



REASONS FOR DECISION ATAC RESOURCES APPLICATION TO AMEND LQ00531

A. Background

ATAC Resources Inc. ("ATAC") currently holds an approved operating plan for a Class 3 exploration program that is valid until August 13, 2024. The approval was issued in 2014, as set out in the *Quartz Mining Act* (Yukon). The exploration program authorizes ATAC to carry out the following activities on quartz mineral claims that form the "Rau Property":

- Use of heavy equipment
- Construction of access trails on Rau Property (40 km, 2 m width)*
- Crossing a watercourse (construction of four new log bridges- approximately 5m width, culverts)
- Airstrip maintenance
- Helicopter use (10 helipads, 50 m² each)
- Line cutting (20 km length, 1m width)
- Clearing sites and drilling (diamond, reverse circulation and auger, 600 drill holes, 200 m² clearings, 54 km drilling)
- Mechanical trenching (100 total, 50 m length X 1 m width X 1 m depth)
- Use of explosives (200 kg)
- Bulk sampling and removal of overburden (5000 kg each)
- Water use (40 000 L / day)
- Camp facilities (three camp sites, 40 people, framed structures, temporary wood frame structure, tent frame)
- Fuel handling and storage (20 000 L diesel, 1 000 L gasoline, 20 000 L jet A fuel, 10 000 L propane)
- Waste storage and disposal

*on claim use, not related to access to Rau property.

B. The Application

ATAC submitted an application to amend its current Class 3 operating plan on December 27, 2019. The Chief of Mining Land Use noted deficiencies in the application and ATAC advised accordingly. Subsequent submissions were made by ATAC, with an updated

application received on May 25, 2020. The application was determined by the Chief of Mining Land Use to be complete on June 15, 2020 (the "Application").

The Application sought authorization to construct and use a 65 km tote road on quartz mineral claims from Hansen Lakes Road (km 12) to the Rau Property (the "Road"). Details of the Application include the following.

1. Upgrade or construction of 65 km of road, including upgrading 12 km of existing trails and the Wind River Trail and construction of 53 km of new routes
2. Forty-six creek and river crossings, including eight bridges, one of which is a multi-span bridge over the Beaver River and seven of which are clear-span bridges
3. Installation of 38 culverts at creek crossings
4. Potential use of fords for crossing ephemeral/seasonal streams
5. Construction activities to occur over one winter season (November to April) and two summer seasons (May to October)
6. Installation of three gates, restriction of access and conduct of patrols
7. Clearing of corridor, approximately 11-15 m wide, involving 5 m for road and 3-5 m clearing on each side of the road
8. Quarrying of granular materials and side casting of materials with borrow material requirements in the order of 300,000 cubic meters
9. Construction and use of camps with 3 to 5 persons each to facilitate construction
10. Establishment of up to 3 staging areas, up to 200 square meters in size, with helicopter landing pads
11. Storage and use of explosives
12. Storage of fuel in 205 litre drums, not exceeding 10 000 litres at one time
13. Use of heavy equipment
14. Decommissioning of the Road including re-contouring, removal of bridges and culverts, construction of run-off control structures, potential re-seeding and re-establishment of stockpiled vegetative mat

15. Use of water for dust suppression

As noted earlier, ATAC's current approval is for a Class 3 exploration program. Inclusion of a 65km length of road on mineral claims in the current operating plan would exceed the threshold for a Class 3 exploration program, which is limited to establishment of less than 15km of new access roads (see *Quartz Mining Land Use Regulations, Table: Exploration Program Class Criteria*). As such, the Application, if approved, would result in a Class 4 operating plan and issuance of a Class 4 exploration program mining land use approval.

The Application did not seek any other changes to the currently approved exploration program.

C. Assessment Under Yukon Environmental and Socio-economic Assessment Act

A proposal to construct and use a road to the Rau Property was submitted to the Mayo Designated Office in 2016 (YOR Identifier: Project # 2016-0129) as required by the Yukon Environmental and Socio-economic Assessment Act (Canada). In the proposal, ATAC identified two potential routes, one that crossed Settlement Land held by the First Nation of Na-Cho Nyäk Dun ("FNNND") and one that did not.

The Designated Office determined that Project #2016-0129 would result in significant adverse effects to identified valued components, but that these significant adverse effects could be eliminated, controlled, or reduced with the application of appropriate terms and conditions. The Evaluation Report was issued May 11, 2017.

A joint Decision Document was issued by YG and FNNND on March 2, 2018. The Decision Document varied the recommended terms and conditions and accepted the recommendation that effects monitoring, as described in s.110 of the Yukon Environmental and Socio-economic Assessment Act, be carried out.

The Application identified a route for the Road that did not overlap Settlement Land; it was fully located on Commissioner's Land.

D. Legislative Context

The process and requirements for considering the Application are set out in subsections 9(2) and 9(3) of the *Quartz Mining Land Use Regulation*. These are set out below for reference.

- 9(2) The Chief shall, within 25 days after receipt of an operating plan that meets the requirements of subsection (1) or, where a public consultation is held under section 132 of the Act, within 25 days after termination of that consultation,
- (a) review the exploration program as described in the operating plan to determine its adverse environmental or socio-economic effects, if any;
 - (b) initiate consultations with each First Nation by notifying it and inviting it to provide written comments to the Chief regarding any adverse effects the exploration program as described in the operating plan may have on its existing or asserted aboriginal or treaty rights;
 - (c) determine whether the exploration program as described in the operating plan will appropriately mitigate any adverse effects; and
 - (d) having regard to the review, consultations and determination under paragraphs (a) to (c)
 - (i) approve the operating plan and indicate the date the activities are to cease,
 - (ii) after consultation with the operator, approve the operating plan subject to any additional conditions, including a requirement to furnish security under section 139 of the Act,
 - (iii) notify the operator in the manner prescribed by subsection 8(3) that more time is required to review the extent of the adverse effects of the operating plan, or
 - (iv) return the operating plan to the person applying for the approval, setting out written reasons why the operating plan cannot be approved.
- (3) On notifying an operator under paragraph (2)(c) that more time is required to review an operating plan, the Chief shall (a) consult with the operator and each First Nation and determine how much more time, to a maximum of 42 days, is required; and (Paragraph 9(3)(a) replaced by O.I.C. 2013/223) (b) within the time determined under paragraph (a), comply with paragraph subparagraph 2(d)(i), (ii) or (iv).

