

Federal Authority Advice Record (FAAR)

FAAR Response must be submitted by October 11, 2024

Rocky Creek Metallurgical Coal Project – CTI Plus Resources Ltd.

Registry File: [88867]

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| Department/Agency | Transport Canada |
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1. a) Is it probable that your department or agency may be required to exercise a power or perform a duty or function related to the project to enable it to proceed?

If yes, specify the Act of Parliament and that power, duty or function.

Based on the information provided in the Initial Project Description (IPD), Transport Canada may have a power or perform a duty or function related to the Project under the *Canadian Navigable Waters Act*.

Canadian Navigable Waters Act

Under the *Canadian Navigable Waters Act* (CNWA), Transport Canada (TC) issues approvals for (a) a designated major work that may interfere with navigation on any navigable water; (b) a work – other than a designated major or minor work – that may interfere with navigation and that is located on a navigable water listed on the Schedule; (c) a work – other than a designated major or minor work – that may interfere with navigation, and that is located on a navigable water that is not listed on the Schedule, whereby the proponent has decided to apply to TC.

TC does not require approvals for works that do not interfere with navigation, or works that meet the criteria of the Minor Works Order (see website link below for details). In cases where a work (other than a minor work) does not interfere with navigation, the proponent is required to deposit information and issue a public notice.

For a work – other than a major or minor work – that may interfere with navigation and that is not located on the schedule, TC requires proponents to post specific information regarding their work on the Online Registry inviting any interested party to comment, and seek authorization through a public resolution process.

Upon application TC requires an application form, as well as information documents relevant to the work which can include, as prescribed by the Minister of Transport, location maps, drawings, methodology of construction (including contingency plans), navigation use, Indigenous use, level of impacts and appropriate mitigation for the impacts for interference to navigation.

The CNWA Application for Approval Form can be found at this website link (create a user/log in to continue): [TC Navigation Protection Program Website](#).

Should the proponent have questions, they can contact the Navigation Protection Program at NPPAC-PPNPAC@tc.gc.ca.

Visit our website: [Navigation Protection Program \(canada.ca\)](#)

For some more information check out: [Navigation Protection - Canada.ca](#)

b) Please describe any Indigenous or public consultation that will be undertaken in relation to the exercise of that power, duty or function, including when it would take place.

If a CNWA approval (as described above) is required, the proponent would be responsible for posting on the TC-Navigation Protection Program Registry; there is a minimum posting of 30 days for the public comment period, before TC can issue an approval. Indigenous consultation may also be required with regards to the approval(s) and the conditions attached to the approval(s).

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2. Is your department or agency in possession of specialist or expert information or knowledge in its area of expertise that may be relevant to the conduct of an impact assessment of the Project?

Specify the specialist or expert information or knowledge.

TC is in possession of specialist or expert information or knowledge in the following areas, which may be relevant to the Project:

Impacts to Navigation Resulting from the Project

The mandate of the Navigation Protection Program (NPP) is to protect the public right of navigation on Canadian navigable waters. The NPP administers the [Canadian Navigable Waters Act](#) (CNWA), the [Wrecked, Abandoned or Hazardous Vessels Act](#) (jointly with the [Department of Fisheries and Oceans](#) and the [Canadian Coast Guard](#)), and certain sections of the [Canada Shipping Act, 2001](#). Program responsibilities of the NPP focus on the administration and enforcement to protect the public right of navigation. The program:

- approves and sets terms and conditions for works in navigable waters;
- assesses navigable waters for additions to the Schedule;
- manages obstructions in navigable waters;
- enforces the [Private Buoy Regulations](#);
- authorizes people to salvage, remove or dispose of abandoned boats; and
- enforces rules against dewatering (removing water from) or depositing materials in navigable waters.

The mandate of the NPP also includes considering requirements under the IAA, or any of the northern IA regimes, when reviewing works on navigable water in Canada. Under the [Canadian Navigable Waters Act](#), approvals for designated major projects on any navigable water would only be issued after the new comprehensive IA is complete and the project is approved.

Transportation of Dangerous Goods

Dangerous goods must be handled, offered for transport and transported in accordance with the [Transportation of Dangerous Goods Act](#) and associated Regulations.

The transportation of dangerous goods is often required for the construction and ongoing operation of most proposed projects undergoing an environmental review. Examples of dangerous goods include acetylene, fuels, some types of paints, wastes and by products that also meet the criteria of [Part 2 \(classification\) of the TDG Regulations](#), etc.

