide for the management and protection of Tłchq Lands and the interests of the Tłchq throughout Mqwhì Gogha Dè Ntł'èe.
- (4) Prior to the regulations referred to in (3) being enacted, no disposition of an interest in Tłchq Lands shall be permitted unless expressly approved as an exceptional case by the Assembly.

Non-compliance

8. (1) If a person who holds a disposition under this law fails or neglects to comply with a term, covenant or stipulation set out in the instrument of disposition or imposed by the Chief's Executive Council pursuant to the disposition, the director may send a notice by registered mail, addressed to the person at their last known address, requiring the person to comply with the term, covenant or stipulation within 60 days after the date the notice is mailed.

(2) If the failure or neglect referred to in subsection (1) continues after the 60 day period, the Chief's Executive Council may, by order, cancel the disposition.

(3) If the Chief's Executive Council cancels a disposition under this section

- (a) the disposition holder's interest in the land and the interest of all persons claiming through that holder are terminated;
- (b) all improvements to the land become the property of the Tłıchǫ Government; and
- (c) any money paid for or under the terms of the disposition is forfeited to the Tłıchǫ Government.

Abandonment or termination

9. (1) A person holding a disposition under this law may abandon and terminate the disposition by giving written notice to the director.

(2) On abandonment and termination of a disposition under subsection (1)

- (a) all improvements to the land become the property of the Tłıchǫ Government; and
- (b) all money paid for or under the terms of the disposition is forfeited to the Tłıchǫ Government.

(3) Unless the Chief's Executive Council otherwise directs, the holder of a disposition that is cancelled or abandoned and terminated must pay all money remaining due under the disposition and observe or perform all terms, covenants and stipulations of the disposition.

Trespass on Tłıchǫ Lands

- 10.** (1) If a person commits a trespass on Tłıchǫ Lands, the director may, on written notice to that person, do one or more of the following
- (a) require the person to cease the unauthorized trespass and restore the land to a condition satisfactory to the director;
 - (b) require the person to pay to the Tłıchǫ Government a sum of money, considered by the Chief's Executive Council reasonable for the unauthorized occupation, possession or use for the restoration of the land;
 - (c) seize, on behalf of the Tłıchǫ Government, any goods, chattels or other materials on Tłıchǫ Lands; or
 - (d) require the person to remove any improvements made by or on behalf of the person on Tłıchǫ Lands and, if the person fails to comply within the required time, instruct the director to remove the improvements at the person's cost.

Offences

- 11.** (1) A person, commits an offence who without lawful authority
- (a) occupies or possesses Tłıchǫ Lands;
 - (b) damages Tłıchǫ Lands or improvements on Tłıchǫ Lands;
 - (c) harvests or damages forest resources, mineral resources, fish or wildlife on Tłıchǫ Lands;
 - (d) construct a building, structure, enclosure or other works on Tłıchǫ Lands;
 - (e) excavates Tłıchǫ Lands;
 - (f) throws, deposits, dumps or in any way causes to be

placed on Tłıchǵ Lands any glass, metal, garbage, soil or other material;

- (g) abandons on Tłıchǵ Lands any vehicle or vessel; or
- (h) interferes with or removes a sign erected by, on behalf of or with the authority of the Tłıchǵ Government on Tłıchǵ Lands.

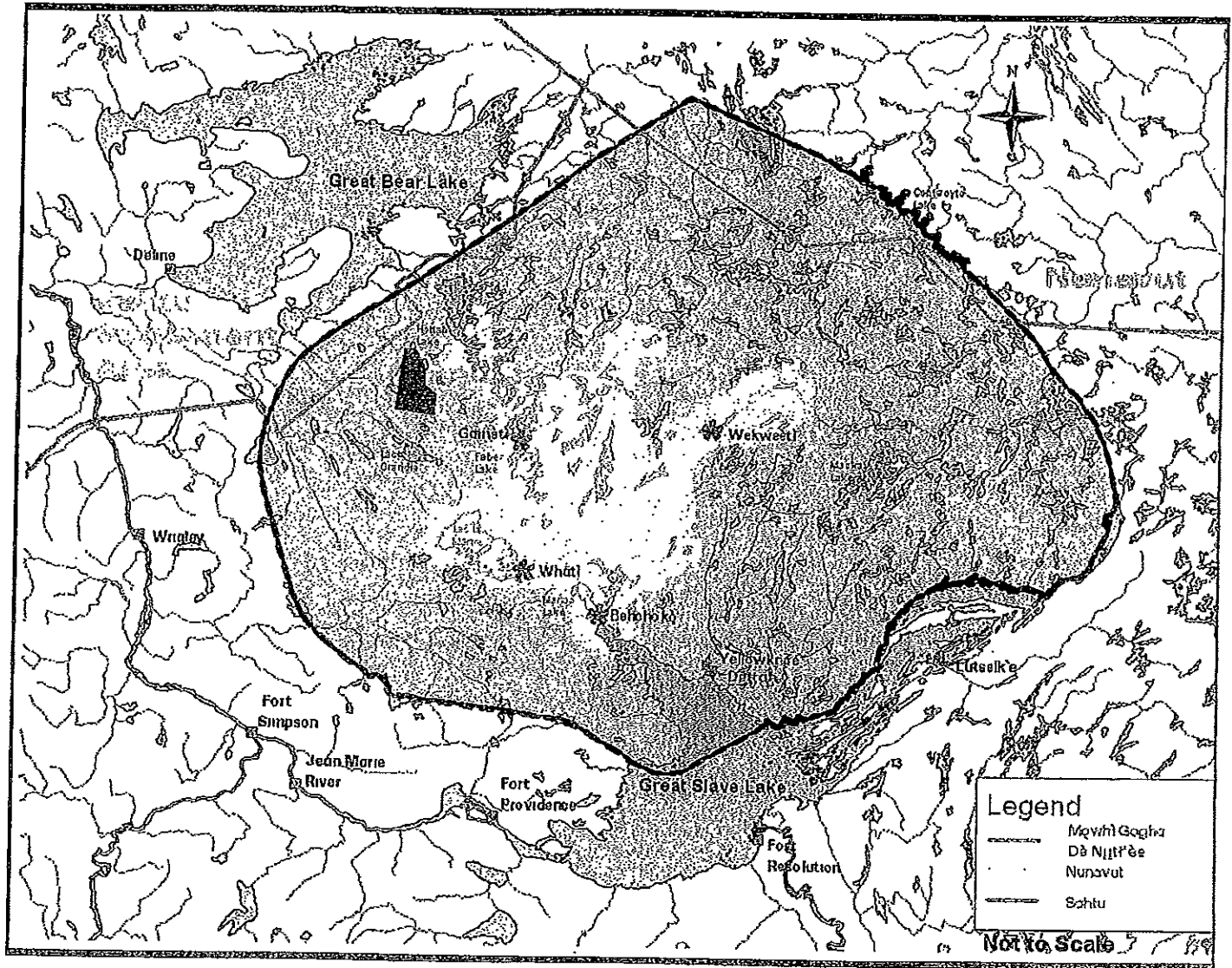
Right of Entry

12. The director or his or her authorized representative may at any reasonable time enter any Tłıchǵ Lands and premises to discharge any duty under this law.

Regulations

13. The Assembly may enact regulations for the carrying out of the purposes and provisions of this Law.

SCHEDULE A MAP



Tłıchǫ Lands

TŁICHQ GOVERNMENT

AMENDMENT TO THE TŁICHQ LANDS PROTECTION LAW 2006

The Tłichq Assembly enacted this law on October 26, 2006 by unanimous consent.

George Mackenzie, Grand Chief of the Tłichq Government, signed this law on October 26, 2006.

Signature: Bertha Rabesca Zoe Date: Oct 26/06
Certified as a True Copy by Bertha Rabesca Zoe as of October 26, 2006.
Laws Guardian, Tłichq Government

DISPOSITION

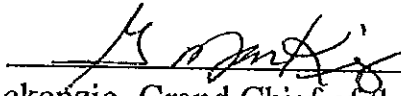
DATE OF INTRODUCTION	CONSIDERATION	CONSENSUS	EFFECTIVE DATE
October 24, 2006	October 25, 2006	October 26, 2006	October 26, 2006

TLĪCHQ GOVERNMENT

AMENDMENT TO THE TLĪCHQ LANDS PROTECTION LAW 2006

The Tlĭchq Assembly enacted this law on October 26, 2006 by unanimous consent.

Signature: _____


George Mackenzie, Grand Chief of the Tlĭchq Government, signed this law on October 26, 2006.

DISPOSITION

DATE OF INTRODUCTION	CONSIDERATION	CONSENSUS	EFFECTIVE DATE
October 24, 2006	October 25, 2006	October 26, 2006	October 26, 2006

TŁICHQ GOVERNMENT

AMENDMENT TO THE TŁICHQ LANDS PROTECTION LAW 2006

Title

1. This law shall be cited as the *Amendment to the Tłichq Lands Protection Law 2006*.

Amendment

2. Section 7(3) of the *Tłichq Lands Protection Law* is hereby amended and shall be replaced with the following:

7. (3) No later than October 31, 2007, the Chief's Executive Council shall recommend to the Assembly regulations necessary to give effect to the Tłichq Lands Protection Law and to provide for the management and protection of the Tłichq Lands and the interests of the Tłichq throughout the Mqwhì Gogha Dè Nıtt'èe.

Coming into Force

3. This law shall come into force on the date the Grand Chief signs this Law.

TLĪCHQ GOVERNMENT

AMENDMENT TO THE TLĪCHQ LANDS PROTECTION LAW 2007

The Tłıchq Assembly enacted this law on November 8, 2007 by unanimous consent.

George Mackenzie, Grand Chief of the Tłıchq Government, signed this law on November 8, 2007.

