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Yukon Environmental and Socio-economic Assessment Board: Public Consultation on Atlin Lake Campground #2013-0113



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Developments Corp.
- A Not-For Profit Charitable Organization -

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Yukon Environmental and Socio-economic Assessment Board: Public Consultation on Atlin Lake Campground #2013-0113

Preface

This paper was written to respond to the Yukon Environmental and Socio-economic Assessment Board (YESAB) public consultation on the Government of Yukon, Department of Environment, Yukon Parks Branch's (Yukon Parks) Atlin Lake campground proposal (#2013-0113). Christian Aboriginal Infrastructure Developments (CAID) responded previously to the YESAB public consultation process (documents 2013-0113-058-1, -063-1 and -076-1). However, a myriad of new information has been revealed by Yukon Parks through a written response to a YESAB information request (document 2013-0113-088-1) and during public information meetings held in Carcross and Whitehorse, Yukon, and Atlin, British Columbia (document 2013-0113-87-1).

We have chosen to use a numbered paragraph format for easy reference to information within this paper.

The term "Aboriginal" is used frequently in this paper. We apologize if the word is found to be offence to our First Nation brothers. "Aboriginal" has become a legal expression of sorts in Canada when discussing First Nation rights. So, we have used the word when we discuss First Nation rights and common law (court cases).

Submitted to: Yukon Environmental and Socio-economic Assessment Board.

Shared with: Carcross/Tagish First Nation and Taku River Tlingit First Nation.

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*Yukon Environmental and Socio-economic Assessment Board: Public Consultation on Atlin Lake Campground
#2013-0113*

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Introduction

1. On August 1, 2013, the Government of Yukon (YG), Department of Environment, Yukon Parks Branch's (Yukon Parks) initiated a Yukon Environmental and Socio-economic Assessment Board (YESAB) evaluation of its Atlin Lake Campground proposal by the Teslin Designated Office (#2013-0113).
2. The initial Seeking Views and Information Period closed September 17, 2013, after which YESAB requested additional information from Yukon Parks. After receipt of Yukon Parks' response, YESAB opened the proposal for an Additional Seeking Views and Information period on October 8, 2013. Concurrent with this additional period, Yukon Parks held meetings for public comment in the communities of Carcross, Whitehorse and Atlin on October 8, 9 and 10, 2013, respectively.
3. Rather than clarify the Atlin Lake campground proposal, the additional information provided, coupled with public meetings and submissions already made to the YESAB process, has resulted in a mix of information bordering on disinformation. This submission by the Christian Aboriginal Infrastructure Developments (CAID) has been written to sort through the information jumble.
4. At the outset, it should be noted there are 6 primary stakeholders who will be affected by the proposed Atlin Lake campground. They are:
 - a. Taku River Tlingit First Nation (TRTFN): TRTFN is opposed to the campground.
 - b. Carcross-Tagish First Nation (CTFN): CTFN is opposed to the campground
 - c. Camp Yukon: Camp Yukon is opposed to the campground.
 - d. Trapper of Concession #326: The trapper is opposed to the campground.
 - e. Atlin Community: The Atlin community is opposed to the campground.
 - f. Private Resident: This individual is opposed to the campground.

Who is the Proponent

5. On March 14, 2013, the YG's Environment Minister, Currie Dixon, announced the development of the Atlin Lake Campground (Appendix A). Minister Dixon is a member of YG's Cabinet.
6. The Executive Council of the Yukon sits in authority over all Yukon government administration, including every department and department branch therein. The Yukon's Premier and his Cabinet comprise the decision making body within the Executive Council.

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7. Minister Dixon is a member of the Executive Council and on March 14th he announced the decision of the Executive Council to develop the Atlin Lake Campground. Minister Dixon then instructed the YG Executive Council's Environment Department, over which he is the Minister, to develop the Atlin Lake Campground. The decision filtered down to the Yukon Park's Branch (Yukon Parks) of the Environment Department which subsequently applied for a proposal evaluation under the *Yukon Environmental and Socio-economic Assessment Act* (YESAA) as the proponent. Staff in Yukon Parks, through a bureaucratic command structure, are under YG's Executive Council's direction and report back through the same bureaucracy to the Executive Council. Yukon Parks is not at arm's length from YG, it is YG.
8. The YESAB application names Yukon Parks as the campground proposal's proponent. However, the true proponent of the Atlin Lake campground proposal is YG. This is of paramount importance because YG represents the Crown and it is the Crown that has a duty to consult First Nations in a meaningful manner.^{1,2,3,4,5}
9. On Thursday October 10, 2013, at the Atlin public comment, the Director of the Yukon Park's Branch stalwartly denied that YG was the proposal's proponent. Further, the Director did not disclose that he may be the YG authority to make the final decision on the proposal after YESAB's evaluation is complete.

Land Designated for the Campground

10. The Atlin Lake campground proposal (document 2013-0113-003-1, page 7) states:
 - a. *This area was selected as one of 34 areas designated as campground reserves by the Yukon Commissioner. A reserve of 36.4 ha was set aside in 1971, and expanded to 111.71 ha (the current size) in 1988. In 2003, Yukon Government Lands Branch created a plan to develop the reserve into a recreational subdivision and public day-use area, but this plan did not materialize because it focused primarily on lot development, which did not meet overall Yukon Government recreational land use objectives for the area.*
11. Yukon Parks indicated in each of its public comment meetings that the proposed Atlin Lake campground site was reserved, set aside or designated as a park or campground reserve; strongly suggesting the land was tied legally somehow to that fate. However, TRTFN has an

¹ *R. v. Sparrow*, [1990] 1 SCR 1075.

² *Guerin v. Canada*, [1984] 2 SCR 335.

³ *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511, 2004 SCC 73.

⁴ *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, [2004] 3 SCR 550, 2004 SCC 74.

⁵ *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, [2005] S.C.J. No. 71, 2005 SCC 69.

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asserted title claim to the site and has never been consulted on that land claim. Further, in 2003 the land was not legally bound to become a campground or park when YG attempted to convert the site into cottage lots (Appendix B).

