

August 15, 2018

Grand Chief George Mackenzie  
Tłı̨chǫ Government  
Box 412  
Behchokǫ, NT  
X0E 0Y0

Via email: [georgemackenzie@tlicho.com](mailto:georgemackenzie@tlicho.com)

Dear Grand Chief Mackenzie,

**Re: Board response to proposed modifications to measures in the Tlı̨chǫ All-Season Road Report of Environmental Assessment and Reasons for Decision (EA1617-01)**

The Mackenzie Valley Environmental Impact Review Board (the Review Board) respectfully submits its response to the Tlı̨chǫ Government's proposed modifications to the measures recommended in the Tlı̨chǫ All-Season Road Project *Report of Environmental Assessment* (EA1617-01). These modifications described in your letter of June 22<sup>nd</sup>, 2018 and proposed pursuant to paragraph 131.1 (1) (b) of the *Mackenzie Valley Resource Management Act* (MVRMA) were carefully considered by the Review Board.

Proposed modifications to measures specifically requested by the Tlı̨chǫ Government include:

- Measures 5-2, Part 1, Part 2, and Part 3
- Measure 5-6
- Measure 8-1
- Measure 9-1, Part 1
- Measure 9-2.

**The Review Board agrees with all of the modifications proposed by the Tlı̨chǫ Government, with only minor additional revisions recommended by the Review Board.** The only party that submitted a written response to these specific measures was the Wek'èezhì Renewable Resources Board. The Review Board has carefully considered this submission in its consideration of the modifications to measures proposed by the Tlı̨chǫ Government.

The objective of the Review Board's analysis was to ensure that each modified measure remains true to the mitigative intention which was the basis for the original measures as set out in the *Report of Environmental Assessment and Reasons for Decision*. Our response also reflects the considerations raised in this consult-to-modify process.

Pursuant to subparagraph 128(1)(b)(ii) of the MVRMA the Review Board recommended that the TASR development be approved, subject to the mitigative measures set out in its report. A mitigative measure, as defined in the MVRMA, must provide for the control, reduction, or elimination of an adverse impact of a development on the environment. Once the Review Board finds that a significant impact will result from a proposed development, mitigation must occur before the project can proceed.



The attached document provides a detailed measure-by-measure analysis of the Review Board's consideration of all the proposed Tłıchǫ Government modifications and sets out specific changes that the Review Board recommends for some of the modified measures. The attachment to this letter also contains "clean" versions of the Review Board's measures including its recommended revisions.

All other measures, without modifications proposed by the Tłıchǫ Government or the Responsible Ministers, remain recommended as written in the *Report of Environmental Assessment*.

The Review Board looks forward to the timely completion of this process. If you have any questions regarding these recommended revisions please feel free to contact our Executive Director, Mark Cliffe-Phillips, at [mcliffephillips@reviewboard.ca](mailto:mcliffephillips@reviewboard.ca) or (867) 766-7055.

Sincerely,

Joanne Deneron,  
Chairperson

*Attachments:*

*Review Board Reasons for Decision-Tłıchǫ Government Consult to Modify Process*

cc. Laura Duncan, Executive Director, Tłıchǫ Government  
Minister Louis Sebert, GNWT Department of Lands  
Michael Conway, Regional Superintendent, GNWT Department of Infrastructure

# Reasons for Decision

## Tłıchq Government Consult-to-Modify Process Tłıchq All-Season Road Project Environmental Assessment August 15<sup>th</sup>, 2018

### Introduction

This document provides the Review Board's responses to each of the proposed Tłıchq Government modifications to the Review Board's measures of the Tłıchq All-Season Road Project *Report of Environmental Assessment* (EA1617-01).

In Part A, for each set of suggested modifications, it shows:

- The Review Board's original measure
- The Tłıchq Government's suggested modifications
- The Review Board's analysis of the suggested modifications
- The revisions the Review Board is recommending in response

All measures are shown in **bold**. Tłıchq Government suggested modifications are shown in **red**. The Review Board's revisions, considering the Tłıchq Government's suggested modifications and submissions from the parties, are shown in **blue**.

Part B of this document lists measures containing the Review Board's recommended revisions to each of the Tłıchq Government's proposed Ministerial modifications for the Tłıchq All-Season Road Project *Report of Environmental Assessment*, without mark-up for convenient reference.

