

ATTACHMENT

**Federal Authority Advice Record: Designation Request under the IAA
Response due by **October 1, 2024****

Vista Coal Mine Phase II Expansion Project (the Project)

Department/Agency	Crown Indigenous Relations and Northern Affairs Canada
Lead Contact	Felexce Ngwa
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1. Has your department or agency considered whether it has an interest in 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 (including provision of financial assistance) that would allow the Project to proceed in whole or in part? Specify as appropriate.

CIRNAC does not have an interest in the Project, and has not taken any course of action that would allow the Project to proceed.

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2. 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 that power, duty or function and its legislative source.

It is improbable that Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) will exercise a power or perform a duty or function related to the Project to enable it to proceed as CIRNAC is not a regulatory department with respect to the proposed project.

CIRNAC does not have a regulatory function relative to the proposed project but can offer subject matter expertise as required of Federal Authorities under the Impact Assessment Act. CIRNAC's Major Projects Management Office facilitates communication and coordination of subject matter expertise from within the department and provides this expertise to partner departments and agencies involved in the Impact Assessment Process – Horizontal Initiative.

3. If your department or agency will exercise a power or perform a duty or function under any Act of Parliament in relation to the Project, will it involve public and Indigenous consultation?
Specify as appropriate.

Not applicable.

4. Is your department or agency in possession of specialist or expert information or knowledge that may be relevant to any potential adverse effects within federal jurisdiction caused by the Project or direct or incidental adverse effects stemming from the Project?

Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) has expert information, knowledge, and tools that may benefit impact assessment or regulatory processes related to the proposed project. Specifically, CIRNAC can provide guidance and advice related to the federal government's legal obligation to consult and, where appropriate, accommodate when contemplating conduct that may adversely impact asserted or established Aboriginal and/or treaty rights, that are recognised and affirmed by section 35 of the *Constitution Act, 1982*. This duty is supported through related jurisprudence, legislation, policy, and treaties. Additionally, CIRNAC may provide advice and guidance related to specific Indigenous groups' special relationship with the Government of Canada (The Crown), including information related to recognition of Indigenous rights and self-determination (RIRSD) tables, modern treaties or self-government agreements, and other related negotiations and processes.

Expert Information and Knowledge

- a) **Section 35 Aboriginal and Treaty Rights are recognised and affirmed by Section 35 of the *Constitution Act, 1982*. These are reflected in court decisions, historic treaties, modern treaties, and some self-government agreements. There are elements involving s.35 rights outlined in agreements stemming from recognition of Indigenous rights and self-determination processes and other related agreements:**
- CIRNAC provides guidance and advice to federal officials for fulfilling the legal duty to consult and, where appropriate, accommodate, when contemplating activities that may adversely impact upon established and asserted Section 35 rights. CIRNAC continues to work on updating the [2011 Guidelines for Federal Officials to Fulfill the Duty to Consult, Engagement with Indigenous groups to renew the guidelines](#) began in February 2024 and is ongoing;

Publicly Available Tools

- b) **The Aboriginal Treaty Rights Information System (ATRIS) is a web-based, geographic information system intended to help users identify the location of Indigenous groups, and to provide users with information pertaining to each Indigenous group's established and/or asserted Section 35 rights. ATRIS provides access to profiles, documents and maps that can be used to assist governments in determining their consultation obligations and other interested parties in carrying out consultation and engagement research. CIRNAC can offer assistance in navigating, and engaging with the ATRIS system.**
- c) **The Reporting Centre on Specific Claims is a publicly available tool that can be utilized to search for information about specific claims that are still in process as well as claims that have already been resolved. Specific Claims made by First Nations against the Government of Canada relate to the administration of land and other First Nation assets and to the fulfillment of historic treaties and other agreements. Settling specific claims is one of the many steps on the journey to reconciliation with First Nations.**

Additional Considerations

- d) **United Nations Declaration on the Rights of Indigenous Peoples Act (UNDA):**

- The Government of Canada is implementing the *United Nations Declaration on the Rights of Indigenous Peoples Act* (UNDA), which affirms the Declaration as a universal international human rights instrument with application in Canadian law. Justice Canada is the federal lead on UNDA, and CIRNAC has an important role due to its relationships with Indigenous partners. CIRNAC's advice and actions in relation to the initiative under consideration will be consistent with the rights-based approach endorsed by UNDA.
- Canada has worked in cooperation and consultation with Indigenous partners to develop the UNDA Action Plan. This Action Plan includes a number of measures which relate directly to Indigenous decision-making and participation and must be taken into account where Indigenous rights may be affected.

e) **Reconciliation:** All departments continue to work on implementing all 94 Calls to Action from the [Truth and Reconciliation Commission Final Report](#).