12. The proposed Atlin Lake campground site is actually untitled Crown land over which CTFN and TRTFN are legally entitled to meaningful consultation by the Crown, YG.
13. On October 9, 2013, at the Whitehorse public comment meeting, a former YG Director rose and recanted the events surrounding the failed 2003 cottage lot development on the land now “reserved” for a campground. He said that YG had ignored First Nations and their rights with the proposed cottage lot development by ignoring their asserted land claims and meaningful consultation. Then Premier, Dennis Fentie, cancelled the project over the lack of meaningful consultation of TRTFN and CTFN, apologizing for the YG’s conduct. The former Director noted YG had not learned its lesson in the last 10 years as it had also not consulted First Nations on the current Atlin Lake campground proposal.
14. It is recommended that Yukon Parks find an alternate site for a new campground or the proposed campground at Atlin Lake be put on hold until CTFN and TRTFN are appropriately consulted.

First Nation Consultation

15. The Government of Canada paved the way to transfer authority to YG with the Yukon Northern Affairs Program Devolution Transfer Agreement (2001). To facilitate the devolution agreement, an umbrella land claim agreement with Yukon First Nations was negotiated. Eleven of fourteen Yukon First Nations signed the Umbrella Final Agreement (1993) and subsequently settled individual final land claim and self-government agreements (Settled First Nations); including CTFN. Three Yukon First Nations remain unsettled with no formal land claim agreements (Unsettled First Nations).
16. The federal government empowered YG through the *Yukon Act* in 2003 but ensured constitutional Aboriginal rights would be protected through section 3 of the act:
 - a. **3.** *For greater certainty, nothing in this Act shall be construed so as to abrogate or derogate from the protection provided for existing aboriginal or treaty rights of the aboriginal peoples of Canada by the recognition and affirmation of those rights in section 35 of the Constitution Act, 1982.*
17. A number of First Nations with communities outside the Yukon have asserted claims to rights and title over their traditional territories which extend into the Yukon; including TRTFN. This TRTFN transboundary claim was recognized by the Government of Canada in 1984, acknowledged by YG in the Yukon’s Devolution Transfer Agreement (2001) and affirmed in

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section 3 of the *Yukon Act* (2003). The YG must consult TRTFN on the Atlin Lake Campground proposal.

18. In 2003 the federal government created the *Yukon Environmental and Socio-economic Assessment Act* (YESAA) to fulfill a treaty commitment in the Umbrella Final Agreement (1993) to Yukon's First Nations. The Yukon Environmental and Socio-economic Assessment Board (YESAB) evaluation process is part of that treaty commitment. The YG must consult CTFN on the Atlin Lake Campground proposal:
 - a. The YESAB process is designed to consult Settled Yukon First Nations on the taking up of land and is part of the YG consultation of CTFN; and,
 - b. The YG also has a duty to consult Settled Yukon First Nations that is rooted as a matter of law, independent of their agreements. This duty to consult is modified in scope by YESAA, but cannot be satisfied solely by the YESAB process.⁶
19. Section 2 of YESAA defines First Nation in a manner that limits the YESAB First Nation consultation process to Yukon First Nations. TRTFN cannot be meaningfully consulted in the YESAB process, nor is TRTFN's right to meaningful consultation modified by the YESAB process:
 - a. *"first nation" means a Yukon First Nation, within the meaning of the Umbrella Final Agreement, and includes the Gwich'in Tribal Council, in relation to consultation, or the Tetlit Gwich'in, in relation to any other matter.*
20. First Nation rights are substantial in Canada. They include title, minerals, fishing, hunting, trapping and so much more. All of these rights need to be consulted in respect of the proposed Atlin campground. TRTFN has no treaties or agreements whereas CTFN has land claim and self-government agreements that will modify its consultation. Each First Nation needs to have their rights meaningfully consulted on both:
 - a. The site chosen for the campground; and
 - b. The specific proposal for the campground.

When Does Consultation Occur?

21. The Yukon 2013-14 Budget was tabled in the Yukon Legislative Assembly on March 21, 2013, and included funds (\$780,000) to plan and begin construction of the Atlin Lake campground.⁷ To include the proposed campground into the budget, work on the Atlin Lake

⁶ *Beckman v. Little Salmon/Carmacks First Nation*, [2010] SCR 53, at para.67 and 69.

⁷ Budget Address 2013-2014, 1st Session of the 33rd Yukon Legislative Assembly, page 26.
http://www.finance.gov.yk.ca/pdf/budget/2013-14_speech_e.pdf

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campground budget would have commenced a minimum of three months prior to the budget being tabled, December of 2012. Planning work on the proposed Atlin Lake campground would have started up to two years prior to preparing the Yukon's 2013-14 Budget.

22. CTFN and TRTFN were informed of the campground proposal at a meeting with YG on May 8, 2013. A subsequent letter dated August 20, 2013, invited both First Nations to participate in the YESAB process within a 14 day response time.
23. On October 8, 2013, at the Carcross public comment meeting, the Director of Yukon Parks disclosed that CTFN first heard of the plan to build a campground on Atlin Lake one or two days before Minister Dixon announced the plan. At the same meeting, both TRTFN and CTFN declared they had not been meaningfully consulted on the campground proposal as of October 8, 2013.
24. The duty to consult arises⁸, “...when the Crown has sufficient knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it.” As such, the duty to consult appears early in the planning process. Consultation with CTFN and TRTFN should have commenced when YG first conceived of the plan to build an Atlin Lake campground.
25. YESAA's section 74 (2) requires unsettled Yukon First Nations to be consulted after the YESAB evaluation is complete and has been submitted to the Decision Body for a decision. This is a constitutional flaw in that it violates established common law on Aboriginal rights guaranteed under section 35 of the *Constitution Act* that demand First Nations be consulted at the planning and decision-making stages.⁹ The three Unsettled Yukon First Nations cannot have their rights modified by an agreement they were not party to.
26. The duty to consult, “...can be triggered even where the Aboriginal interest is insufficiently specific to require that the Crown act in the Aboriginal group's best interest.”¹⁰ In this regard, both CTFN and TRTFN have sufficient interest in the site of the campground proposal and both have Aboriginal rights which may be affected by a campground at that site. Both CTFN and TRTFN must be meaningfully consulted.