## Part A

### 1. Measure 8-1: Integrated Fisheries Management Plan

The Board's original measure on an Integrated Fisheries Management Plan is as follows:

#### **Measure 8-1: Integrated Fisheries Management Plan**

**Fisheries and Oceans Canada and the Tłıchǵo Government, with the support of the developer, will develop and implement an Integrated Fisheries Management Plan for fisheries in the project area. This will prevent significant adverse impacts from additional fishing pressure that will likely result from increased access via the Project. In designing the plan, Fisheries and Oceans Canada and the Tłıchǵo Government will engage the Wek'èezhì Renewable Resources Board, the Community of Whatì and other affected Aboriginal groups. Fisheries and Oceans Canada and the Tłıchǵo Government will submit the plan to the Wek'èezhì Renewable Resources Board for review under section 12.5.1 of the Tłıchǵo Agreement.**

**As part of this plan, Fisheries and Oceans Canada and the Tłıchǵo Government, along with the above organizations, will complete the following work:**

- a) Complete work to understand baseline fishery and harvest conditions. This work will include, at a minimum:
  - i. assessing yield and harvest;**
  - ii. identifying management issues;**
  - iii. establishing fisheries objectives; and,**
  - iv. clarifying management and stewardship arrangements.****
- b) Design and implement, with support of the developer, mitigation to prevent or manage project impacts (which may include a regulatory and compliance plan).**
- c) Design and implement monitoring plans, meeting the requirements of Appendix C.**
- d) Design and implement an adaptive management plan (following guidance in Appendix B).**

**Fisheries and Oceans Canada and the Tłıchǵo Government will provide opportunity for the working group (required by Measure 14-3) and other interested parties to review and comment on this plan.**

The Tłıchǵ Government's proposed modification to measure 8-1 is as follows:

**Measure 8-1: ~~Integrated~~ Fisheries Management Plan**

Fisheries and Oceans Canada and the Tłıchǵ Government, with the support of the developer, will develop and implement an ~~an Integrated~~ Fisheries Management Plan for fisheries in the project area. This will prevent significant adverse impacts from additional fishing pressure that will likely result from increased access via the Project. In designing the plan, ~~Fisheries and Oceans Canada and the Tłıchǵ Government will engage~~ the Wek'èezhì Renewable Resources Board, the Community of Whatì and other affected Aboriginal groups **will be engaged**. Fisheries and Oceans Canada and the Tłıchǵ Government will submit the plan to the Wek'èezhì Renewable Resources Board for review under section 12.5.1 of the Tłıchǵ Agreement.

As part of this plan, ~~the following work will be completed Fisheries and Oceans Canada and the Tłıchǵ Government, along with the above organizations, will complete the following work:~~

- a) Complete work to understand baseline fishery and harvest conditions. This work will include, at a minimum:
  - i. assessing yield and harvest;
  - ii. identifying management issues;
  - iii. establishing fisheries objectives; and,
  - iv. clarifying management and stewardship arrangements.
- b) Design and implement, with support of the developer, mitigation to prevent or manage project impacts (which may include a regulatory and compliance plan).
- c) Design and implement monitoring plans, meeting the requirements of Appendix C.
- d) Design and implement an adaptive management plan (following guidance in Appendix B).

Fisheries and Oceans Canada and the Tłıchǵ Government will provide opportunity for the working group (required by Measure 14-3) and other interested parties to review and comment on this plan.

## **Analysis and response**

The Review Board agrees with the Tłıchǫ Government that an “Integrated Fisheries Management Plan” is a major undertaking which includes a full fish stock assessment of Lac la Martré. This scale of work was not intended by the Board in this measure. The Review Board therefore accepts removing the word “Integrated” from the name of the plan and re-naming it a “Fisheries Management Plan” to avoid confusion.

The Review Board accepts the Tłıchǫ Government’s proposed modification to remove the Tłıchǫ Government as the organization responsible for engagement in paragraph 1 of the measure. In its July 19 submission, the Wek’èezhì Renewable Resources Board states that it must be clear which organization will be engaging each group in this measure. The Review Board is of the view that the measure should specify the organization responsible for conducting the engagement. For this reason, the Review Board recommends clearly keeping Fisheries and Oceans Canada as the responsible party.