Signature: Bertha Rabesca Zoe Date: Nov 8/07
Certified as a True Copy by Bertha Rabesca Zoe as of November 8, 2007.
Laws Guardian, Tłıchq Government

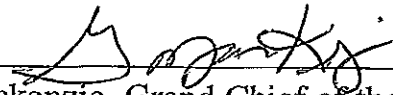
DISPOSITION

DATE OF INTRODUCTION	CONSIDERATION	CONSENSUS	EFFECTIVE DATE
November 7, 2007	November 8, 2007	November 8, 2007	November 8, 2007

TŁICHQ GOVERNMENT

AMENDMENT TO THE TŁICHQ LANDS PROTECTION LAW 2007

The Tłichq Assembly enacted this law on November 8, 2007 by unanimous consent.

Signature: 
George Mackenzie, Grand Chief of the Tłichq Government, signed this law on November 8, 2007.

DISPOSITION

DATE OF INTRODUCTION	CONSIDERATION	CONSENSUS	EFFECTIVE DATE
November 7, 2007	November 8, 2007	November 8, 2007	November 8, 2007

TŁICHQ GOVERNMENT

AMENDMENT TO THE TŁICHQ LANDS PROTECTION LAW 2007

Title

1. This law shall be cited as the *Amendment to the Tłichq Lands Protection Law 2007*.

Amendment

2. Section 7(3) of the *Tłichq Lands Protection Law* is hereby amended and shall be replaced with the following:

7. (3) No later than October 31, 2009 or such other date as determined by the Tłichq Assembly, the Chief's Executive Council shall recommend to the Assembly regulations necessary to give effect to the Tłichq Lands Protection Law and to provide for the management and protection of the Tłichq Lands and the interests of the Tłichq throughout the Mqwhì Gogha Dè Nıtt'èe.

Coming into Force

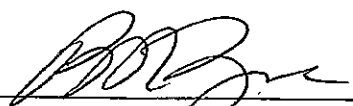
3. This law shall come into force on the date the Grand Chief signs this Law.

TLĪCHQ GOVERNMENT

AMENDMENT TO THE TLĪCHQ LANDS PROTECTION LAW 2009

The Tłıchq Assembly enacted this law on October 29, 2009 by unanimous consent.

Joe Rabesca, Grand Chief of the Tłıchq Government, signed the *Amendment to the Tłıchq Lands Protection Law 2009* on October 29, 2009.

Signature:  Date: Oct 29/09
Certified as a True Copy by Bertha Rabesca Zoe as of October 29, 2009.
Laws Guardian, Tłıchq Government

DISPOSITION


DATE OF INTRODUCTION	CONSIDERATION	CONSENSUS	EFFECTIVE DATE
October 28, 2009	October 29, 2009	October 29, 2009	October 29, 2009

TŁICHQ GOVERNMENT

AMENDMENT TO THE TŁICHQ LANDS PROTECTION LAW 2009

The Tłichq Assembly enacted this law on October 29, 2009 by unanimous consent.

Signature: _____


Joe Rabesca, Grand Chief of the Tłichq Government, signed this law on October 29, 2009.

DISPOSITION

DATE OF INTRODUCTION	CONSIDERATION	CONSENSUS	EFFECTIVE DATE
October 28, 2009	October 29, 2009	October 29, 2009	October 29, 2009

TŁICHQ GOVERNMENT

AMENDMENT TO THE TŁICHQ LANDS PROTECTION LAW 2009

Title

1. This law shall be cited as the *Amendment to the Tłichq Lands Protection Law 2009*.

Amendment

2. Section 7(3) of the *Tłichq Lands Protection Law* is hereby amended and shall be replaced with the following:

7. (3) No later than October 31, 2011 or such other date as determined by the Tłichq Assembly, the Chief's Executive Council shall recommend to the Assembly regulations necessary to give effect to the Tłichq Lands Protection Law and to provide for the management and protection of the Tłichq Lands and the interests of the Tłichq throughout the Mowhì Gogha Dè Nıtl'èe.

Coming into Force

3. This law shall come into force on the date the Grand Chief signs this Law.



Wek'èezhìi
Land and Water Board

Box 32, Wekweètì, NT X0B 1W0

Tel: 867-713-2500 • Fax: 867-713-2502

This is Exhibit "D" referred to in the
affidavit of Dr. John B. Zoe
sworn before me, this 21st
day of September 2010

[Signature]
COMMISSIONER FOR TAKING AFFIDAVITS

April 24, 2008

Robin E. Goad, President
Fortune Minerals Limited
1902 - 140 Fullarton Street
London, ON N6A 5P2

Dear Mr. Goad:

Land Use Permit Eligibility Requirements on Tłıchǵ Lands

After careful review and consideration the Wek'èezhìi Land and Water Board has recently ruled that Fortune Minerals Ltd. is not eligible to apply for land use permits for activities that are to take place wholly or partially within Tłıchǵ owned lands without providing proof of a right of access to those Tłıchǵ lands. The Board in their decision considered all the information that was submitted to the WLWB from the Tłıchǵ Government, INAC, GNWT-ENR and Fortune Minerals in response to our request for clarification on eligibility requirements listed within the *Mackenzie Valley Land Use Regulations*. The Board's decision is consistent with positions put forward by the Tłıchǵ Government, and Indian and Northern Affairs Canada that a proof of right to access Tłıchǵ lands, through an existing access right provided for in the Tłıchǵ Agreement or granted by the Tłıchǵ Government, should be provided before a proponent be deemed eligible to apply for a land use permit.

Due to the current ineligibility of Fortune Minerals submissions for land use permits for the proposed development of the NICO mine and mill, all weather access road, airstrip, and hydro transmission line, the WLWB will not be processing the associated water licence applications that were submitted to the WLWB for the all weather access road and the NICO mine and mill.

While the Tłıchǵ Government has made its views known to the Board that a proof of a right to access Tłıchǵ lands should be required by the Board prior to deeming applications on Tłıchǵ lands complete, the Tłıchǵ Government has not provided direction to the Board on what kind of documentation should be submitted by an applicant, or other party, to prove a right of access to Tłıchǵ lands. We have proposed a meeting between the WLWB and the Tłıchǵ Government to discuss and provide clarity on what the expectations from each party may be in determining eligibility for land use

permits in the future. Fortune Minerals will be informed of any decisions that result from the proposed meeting.

If you have any further questions or concerns, please do not hesitate to contact Zabey Nevitt at (867) 669-9592 or by email at zabey@wlwb.ca.

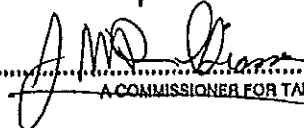
Sincerely,

A handwritten signature in black ink, appearing to read "V Camsell-Blondin". The signature is fluid and cursive, with a long horizontal stroke at the beginning.

Violet Camsell-Blondin
Chair

Copied to: Trish Merrithew-Mercredi, Regional Director General, INAC
Gary Bohnet, A/Deputy Minister, GNWT-Environment and Natural
Resources
Grand Chief George Mackenzie, Tłıchǫ Government

This is Exhibit "E" referred to in the
affidavit of Dr. John B. Zoe
sworn before me, this 21st
day of September 2010


A COMMISSIONER FOR TAKING AFFIDAVITS

November 5, 2008

Violet Camsell-Blondin, Chair
Wek'èezhli Land and Water Board
Box 32, Wekweètł, Northwest Territories
X0E 1W0

Dear Ms. Camsell-Blondin:

**Re: Updated Application for Type A Water License and Type A Land Use Permit
for the NICO Cobalt-Gold Bismuth Project**

Fortune Minerals Ltd. (Fortune) is pleased to submit updated applications for a Type A Water License and a Type A Land Use Permit to the Wek'èezhli Land and Water Board (WLWB) for the NICO Cobalt-Gold-Bismuth Project located within the Tłıchq territory as part of the Wek'èezhli co-management lands. The project would comprise a mine site with open pit and underground operations, ore processing mill facilities, tailings and mine rock management areas, a camp site, waste management facilities, an effluent treatment facility and roads within the mine site. All projects elements are located within the excluded claim boundaries.

Fortune has completed extensive community consultation activities in the past in relation to the NICO Project and has organized an additional community consultation program that will take place from November 12-15th, 2008. These information sessions, which will occur in Whatl, Gamètł, Wekweètł, Behchokǫ and Yellowknife are aimed at providing the Tłıchq people with the most current plans for mine development and operation.

We look forward to working with the board during the permitting process. If you have any questions or comments, please contact the undersigned.

Sincerely,

Robin Goad, P.Eng.
President, Fortune Minerals

RS/JK



Wek'èezhìi
Land and Water Board

Box 32, Wekweètì, NT X0E 1W0
Tel: 867-713-2500 • Fax: 867-713-2502 • www.wlwb.ca

Application for:

New Land Use Permit
Type A

☒

Amendment

☐

to _____

1. Applicant's name and mailing address: Fortune Minerals Limited 140 Fullarton St., Ste 1902, London, ON, N6A 5P2	Fax number: (519) 858-8155
	Telephone number: (519) 858-8188
2. Head office address: As above	Fax number:
	Telephone number:
3. Other personnel (subcontractor, contractors, company staff etc.) Unknown at this time Number of persons on site X Number of operating days = Number of person days TOTAL: 600 X 548 = 328,800 person days for construction 225 X 5,475 (15 year operating life) = 1,231,875 person days for operation	
4. Eligibility: (Refer to section 18 of the <i>Mackenzie Valley Land Use Regulations</i>) <u>a)(i)</u> X a)(ii) a)(iii) b)(i) b)(ii)	

5. a) Summary of operation (Describe purpose, nature and location of all activities.)

The project comprises a mine site with open pit and underground operations, ore processing mill facilities, tailings and mine rock management areas, service complex and mine equipment maintenance building, a camp, site access roads and water intake facilities. All project elements are within the excluded claim boundary. The project features and study areas are depicted on attached Figures 1 to 3. Figure 4a indicates the location of the proposed open pit mine, plant facilities, tailings and mine rock management areas, and related infrastructure. Figure 4b presents possible granular borrow quarry sites and possible rockfill borrow quarry sites.