⁸ *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 SCR 511, 2004 SCC 73, at para 35.

⁹ *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 SCR 511, 2004 SCC 73, at para 74 and 76.

¹⁰ *Dene Tha' First Nation v. British Columbia (Minister of Environment)*, [2006] F.C. 1354, 2008 FCA 20, at para.81.

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CTFN Consultation

*** Please note, the following comments on CTFN issues are made independent of CTFN and should not be construed to replace the meaningful consultation of CTFN.**

27. The required consultation process with CTFN has been modified by its land claim and self-government agreements to include the YESAB public consultation process. However, CTFN is still owed a duty to consult that is grounded in law and cannot be bypassed.¹¹ This duty to consult is governed by constitutional rights guaranteed under section 35 and the rule of law. A public consultation process will not suffice to fulfill this duty.¹²
28. CTFN responded to the YESAB public consultation process (document 2013-0113-62-1) and indicated their treaty rights would be adversely affected by the proposed campground in relation to hunting, fishing, woodcutting and berry picking.
29. CTFN must also be meaningfully consulted by the YG on the campground separate from YESAB. Issues that surfaced during the public comment meetings in Carcross and Atlin that Yukon Parks cannot mitigate through the YESAB process include:
 - a. The protection of Southern Lakes grizzly bears that frequent the proposed campground site;
 - b. The conservation of Southern Lakes caribou that are recovering in and around the campground site whose protection is included in the CTFN Final Agreement, Schedule B;
 - i. The Honourable Kevin Barr, MLA for the Mount Lorne-Southern Lakes riding spoke to the Yukon Legislative Assembly on the caribou herd he saw at the proposed campground site (Appendix C); and,
 - ii. CTFN elders indicated that Southern Lakes caribou are in the proposed campground site and the immediate area around the site.
 - c. The alternative development of campgrounds within the proposed Agay Mene Territorial Park which is included in the CTFN Final Agreement;
 - d. The alternative development of the Conrad campground which is included in the CTFN Final Agreement;
 - e. The designation and compensation of CTFN traplines which are included in the CTFN Final Agreement; and,
 - f. The protection of the fishery in Atlin, Snafu and Tarfu Lakes for sustenance harvests as

¹¹ *Beckman v. Little Salmon/Carmacks First Nation*, [2010] SCR 53, at para.67 and 69.

¹² *Dene Tha' First Nation v. British Columbia (Minister of Environment)*, [2006] FC 1354, 2008 FCA 20, at para.115.

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per the CTFN Final Agreement.

30. The failure of YG to consult and accommodate on issues outlined in paragraph 29 will result in adverse effects on CTFN's Aboriginal and treaty rights.
31. On October 8, 2013, at the Carcross public comment meeting, the Director of Yukon Parks informed the audience he was, "under the impression" that YG did not have to consult CTFN on the Atlin Lake Campground because the proposal was located on non-settlement land. This statement is completely erroneous.¹³

TRTFN Consultation

<p>* Please note, the following comments on TRTFN issues are made independent of TRTFN and should not be construed to replace the meaningful consultation of TRTFN.</p>
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32. TRTFN has no treaty or land claim with Canada, British Columbia or the Yukon. Therefore, the meaningful consultation of TRTFN for the Atlin Lake campground proposal by YG must follow the rule of law established by the *Constitution Act* (1982) and common law.
33. YESAB is a Yukon treaty-based public consultation process that cannot take the place of, or modify, the meaningful consultation process, and its depth, required of YG when dealing with TRTFN.
34. It was inappropriate of Kevin Leary, Deputy Minister of Environment, to invite TRTFN into the YESAB public consultation process, without engaging TRTFN separately in meaningful consultation (document 2013-013-23-1), when common law has already established that a public consultation does not fulfill the duty to consult.¹⁴
35. In its submission to YESAB (document 2013-0113-073-1):
 - a. TRTFN indicated that it was not informed of the YG decision to build a campground within its traditional territory on Atlin Lake before Minister Dixon's March 14th announcement; and,
 - b. TRTFN had not been meaningfully consulted and is strongly opposed to the development of the proposed campground.

36. The YG cannot contend that a transboundary claim by TRTFN can be dismissed:

¹³ *White River First Nation v. Yukon Government*, [2013] YKSC 66, at para. 127.

¹⁴ *Dene Tha' First Nation v. British Columbia (Minister of Environment)*, [2006] FC 1354, 2008 FCA 20, at para 115.

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- a. First, Canada and YG, the Crown, have already recognized TRTFN's asserted claim to title and rights over its traditional territory in the Yukon; and,
- b. Second, the TRTFN transboundary claim meets the 3 part test that determines if the duty to consult is triggered by the campground proposal. The three elements are:¹⁵
 - i. Does the Crown have knowledge, actual or constructive, of a potential Aboriginal claim or right that may be affected;
 - ii. Could the contemplated Crown conduct affect a potential Aboriginal claim or right; and,
 - iii. Is there the potential the contemplated conduct may adversely affect an Aboriginal claim or right.

37. Meaningful Consultation of TRTFN on the campground proposal must:

- a. Be deep as it involves hunting and fishing rights in relation to Aboriginal title where the potential for non-compensable damage is high;¹⁶
- b. Include the First Nation community and its broader nation since Aboriginal rights are communal; and in this case include hunting, fishing and land title rights;^{16,17}
- c. Include the knowledge of TRTFN's Elders since histories and practices play a consultation role in the assertion of Aboriginal rights given that Aboriginal rights recognized and affirmed under Section 35 are defined by pre-contact practices;¹⁸
- d. Provide technical assistance and funding for TRTFN to fully participate in the consultation process^{19,20,21};
- e. Include hunting and fishing rights;^{22,23}
- f. Include wildlife conservation and natural resource management;^{24,25} and,

¹⁵ *Rio Tinto Alcon Inc. v. Carrier Sekani Tribal Council*, [2010] SCC 43, 2010 2 SCR 650 at para 31.