The proposed modification in paragraph 2 deals with who is responsible for implementation of the measure. The modification proposed by the Tłıchǫ Government no longer identifies the organizations responsible for implementing the measure. This changes the intent of the measure. In the opinion of the Review Board, a key requirement of a measure is that it must have an organization responsible for its implementation. The proposed modification is therefore not acceptable to the Review Board. In its July 19 submission, the Wek’èezhì Renewable Resources Board observes that it should remain clear who will be completing the work. The solution proposed by the Review Board is to retain Fisheries and Oceans Canada as the organization responsible for implementation of the measure, with involvement of the Tłıchǫ Government should it choose to participate.

The Review Board's recommended modification to measure 8-1 is as follows:

**Measure 8-1: ~~Integrated~~ Fisheries Management Plan**

Fisheries and Oceans Canada and the Tłıchǵ Government, with the support of the developer, will develop and implement an ~~an Integrated~~ Fisheries Management Plan for fisheries in the project area. This will prevent significant adverse impacts from additional fishing pressure that will likely result from increased access via the Project. In designing the plan, ~~Fisheries and Oceans Canada will engage with the Tlıcho Government Fisheries and Oceans Canada and the Tłıchǵ Government will engage~~ the Wek'èezhì Renewable Resources Board, the Community of Whatì and other affected Aboriginal groups ~~will be engaged~~. Fisheries and Oceans Canada and the Tłıchǵ Government will submit the plan to the Wek'èezhì Renewable Resources Board for review under section 12.5.1 of the Tłıchǵ Agreement.

As part of this plan, ~~the following work will be completed Fisheries and Oceans Canada, with involvement from the Tlıcho Government should it choose to participate, Fisheries and Oceans Canada and the Tłıchǵ Government, along with the above organizations, will complete the following work~~ will complete the following work:

- a) Complete work to understand baseline fishery and harvest conditions. This work will include, at a minimum:
  - i. assessing yield and harvest;
  - ii. identifying management issues;
  - iii. establishing fisheries objectives; and,
  - iv. clarifying management and stewardship arrangements.
- b) Design and implement, with support of the developer, mitigation to prevent or manage project impacts (which may include a regulatory and compliance plan).
- c) Design and implement monitoring plans, meeting the requirements of Appendix C.
- d) Design and implement an adaptive management plan (following guidance in Appendix B).

Fisheries and Oceans Canada and the Tłıchǵ Government will provide opportunity for the working group (required by Measure 14-3) and other interested parties to review and comment on this plan.

## Measures 5-2, measure 5-6, measure 9-1 and measure 9-2

### Analysis and response

The Review Board accepts the modifications proposed by the Tłıchǫ Government for measures 5-2, 5-6, 9-1, and 9-2.

With respect to measure 5-2, Part 1, the Review Board accepts the proposed modifications with the small addition from the original text to retain the intent of the measure. This addition is shown below in blue. With respect to the revised wording “to address the decline in the availability of country foods”, the Review Board recognizes the value of the proposed modification in maintaining options to address the impact using creative means, such as inter-community trade or other methods.

The four measures with the modifications proposed by the Tłıchǫ Government and the Review Board’s addition, are reproduced below.

<b>Measure 5-2: Tłıchǫ monitoring, engagement and reporting of adverse health and well-being impacts</b>
<b>5-2, Part 1: Tłıchǫ monitoring of adverse health and well-being impacts</b> <b>The Tłıchǫ Government, Government of the Northwest Territories, Tłıchǫ Community Services Agency and Community Government of Whatì, with the support of the developer, <del>and in collaboration with the Tłıchǫ Community Services Agency,</del> will establish and implement a framework to monitor and evaluate health and well-being impacts associated with the road, and will adaptively manage health and well-being impacts as described in Measure 5-1 and following guidance in Appendices B and C, for each year of construction and for a minimum of ten years of operations.</b> <b>Following ten years of Project operations, the Community Government of Whatì, Government of the Northwest Territories, Tłıchǫ Community Services Agency and Tłıchǫ Government in collaboration with the developer, will re-evaluate the need for, and frequency of, monitoring, engagement, reporting and adaptive management.</b> <b>If the monitoring of harvest success rates and availability of country foods in Whatì (in Measure 5-1, Part 1, above) indicates a declining trend in harvest success and the consumption of country foods, the Tłıchǫ Government and the Community Government of Whatì will develop and implement a strategy <b>to address the decline in the availability of country foods</b> <del>to improve availability of country foods</del> for those most affected.</b>
<b>5-2, Part 2: Public engagement</b> <b>The Tłıchǫ Government, Government of the Northwest Territories, Tłıchǫ</b>