Mine

Underground and open pit mines targeting the NICO deposit will be constructed at the NICO property. Ore reserves totaling 21.8 million tonnes (Mt) have been identified and are sufficient for a planned 15 year mine life at an annual processing rate of 1.696 Mt. Mining will be primarily by

open pit with a combination of underground and open pit during the first two years of operations. Dimensions of the open pit will be approximately 1,340 metres (m) long by 460 m wide, and 230 m deep. Mine rock from the open pit will be stored in the Mine Rock Management Area south of the open pit (Figure 4a). During the construction phase, a 10 Mt pre-strip program will be conducted in the open pit to remove overburden rock from above the ore body. A portion of the rock excavated during this phase will be used to construct site roads and the dam structures of the tailings management area.

Facilities and service systems related to underground and open pit dewatering, fuel storage, ammonium nitrate storage, ANFO production, and mobile plant maintenance (truck shop) will be constructed in association with the mining activities.

Mill and Processing Facilities

The mill will perform standard crushing followed by ball mill grinding. There will be two flotation circuits producing bismuth and cobalt concentrates, which are processed in two separate hydrometallurgical circuits. These circuits consist of pressure acid leaching/precipitation/ion exchange/electrowinning (for cobalt) and chloride leaching/electrowinning/cementation (for bismuth). Copper cement or metal is produced as a by-product. Processed residues are treated for gold recovery using cyanidation. Products from the mill will be gold doré, cobalt carbonate or metal (preferred) and bismuth metal and cement (byproduct). The tailings management area will be constructed to accommodate processed rock (tailings). A Mine Rock Management Area will be constructed adjacent to the open pit (Figure 4a). Laboratory facilities will be established to handle routine analyses for the site.

Road Access and Airstrip

A separate application will be submitted for the all-weather access road to the site, including a bridge over the Marian River. An airstrip will be constructed to the southeast of the operations, west of Burke Lake and is located entirely within the claim block (See Figure 4a). It will be used for emergencies, construction, and possibly charter transportation.

Power

Power will be supplied by diesel generators. Hydroelectric power will be used to supplement diesel power generation when, and if, it becomes available.

b) Please indicate if a camp is to be set up. (Please provide details on a separate page, if necessary.)

Camp

Permanent camp facilities are currently planned to be constructed southeast of the mine operations west of Nico Lake. It will have capacity for approximately 150 people during normal operations and approximately 600 people during construction. A workforce of 225 people is expected to be hired for the overall mining operation at NICO. The camp will be divided into dormitories and one general complex which will contain kitchen, storage areas, preparation areas, dining room for approximately 120 people, washrooms, offices and recreation area. A pioneer camp at the present exploration camp at Lou Lake will facilitate early construction, including construction of the permanent camp and temporary construction camp wing.

Buses will be available to transport employees to and from the site from Yellowknife and local communities. An airport will be maintained at Burke Lake for construction and emergencies, and possibly charter transport. The work rotations are currently planned to be 7, 5, or 4 day periods. A

float plane and boat dock will be maintained on Lou Lake.

Potable water will be produced on site and sewage treatment facilities will be constructed.

6. Summary of potential environmental and resource impacts (describe the effects of the proposed land-use operation on land, water, flora & fauna and related socio-economic impacts). (Use separate page if necessary.)

The potential environmental and resource impacts of the proposed mine, associated infrastructure and operations are addressed in Attachment 3 of the *Water License Application and Mining Industry Questionnaire to Accompany Water License Applications to the Mackenzie Valley Land and Water Board*.

A summary of community consultation activities is provided in Attachment 6.

7. Proposed restoration plan (please use a separate page if necessary).

The proposed restoration plan is addressed in Question 7.5 of the attached Mining Industry Questionnaire and Attachment 2 in this application package.

8. Other rights, licenses or permits related to this permit application (mineral rights, timber permits, water licenses, etc.)

Figure 10 shows the claim boundaries for the NICO project. This application covers the portion of the all-weather access road within the claim boundary. The bridge and all-weather access road from Whati will be covered under a separate application.

Is this to be a pioneered road? Yes Has the route been laid out or ground truthed? Yes.

9. Proposed disposal methods.

The general approach to waste management at the proposed mine is summarized in Attachment 5, (General Waste Management) in this application package.

a) Garbage: Combustible waste materials (non-usable, non-recyclable, non-hazardous wastes) will be incinerated in petroleum-fired, scrubber-equipped incinerator, in accordance with regulations. Recyclable materials will be segregated at source for transportation to recycling facilities in a waste materials management facility proposed to be located in the vicinity of the effluent treatment facility. Non-combustible materials will be disposed in an on-site waste disposal site (sanitary landfill) to be developed within the footprint of the mine rock and tailings disposal areas.

b) Sewage (Sanitary & Grey Water): A sewage treatment plant will be established and operated to handle sewage from the camp and mine site. Effluent from the sewage treatment plant will be deposited into the TMA. Sludge will either be disposed in the sanitary landfill or incinerated. Where washroom facilities are required outside the serviced area, portable toilets will be used.

c) Brush & trees: Trees within the development areas will be cut down, cut into lengths and lain flat to decompose, or distributed to communities for firewood. Brush will be shredded and combined with organic overburden stockpiles.

d) Overburden (Organic soils, waste material, etc.): Overburden will be cleared from the site road alignments and development areas as required and stockpiled in one of the 4 proposed stockpile areas (Figure 4a).

10. Equipment (includes drills, pumps, etc.) (Please use separate page if necessary.)		
Type & number	Size	Proposed use
Trackless Underground Mining Equipment (5 x 5 m decline at 15% gradient)	Approx 1.2 Mt ore mined at 20-25 m sub-level intervals with draw points at 15 m centerlines.	Ore production, exploration; open stope mine method.
Jumbo drill (1)	Electric-hydraulic	Production blasting and development
Load-haul-dump units (3)	6 cubic meter (m ³), 12.5 tonne (t) Sandvik Toro 1250 or equivalent.	Stope mucking
Underground haulage vehicles (3)	45-t, DUX DT-45 or equivalent.	Haulage of ore and waste
Production drill (1)	Top hammer or in-the hole type, 125 millimetre (mm)	Mine development drilling and ore control
Scissorlift (1)	Standard	Maintenance
Explosive Loading Vehicle (1)	Standard	Transporting of ANFO/emulsion, loading drill holes
Underground mine service vehicles (4)	Standard	Personnel and supply transport
Miscellaneous mine pumps (5 estimated)	Approximately 50 m ³ /day water infiltration	Underground mine ventilation and dewatering
Fresh air vent raise (1)	3 m x 3 m; 20 million BTU per hour (MBTU/h) direct propane fired heater.	Mine air and ventilation
Conventional Open Pit Mining Equipment	Approximately 100 Mt mined, 3.9:1 strip ratio waste to ore	Ore production, waste rock production, and road, dam and infrastructure construction.
Self-propelled blast hole drill (1)	152-229 mm holes, in-the-hole hammer rig, single pass, Sandvik Drilltech D45Ks or equivalent	Production blasting and ore control
Production hydraulic face shovel (1)	Terex RH90C or equivalent, 10 m ³ capacity	Stripping and loading
Wheeled loader (1)	Caterpillar 992 or equivalent - 11.5 m ³ capacity	Loading, road maintenance and ground control
Surface rock haulage trucks (5)	Caterpillar 777 or equivalent - 91 t capacity	Ore and waste transport
Track-type tractor,	Caterpillar D9 or equivalent	Haul road maintenance and

Type & number	Size	Proposed use
bulldozer (1)		ground control
Surface grader (1)	Caterpillar 16M or equivalent.	Haul and access road maintenance, ground control
Fuel truck (1)	Standard	Mobile field refueling
Water truck (1)	Standard	Dust suppression
Mechanics truck (2)	Standard	Mobile field maintenance, air, lube
Explosives transport truck (1)	Contractor supply	Transport of explosive and blasting agents
Explosives loading truck (1)	Contractor supply	ANFO, emulsion loading
Service vehicles (12)	Miscellaneous less than 10t	Mobile field maintenance and supervision
Portable light stands (2)	Standard	Operations during periods of darkness
Pit dewatering pumps (3)	Approximately 250 m ³ /day combined ground water infiltration and precipitation	Freshet, rainfall, and ground water infiltration
Fixed Surface - Process	4,650 dry tonnes/day average	Recovery of cobalt, bismuth, gold and by-products, water recovery, services.
Crushing Plant	42 x 65 inch gyratory crusher, 375 kW; 7 foot (ft) standard and 7 ft short head crusher, 260 kW; 3500 t live fine ore bin;	Primary, secondary, and tertiary crushing; conveying; screening; Produce feed for the concentrator
Conventional concentrator	1 – 12 x 17'-8" rod mill, 970 kW; 3 – 12 x 14'-8" ball mills, 970 kW; regrind mill; flotation; and thickening.	Primary and secondary grinding; hydrocyclones; bulk rougher (45 min), cleaner and scavenger (18 min) flotation; regrinding; bismuth rougher, cleaning and scavenger flotation (25 min); water recovery; and services for the production of cobalt and bismuth concentrates, and cleaner tailings for cyanidation.
Pressure acid leach and Precipitation	180 t/day, 5 compartment, 6 agitator, 60 min retention, 180°C, 2200 kPa (abs) pressure vessel (autoclave); thickeners, clarifiers, filters, reaction tanks, pH control, high-pressure boiler, and services.	High pressure acid leach oxidation, thickening, filtration, solution neutralization, residual arsenic precipitation, copper recovery, zinc sulphide precipitation, cobalt precipitation as cobalt carbonate.
Ion Exchange and Cobalt Electrowinning	Cobalt carbonate re-leaching, ionic exchange columns, electrowinning cells	Ionic exchange for the removal of nickel, production of cobalt cathode by electrowinning.
Chloride leach plant	20 tonnes per day (t/day)	Leaching of bismuth concentrate; solid/liquid separation; electrowinning of pregnant