¹⁶ *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 SCR 511, 2004 SCC 73, at para 40 and 44.

¹⁷ *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010, at para 115.

¹⁸ *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010, at para 84, 85, 86 and 87.

¹⁹ *Dene Tha' First Nation v. British Columbia (Minister of Environment)*, [2006] FC 1354, 2008 FCA 20, at para.134.

²⁰ *Platinex Inc. v. Kitchenuhmaykoosib Inninuwug First Nation*, [2007] CanLII 20790 (ONSC) at para 27.

²¹ *White River First Nation v. Yukon Government*, [2013] YKSC 66, at para. 108.

²² *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 SCR 511, at para 40.

²³ *Delgamuukw v. British Columbia*, [1997] 3 SCR 1010, at para 168.

²⁴ *R. v. Sparrow*, [1990] 1 SCR 1075.

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- g. Include a reasonable process established by the Crown for consultation²⁶ that recognizes the distinct features of TRTFN.²⁷
38. Any consultation process established by YG for TRTFN on the Atlin Lake Campground proposal will not meet its duty to provide Meaningful Consultation if:
- a. YG only meets with Aboriginal leaders;^{16,17,28}
 - b. YG uses a public consultation process to consult TRTFN;²⁹
 - c. YG uses public comment meetings to consult TRTFN;³⁰
 - d. YG provides a consultation process that excludes accommodation from the outset;³¹ and,
 - e. YG provides mitigation and not accommodation.³²
39. On October 10, 2013, at the Atlin public comment meeting, the Director of Yukon Parks informed those in attendance the YG had not consulted First Nations yet, including TRTFN, but would do so as part of the YESAB evaluation process before the YG finished its decision process. Unfortunately, this is not the meaningful consultation of TRTFN's constitutional Aboriginal rights. What the Director proposed excludes accommodation from the outset while substituting mitigation for accommodation.

Consultation Summary

40. CTFN and TRTFN have not been meaningfully consulted on the proposed Atlin Lake campground.
41. The nature of the lawful meaningful consultation that is required of YG with CTFN is no different than that of TRTFN's. It is simply modified by the applicable sections of CTFN's final land claim and self-government agreements.
42. In 2003, Premier Fentie permanently ended the unlawful YG development of cottage lots, on

²⁵ *R. v. Badger*, [1996] 1 SCR 771, at para 97.

²⁶ *Huu-Ay-Aht First Nation et al. v. The Minister of Forests et al.*, [2005] BCSC 697, at para. 123.

²⁷ *Wii'litswx v. British Columbia (Minister of Forests)*, [2008] BCSC 1139, at para. 247.

²⁸ *Dene Tha' First Nation v. British Columbia (Minister of Environment)*, [2006] FC 1354, 2008 FCA 20, at para.118.

²⁹ *Dene Tha' First Nation v. British Columbia (Minister of Environment)*, [2006] FC 1354, 2008 FCA 20, at para.115.

³⁰ *Dene Tha' First Nation v. British Columbia (Minister of Environment)*, [2006] FC 1354, 2008 FCA 20, at para.104.

³¹ *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, [2005] 3 SCR 388, [2005] SCC 69, at para. 54.

³² *Dene Tha' First Nation v. British Columbia (Minister of Environment)*, [2006] FC 1354, 2008 FCA 20, at para. 82.

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the very same site now proposed for the Atlin Lake Campground, due to the lack of First Nation Consultation. Nothing has changed.

Hunting and Trapping

43. The campground site chosen by Yukon Parks for the proposed Atlin Lake campground is used by First Nations for hunting and trapping.
44. The YG suggests there is no current First Nation hunting or trapping at the site of the proposed campground:
 - a. The Yukon Parks' campground proposal (document 2013-0113-003-1, page 28) writes, *"Currently, there is no hunting within the actual campground reserve because of its proximity within 1 km of the four nearby private lots would make it illegal to discharge a firearm. No hunting is allowed in Yukon Parks campgrounds, so the construction of this campground would not effectively change the status of hunting on the reserve."*
 - b. An Environment Department submission (documents 2013-0113-067-1, Environment Comment, page 8) indicates, *"Given that the majority of the campground reserve is located within 1 km of a resident, trapping likely does not occur within the reserve area and the project is not likely to have impacts as a result of direct overlap with trapping activities and infrastructure."*
 - c. Yukon Parks is defaulting to section 13 (1) of the Yukon's *Wildlife Act* (2002).
 - i. **13(1)** *A person shall not hunt or trap wildlife within one kilometre of a building which is a residence, whether or not the occupants are present in the building at the time, unless the person has the permission of the occupants to do so.* [Emphasis added]
45. On October 8, 2013, in the Carcross public comment meeting, Yukon Parks' Park Planner stated there was no one currently trapping in the campground with trapping concession #326. There were two noted comments made in reply to that statement:
 - a. At the meeting, it was revealed there is a standing agreement between private property owners in proximity to the site of the proposed campground and First Nations (CTFN and TRTFN) that allows trapping and hunting within one kilometre of local private resident buildings; such that, there is hunting and trapping at the proposed campground site; and,
 - b. At the meeting, someone identified themselves as a person who trapped at the proposed campground site with the owner of the trapline during the 2012-13 winter season.
46. The hunting and trapping activities and rights of both CRTFN and TRTFN will be adversely affected by construction of the proposed campground. The YG must engage in consultation

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and accommodation of CTFN and TRTFN (as described earlier) to fulfill its lawful duty to consult.