5. Has your department or agency had previous contact or involvement with the Proponent or other parties in relation to the Project?

CIRNAC has had no previous contact or involvement with the proponent or other party in relation to the proposed project.

6. From the perspective of the mandate and area(s) of expertise of your department or agency, does the Project have the potential to cause adverse effects within federal jurisdiction or direct or incidental adverse effects as described in section 2 of the IAA? Could any of those effects be managed through legislative or regulatory mechanisms administered by your department or agency? If a licence, permit, authorization or approval may be issued, could it include conditions in relation to those effects?

CIRNAC does not have any regulatory mechanisms or permits related to those effects.

7. Does your department or agency have a program or additional authority that may be relevant and could be considered as a potential solution to concerns expressed about the Project? In particular, the following issues have been raised by the requestor:

- potential impacts on species at risk and their habitats;
- potential impacts on migratory birds;
- potential impacts on fish and fish habitat;
- potential impacts on the health, social and economic conditions of Indigenous Peoples;
- potential impacts on Aboriginal and Treaty Rights;
- potential impacts on Indigenous lands and resources used for traditional purposes;
- potential impacts on surface water quality and quantity;
- potential impacts to groundwater quality and quantity; and
- potential impacts on air quality.

If yes, please specify the program or authority.

Existing CIRNAC programs that may be able to address one or more of the above concerns include:

- **First Nation Adapt Program:** This program provides funding to First Nation communities located below the 60th parallel to assess and plan for the impacts of climate change on community infrastructure and emergency management. The program provides support for communities to address one or more of the following types of projects:
 - risk assessments of climate change impacts on community infrastructure or emergency management;

- development and assessment of adaptation options;
- cost-benefit analysis of adaptation options.

The floodplain mapping portion of the program provides support for communities to:

- develop floodplain maps (including drainage studies) in order to identify flood risks to local infrastructure and inform local decision-making;
- develop best practices, tools and adaptation options for flood management;
- participate in regional watershed management processes;
- collect and share regional watershed data.

Status: Ongoing intake - funding available

Contact: Elizabeth Laval
 Email: adaptation@rcaanc-cirnac.gc.ca
 Sector/Branch: Northern Affairs / Natural Resources and Environment Branch / Climate Change and Clean Energy Directorate

- **Indigenous Community-Based Climate Monitoring Program**: The program supports community-led projects to monitor climate and the environmental effects of climate change on communities and traditional territories. The program builds capacity to support the design, implementation, or expansion of long-term, community-based Indigenous-led climate monitoring projects.

Status: The Program accepts proposals from First Nations in the North, Inuit and Métis on an on-going basis. The call for proposals for First Nations projects South of 60° latitude is now closed. The deadline to submit proposals was October 20, 2023.

Contact: Marlene Doyle
 Email: surveillanceclimat-climatemonitoring@rcaanc-cirnac.gc.ca
 Sector/Branch: Northern Affairs / Natural Resources and Environment Branch / Climate Change and Clean Energy Directorate

- **Federal Interlocutor's Contribution Program**: The objective of the Federal Interlocutor's Contribution Program is to help to build capacity, and to maintain a relationship based on trust and respect between Métis and non-status Indian people and the Government of Canada. This is achieved by: maintaining political relations with their representative organizations; acting as the point of contact within the federal government; acting as an advocate of their issues within Cabinet; entering into contribution agreements to help to build organizational and institutional capacity; and, building stronger linkages with provincial governments. In order to achieve these objectives, the Program supports work with Métis, non-status Indian and off-reserve Indigenous organizations towards:
 - achieving practical ways of improving Métis and non-status Indians socio-economic conditions,
 - increasing self-reliance, and
 - reducing dependency.

Status: Formal call out closed for this fiscal (re-opens Feb/Mar 2024). Late applications may be considered pending availability of funds.

Contact: Erik Anderson
 Email : erik.anderson@rcaanc-cirnac.gc.ca

- **Supporting Indigenous Women and 2SLGBTQIA+ Organizations**: Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) is working with Indigenous women's and 2SLGBTQI+ organizations to:
 - develop and support relationships based on trust and respect
 - create opportunities to empower and engage Indigenous women's and 2SLGBTQI + organizations in decision-making processes that impact their lives

This program will provide contribution funding for projects that:

- increase the ability of Indigenous women's and 2SLGBTQI + organizations to engage at the grassroots level
- advance grassroots voices and the priorities of Indigenous women and 2SLGBTQI + people within all levels of government
- support real and meaningful systemic change in Canada

Status: The first call for proposals closed on February 11, 2022. A new call for proposals will occur in October 2025 for projects to begin in April 2026.