Type & number	Size	Proposed use
		chloride solution for the production of bismuth cathodes; and residual byproduct production of bismuth cement.
Gold recovery plant	Batch cyanidation – 20 t/day; Carbon-in-pulp (CIP) - 650 t/day Refinery Cyanide destruction circuit	Batch cyanidation of bismuth concentrate for gold recovery, filtration, electrowinning of pregnant gold solution. Recovery of gold from pressure acid leach solid residue, bulk cleaner tails, and chloride leach solid residue; carbon strip circuit; gold electrowinning; carbon regeneration and reactivation. Processing of gold electrowinning sludges, drying, fluxing, refining for the production of gold and silver. Destruction of cyanide in slurry by the SO ₂ -air process.
Oxygen plant	100 t/day	Provide high purity oxygen for autoclave and other unit operations
Power Plant and Heat Recovery	Diesel-fired generators with heat recovery: 18 MW peak load, 15 MW average load (number and size of generators to be determined). Make-up Heat Boilers	Overall power requirements; probable n+1 configuration during underground operations, n+2 thereafter. Augment plant and camp heating requirements when grid power is available.
Plant Back- up generator (1)	1500 kW	Controlled shutdown of autoclave; ventilation; lighting; process control; plant agitators; and heat
Camp Back-up generator	TBD	Emergency power.
Tailings pipeline, return (decant) water pipeline (3)		Transport of processed rock to the TMA, return of makeup water to process or to the ETF.
Effluent Treatment Facility (1)	22,300 m ³ /day (seasonal, maximum)	Seasonal tailings decant water treatment and discharge.
Lou Lake pump (1)	Interim (camp use through construction)	Pioneer camp potable water supply
Lou/Burke Lake pump houses, fire water tank and pump, potable water system, sewage treatment	7,200 m ³ /day	Camp potable water and process water; firefighting

Type & number	Size	Proposed use
facility		
Miscellaneous general surface facilities (1)	Support infrastructure	Service Complex (mine dry, management offices, repair shops, general warehouse); Laboratory, Fuel and reagent storage, cold storage building, lay down areas, mine equipment maintenance building.
Front end loader (1)	Caterpillar 980 or equivalent	Surface stockpile maintenance, plant feed
Miscellaneous service vehicles (6)	Half-ton trucks	Mobile field maintenance and supervision, employee transport.
Miscellaneous mobile heavy equipment (6) HIAB truck, self propelled articulating boom, self-propelled slab scissor lifts, forklift, skid-steer loader (Bobcat), tele-handler	All less than 10t	Maintenance and operations
Construction equipment (as required) Articulated trucks, mobile heavy and medium lift cranes, excavator, wheel loader, self propelled articulating boom, self-propelled slab scissor lifts, tele-handler, dozer, cement truck and plant, mobile crushing plant, mobile batch plant (cement).	All greater than 10t	Mine and infrastructure construction

11. Fuels	Volume (Litres)	Number of containers	Capacity of containers (Litres)	Location
Diesel	712,000	Eight; enviro-tanks, already on site	89,000	Fuel storage area
	1,250,000	Power Plant Fuel – Fourteen; enviro-tanks or design build to spec	89,000	Fuel storage area
	2,082,000	Eleven; fuel bladders (pillow tanks) – 50,000 gallons each, or similar temporary storage technology	189,270	Temporary, Construction Fuel Storage

Diesel (cont.)	1,000	One; day tank	1,000	Plant services area – fire water pump
	1,000	One; day tank	1,000	Nico Lake camp – fire water pump
	2,250	One; integrated day tank	2,250	Plant emergency Genset
	1,000	One; integrated day tank	1,000	Permanent camp – emergency Genset
	1,000	One; integrated day tank	1,000	Temporary camp – Emergency Genset
	30,000	One; integrated day tank	30,000	Lou Lake pump house (allowance for diesel fired pump – topography, distance)
	10,000	One; integrated day tank	10,000	Burke Lake pump house (allowance for diesel fired pump – intermittent use, distance)
	19,000	One; mobile equipment	19,000	Surface fuel truck
	4,540	One; mobile equipment	4,540	Underground service truck, cassette
Gasoline	70,000	One; enviro-tank	70,000	Fuel storage area east of the service building
Aviation fuel (Jet A and Jet B)	4,100	20 drums	205	Lou Lake Camp (seasonal), 'Insta-Berm' containment or similar
	4,100	20 drums	205	Air strip 'Insta-Berm' containment or similar
Propane	227,000	One; Permanent supplier-installed; 60,000 gallon Tank	227,000	Process plant - high pressure boiler
	227,000	Two; Permanent supplier-installed; 30,000 gallon tanks	113,500	Make-up heat boilers (grid power) and fresh air raise fan (years 1 and 2)
	113,600	Two; Permanent supplier-installed; 15,000 gallon tanks; 15,000 gallon tanks	56,800	Crusher buildings, and ETF/Incinerator/Waste Management Area

12. Containment fuel spill contingency plans. (Please attach separate contingency plan if necessary).

Question 7.4 of the Mining Industry Questionnaire and Attachment 4 in this application package provides contingency and emergency plans for the operation. All liquid fuels will be stored in double wall enviro tanks and/or within the fuel storage area. Bulk hydrocarbons used within the process will be stored in the fuel storage area, with day tanks installed at the location of use

13. Methods of fuel transfer (to other tanks, vehicles, etc.)

The following fuel transfer activities have been identified

- Transfer of diesel fuel or gasoline from a delivery truck into the fuel storage area, or construction fuel storage area, via a supplier delivery pump system.
- Transfer of diesel fuel from the fuel storage tanks into the surface mobile fuel truck utilizing a fuel transfer pump
- Transfer of diesel fuel from the surface mobile fuel truck to surface operations heavy equipment using an integrated pump
- Transfer of diesel fuel from the fuel storage tanks into the underground service vehicle diesel fuel cassette using an integrated pump
- Transfer of diesel fuel from the underground service vehicle diesel fuel cassette to underground mobile equipment.
- Transfer of diesel and gasoline into light vehicles at the fuel storage area by mechanical dispensing systems
- Transfer of and using fuel to mix with ammonium nitrate using a supplier-supplied mixing system.
- Transfer of ANFO into blast holes using a supplier-supplied delivery system.
- Transfer of aviation fuel from barrels into aircraft either at the landing strip or at the float plane base utilizing a barrel pump.
- Transfer of diesel fuel from the surface mobile fuel truck to fixed plant tanks and equipment such as fire water pump day tanks, Genset and other small equipment using an integrated pump and nozzle.
- Transfer of propane from a delivery truck into the propane fuel tanks located at the main plant, crusher, ETF, and fresh air raise utilizing a supplier-supplied delivery system.
- Transfer of flammable hydrocarbons including fuels, solvents, and reagents (such as motor oil, hydraulic oil, grease, waste oil, MIBC, and varsol) from drums or totes into smaller containers or equipment reservoirs; or removing the same from equipment reservoirs and transferring to waste disposal facility (waste oil tank or other).

Fortune will develop a hazardous material management system to establish a standard operating procedure for the activities outlined above, and implement it prior to commencing construction. In addition, Fortune personnel dispensing fuel will be appropriately trained. Fortune personnel conducting maintenance work on fuel dispensing systems will be appropriately certified.

The fuel storage area will be constructed to meet the following codes of practice and technical guidelines, in addition to registration:

- *Canadian Council of Ministers of the Environment (2003). Environmental Code of Practice for Aboveground and Underground Storage Tank Systems Containing Petroleum and Allied Petroleum Products.*
- *Canadian Environmental Protection Act (1999).*
 - *Storage Tank Systems for Petroleum Products and Allied Petroleum Products Regulations (SOR/2008-197).*
 - *Federal Registration of Storage Tank Systems for Petroleum Products and Allied Petroleum Products on Federal Lands or Aboriginal Lands Regulations (SOR/97-10).*
- *National Fire Code of Canada 2005.*
- *CAN/CSA B149.2-05 Propane Storage and Handling Code.*

14. Period of operation (includes time to cover all phases of project work applied for,

including restoration)

This project will be a multi-year mine facility, with a current life span estimated at 15 years from the commencement of mining. Two years of development is anticipated prior to production and at least two years of reclamation will be required following exhaustion of the resource. On-going water monitoring and treatment may be required for several years following closure.

15. Period of permit (up to five years, with maximum of two years of extension).

5 years

16. Location of activities by map co-ordinates (attached maps and sketches)

Figures 1 illustrates the study area included in this mine application. Figure 2 shows drainage patterns for the study area and Figure 3 shows the natural topography of the proposed mine area and the location of previous exploration activities. Figure 4a indicates the location of the proposed open pit mine, plant facilities, tailings and mine rock management areas, and related infrastructure components. Figure 4b presents possible granular borrow quarry sites and possible rockfill borrow quarry sites (if required).

Minimum latitude (degrees,, minutes, seconds)
63° 31'

Maximum latitude (degrees, minutes, seconds)
63° 33'

Minimum longitude (degrees, minutes, seconds)
116° 41'

Maximum longitude (degrees, minutes, seconds)
116° 47'

NAD 83? or 27? NAD 83

Map Sheet no. 085 N

17. Applicant

Print name in full Robin E. Goad, Fortune Minerals Limited

Signature:

Date: November 05, 2008

**18. Fees Type A - \$150.00 ** Type B - \$150.00 **
(**Application Fees are Non-Refundable**)**

Land use fee: <u>1430</u> hectares @ \$50.00/hectare	\$ <u>71,500</u>
Assignment fee \$50.00	\$ <u>50.00</u>
Total application and land use fees	\$ <u>71,700</u>

Please make all cheques payable to "Receiver General of Canada"



ARKTIS SOLUTIONS INCORPORATED

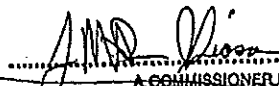
:: 117 Loutitt Street :: Yellowknife, NT :: X1A 3M2 ::
:: Phone: 867.446.0066 :: Fax 866.475.1147 ::

June 1st, 2009

Mr. Alan Ehrlich
Senior Environmental Assessment Officer
Mackenzie Valley Environmental Impact Review Board
200 Scotia Centre
PO Box 938, 5102-50th Avenue
Yellowknife, NT X1A 2N7

This is Exhibit "F" referred to in the
affidavit of Dr. John B. Zee
sworn before me, this 21st
day of September 2010

Mr. Ehrlich,


A COMMISSIONER FOR TAKING AFFIDAVITS

**RESPONSE TO MVEIRB'S OUTLINE AND INSTRUCTIONS FOR SCOPING
PHASE OF THE ENVIRONMENTAL ASSESSMENT OF FORTUNE MINERALS
NICO PROJECT [EA0809-004]**

The Mackenzie Valley Environmental Impact Review Board (hereafter referred to as the "Review Board") is currently undertaking the environmental assessment of the Fortune Minerals Limited (FML) proposed NICO project. The Review Board is currently completing the information gathering phase of the environmental assessment which includes project scoping. On April 2nd, 2009 the Review Board invited Interested Parties to submit comments for their consideration. The comments will also be entered into the public record for the NICO environmental assessment. The Interested Parties' submitted comments will be used to identify the scope for the following assessment. Arktis Solutions Incorporated (ASI), on behalf of our Client the Tłıchǵ Government (TG), is pleased to provide the Review Board with a summary of the comments related to environmental assessment scoping of the proposed NICO project. As advertised through a December 30, 2008 letter developed and circulated by the Tłıchǵ Government, ASI has and will continue to act as an administrative window to the Tłıchǵ Government on all matters related to the NICO Project. It should be clearly understood that although ASI provides a gatekeeper function, the Tłıchǵ Government will always flagship its' own executive directives and authorities.