Wildlife

47. The most current review of wildlife within proximity to the proposed Atlin Lake Campground site was produced in 2012 by the Southern Lakes Wildlife Coordinating Committee.³³ In this wildlife assessment report for the Southern Lakes area:
- a. Grizzly bear populations have declined and are currently listed in Canada as a species of special concern. The report makes a number of recommendations for grizzly bears, including:
 - i. *“Best management practices should be implemented for land use developments occurring in or near important habitats for grizzly bears. Avoiding these areas is in the best interest of bears and public safety;”* and,
 - ii. *“As a priority, continue to develop and implement measures that reduce human-bear conflicts.”*
 - b. Woodland caribou populations dramatically declined in the area over the last century in the area and have been the focus of wildlife conservation initiatives for over 20 years. These caribou are currently listed in Canada as a species of special concern. The report makes a number of recommendations, including:
 - i. *“Carefully manage human use of caribou habitats, with a particular focus on limiting access, development and human disturbance in important caribou habitat;”* and,
 - ii. *“Protection of important caribou habitats (winter and calving areas, and travel corridors) needs to be a key consideration in land use decisions, as well as land use planning processes.”*
 - c. Moose populations have been declining in the area over the last 30 years primarily from overharvesting. The report makes a number of recommendations, including:
 - i. *“The protection of important moose habitats (winter and calving areas, and travel corridors) needs to be a key consideration in land use decisions, as well as land use planning processes;”* and,
 - ii. *“Mechanisms capable of managing or regulating human access into important*

³³ (2012) *Regional Assessment of Wildlife in the Yukon Southern Lakes Area, Volume 1: Context and recommendations; Volume 2: Specie Status Assessment*, Southern Lakes Wildlife Coordinating Committee, <http://www.yfwcm.ca/slwcc/projects/>, Accessed October 17, 2013.

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moose habitats should be developed and implemented. The focus should be on limiting new access into places where moose are at greater risk from harvest. Increasing access in some areas is a cause for concern because these areas would have the potential to be over-harvested.”

48. The site for the proposed Atlin Lake campground is part of an identified wildlife funnel that creates a wildlife corridor through the site of the proposed campground:
- “The north end of the lake also is a low-lying area that functions as a natural funnel and crossing area between subalpine areas east and west of the reserve.”* (document 2013-0113-003-1, page 20); and,
 - “Also, there is a local bottleneck effect, as bears will be naturally funneled between Atlin Lake to the west and the mountains to the east. The Reserve directly overlaps this bottleneck area, likely increasing the probability of people encountering bears in the area.”* (document 2013-0113-005-1, page 7)
49. The wildlife assessment provided by Yukon Parks to YESAB (document 2013-0113-005-1) indicates the site of the proposed campground is:
- Used by bears for food and as a travel corridor;
 - Used by moose as a significant wintering area; and
 - Frequently associated with a 28 animal, woodland caribou herd.
50. At the October 8, 2013, public comment meeting in Carcross, a CTFN elder stated the area of the proposed campground site, including the actual site, was a wintering area for a frequently seen woodland caribou herd. This observation was validated by MLA Kevin Barr who attended the meeting (appendix C).
51. At the October 9, 2013, public comment meeting in Whitehorse, it was stated that the proposed campground site is a haven for grizzly bears which are seen daily in the summer at the site. In the same meeting, the Chief of TRTFN remembered staying at the proposed campground site as a youth and seeing fresh grizzly bear tracks daily.
52. The site proposed for the Atlin Lake campground is a significant wildlife habitat and corridor for grizzly bears, moose and woodland caribou. It is strongly recommended that:
- CTFN and TRTFN be consulted (as described earlier) in regard to wildlife and wildlife management at the proposed site; and,
 - Recommendations made in the *Regional Assessment of Wildlife in the Yukon Southern Lakes Area* (2012) be followed and Yukon Parks choose an alternate site for a new campground.

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Fishery

53. The Yukon Parks' fisheries assessment (document 2013-0113-007-1) indicates:
- a. Atlin Lake, at the proposed campground site, is a lake trout spawning area at which spawning occurs in September in shallow water near shore;
 - b. Atlin Lake is not part of the BC-Yukon Transboundary Management Agreement;
 - c. There are no lake trout harvest estimates for Yukon First Nation (including CTFN) harvest in Atlin Lake;
 - d. There are no lake trout harvest estimates for BC First Nation (TRTFN) harvest in Atlin Lake;
 - e. There are no lake trout harvest estimates for BC recreational fishing in Atlin Lake;
 - f. There are no lake trout harvest estimates for Yukon recreational fishing;
 - g. There are commercial Yukon lake trout harvest licenses for 410 kg per year;
 - h. Conservatively, there will be an additional 1,140 kg of lake trout harvest from Atlin lake per year as a result of the proposed campground; and,
 - i. That these conservative harvest estimates may lead to the reduction of lake trout at the northern end of Atlin Lake.
54. Negative impacts on Atlin Lake lake trout have been discussed in a number of submissions to the YESAB process, including submissions from the Carcross-Tagish Renewable Resource Council (CTRRC) (document 2013-0113-068-1) and CAID (document 2013-013-076-1). The combination of unknown harvest levels coupled with the potential to harvest over ten times more lake trout than estimated by the fisheries assessment report, will be catastrophic for lake trout in Atlin Lake.
55. In CTFN's submission to YESAB (document 2013-0113-062-1), a clear concern was raised that the campground proposal would lead to unsustainable harvest levels of fishery resources in the area.
56. TRTFN's community is on Atlin Lake and the proposed campground has been used for a variety of traditional pursuits, including sustenance fishing (document 2013-0113-073-1):
- a. TRTFN identifies the shoreline of the proposed campground as a lake trout spawning area;
 - b. TRTFN revealed that at a September 12, 2013, meeting between BC and Yukon fisheries staff, it was acknowledged by Yukon Staff that there is very little baseline data available upon which to base sound fishery management decisions; and,

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- c. TRTFN is concerned that competing accesses to their traditional fish food source is a significant immitigable impact of the proposed campground on the Tlingit way of life.

57. On October 9, 2013, at the Whitehorse public comment meeting, a representative from CTRRC spoke and indicated:

- a. Lake trout need a 20-30 year management plan and that cannot be done without first conducting appropriate studies; and,
- b. The only way to manage lake trout is to restrict access to fishing.