Transport Canada's Transportation of Dangerous Goods Directorate conducts work related to the safe transportation of dangerous goods and the prevention of and response to incidents involving dangerous goods. The group's activities consist of:

- Developing and enforcing safety standards for the safe transportation of dangerous goods;
- Conducting compliance monitoring of modal (air, rail, marine, road) shippers and importers, assessing emergency response assistance plans, means of containment standards and facilities; and,
- Operating the Canadian Transport Emergency Centre to provide advice on emergency response operations for incidents involving dangerous goods.

Emergency Response Assistance Plan (ERAP) program administered by TC

Under [Part 7 of the TDG Regulations](#), [Emergency Response Assistance Plans](#) (ERAPs) are required from companies offering for transport or importing certain types of dangerous goods before they can be transported. The ERAP must be approved by TC and the company must have received an ERAP number from the department before being allowed to ship ERAP-able products. Anyone who handles, offers for transport, imports and/or transports dangerous goods must comply with TDG regulations – this includes holding a valid TDG training certificate, completing the appropriate documentation, using the proper means of containment, reporting any reportable spills and holding a valid ERAP when required.

Rail Safety

Transport Canada's Rail Safety Program is responsible for developing, implementing and promoting safety policy, regulations, standards and research. It also works with partners to make safety improvements at rail/road grade crossings.

The Rail Safety Directorate's organizational mission is to advance the safety of the Canadian rail transportation system through regulation, outreach and oversight, where this mission leads to a vision of a national transportation system that Canadians recognize as safe and efficient.

The dimensions of Regulation, Outreach and Oversight are three core areas in which Rail Safety carries forth its collective objective to achieve a safe rail transportation system. It is within these three dimensions that the expertise of rail safety may be looked upon to provide advice for projects directly or indirectly involving railways.

Regulations

- Legislation, policy development and interpretation
- International, intergovernmental, departmental and interdepartmental relations
- Focal point for encouraging new technologies and harmonization

Outreach

- Communications, stakeholder consultation and education and awareness
- Funding programs, particularly for crossing improvements

Oversight

- Program delivery and tracking including audits, inspections, complaint-handling, enforcement and responding to safety threats

The Directorate regulates the operations and the equipment owned by the Canadian National Railway Company.

TC's Railway Safety Engineering group monitors compliance with the provisions of the [Railway Safety Act](#) (RSA) and regulations pertaining to the construction and maintenance of railway infrastructure such as track, right of way, structures, crossings and signal systems as well as natural hazards. TC's Railway Safety Equipment and Operations group monitors compliance with the RSA and the [Canadian Rail Operating Rules](#). Equipment Inspectors inspect equipment and monitor the railway's equipment maintenance programs.

Requirements Pursuant to the Railway Safety Act

The Initial Project Description refers to construction of new rail track connecting a proposed rail loop and rail loadout facility to the CN main line. This may involve the construction of structures above or below a CN rail line. The IPD also does not identify the owner of the track to be built between the project's site and the CN Rail main line. If it is CN, then TC would have full regulatory oversight

responsibility (both for infrastructure and Operations).

For the purposes of subsection 8(1) of the [Railway Safety Act](#), the following is prescribed as railway works of a kind for which notice shall be given: *the construction or alteration of structures located above or below a line of railway by a party other than a railway company, but excluding a mine or an oil or gas well*. As such, that type of construction would be subject to the Notice of Railway Works Regulations and the project proponent would be required to file a Notice of Railway Works. All the details of the regulation can be found at the following link: [Notice of Railway Works Regulations \(justice.gc.ca\)](#)

If the track owner is not a federally regulated railway, then Transport Canada would only have oversight responsibility. The proponent will need to clearly identify who the owner of the trackage will be in order for Transport Canada to determine our responsibility to this portion of the project.

Local railway companies¹ fall directly under the authority of the [Railway Safety Act](#) when operating on federally-regulated railway lines. This means that local railway companies are directly responsible for complying with the federal railway safety regime when on federally-regulated track. This will involve submitting railway safety rules that apply to their operations to Transport Canada for approval. Transport Canada will be responsible for monitoring their compliance to these rules by going directly to their company instead of their host railway company.