It is important to note that at this stage of the environmental assessment, all details of the proposed development are not available for review by Interested Parties. As such, not all of the potential impacts from the proposed development are understood and therefore may not be captured within the scoping phase of the environmental assessment. Furthermore, although some members of the TG and Tłıchǵ Community participated in the Review Board scoping sessions, the Review Board should note that a TG sanctioned Traditional Knowledge (TK) study and community consultation sessions have not been completed. As a result, this letter is limited in its content. Additional concerns may be raised to the Review Board as more information becomes available. Currently, ASI is examining options to ensure the development satisfies the Review Board's Guidelines for Incorporating Traditional Knowledge in Environmental Impact Assessment (July 2005). Currently, a TK Agreement has not been administered between FML and the TG.



ARKTIS SOLUTIONS INCORPORATED

:: 117 Loutitt Street :: Yellowknife, NT:: X1A 3M2 ::
:: Phone: 867.446.0036 :: Fax 866.475.1147 ::

FML's NICO Project is entirely surrounded by Tłıchʼo Lands and is the first mining development to occur within the Wek'èezhì since the completion of the Tłıchʼo Agreement. This environmental assessment occurs prior to the completion of the Tłıchʼo Land Use Plan. As per the *Review Board's* correspondence of April 2nd, 2009 to Interested Parties, ASI has considered the *Review Board's* five broad questions to assist in defining the scope of the project. Each question along with a summary of comments is provided below. The *Review Board* shall note that the information presented in ASI's correspondence is not an exhaustive list of what may be considered in the environmental assessment.

1. What biophysical, socio-economical and cultural issues should be considered during the environmental assessment and why?

The following select concerns were expressed by the TG and Tłıchʼo Community Members during the scoping sessions and/or are viewed as important to be included in the environmental assessment. These concerns encompass biophysical, socio-economical and cultural issues that should be considered during the environmental assessment, as well as, security evaluation for Tłıchʼo citizens and communities.

a. Water quantity and quality concerns:

- i. The temporal and spatial water quality and quantity changes, both upstream and downstream from the proposed NICO project during construction, operation, and post-closure are not completely defined or characterized;
- ii. Tłıchʼo community drinking water sustainability and financial implications;
- iii. Water used and discharged from the mine site may impact groundwater and surface water quantity and quality. Impacts to traditional users, wildlife, fisheries, etc. are not completely defined and characterized;
- iv. Water monitoring plans were limited in the detail provided in the project description. Additional information is necessary to understand: geographical extent of the project; parameters to be monitored along with spatial and temporal characteristics and methodology; and,
- v. Water is precious. Water use should be optimized on site water through the development of water recycling management plan, detailed water balance, and water treatment design and operation.

b. Wildlife, birds, and fisheries concerns:

- i. Site activities and infrastructure such as the tailings ponds, landfill, waste rock piles, and stockpiles, have potential to impact wildlife and fisheries. Impacts of site activities and infrastructure on wildlife are not completely defined and characterized; and,



ARKTIS SOLUTIONS INCORPORATED

:: 117 Loutitt Street :: Yellowknife, NT:: X1A 3M2 ::

:: Phone: 867.446.0036 :: Fax 866.475.1147 ::

- ii. The ability of wildlife and birds to safely move through and/or diverted from the mine site and associated infrastructure is important. Special consideration should be given to TEK in site design, management plans, and mitigation strategies. Consideration should also be given to traditional and innovative measures and technologies to manage wildlife and birds.

c. Mine site concerns:

- i. Impacts from on-site and off-site processing of ore, along with the associated impacts to the environment, employment, and overall site management, is not fully defined and characterized.

d. Socio-economic concerns:

Select socio-economic impacts on the North Slave economy and culture include:

- i. Direct and indirect impacts on Tłı̄chǫ business;
- ii. Income and employment in the four Tłı̄chǫ communities during construction, operation, and post-closure;
- iii. Cultural and social impacts from the mine on the four Tłı̄chǫ communities during construction, operation, and post-closure. This includes potential cultural and community well-being linkages due to mine proximity and direct transportation access (road); and,
- iv. Evaluation of mine worker shifts and impacts to cultural and home life for each on-site and off-site processing option.

e. Access to the NICO Site:

- i. FML has stated that an all-weather road is required for the NICO Project. Currently there are no formal plans to develop and construct an access road over Tłı̄chǫ Lands to the NICO site. Impacts associated from an access route to the NICO Project should be included in an environmental assessment that considers, but not limited to, traditional and current land use and Tłı̄chǫ citizen's health and safety. ASI acknowledges the questions posed in the *Review Board's* correspondence to FML on May 1st, 2009 (Re: *Request for Clarifications Regarding the FML NICO Cobalt-Gold-Bismuth-Copper Project*) related to access to the NICO site.

f. Traditional Knowledge Study:

- i. As aforementioned, a TG sanctioned Tłı̄chǫ TK study and community consultation sessions have not been completed to date. Currently, a TK Agreement between FML and the TG has not been administered.

g. Additional Items of Importance:

- i. ASI has also included other macroscopic topics which should be considered. These include, but are not limited to, the following:



ARKTIS SOLUTIONS INCORPORATED

:: 117 Loutitt Street :: Yellowknife, NT:: X1A 3M2 ::

:: Phone: 867.446.0036 :: Fax 866.475.1147 ::

- a. Air quality;
- b. Permafrost conditions;
- c. Geology;
- d. Geochemistry, acid rock drainage, metal leaching, and mineralogy;
- e. Surface and ground water quantity and quality;
- f. Vegetation;
- g. Landscape and landform features;
- h. Noise;
- i. Community health;
- j. Environmental impacts from past forest fires including impacts from the most recent fire (2008) and how it has influenced scientific baseline efforts, how it will be considered in evaluating impacts directly related to NICO, and how impacts due to forest fires will be adequately evaluated;
- k. Community and culturally significant values, traditional and current land and water activities, and community travel; and,
- l. All living and non-living things that form the ecology of the area.

2. What physical works and activities should be considered part of the development?

The scope of the development should consider all physical works or activities that are required for the construction, operation and closure of the proposed NICO project, including, but not limited to, the following items:

- a. **Mining, milling and materials storage works and activities, such as:**
 - i. Use of existing underground mine and development of an underground and open pit mine;
 - ii. Extraction and crushing of ore-bearing rock;
 - iii. Transport, storage, and use of explosives;
 - iv. Mine dewatering;
 - v. Construction and management of a Mine Rock Management Area and Tailings Containment Area;
 - vi. Ore processing operations;
 - vii. Management of dense media separation reject rock, ore, and tailings stockpiles including the construction of associated foundations, buildings, and water treatment and management;
 - viii. Mining equipment operation, including vehicles and materials conveyance systems;
 - ix. Extraction, transportation, consumption, recycling, treatment and discharge of water; and,
 - x. Storage, handling, use and disposal of milling process additives and chemicals.



ARKTIS SOLUTIONS INCORPORATED

:: 117 Loutitt Street :: Yellowknife, NT :: X1A 3M2 ::
:: Phone: 867.446.0036 :: Fax 866.475.1147 ::

b. On-site and off-site infrastructure and use, such as:

- i. Construction and operation of tailings containment area;
- ii. Construction and operation of buildings;
- iii. Construction and use of drainage control structure and process/ wastewater pipelines;
- iv. Construction and use of new roads;
- v. Use of a potential winter road realignment;
- vi. Construction and operation of a new water treatment plant;
- vii. Construction and operation of waste disposal facilities (e.g., landfill, sewage, etc.);
- viii. Additional construction and use during mine operations of existing on-site water management facilities, including: sewage treatment plant, polishing pond, runoff collection pond, culverts and gates at discharge points, and flood protection dykes around the property; and,
- ix. Extraction of water for use as portable water and to support mining and processing operations.

c. Support / Ancillary facilities and activities, such as:

- i. Transport of products (e.g. concentrate) from NICO Property to railhead (TBD) along an access road and Highway #3;
- ii. Transport of goods, fuel, contractors and employees by air and road/winter road that support the NICO operation; and,
- iii. Development and use of borrow sources for construction at the mine site.

d. Reclamation and monitoring, such as:

- i. Removal of all structures and equipment;
- ii. Reclamation of water storage pond and all other site water management facilities;
- iii. Reclamation of access roads and NICO site road networks;
- iv. Reclamation of on-site infrastructure such as: foundations, dykes, piping, and buildings;
- v. Re-vegetation of areas affected by mining and support activities;
- vi. Reclamation of the waste rock pile, tailings containment area, dense media separation reject rock, tailings and ore stockpiles, and any other surface materials storage locations;
- vii. Short and long term environmental, geotechnical, and ecological monitoring; and,
- viii. Short and long term mine water outflow monitoring / management around the mine site.



ARKTIS SOLUTIONS INCORPORATED

:: 117 Loutitt Street :: Yellowknife, NT :: X1A 3M2 ::
:: Phone: 867.446.0036 :: Fax 866.475.1147 ::

3. Within which time period and area should impacts (including project-specific and cumulative impacts) be considered?

The time period over which impacts should be considered include: activities to support construction, construction, mine operation, reclamation, and post closure. In general, the time period should begin when site activities commence and until post-closure monitoring concludes that future impacts from the mine site are acceptable to the TG.