58. At the October 10, 2013, public comment meeting in Atlin, comments included:

- a. Transboundary fishing licenses are not a conservation method;
- b. The numbers in the Yukon Parks' fisheries assessment reflect a 46% increase in lake trout harvest which will adversely affect the lake trout population;
- c. The only way to protect lake trout is to block access. All fishery studies must be completed and conservation decisions made before Atlin Lake can be accessed by a boat launch at the north end; and,
- d. The Yukon Parks' fisheries assessment's number of approximately 1,100 kg of additional lake trout harvested per year as a result of the proposed campground only represents 220 fish (at 5 kg each). Surely, we can expect higher harvest increases than just 220 fish in a year.

59. The site proposed for the Atlin Lake campground will have a significant impact on the lake trout fishery, and Atlin Lake fisheries in general. It is strongly recommended that:

- a. CTFN and TRTFN be consulted (as described earlier) in regard to sustenance fishing and fisheries management in regard to the proposed site and its effects on Atlin Lake; and,
- b. That an alternate site for a new campground be found or the proposed site on Atlin Lake be placed on hold pending the results of needed studies.

Safety and Security

60. There were a large number of submissions made to YESAB in regard to the safety and security of the proposed Atlin Campground. Many of those submissions concerned the safety of children and property at Camp Yukon; Camp Yukon and the proposed campground would share the campground's northern border and beach.

61. On October 9, 2013, at the Whitehorse public comment meeting, comments included:

- a. There are frequent and repeated acts of vandalism and theft that occur on private property

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next to the Tarfu campground. The only real solution is a 24 hour guard or the closure of the campground. Camp Yukon can expect the same and that will put the 60 year old children's camp out of business;

- b. The proposed campground will be the third largest campground in the Yukon and the only one of the three that is not near [the infrastructure of] a Yukon community;
- c. With the population of the new campground plus Camp Yukon, and, Snafu and Tarfu campgrounds, there will be approximately 500 people in that area at peak season. This is the population of Atlin or Ross River and Faro combined. These towns have resident RCMP detachments and other fulltime security and safety services. If the new campground is built, there will be no protection for campground patrons or Camp Yukon;
- d. Camp Yukon is a million dollar investment and its financial viability will be affected by the proposed campground. It is not a question of if there will be a negative impact on Camp Yukon, we all know there will be. The question is how bad will it be;
- e. Other Yukon campgrounds are used by hunters as staging areas. I have gone to a campground within two hours of Whitehorse for the May long weekend only to find thirteen caribou carcasses. What will stop that happening with the new campground;
- f. The Yukon Parks Director suggesting 1-2 extra Park Officer patrols, signage and a 100 m buffer zone between the campground and Camp Yukon would protect camp children from potential predators and camp equipment from vandalism;
- g. The proposed campground will put the children at Camp Yukon at risk – a sign and a buffer zone won't stop people from entering Camp Yukon from the campground;
- h. Snafu and Tarfu campgrounds are a drunken party almost every weekend. The same will occur in the proposed campground and place the children at Camp Yukon at risk; and
- i. Everyone has to deal with risk. Yes, the Atlin Lake campground will increase the risk for kids at Camp Yukon but that is a fact of life.

62. At the October 10, 2013, public comment meeting in Atlin, comments included:

- a. The Yukon Parks Officers do not patrol enough and as soon as they leave the campground the patrons revert to drinking and partying. You need fulltime officers in the campground;
- b. There are no BC conservation officers to police the waters and hunters;
- c. Atlin does not have sufficient search and rescue to handle the proposed Atlin Lake campground;
- d. The Yukon Parks' Park Planner suggested a volunteer group in Whitehorse may begin the voluntary monitoring of an emergency shortwave channel that might reach the proposed campground;
- e. It will be impossible to enforce fishing limits and licenses without additional officers stationed at the new campground; and,

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- f. This campground proposal should not be considered until after the fish studies are done and transboundary agreements for Atlin Lake are in place.
63. Yukon Parks has submitted that Kamp Klondike on the Klondike River near Dawson City is a children's camp with a nearby Yukon campground (document 2013-0113-088-1) that has had no altercations. This campground is not within two hours of Whitehorse and does not see the same party crowd that both Snafu and Tarfu campgrounds experience; and, that are expected at the proposed Atlin Lake campground. Further, Yukon Parks has not submitted an independent report on Kamp Klondike safety and security for YESAB evaluation.
64. The site proposed for the Atlin Lake campground will have a significant impact on the region's emergency and security services. It is strongly recommended that:
- a. The campground proposal be put on hold until CTFN and TRTFN are meaningfully consulted (as described earlier) on the choice of the site for a new campground; and,
 - b. After First Nation consultations are complete, Yukon Parks should consult local property owners and regional communities on needed safety and security infrastructures before advancing a campground proposal through the YESAB evaluation process. Mitigation should not come before accommodation.

Alternatives

65. There are a number of alternative sites available to Yukon Parks for campground development, 33 according to the Atlin Lake Campground proposal (document 2013-0113-003-1).
66. There is a private campground (formerly known as the Pride of the Yukon) located at Mile 7 of the Atlin Road (MLS# 8390) for sale. This campground could be updated and expanded into adjacent Crown land.
67. At the October 10, 2013, Atlin Public Comment meeting, the failed 2005 treaty obligation to build Conrad campground with CTFN was raised:
- a. Conrad campground is named in schedule A, section 11.0 of the CTFN Final Agreement, as an economic opportunity for CTFN.
68. CTFN and the Teslin Tlingit Council Final Agreements include the development of the Agay Mene Natural Environment Park in schedule D. In section 2.0 and 5.0, specifically sections 2.1.9 and 5.3.7, the development of recreational campgrounds is enabled. Campgrounds could be a part of the Agay Mene development.
69. There are many viable alternative sites to place a campground other than Atlin Lake:

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- a. Some of these sites have First Nation agreements for their development;
- b. Many sites do not have First Nation transboundary claims that need to be resolved;
- c. None have a historic and well established children's camp nested against them;
 - i. It should be noted that Camp Yukon was first established in 1953, well before any land selections were made for potential Yukon campgrounds.
- d. Many sites will not be a habitat and funnel for grizzly bears, woodland caribou and moose;
- e. Most sites would not have a First Nation community and sustenance fishery situated on the same lake as the campground;
- f. Most sites would not need a transboundary agreement from another province or territory; and,
- g. Most sites would not be located closer to an extraterritorial community than a Yukon community;

70. Any alternate site proposed for a new campground will have to:

- a. Engage First Nations in meaningfully consultation (as described earlier) on the choice of the site; and,
- b. After First Nation consultations are complete, Yukon Parks would need to consult local property owners and regional communities on needed infrastructures and concerns before advancing a campground proposal through the YESAB evaluation process.