**Community Services Agency** and Community Government of Whatì, with the participation of the developer, **and** the P3 operator **and the Tłchq Community Services Agency**, will meet with the residents of Whatì at least once per year to discuss:

- a) priority health and well-being impacts at the individual, family and community level related to the Project;
- b) the effectiveness of programs or mitigations used to address these impacts; and,
- c) the need to adjust programs or implement additional mitigations.

#### 5-2, Part 3: Reporting

The Tłchq Government, **Government of the Northwest Territories, Tłchq Community Services Agency** and Community Government of Whatì, with the support of the developer, will prepare and make publicly available an annual progress report on their efforts to mitigate impacts on health and well-being to the Community of Whatì. The report will describe engagement, current management and plans for future adaptive management.

The findings of the report will be presented to the residents of Whatì, provided to the Whatì Inter-Agency Committee and provided to the Tłchq All-Season Road Corridor Working Group (see Measure 14-3).

#### Measure 5-6: Include Behchokò in accident response planning

The Government of the Northwest Territories will develop and implement an effective ground ambulance and highway rescue action plan along the road that will be designed in collaboration with the Tłchq Government, **Tłchq Community Services Agency**, Community Government of Whatì, and Community Government of Behchokò.

#### Measure 9-1: Monitoring harvest and managing wildlife to maintain successful harvest

##### 9-1, Part 1: Aboriginal harvest monitoring and reporting program

To mitigate impacts on Aboriginal harvesters and to effectively inform management of wildlife populations in the area of the Project, GNWT-ENR will work together with the Tłchq Government and Wek'èezhì Renewable Resources Board to develop and implement a **non-mandatory** Aboriginal harvest monitoring and reporting program.

The harvest monitoring and reporting program will:

- d) focus on boreal caribou, barren-ground caribou and moose population trends in areas accessed by winter roads and trails from the Project;
- e) be community-based and involve collaboration between Tłı̨chǫ Government and the developer;
- f) involve Traditional Knowledge holders and harvesters in monitoring wildlife harvesting trends; and,
- g) report on wildlife harvesting numbers and trends from monitoring checkpoints and/or other harvest monitoring methods annually to the Tłı̨chǫ Government, Wek'èezhì Renewable Resources Board, GNWT-ENR and other wildlife co-management partners.

The developer will fund this harvest monitoring and reporting related to the project. The harvest monitoring will meet the requirements of Appendix C.

#### 9-1, Part 2: Use monitoring to inform management

GNWT-ENR, in collaboration with the Tłı̨chǫ Government and Wek'èezhì Renewable Resources Board, will consider wildlife management actions and mitigations based on the results of the monitoring above and the information collected by the GNWT's existing Resident Hunting Reporting Program, to help ensure sustainable Aboriginal harvesting of wildlife and report on monitoring results and management actions in the annual reviews of the Wildlife Management and Monitoring Plan.

#### Measure 9-2: Cultural sensitivity in work camps and communities

To mitigate the Project's impact on Tłı̨chǫ culture and well-being of Tłı̨chǫ residents, the developer will require that the P3 operator has culturally appropriate and specific policies in accordance with those set out by the Tłı̨chǫ Government, GNWT departments and federal government. The P3 operator will have policies and programs in place for employee cultural orientation, **developed approved** by the Tłı̨chǫ Government, for all non-Tłı̨chǫ **workers residents**, including awareness of special cultural norms and practices.

## **Part B – Review Board’s Recommended Revisions Without Mark-up**

This part lists measures containing the Review Board’s recommended revisions to each of the Tłıchǫ Government’s proposed modifications for the Tłıchǫ All-Season Road Project *Report of Environmental Assessment*, without mark-up.