The area over which impacts should be considered should include locations that support the physical works and activities. Additionally, the area should also consider the geographical extent to which the site physical works and activities impact land surface and vegetation, wildlife, fisheries, traditional land use, and water quality and quantity. This includes all Tłıchǫ and Community Lands and lands surrounding and contained within Mōwhí Gogha Dé Nîitáée.

4. What evidence (if any) from previous studies, management plans, or environmental assessments should be transferred onto the public record for this environmental assessment, and why?

The following select concerns were expressed by the Tłıchǫ Community Members and Elders during the scoping sessions and should be transferred onto the public record:

- a. There are concerns with ammonia entering water bodies and its impacts on fish. Ammonia-related studies conducted at Diavik Diamond Mine and alternatives to ANFO (ammonium nitrate and fuel oil) should be considered.
- b. There are concerns about the past impacts that mining has had on the Tłıchǫ People. The impacts of past, present and future developments are important to understand impacts from the proposed NICO project. The assessment should include the cumulative effects of existing mines, including, Ekati Diamond Mine, Diavik Diamond Mine, and previous mines, including, Colomac Mine, Rayrock Mine, Inadore/Beaver Lodge Mine, and North Inca.

5. What alternative ways of carrying out this development should be considered during the EA?

An analysis that includes the advantages and disadvantages of completing the following site activities should be considered:

- a. On-site versus off-site processing of ore including, but not limited to, implications regarding power, operation and reclamation costs, employment, Tłıchǫ Community economies and businesses, transportation of goods and products to and from the proposed NICO site, chemical usage amounts and



ARKTIS SOLUTIONS INCORPORATED

:: 117 Loutitt Street :: Yellowknife, NT :: X1A 3M2 ::

:: Phone: 867.446.0036 :: Fax 866.475.1147 ::

types, and short and long term water quality discharged from the tailings containment area. ASI has included (attached) a Saskatoon Regional Economical Development Authority Incorporated Industry Profile Event Information involving FML for *Review Board* consideration. ASI also acknowledges the question posed in the *Review Board's* correspondence to FML on May 1st, 2009 (Re: *Request for Clarifications Regarding the FML NICO Cobalt-Gold-Bismuth-Copper Project*) related to processing. Off-site processing should include an option for activities outside of Tłı̄ch̄ lands on old airport road, near kilometre 198.

- b. Post-closure water treatment of water discharged from the Tailings Containment Area.
- c. Water use and recycling.
- d. Short and long-term storage and management of waste (i.e., tailings, mine rock, landfill, etc.)

On behalf of the TG, ASI would like to thank the *Review Board* for the opportunity to contribute as an Interested Party in the FML NICO Project scoping phase. ASI is looking forward to other opportunities, presented through the *Review Boards* Initial Decision and Terms of Reference Phases, where we may provide meaningful contributions to the NICO environmental assessment. If you have any questions regarding the contents of this letter please feel free to contact myself at (867) 446-0036 or murdock@arktissolutions.com.

Sincerely,

Joe Murdock
Chief Executive Officer

***Attached* – Saskatoon Regional Economical Development Authority Incorporated Industry Profile Event Information**

***Attached* – Letter from Tłı̄ch̄ Government to Distribution List RE: Introducing the Technical and Regulatory Liaison for the Fortune Minerals Ltd. NICO Project and Other Associated Project Components**



ARKTIS SOLUTIONS INCORPORATED

:: 117 Loutitt Street :: Yellowknife, NT :: X1A 3M2 ::

:: Phone: 867.446.0036 :: Fax 866.475.1147 ::

Saskatoon Regional Economical Development Authority Incorporated
(<https://www.picatic.com/ticket/fortuneminerals/index.php>)

Saskatoon Region: Under Consideration for \$150 Million Hi-Tech Metals Processing Facility

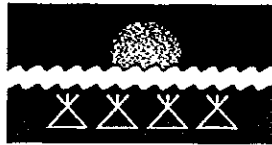
Fortune Minerals Limited is a Canadian mineral development company that is listed and trades on The Toronto Stock Exchange. Fortune owns a number of mineral deposits in Canada, including the NICO Gold-Cobalt-Bismuth-Copper deposit located in the Northwest Territories, approximately 160 km northwest of the City of Yellowknife.

Fortune Minerals is searching for a site for the construction of an ore processing facility in southern Canada where there is readily available, lower cost power and a skilled workforce to operate a state of the art metallurgical plant. This plant will use innovative hydrometallurgical process methods to produce 99.8% cobalt cathode, 99.5% bismuth cathode, gold doré and copper. The facility will have an initial capital investment of \$150 million and will create 85 new jobs during a minimum 15-year period. It is anticipated that this facility could also be used to recycle hybrid car batteries. Construction of this facility is expected to begin in 2010, with production in late 2011 or early 2012 (depending on the permitting process underway). *Your location* is one of the areas under consideration to build this process plant.

Site Selection Criteria:

- ½ to 1 section of land
- Industrial land park or existing brownfield location is ideal, although not necessary
- Access to CN rail line is preferred since ore will be transferred via CN rail from Hay River (14 cars per day, 24/7)
- Rail spur will be an asset, although not necessary
- Industrial and potable water required; during start-up the plant will require 3,000 m³ per day; steady-state consumption is estimated at 150 m³ per day
- Power consumption will be 90 megawatt hours per year with a connected load of 10 to 12 megawatts that will require a power line of 115 kva or greater to service the area
- Good grid road or highway access year round
- Natural gas service
- Domestic sewer preferred
- An industrial sewer of process solutions not suitable for recycling
- Available municipal tax incentives

Additional information on Fortune Minerals Limited can be found at www.fortuneminerals.com



Tłıchǫ Government

Box 412, Rae-Edzo, NT X0E 0Y0 • Tel: (867) 392-6381 Fax: (867) 392-6389 www.tlicho.ca

December 30, 2008

Delivery: Email

DISTRIBUTION LIST

**Introducing the Technical and Regulatory Liaison for the Fortune Minerals Ltd.
NICO Project and Other Associated Project Components**


The Tłıchǫ Government is pleased to announce the retention of Arktis Solutions Incorporated to provide technical analysis and advisory on the NICO Project and other associated project components.

Mr. Joe Murdock will act as the liaison for all matters related to the NICO Project and other associated project components including communications.

In relation to the Nico Project, any interested and affected parties/individual can contact Mr. Murdock. Mr. Murdock is based in Yellowknife and can be reached at 867-446-0036 or email at murdock@arktissolutions.com.

If you have any questions, I can be contacted at 867-392-6381, 867-765-4908 or by email at jzoe@tlicho.com. Masi.

In Tłıchǫ Unity,



John B. Zoe
Tłıchǫ Executive Officer,



ARKTIS SOLUTIONS INCORPORATED

:: 117 Loutitt Street :: Yellowknife, NT :: X1A 3M2 ::
:: Phone: 867.4460036 :: Fax 866.475.1147 ::

July 23rd, 2009
Delivery: Email

Mr. Richard Edjericon
Chairperson
Mackenzie Valley Environmental Impact Review Board
200 Scotia Centre
PO Box 938, 5102-50th Avenue
Yellowknife, NT X1A 2N7

This is Exhibit "C" referred to in the
affidavit of Dr. John B. Zee
sworn before me, this 21st
day of September, 2010

Mr. Edjericon,

THE INCLUSION OF AN ALL-SEASON OR SEASONAL OVERLAND ROAD IN
THE ENVIRONMENTAL ASSESSMENT OF THE FORTUNE MINERALS
LIMITED'S NICO PROJECT [EA0809-004]

On June 1st, 2009, Arktis Solutions Incorporated's (ASI) filed an *Intervention*, on behalf of the Tłı̨chǫ Government, to the Mackenzie Valley Environmental Impact Review Board (MVEIRB). This *Intervention* was pursuant to the scope of environmental assessment for the Fortune Minerals Limited (FML) NICO Project development. In light of additional correspondence filed on the MVEIRB public registry, ASI kindly requests an opportunity to provide further clarity to Bullet 1(e)(i) of the already submitted ASI *Intervention*.

As previously reported in ASI's *Intervention*, there are no formal plans in place with the Government of the Northwest Territories (GNWT), or any other Party, to develop and construct a transportation access route over Tłı̨chǫ Lands to the NICO site. It is understood that currently, the GNWT is only *studying* the realignment of the existing public Tłı̨chǫ winter road to an overland alignment. It is also understood that no commitments and agreements to develop and construct on Tłı̨chǫ Lands have been made. As there is a requirement to access Tłı̨chǫ Lands and connect the NICO mine site to Highway #3, it is inherent that the Tłı̨chǫ Government would play a significant role in the determination and approval of any all-season and/or overland seasonal road development. At this time the only approved transportation access route towards the NICO mine site is the winter road defined in Chapter 19 of the *Tłı̨chǫ Agreement*. In a letter to FML, dated June 30th, 2009, MVEIRB outlines its requirement for "details regarding the specific route that will be followed by trucks transporting concentrate from the site of the NICO Project to the existing highway" and acknowledges the involvement of Third Parties in the determination of these details. Any FML response to MVEIRB regarding a *specific route* at this present time would be speculative, and could possibly be subject to drastic change, as agreements and commitments do not formally exist between the GNWT and/or FML with the Tłı̨chǫ Government. MVEIRB and other Parties should also be aware that the Tłı̨chǫ Government is currently completing a Land Use Plan to develop, manage and conserve Tłı̨chǫ Lands. Consideration must be given to this process to ensure that cultural, social, economic and



ARKTIS SOLUTIONS INCORPORATED

:: 117 Loutitt Street :: Yellowknife, NT :: X1A 3M2 ::

:: Phone: 867.446.0036 :: Fax 866.475.1147 ::

environmental goals and values of the Tłıchǫ are considered when making decisions involving Tłıchǫ Land use.