Civil Aviation and Aviation Safety

The Initial Project Description refers to construction of a new transmission line. Transport Canada requires additional information about the height and location of the transmission line to determine if marking and lighting will be required.

[Standards Branch](#) and Policy & Regulatory Services Branch, respectively, are the most likely branches from [Civil Aviation](#) to provide specialist or expert information or knowledge in the context of aviation related IA projects. Notwithstanding, other branches of Civil Aviation may provide beneficial advice depending on the circumstances surrounding a project.

The Standards Branch is responsible for the regulatory framework in areas such as aerodromes & air navigation, aviation occupational health & safety, aircraft emission standards (including noise), aircraft maintenance and manufacturing requirements among others.

Areas of aviation safety where specialist or expert information or knowledge may prove useful to IA projects:

- Aviation Occupational Health and Safety
- Aircraft Emissions (including noise)
- Land Use in the Vicinity of Aerodromes
- Aerodrome Certification
- Private Landing Strip
- Wildlife Control (Aerodromes and Air Navigation)
- Lighting and Painting of wind generation facilities/bridge structures/marine trestles for Air Safety
- Aerodrome Obstructions

Indigenous Relations

The Indigenous Relations Unit supports policy, program, and regulatory initiatives across Transport Canada where Indigenous peoples may be affected.

Activities

Consultation and engagement with Indigenous groups is an important part of sound policy development and informed decision-making. The Indigenous Relations Unit contributes to the work of Transport Canada across all programs and modes by promoting consistency in meeting the legal duty to consult, ensuring Modern Treaty obligations are met in the conduct of TC's activities, and

¹ See Railway Safety Act for definition of "local railway company"

working to strengthen Canada's relationship with Indigenous peoples.

Promoting consistency in meeting the Legal Duty to Consult

In carrying out Impact Assessment work, the legal Duty to Consult may arise. The Duty to Consult arises when the Crown contemplates conduct that might adversely affect potential or established Aboriginal or Treaty rights. To promote consistency in meeting this important legal obligation within the Department, Indigenous Relations:

- Supports program/project managers in the conduct of consultation and engagement activities and in maintaining Indigenous consultation records;
- Conducts analysis on a case-by-case basis to recommend appropriate Indigenous consultation and engagement activities with respect to Transport Canada's activities;
- Provides support, training, and guidance to managers and Indigenous Relations advisors in the regions and the NCR;
- Tracks and contributes to consultation and engagement work in support of high-profile files; and
- Collaborates with other federal departments; acting as one-window for Government of Canada policy initiatives and tools development.

TC activities that may trigger a legal duty to consult, and/or an opportunity to strengthen relationships and promote better decision-making, include but are not limited to: regulatory approvals, contribution funding (e.g. transportation infrastructure projects), real property transactions and policy/regulatory development.

If requested by the Agency to participate in and support Indigenous consultation activities, TC's lead IA officer will involve their Indigenous Relations unit in Pacific Region.

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3. Has your department or agency considered the project; exercised a power or performed a duty or function under any Act of Parliament in relation to the Project; or taken any course of action that would allow the Project to proceed in whole or in part?

No.

4. Has your department or agency had previous contact or involvement with the proponent or other party in relation to the Project? (for example: an enquiry about methodology, guidance, or data; introduction to the project)

Provide an overview of the information or advice exchanged.

No.

5. Does your department or agency have additional information or knowledge on the project not specified above, including information on the geographic, environmental, economic or social context of the project? (e.g. location of protected or sensitive areas, previous history between local communities and proponent or similar projects, local or regional social or economic concerns)?

No.

6. Based on the mandate and area(s) of expertise of your department or agency, what are the key issues related to the project?

The information provided in the proponent's Initial Project Description is high level and Transport Canada would need more details (as per Table 1 below) to determine if we have issues concerning the project.

For each key issue:

- Describe the potential effect or the nature of the issue, including any relevant context ;
- Provide the rationale and/or evidence for why it is a key issue;

- Provide advice on how to address the issue, including any information or studies that should be required in the Tailored Impact Statement Guidelines, potential mitigation measures, and/or regulatory requirements relevant to the issue;
- Provide a concise, plain-language summary of the issue for inclusion in the Summary of Issues.

The information provided will be considered by IAAC and may be used to inform its decision on whether an impact assessment is required and, where appropriate, for next steps in the impact assessment process including to develop project-specific draft Tailored Impact Statement Guidelines.