Conclusions

First Nation Consultation

71. The meaningful consultation of CTFN and TRTFN on the proposed campground is a lawful duty that has been neglected by Yukon Parks. Consultation includes the choice for the campground site.

72. If Yukon Parks continues in this manner, it is very likely that the Atlin Lake campground will end up in litigation. Litigation will permanently kill the proposal. However at the present time, it is unlikely there can be any other outcome of consultation except the selection of an alternative site.

Hunting and Trapping

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73. CTFN and TRTFN hunting and trapping rights must be consulted and accommodated.
74. Non-First Nation hunting concerns can be mitigated if conservation officers are assigned to the region.

Wildlife

75. CTFN and TRTFN must be consulted and accommodated on wildlife management at the campground site and the general area.
76. Yukon parks will not be able to mitigate a solution to woodland caribou and grizzly bear conservation programs when the site for the proposed campground feeds, houses and funnels (concentrates) these animals. It is likely there can only be one solution, the selection of an alternative campground site.

Fisheries

77. CTFN and TRTFN must be consulted and accommodated on the fisheries.
78. There can be no campground or boat launch or final First Nation consultation until needed fisheries studies are completed. It is likely these studies will conclude access to Atlin Lake must be restricted to preserve lake trout populations and TRTFN sustenance harvests. This will necessitate the selection of an alternative site for the campground.

Safety and Security

79. Parks Yukon has chosen to put a campground on Atlin Lake, the largest lake in BC and the Yukon. Yukon Parks chose to do this without consideration for a safety and security infrastructure to support the campground. There will most certainly be an increased frequency of emergencies and fatalities with the proposed campground because of the size of the lake and lack of safety infrastructures. Until appropriate safety and security services are in place, it would be negligent to build the third largest campground in the Yukon on Atlin Lake.
 - a. The lack of safety and security infrastructure cannot be mitigated by an extra visit or two each week from Park Officers, a potential volunteer shortwave radio emergency channel or warning signage. The proposed campground needs to be accommodated with infrastructure.
80. Parks Yukon has chosen to put the third largest campground in the Yukon beside a children's wilderness camp. This will place the children at risk and economically ruin the camp. There is no justifiable reasoning behind Yukon Parks' decision to place children at risk. It is negligent to build the camp next to a children's camp.
 - a. Yukon Parks has painted the Yukon's campgrounds as a safe environment for families yet

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public comments at recent meetings suggest a different reality with prevalent unlawful behaviours. While not all campers act unlawfully and not all campgrounds are out of control, there is sufficient evidence to indicate children at Camp Yukon will be placed at risk by the proposed Atlin Campground.

Alternative Sites

81. We have identified a number of insurmountable hurdles with the proposed Atlin Lake Campground site.
82. It is clear, Yukon Parks will need to choose an alternative campground site.

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Appendix A: Minister Dixon Announcement

FOR RELEASE #13-053
March 14, 2013

New territorial campground planned for Atlin Lake

WHITEHORSE—The Government of Yukon is developing plans for a new territorial campground at Atlin Lake to meet the growing demand for quality camping and recreation opportunities in the Southern Lakes region, Environment Minister Currie Dixon announced today.

“Atlin Lake is a big, beautiful lake with excellent fishing opportunities, and is less than two hours away from Whitehorse, making it an ideal location for a new campground,” Dixon said. “It is our intent that this new campground will be open to the public for the 2015 camping season.”

The site of the proposed campground is a 112-hectare reserve on the eastern shore of Atlin Lake, at Kilometre 40 of the Atlin Road just north of the British Columbia border. There has been no development on the site to date. Preliminary work suggests the campground would feature 45 campsites, a boat launch and a dock.

“Yukoners and visitors alike enjoy experiencing our incredible environment by visiting our territorial campgrounds,” Dixon added. “Campgrounds within a two hour drive of Whitehorse are at or near capacity just about every weekend during the camping season, so we know that there is considerable demand for a new campground.”

The Yukon government has identified \$75,000 in the 2012/13 Supplementary Estimates No. 2 to begin planning, and the 2013/14 Budget Main Estimates will seek \$780,000 to begin construction this summer, subject to legislative approval. As a part of the planning process, the Yukon government will seek input from the public, affected First Nations, and stakeholders.

The government operates 42 highway campgrounds throughout the territory, charging just \$12 per night or \$50 for a season’s pass. The campground network offers fishing, hiking, wildlife viewing and boating opportunities. Roadside campgrounds offer picnic tables, campfire pits, firewood and at least one picnic shelter, along with outhouses and hand-pumped cold water.

For more information about Yukon government campgrounds visit
www.env.gov.yk.ca/camping-parks/campgrounds.php.

**Appendix B: Hansard - Yukon Legislative Assembly,
Whitehorse, Yukon, April 24, 2003.**

Speaker: I will now call this House to order. We will proceed at this time with prayers.

QUESTION PERIOD

Question re: Atlin Lake subdivision development

Mr. Cardiff: I have a question for the Premier today. The Yukon Party's election platform made a commitment to work cooperatively with First Nation governments to coordinate the management of settlement lands and public lands. Does the Premier believe that the principle of cooperation should also apply to lands in the traditional territories of First Nations that have not yet finalized their land claims and self-government agreements?