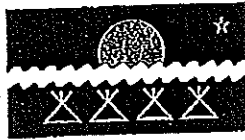
In light of the aforementioned, and further to the "*principle project/accessory test*" used to scope environmental assessments, it is difficult to comment on the topics of independence, linkage and proximity as the specifics of a transportation access route traversing Tłıchǫ Lands have not yet been adequately determined nor accepted by the Tłıchǫ Government. MVEIRB, and other Parties, should be aware that a transportation access route provided to MVEIRB by FML at this present time is spatially speculative and may be subject to significant change. The acceptance of a FML defined transportation access route, without agreements and commitments in place may cause future discrepancies due to current uncertainties.

On behalf of the Tłıchǫ Government I would like to thank MVEIRB for the opportunity to intervene on the NICO Project environmental assessment. If you have any questions whatsoever please do not hesitate to contact me at 867.446.0036 and/or murdock@arktissolutions.com.

Regards,

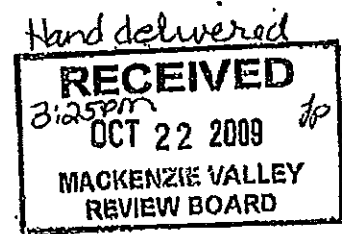
Joe Murdock
Chief Executive Officer

cc. Dr. John B. Zoe (Tłıchǫ Government)
Mr. Robin Goad (FML)
Hon. Michael McLeod (GNWT)
Ms. Trish Merrithew-Mercredi (DIAND)



Tłı̨chǫ Government

Box 412, Behchokǫ̀, NT X0E 0Y0 • Tel: (867) 392-6381 Fax: (867) 392-6389 www.tlcho.ca



October 22, 2009

Chuck Hubert, Environmental Assessment Officer
Mackenzie Valley Environmental Impact Review Board
P.O. Box 938, 5102 - 50th Ave
Yellowknife, NT X1A 2N7
Fax: (867) 766-7074

This is Exhibit "H" referred to in the
affidavit of Dr. John B. Doe
sworn before me, this 21st
day of September, 2010

AND. J. [Signature]
A COMMISSIONER FOR TAKING AFFIDAVITS

RE: Fortune Minerals NICO Project Draft Terms of Reference

Thank you for the opportunity to review the Draft Terms of Reference on the proposed Fortune Minerals mine: the NICO project. The Tłı̨chǫ Government has overarching comments to make as well as specific comments on the Draft Terms of Reference. These specific comments are provided by the section they refer to.

Roads in Tłı̨chǫ Lands— This proposed project will be undertaken on lands that are surrounded by Tłı̨chǫ Lands. This fact needs to be addressed in a careful and sensitive manner. It represents the first such project to be carried out contiguous to Tłı̨chǫ Lands. Present Tłı̨chǫ Law does not allow for any development on Tłı̨chǫ Lands and therefore any planning based on the assumption of access to or involvement of Tłı̨chǫ Lands needs cautious review. It is true that the Mining Rights relied on by Fortune Minerals is recognised in the *Tłı̨chǫ Agreement* but that in itself does not mean that access or impact to Tłı̨chǫ Lands is provided for. The nature of this project on existing Tłı̨chǫ Laws and Tłı̨chǫ Lands needs special and specific review by the MVEIRB.

Thus the Terms of Reference should be restricted to reviewing the issues around the mine site, the facilities, and the deposit. The *Amendment to the Tłı̨chǫ Lands Protection Law* from 2007 places a moratorium on development on Tłı̨chǫ Lands. Given that this proposed development is surrounded by Tłı̨chǫ Lands, this law applies to the proposed project. Until this moratorium is lifted, there is no possibility of discussing any road in the environmental assessment.

As a result there should be no consideration of the issues of a road that may access or cross Tłıchǫ Lands, nor any reference made to them. To consider a road in the face of the moratorium is quite disrespectful, wrong in law and would be an affront. Any reference to the spur road for the development and the imaginary road that would join Highway 3 should be removed from consideration in the Environmental Assessment.

There is also a Land Use Planning process that is being undertaken by the Tłıchǫ Government, and this process needs to be given due respect. This process has been internal to date, and the moratorium on development will only be lifted once this process is complete. Recognizing that there is a Land Use Planning process in place, any proposed development must be consistent with the Land Use Plan that comes into place. We therefore request that an addition be made to the Draft Terms of Reference, suggesting that any proposed development be consistent with the Land Use Plan. As well, the Terms of Reference should include a consultation process with the Tłıchǫ Government when the Land Use Plan is complete. The Land Use Plan, once in place, will have bearing on the consideration of cumulative impacts, as well as cultural heritage sites to be considered.

There can be no assumption made that there will be a road. Thus the Review Board needs to assess this development in light of this possibility

New Key Line of Inquiry: We would like to see impact on wildlife and particularly caribou become a key line of inquiry. The area for the proposed development is in the staging area for bulls in the winter, and the potential impact on caribou is thus high.

Water as a Tłıchǫ Right: In the *Tłıchǫ Agreement*, please make reference particularly to Chapter 21.2 which refers to Tłıchǫ rights to water. The specific right that is mentioned in the *Tłıchǫ Agreement* is:

Subject to any use of water, deposit of waste or activity referred to in 21.3.2 or 21.3.3 that is authorized by law, including by an authorization issued by the Wek'èezhìi Land and Water Board or by another competent water authority, the Tłıchǫ First Nation has the right to have waters which are on or flow through or are adjacent to Tłıchǫ lands remain substantially unaltered as to quality, quantity and rate of flow when such waters are on or flow through or are adjacent to Tłıchǫ lands.

On issues of Cultural Heritage—The Tłıchǫ Government requires that any work in cultural heritage resources be done in collaboration with the Tłıchǫ Government, and only with the express agreement of the Tłıchǫ Government.

Organization of the Draft Terms of Reference: One concern we have with the new organization of the Terms of Reference is with the adoption of an overview and an Appendix. We are unclear why the Appendices have been designed; it causes double the amount of work

and makes it very confusing to follow. The layout is a concern to the Tłıchǫ Government because there is room for the developer to misinterpret the Review Board's expectations.

Consultation— where there may be an impact on Tłıchǫ rights, there is a need for the Crown and the company to provide for a process of consultation. The first requirement should be for the process itself to be agreed upon with the Tłıchǫ. This needs to be reflected in the Terms of Reference.

Road south of Highway 3—There is no inclusion of discussion of any potential impacts south of the Highway 3 junction all the way to the NWT border, some of which runs through Tłıchǫ territory.

Specific Comments include:

2.1 Geographic scope

Please include a map showing the minimum geographic scope of assessment, given that it is unclear to parties what the minimum scope around the road works for assessment might be.

There is no mention in the geographic scope of assessment of the transportation corridor being used to get initial concentrate from the end of *the potential GNWT road along Highway 3 until it leaves the NWT*. This absolutely needs to be part of the scope of assessment.

Long-term mine water outflow monitoring and [ADD WATER] management around the mine site.

The Review Board may amend the scope of development during the environmental assessment [ADD AT ANY TIME] if the proposed development changes or as further processing details become available.

2.2.1 Scope of assessment

- see section 2.2.3 for details [ADD ON CUMULATIVE EFFECTS ASSESSMENT]

Geographic scope

- The use of the term "related to the NICO Project" may be too loose for an environmental assessment in which there will be activities related to the NICO project that are not in the scope of development (i.e., GNWT road). Therefore, we suggest use of term "...by activities within the NICO Project scope of development".
- The geographic scope considered for each valued component must be appropriate for the characteristics of that component or impact [ADD and the nature of the impact source]
- For example, consideration of impacts on air should reflect the airshed, wind patterns [ADD and the mobility of airborne contaminants emanating from the development].

- On topic while the ranges of wildlife using the area may be relevant from a cumulative effects perspective...Ranges of area wildlife are not only important from a cumulative effects assessment, but from a direct effects assessment perspective as well. Suggest instead "Impact assessment of wildlife species needs to take the ranges of the animals into consideration, especially when considering cumulative effects."
- Additional geographic scope needs further guidance. Is the developer to figure out what that reasonable impact footprint radius is (using 3.2.3?) or will the Review Board set some minimum boundaries? Or can you provide the criteria the developer should consider when determining what is a "reasonable radius" or "reasonable corridor"?
- On the NICO access road, there is no mention in here of transport of initial concentrate from the end of the potential GNWT road along Highway 3 until it leaves the NWT. There needs to be mention made of this
- The geographic scope for assessing impacts to the human environment should also include "and residents" or preferably "residents and communities". The problem with just saying communities is that individual residents (and not all of them use the land) may be impacted but the technical political entity that is the community may not as a whole feel or report this.

2.2.2 Temporal scope

- The developer should give special attention to "key periods of intensified use" when people are more likely to be on the land, including "key harvesting periods and annual cultural gatherings".
- The developer will use temporal boundaries for this environmental assessment according to potential long-term impacts on valued components, rather than on a single generic timeline. In all cases, the temporal boundary does not end with the duration of the operating phase of the NICO Project. Should say, rather, "The temporal boundary may not end with the operating phase of the NICO Project".
- On contaminated sites, suggest adding the impact "of past activities and continuing effects of those activities..." here to make it clear cumulative effects assessment is not just about the effects of Mine X from 1960-1970, but also its continuing impacts to this day and into the future.

2.1 Scope of Development

Under Construction one of the bullet points is "Construction of NICO access road to mine site by Fortune." Please amend this to state: "Construction of NICO access road to mine site".

3.1.2 Incorporation of Traditional Knowledge

The traditional knowledge studies should be controlled by and run, where feasible, by Tłıchǫ consultants and teams. Elders and other knowledge holders should be involved in any studies, and in any study of heritage and significant cultural sites.

Also, it suggests that “Fortune will use traditional knowledge”; rather it should say, “Fortune will make all reasonable efforts to incorporate traditional knowledge from aboriginal culture holders as a tool...”

3.1.3 Assessing the impact of the environment on the development

ADD "seasonal flooding and melt patterns" after “climate change impacts”

3.1.4 Use of appropriate media

The landscape model is not the only effective way to communicate, and should not be seen as the only tool.