Please use Table 1 to respond to this question.

7. Where possible, identify any additional information the proponent could include in their response to the Summary of Issues, and, if IAAC requires it, in their Detailed Project Description, that would:
- Give confidence that minor issues or effects could be addressed and managed by clear measures, existing guidelines, other regulatory processes or other existing tools;
 - Inform the decision as to whether an impact assessment is required; or
 - Aid in tailoring the Tailored Impact Statement Guidelines, if IAAC decides an impact assessment is required.

These clarifications and additional information will be included as specific questions in the Summary of Issues provided to the proponent.

Please use Table 2 to respond to this question.

Transport Canada
Name of Departmental / Agency
Responder

Philip Bartha
Regional Environmental Advisor
Title of Responder

October 11, 2024
Date

Table 1: Key Issues to inform the impact assessment process

IAAC asks that federal authorities align expert advice with IAAC’s approach to tailoring by project, which focuses on key project issues, clearly focused on the prevention of adverse effects within federal jurisdiction. In identifying key issues, federal authorities should be mindful of the project’s context (size, scope, location), Indigenous Knowledge and perspectives, and public concerns. Key issues that may be relevant to the decision include:

- adverse effects within federal jurisdiction and direct or incidental adverse effects that may be to some extent significant, based on federal experts’ knowledge and experience with past projects;
- potential impacts on Indigenous Peoples and their rights, based on Indigenous Knowledge and perspectives or experience with past projects;
- effects on key species or habitats (e.g. at risk, important to Indigenous communities, commercial importance, provide important ecosystem function);
- issues or effects that may result from novel project activities, components or technology;
- effects with large uncertainties, including in the effectiveness of mitigation measures;
- adverse effects within federal jurisdiction or direct or incidental adverse effects where mitigation measures are limited;
- positive effects, including where project may support other governmental priorities, including reconciliation with Indigenous Peoples; and
- key concerns raised by Indigenous groups or local communities.

Effects that are anticipated to be minor or which can be managed using well understood mitigation, existing guidance, and/or other regulatory processes may have simplified information requirements or may be removed entirely. Measured advice from federal authorities on key issues and solutions —and on the scope and detail of any required information and studies — will enable IAAC to focus assessments on issues that are important to participants and to decision-makers.

| Comment ID | Relevant section of the Initial Project Description | Valued Component or Factor to Consider | Description of Key Issue (Context and Rationale) | Advice | Plain language summary for inclusion in Summary of Issues |
|--|---|---|--|---|---|
| <p>Please identify comments by organization and comment number.</p> <p>e.g.: IAAC-01</p> | <p>If the comment is related to a specific section of the Initial Project Description, please include that reference.</p> | <p>Identify valued component(s) or factor to consider—within the mandate of your department or agency—to which the potential effect or issue applies.</p> | <p>Provide a brief description of the issue and rationale for being a key issue.</p> <p>Include, where relevant,:</p> <ul style="list-style-type: none"> • the pathway of effects; • relevant context on why it is a key issue; • key uncertainties that should be addressed in the impact assessment; • Indigenous or public concerns or perspective; • potential for differential effects among diverse subgroups; • scientific evidence or Indigenous Knowledge, including from past project experience, which supports inclusion as a key issue. | <p>Where applicable, briefly provide solutions on how to address the potential issue or effects including:</p> <ul style="list-style-type: none"> • Information or studies required to describe and characterize the potential effect; including any guidance for data collection and/or analysis or existing data sources to inform the assessment; • Any means, including any powers, duties or functions, that your department or agency has that may mitigate, manage, or set conditions related to the issue or effect; • Guidance or policies for mitigating effects or any standard and well-understood mitigation measures that would address the effect, including follow-up monitoring activities; and/or • Commitments the proponent could make to respond to the issue. <p>Where available, please refer to existing text in the Tailored Impact Statement Guidelines template.</p> | <p>For issues to be included in the Summary of Issues, provide a concise, plain language synopsis of the key issue and any questions or directions for the proponent.</p> |
| TC-01 | <p>Executive Summary – Figure 2, p. viii</p> <p>Executive Summary – Access, Transportation, and Power, p. xi</p> <p>4.1 Project Infrastructure – Access, Transportation, and Power, p. 19</p> | Impacts to Navigation | <p>The proposed watercourse crossings and transmission line crossings over various watercourses (e.g. creeks and rivers) may impact navigation. Information about navigation is required to determine if the project requires a <i>Canadian Navigable Waters Act (CNWA)</i> approval.</p> <p>Transport Canada currently does not have enough information about the project components and works to determine if the <i>Canadian Navigable Waters Act</i> would apply.</p> | <p>The proponent will need to determine if the watercourses that intersect the proposed transmission line and watercourse crossings (e.g. bridges) are navigable or provide Transport Canada with usage information to assist.</p> <p>If the creeks and rivers support navigation, the proponent can complete a self-assessment to determine if the work meets the criteria of a Minor Works Order for Watercourse Crossings and Ariel Cables.</p> <p>Minor Works Order</p> | <p>Proposed bridges and the transmission line may impact navigation within creeks and rivers. Transport Canada requires more information to determine if these creeks and rivers are navigable. What project components and works will require the proponent to obtain a <i>Canadian Navigable Waters Act</i> permit?</p> |