Hon. Mr. Fentie: Yes, our government does believe that it applies, and I can inform the member opposite that we are deeply concerned about how things have evolved over the past number of years in terms of dealing with the First Nations on a government-to-government basis. That is why we have chosen to take the route that we are taking to formalize our relationship at a government-to-government level. That is one of the first and most important steps to solving these problems that we have continually faced in this territory over many, many years in trying to deal in a respectful and a mutual-interest based process with our First Nations.

Mr. Cardiff: The government is currently developing plans for a subdivision on Atlin Lake involving 39 cottage lots and a 17-site campground. The land in question lies in an area where the traditional territories of the Carcross-Tagish First Nation and the Taku River Tlingit overlap. Both First Nations wrote to the Premier objecting to this development and they're still waiting for a reply. In the meantime, they are upset about this government's approach to consultation. One spokesman termed the process basically meaningless and suggested that the government was just going through the motions to cover its backside.

Given his emphasis on respectful government-to-government relations and on partnerships with First Nations, why hasn't the Premier directed the Minister of Community Services to halt the work on this project until a proper consultation has taken place? [Emphasis Added]

Hon. Mr. Fentie: We are very concerned about the developments on this particular issue. It goes much deeper than what we have just committed to First Nations as a government in developing and formalizing our relationship. It includes Canada, which agreed to even fund a land use planning commission in this traditional territory. So, we obviously have a serious problem here and we are taking steps to rectify that problem.

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The plan is nothing more than conceptual and we are going to deal with the First Nations impacted on a respectful level, on a level that we committed to as governments, and we will solve this problem.

Mr. Cardiff: Well, it is a little bit more than conceptual. There has been activity taking place on the land this past winter. There are drills and Cats being walked across recreational trails, so it is a little bit more than conceptual. There is a nice coloured map and everything that goes along with this.

As the Premier well knows, this is not the only YTG land development project that has the people most directly affected up in arms. The difference this time is that this recreational development affects transboundary lands in an area where land claims have not been finalized and it puts it squarely in the Premier's court.

This government is not honouring its obligations to consult. It is not treating the First Nations involved with respect. It is not consulting with adjacent property owners, such as Bethany Tabernacle. [Emphasis Added] This high-handed way of doing things is the direct opposite of what this government promised to do.

Speaker: Would the member ask his question, please?

Mr. Cardiff: Certainly. Will the Premier put the brakes on this project and send a qualified senior official from his land claims office to resolve this impasse, or is he prepared to see this government project head for the law courts?

Hon. Mr. Fentie: First, I must point out that, to defend the argument the member is making, he must provide the necessary burden of proof that we are, indeed, proceeding with this development, which we are not. In fact, I have drafted a letter to the First Nations outlining the fact that we are not going to proceed, that the process is flawed, and we intend to fix it. I also want to reiterate that Canada has made a very significant commitment under the MOU to the Carcross-Tagish First Nation to the Dakh Ka Land Use Planning Commission. This particular process the government had embarked upon is also in conflict with that commitment. That's why we are taking the steps we are to ensure that this process does not proceed as it is laid out, and that we sit down, as governments, with the First Nation to make sure the land use planning process continues as was committed to them by the federal government and by the Yukon government, by signing on to the MOU with Carcross-Tagish First Nation.

So, we are taking the steps to rectify the situation, and that clearly lays out the burden of proof that we are honouring our commitment to deal with First Nations in a respectful way and on a government-to-government basis.

Question re: Double standard by government (business loans outstanding) ...

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Appendix C: Hansard - Yukon Legislative Assembly, Whitehorse, Yukon, April 11, 2013, p.2385-2387.

Mr. Barr: “I would like to thank the Minister of Tourism and Culture for his opening remarks. It is my honour to rise to debate the government’s estimates for 2013-14 for the Department of Tourism and Culture.

There are also the caribou: if you haven’t been down in the Southern Lakes area, there has been work on the Southern Lakes herd for over 20 years now in reclaiming that Southern Lakes caribou herd. This was the first year, while I was out helping Art Johns on his trapline, directly adjacent across from the new proposed campground on the Atlin Road, we personally saw 28 caribou. There have been sightings of 37 caribou in that area. If you’ve never been out there or have been living out there for many years, you might see one or two caribou, so to see herds of 37 or 28, it has taken a lot of work. [Emphasis Added]

I acknowledge the efforts of all those people involving the cumulative efforts, not only of the Southern Lakes caribou herd recovery program and seeing to the success it is just this winter.

I would like, at this time, to maybe start off with a question to the minister regarding the plan for a territorial park on Atlin Lake. The Government of Yukon announced it is developing plans for a new territorial campground at Atlin Lake. The government intends that it will be open to the public for the 2015 camping season.

The site of the proposed campground is a 112-hectare reserve on the eastern shore of Atlin Lake, at kilometre 40 of the Atlin Road, just north of the British Columbia border. The Yukon government has identified \$75,000 in the *Supplementary Estimates No. 2, 2012-13* to begin planning, and the 2013-14 budget main estimates will seek \$780,000 to begin construction this summer.

I just briefly mentioned that the wintering grounds of this caribou herd — Southern Lakes — that is finally rising to peaks never seen before. This is exactly the area where I saw this herd of 28, right in the same campground area that they are looking at removing from the caribou’s natural winter habitat.

If you have driven along this road in the winter, you will see the tracks on the sides of the hills in the snow. You can’t see a spot of just natural, newly fallen snow for the numbers of tracks. This goes on for kilometers, right in that specific area. [Emphasis Added]

I have concerns about how heritage, culture and tourism are going to be mitigated. It’s my understanding, in speaking with First Nation elders of the area, that this specific area is of huge importance to the archaeological artifacts that are yet to be identified at the site.

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As this plan goes forward, my question to the minister this: What steps is he taking with the stakeholders, the combined First Nations of that area — CTFN, Taku River Tlingit — who have identified that this site contains many artifacts that have yet to be looked for, discovered or explored? I'd like to know the extent of the Department of Tourism and Culture's involvement in planning with the Environment minister as this proceeds and as we look at construction in this fiscal year."