<b>Measure 5-2: Tłıchǫ monitoring, engagement and reporting of adverse health and well-being impacts</b>
<b>5-2, Part 1: Tłıchǫ monitoring of adverse health and well-being impacts</b> <b>The Tłıchǫ Government, Government of the Northwest Territories, Tłıchǫ Community Services Agency and Community Government of Whatì, with the support of the developer, will establish and implement a framework to monitor and evaluate health and well-being impacts associated with the road, and will adaptively manage health and well-being impacts as described in Measure 5-1 and following guidance in Appendices B and C, for each year of construction and for a minimum of ten years of operations.</b> <b>Following ten years of Project operations, the Community Government of Whatì, Government of the Northwest Territories, Tłıchǫ Community Services Agency and Tłıchǫ Government in collaboration with the developer, will re-evaluate the need for, and frequency of, monitoring, engagement, reporting and adaptive management.</b> <b>If the monitoring of harvest success rates and availability of country foods in Whatì (in Measure 5-1, Part 1, above) indicates a declining trend in harvest success and the consumption of country foods, the Tłıchǫ Government and the Community Government of Whatì will develop and implement a strategy to address the decline in the availability of country foods for those most affected.</b>
<b>5-2, Part 2: Public engagement</b> <b>The Tłıchǫ Government, Government of the Northwest Territories, Tłıchǫ Community Services Agency and Community Government of Whatì, with the participation of the developer, and the P3 operator, will meet with the residents of Whatì at least once per year to discuss:</b> <b>a) priority health and well-being impacts at the individual, family and community level related to the Project;</b> <b>b) the effectiveness of programs or mitigations used to address these impacts; and,</b> <b>c) the need to adjust programs or implement additional mitigations.</b>

**5-2, Part 3: Reporting**

**The Tłıchǵo Government, Government of the Northwest Territories, Tłıchǵo Community Services Agency and Community Government of Whatı̀, with the support of the developer, will prepare and make publicly available an annual progress report on their efforts to mitigate impacts on health and well-being to the Community of Whatı̀. The report will describe engagement, current management and plans for future adaptive management.**

**The findings of the report will be presented to the residents of Whatı̀, provided to the Whatı̀ Inter-Agency Committee and provided to the Tłıchǵo All-Season Road Corridor Working Group (see Measure 14-3).**

**Measure 5-6: Include Behchokǵo in accident response planning**

**The Government of the Northwest Territories will develop and implement an effective ground ambulance and highway rescue action plan along the road that will be designed in collaboration with the Tłıchǵo Government, Tłıchǵo Community Services Agency, Community Government of Whatı̀, and Community Government of Behchokǵo.**

### **Measure 8-1: Fisheries Management Plan**

**Fisheries and Oceans Canada and the Tłıchǫ Government, with the support of the developer, will develop and implement a Fisheries Management Plan for fisheries in the project area. This will prevent significant adverse impacts from additional fishing pressure that will likely result from increased access via the Project. In designing the plan, Fisheries and Oceans Canada will engage with the Tlıcho Government, the Wek'èezhì Renewable Resources Board, the Community of Whatì and other affected Aboriginal groups. Fisheries and Oceans Canada and the Tłıchǫ Government will submit the plan to the Wek'èezhì Renewable Resources Board for review under section 12.5.1 of the Tłıchǫ Agreement.**

**As part of this plan, Fisheries and Oceans Canada, with involvement from the Tlıcho Government should it choose to participate, will complete the following work:**

- a) Complete work to understand baseline fishery and harvest conditions. This work will include, at a minimum:
  - i. assessing yield and harvest;**
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**Fisheries and Oceans Canada and the Tłıchǫ Government will provide opportunity for the working group (required by Measure 14-3) and other interested parties to review and comment on this plan.**

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The harvest monitoring and reporting program will:

- a) focus on boreal caribou, barren-ground caribou and moose population trends in areas accessed by winter roads and trails from the Project;
- b) be community-based and involve collaboration between Tłıchǫ Government and the developer;
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The developer will fund this harvest monitoring and reporting related to the project. The harvest monitoring will meet the requirements of Appendix C.

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**Measure 9-2: Cultural sensitivity in work camps and communities**

**To mitigate the Project's impact on Tłıchǫ culture and well-being of Tłıchǫ residents, the developer will require that the P3 operator has culturally appropriate and specific policies in accordance with those set out by the Tłıchǫ Government, GNWT departments and federal government. The P3 operator will have policies and programs in place for employee cultural orientation, approved by the Tłıchǫ Government, for all non-Tłıchǫ workers, including awareness of special cultural norms and practices.**