Add to the last sentence...”Where the developer references external sources of information, it should provide a succinct summary of the relevant information from the source report ... [and the external source placed on the public registry for this environmental assessment via submission by the developer.]

3.2.2 Developer

2. Whether and how" the developer will ensure...". The developer needs to make the specific pledge that it will make its contractors accountable.

3. Regulatory compliance should be at least NWT wide for any developer, not just project specific.

4. The company should reveal any guidelines that are adhered to, or any professional associations, such as the Mining Association of Canada, that they are a part of and codes of practice that members are expected to adhere to.

5. ADD "... financial capacity to carry through with development of, proposed mitigation and management of" the NICO project.”

3.2.3 Developer’s assessment boundaries

Reference made to (see Section 3.5) should say 3.6

3.2.4 Description of the existing environment

Should say "any" industrial activity, including exploration programs.

Describe the “geographic” location (add geographic)

Under human environment, heritage resources should include (known and potential for unfound)

Since its use of the proposed GNWT road is being assessed by the developer, they will need to provide baseline description of the existing environment along the entire GNWT road corridor, including nearby watercourses. This is a key gap in the current document.

3.2.6 Public Engagement

The implications of possible agreements that are made between the developer and other parties on more than just environmental monitoring and management should be discussed. For example, any mitigation agreed upon for social change should be discussed or other relevant items.

Please add: "Public engagement should be done with and through the appropriate public authorities, and an agreed upon process for consultation should be set out."

The Review Board has recently put out a template for reporting back to them the results of such meetings on the Internet – please include weblink to that document
http://reviewboard.ca/upload/project_document/1254777032_Template_for_meeting_report_.PDF

How Fortune has engaged, or intends to engage, traditional knowledge holders in order to collect relevant information for the impact assessment, as well as a summary table indicating where and how in which of the subsequent sections (3.3-3.6) traditional knowledge was [INCORPORATED rather than analyzed and used.]

3.3 Impacts on the Biophysical environment

The footnote 7 will need to be included in the text of the document, not as a footnote.

3.3.2 Key Line of Inquiry: Water Quality

3.3.3 Key Line of Inquiry: Closure and reclamation

The Terms of Reference have to be as clear as possible, but with the current Appendix structure, this is not the case. There is far too much room for interpretation.

Water quality

- changes to the safety of water for drinking in Bechoko and for people should add "and other quality considerations", not just safety. If people don't trust the water even if it is legally safe to drink, it is not a safety issue, it is a willingness to drink issue
- Describe how Thichq citizens will be involved and consulted, particularly the families who are traditional users of the Hislop Lake area.
- Predict potential impacts on any ephemeral streams and groundwater flows from the project area. Review Board to clarify how this line item differs from the one above? There is a confusing overlap here.
- It is unclear to the reader whether these bulleted items below are all the things that need to be considered for water quality, and material in appendices is to support answering

these high level questions, or in fact they are something different. The bullets ask for a variety of predictions, many of which overlap, and sandwiched in between those requests for predictions is a bullet asking the developer to consider natural baseline conditions, which is usually the first step in the impact assessment, long before change predictions.

3.3.4 Water quantity

Availability of drinking water in Behchoko: there will be lots of water in Behchoko, its quality may be of concern, but not quantity.

3.3.5 Fish and aquatic habitat

Please use consistent text throughout (use of this header throughout “Fish and aquatic habitat”)

A consistent problem is emerging in that each 3.3 subheading has a different flow of questions. Some just ask for impact predictions, others for comments on baseline conditions, others for mitigation. Suggest a consistent flow to avoid confusion.

3.3.7. Terrain

There is nothing on road stability, effects of stability issues on public safety or plans for road maintenance.

3.3.8 Air quality

There section may need to state the different receptors that might be impacted, such as water or workers, or other landusers or vegetation.

3.3.9 Vegetation

This is the first discussion of the fire in the general requirements, if the fire is important, its importance should be discussed in a preamble where the Review Board identifies the role of examining the fire in the impact assessment.

3.4 Impacts on the Human Environment

Describe the employment and training plan for construction, specifically how Tłıchǫ citizens will be trained on the appropriate machinery to prepare for operation.

Please add an additional bullet:

- Describe any effects on public safety from increased traffic associated with Fortune's direct use of the GNWT road, as well as induced activity along that same route partially attributable to increased economic activity from the NICO project.

- Describe the social impacts of the NICO Project, focusing on community wellness and population health [for the Tłıchǫ region and at a community by community level] rather than issues at community, family and individual levels.
- The social dynamic is likely to change given the road and the mine. Even if the road is scoped out, the changing social dynamic of the cumulative effect of the mine and the road need to be central in the cumulative effects.

3.5 Accidents and malfunctions

The realm of risk assessment is so large that there are virtually no boundaries to what is being asked here. The developer can do as much or as little as they like on risk assessment. This is inadequate guidance. Is the Review Board asking for every single aspect of the development to undergo risk assessment, or should it focus on those things most likely to be prone to significant incidents as identified during scoping.

Bullet three should say "during all phases of the proposed development from construction through post-closure". Accidents and unexpected results happen during reclamation programs too.

Appendix A: Existing Environment

Bullet 1 under A4

Should not say, around the mine itself, but "around, into and out of the mineworks."

Bullet 3. The NICO project mine site has not been defined. This needs to be reconsidered. Does the Review Board mean surface, ground? What are the boundaries of the NICO Project mine site? Why is it important, and is it even possible, to determine this relative contribution of water? This should be eliminated or revised for clarity. For example, later in the text it says immediate mine site area. What is the difference?

Third bullet should refer to item number 7 above.

Bullet 10

The Review Board previously asked for ground composition of the underground works area, so to avoid overlap, suggest "describe the ground conditions underlying all mine site infrastructure and the NICO access road..."

Appendix B: Development Description

Has to include information about storage and transportation requirements south of where the GNWT road hits the GNWT Highway until it hits the NWT Border. The project description should not end at the end of the proposed GNWT road.

Please include the possibility of traditional environmental monitors.

Item 21 There is not enough information asked for on the construction and physical attributes or the corridors around the road. Need additional information on width of road, road type, vegetation removal, road geometry, drainage plan, and bed formation.

Item 23. Description of any locations in NWT where storage is envisioned. If it will be trucked down highway 3, then need to know where transfer or storage is envisioned.

Appendix C: Water Quality

Item 3, should describe parameters such as physical and chemical characteristics of the naturally occurring arsenic, its mobility and prevalence in the ground and surface waters. Also should describe the differences in arsenic levels in all of the relevant water bodies, including aquifers.

Item 4. Should say, “discharge of ammonia and other nutrients”

Item 9. A. Should say “receiving environment for final effluent discharge” and should include specific locations.

b. the term effluent levels requires clarification. It can be read as either amount of total effluent or as quality parameters for individual constituents.

10a. Only metals are noted as requiring effluent treatment. What about TSS and nutrients?

13 f. There was nothing on water management in underground vs. open pit. These would be different: should there be requirements for this?

Appendix D: Closure and Reclamation

3c. Please add: the physical integrity of permanent features, “especially the open pit”

Appendix J: Human Environment

Employment

1. Under employment, there is no discussion of gender gaps. An analysis of each employment indicator by gender should be done, such as some of the following.
 - Employment policies for indigenous women, especially in non-traditional jobs;
 - Specific training initiatives designed for women;
 - Measures to ensure the security and safety of women in work camps;
 - Gender sensitivity training and anti-harassment policies;

- Reporting requirements on employment and training by gender particularly for indigenous women;
 - Provisions for childcare and flexibility in hours to accommodate family needs (e.g., medical and dentist appointments, sick children);
 - Specific training and scholarships to facilitate entry of women into areas dominated by men, and
 - Gender based analysis during environmental and social impact assessments.
2. There should be a real emphasis on how to mobilize Tłıchq citizens and businesses given that there are two operating diamond mines in the region which will compete for the labour force. In the case that northern and aboriginal workforces are not available, what emphasis will there be on increasing benefits to the local communities?

Please add to 4:

4d. Discussion of policies for site, such as anti-discrimination policies and cross cultural training.; Indigenous training and employment policy; policies on consumption and use of alcohol and drugs; cultural policies to meet specific needs, such as bereavement leave, and bereavement policies are based on extended family models of kinship.

4e. Workplace environment measures, such as drug and alcohol free measures, country food provision, and negotiation of the best and most adaptive rotation schedule for harvesters

4. On plans and strategies:

Please add “advancement” to employment and retention

J3 Social impacts

Item 3 Should include a requirement for NICO project to assess camp vs. the daily commute for residents of Whatı, including associated benefits and risks.

After 5, please add an additional line item on how Fortune will minimize its contribution to potential adverse social change, especially in the two smaller communities that will be on the all-season road grid for the first time. Describe what types of effects expected on these populations from all-season road, how NICO may contribute to the impacts, and associated mitigation.

J4 Cultural Impacts—Addition of many aspects to cultural heritage and cultural impacts

- As discussed in the preamble, there must be collaboration with the Tłıchq Government and consultation on any issues involving cultural heritage.

- Measures and protocol to avoid damage to cultural sites, including protocols for site or object management and site clearances, timeframes and, if sites are to be identified in reports, who will have access to this information.
- How the developer will ensure the participation of Tłıchǫ people in heritage assessments, including provision of adequate funding.
- Identify any impacts on aboriginal access to areas of importance for social, religious or cultural purposes. Many of these areas will be identified in the Tłıchǫ Land Use Plan.
- The developers plans for using Tłıchǫ people to monitor impacts on culture

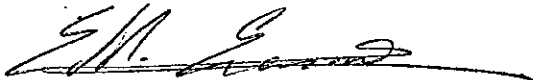
J5 Human Environment Monitoring and Management.

We would like an additional line item for monitoring focusing on identifying, reporting and finding appropriate minimization strategies for social and economic impacts associated with Gamètł and Whatł being on the all-season road grid.

We would like to thank the Board for granting the Tłıchǫ Government an extension in providing comments to the Terms of Reference. We are open to meet with Board to discuss these issues further.

Sincerely,

In Tłıchǫ Unity,



Eddie Erasmus,
Director of Lands Protection Department