Contact: Cherill Baynham
Email: cherill.baynham@rcaanc-cirnac.gc.ca
Sector/Branch: Policy and Strategic Direction / Indigenous and External Relations Branch / Indigenous Relations and Policy Directorate / Indigenous Women's and 2SLGBTQI+ Relations Unit
Generic Email: femmesautochtones-indigeneswomen@rcaanc-cirnac.gc.ca

- **Federal Initiative on Consultation:** To ensure Indigenous peoples have consultation and engagement capacity and are meaningfully participating in consultation and engagement activities.

Status: Fully subscribed.

Contact: Kirsten Miller
Email: kirsten.miller@rcaanc-cirnac.gc.ca
Sector/Branch: Implementation Sector / Consultation and Accommodation Unit Directorate

A comprehensive list of programs, services, and initiatives provided by CIRNAC for Indigenous and northern communities and organizations and be found [here](#).

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8. Does your department or agency have a program or mechanism that would address or mitigate impacts resulting from ammonia, nitrates, nitrites, sulphates, mercury and selenium contamination of water systems? If yes, please provide a brief explanation on the program, mechanism, including whether Indigenous consultation takes place.

CIRNAC does not have specific programs dedicated to mitigating impacts resulting from the contamination of water systems by ammonia, nitrates, nitrites, sulphates, mercury and selenium.

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9. Does your department or agency have information about the interests of Indigenous communities in the vicinity of the Project; the exercise of their rights protected by section 35 of the *Constitution Act, 1982*; and/or any consultation and accommodation undertaken, underway, or anticipated to address adverse impacts to the section 35 rights of the Indigenous communities?
If yes, please specify.

The Project Summary identified the Aseniwuche Winewak Nation, Kehewin Cree Nation, O'Chiese First Nation, Ermineskin Tribe, and Whitefish Lake First Nation #128 as potentially being impacted by the project. CIRNAC notes that Louis Bull Tribe and Stoney Nakoda Nation have expressed a strong desire to be consulted on this project but their request has been rejected by the province, as outlined in the

Request for Designation (pg.26). It might be useful to talk with these First Nations to better understand their concerns.

CIRNAC would also like to provide the following information related to Canada's relationships with the potentially impacted Indigenous groups for this project:

Aseniwuche Winewak Nation is claiming to be a Section 35 rights bearing collective. A discussion table was created to discuss their claim and establish an alternative to litigation, but is inactive, as Aseniwuche Winewak Nation decided to continue with litigation.

In addition, Kehewin Cree Nation, O'Chiese First Nation, and Ermineskin Tribe are part of the Treaty 6 Recognition of Indigenous Rights and Self-Determination (RIRSD) Table. Also, Whitefish Lake First Nation #128 is part of the Treaty 8 RIRSD Table.

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10. If your department or agency has guidance material that would be helpful to the Proponent or IAAC, please include these as attachments or hyperlinks in your response.

Link List

Principles respecting the Government of Canada's relationship with Indigenous peoples
<https://www.justice.gc.ca/eng/csj-sjc/principles-principes.html>

Statement of Principles on the Federal Approach to Modern Treaty Implementation
<https://www.rcaanc-cimac.gc.ca/eng/1436288286602/1539696550968>

Cabinet Directive on the Federal Approach to Modern Treaty Implementation
<https://www.rcaanc-cimac.gc.ca/eng/1436450503766/1544714947616>

Canada's Collaborative Modern Treaty Implementation Policy
<https://www.rcaanc-cimac.gc.ca/eng/1672771319009/1672771475448>

United Nations Declaration on the Rights of Indigenous Peoples Act
<https://laws-lois.justice.gc.ca/eng/acts/U-2.2/>

United Nations Declaration Act – Action Plan
<https://justice.gc.ca/eng/declaration/ap-pa/index.html>

Aboriginal and Treaty Rights Information System
https://sidait-atris.aadnc-aandc.gc.ca/atris_online/home-accueil.aspx

Aboriginal Consultation and Accommodation - Updated Guidelines for Federal Officials to Fulfil the Duty to Consult
<https://www.rcaanc-cimac.gc.ca/eng/1100100014664/1609421824729>

Bruno Steinke

Name of Departmental / Agency Responder

**Senior Director, Consultation and
Accommodation Unit, Modern Treaties
Consultation and Intergovernmental
Relations Sector, CIRNAC**

Title of Responder

October 1, 2024

Date