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| | | | | Project Review Tool for self-assessing works against the Minor Works Order | |
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Please insert additional rows as necessary.

Table 2. Clarifications or additional information the Proponent could include in the response to Summary of Issues

| Comment ID | Relevant section of the Initial Project Description | Description of Issue, Concern or Uncertainty | Clarification or additional information | Plain language summary for inclusion in Summary of Issues |
|--|---|---|---|--|
| <p>Please identify comments by organization and comment number.</p> <p>e.g.: IAAC-01</p> | <p>If the comment is related to a specific section of the Initial Project Description, please provide a reference.</p> <p>You may also choose to copy the relevant text here.</p> | <p>Provide a description of the issue, concern or uncertainty the proponent could address in their response to Summary of Issues and, if IAAC requires it, in their Detailed Project Description that would give confidence that the issue will be addressed and managed, by clear measures, existing guidelines, regulatory processes or other existing tools, and thus be the subject of simplified information requests in the guidelines, or simply be removed.</p> | <p>Provide recommended clarification or additional information to be included in their response to the Summary of Issues and, if IAAC requires it, in their Detailed Project Description to address the issue, concern or uncertainty, for example:</p> <ul style="list-style-type: none"> • Clarifications to elements of the project description (e.g. components, activities, locations or alternatives); • Proposed project design changes that could avoid effects; • Evidence that could be presented to demonstrate there is no effect pathway of effect or that effects would be negligible; • Evidence that standard mitigations will address potential effects • Commitments the proponent could make to respond to the issue, including the implementation of federal operational policies or guidance documents. | <p>For issues to be included in the Summary of Issues, provide a concise, plain language synopsis of the issue and of the question or direction for the proponent.</p> |
| TC-01 | 4.1. Project Infrastructure, p. 14 | Transport Canada requires more information about the track length. How many kilometres of new track will be needed for the rail loop and loadout facility? | | Transport Canada asks that the proponent describe how many kilometers of new track will be needed for the rail loop and loadout facility. |
| TC-02 | 4.1. Project Infrastructure – Access, Transportation and Power, pp. 18-19 | Transport Canada requires more information about who will own the railway track infrastructure. What is the intent for the operational aspects of the rail loop and rail loadout facility? | Will the rail loop infrastructure be built and owned by the proponent or by CN? | Transport Canada asks that the proponent describe who will build and own the new rail loop and loadout facility. |
| TC-03 | 4.1. Project Infrastructure – Access, Transportation and Power, pp. 18-19 | Transport Canada requires more information about rail switching. Where will the rail switching occur and who will do the switching? | Will the switching be conducted by CN staff or proponent staff? And will any of the switching occur on the CN main line track? | Transport Canada asks that the proponent provide information about rail switching. |
| TC-04 | 4.1 Project Infrastructure – Access, Transportation, and Power, p. 19 | Transport Canada requires further information on the transmission line, including the heights and precise location of the towers. Transport Canada requires this information to determine if marking and lighting of the structures will be required. | <p>Advisory Circular 601-007 describes the Aeronautical Assessment process for proponents.</p> <p>Additionally, if the project is approved, Transport Canada may note that the mine is a blasting hazard on aeronautical maps or via a Notice to Airmen (NOTAM).</p> | Transport Canada requires more information about the transmission line to determine if it needs to be marked and lighted. |

Please insert additional rows as necessary.