E. Chronology of Events

For convenience, the key dates associated with the review of the Application are set out below.

December 27, 2019	Application submitted by ATAC
January 14, 2020	Estimate of security related to Road submitted by ATAC
January 16, 2020	Emergency Response Plan, Spill Contingency Plan, Wildlife Attractant Plan submitted by ATAC
May 25, 2020	Updated Consultation Log submitted by ATAC
May 25, 2020	Application deemed complete by Chief, Mining Land Use
June 12, 2020	Telephone Meeting ATAC and Yukon officials
June 18, 2020	Initiation of consultation period with FNNND re: Application
June 18, 2020	Initiation of Application (Plans) by Yukon officials (EMR and ENV) ¹
June 26, 2020	FNNND request for consultation plan re: Application
July 7, 2020	Telephone meeting YG and FNNND re: consultation
July 10, 2020	Notice to ATAC re: extension of consultation period
July 10, 2020	Comments from ENV on Application
August 5, 2020	Letter from FNNND re: consultation requirements
August 27, 2020	Execution of Consultation Plan
September 2, 2020	Whitehorse Consultation Meetings (YG and FNNND) ²
September 10, 2020	Mayo Consultation Meetings (YG and FNNND) ³
September 25, 2020	Submission of 'What We Heard' Community Comments summary
September 25, 2020	Submission of Comments by FNNND to Chief Mining Land Use
November 27, 2020	Conclusion of Consultation with FNNND
November 27, 2020	Notification to ATAC of return of application

In relation to the above, it should be noted that the COVID-19 pandemic affected consultation on the Application. The FNNND consistently expressed reservations about community contact and exposure to the COVID-19 virus. In addition, Yukon government declared a state of emergency related to the COVID-19 pandemic under the *Civil Emergencies Measures* on March 27, 2020. The state of emergency has been extended twice, with an additional 90-day extension declared on September 9, 2020. Guidelines and restrictions related to the state of emergency, and more generally to the COVID-19 pandemic, such as limitations on social distancing and gatherings, were accommodated

¹ EMR – Department of Energy, Mines and Resources; ENV – Environment Yukon

² Graham Down, CEO, ATAC Resources Inc attended part of each afternoon and evening session

³ Graham Down, CEO, ATAC Resources Inc attended full afternoon and evening session

throughout the review of the Application and led to delays in conducting the internal review of the Application by the Chief and consultation with the FNNND.

F. Application Review by Chief

a. Consideration of Environmental and Socio-economic Effects

To assist in the review, the Chief of Mining Land Use (the “Chief”) requested expert assistance from other Yukon government departments and branches. On July 10, 2020, Environment Yukon (“Environment”) provided comments to the Chief on the Fish and Wildlife Monitoring and Adaptive Management Plan (“FWMAMP”) and Road Access Management Plan (“RAMP”), both of which were submitted as part of the Application (collectively, the “Plans”).

The internal review conducted by Yukon government officials indicated to the Chief that adverse impacts from Road construction and use could occur, as had been identified in the Evaluation Report for the Project. However, the Plans submitted by ATAC to mitigate these impacts required additional work to adequately address mitigation of the potential adverse environmental effects of construction and use of the Road. Specifically, deficiencies related to adequate baseline data to design appropriate environmental monitoring programs and adaptive management measures were noted. Further, the Plans did not adequately consider the cumulative impacts of the Road on the ecosystem, and wildlife in particular. The potential cumulative effect of the Road on the environment is one of the primary concerns raised by YG and the FNNND. The potential multi-user nature of the Road goes beyond the scope of a single use exploration access road and needs to be considered in the broader cumulative effects to the area.

In addition to the above, the Road does not overlap with any existing all-season access route, with the exception of a 12km section that overlaps the seasonal Wind River Trail. As such, it would provide year round access to an area that has had no year-round access to date. Establishing 65km of new, year-round access, for a Class 3 exploration program has no precedent in Yukon. While a review extending back to introduction of the class exploration program was not conducted, there are no examples of new roads over 50km in length (i.e. not along existing routes) being authorized for Class 3 or 4 exploration programs in the past decade. Far more typically, existing access routes and new access routes have only been upgraded or constructed once mine development and production has been authorized.

In addition to the above, it is also relevant that only three full exploration seasons remain on the current mining land use approval (expiry date August 13, 2024). It was also noted that the Application speaks to decommissioning the Road as a part of the program. Both of these raise the question of necessity and ability to complete the proposed work within the remaining term of the approval.

b. Consultation with the First Nation of Na-Cho Nyäk Dun

The FNNND was informally advised that the Application was received by the Chief shortly after its receipt in late December, 2019. Discussions were held with FNNND in the early months of 2020 although notice of consultation, as required by the subsection 9(2)(b) of the *Quartz Mining Land Use Regulation* and the common law, was not provided to the FNNND until after the Application was deemed complete. Notice was provided on June 18, 2020, by letter.

Written response from the FNNND to the June 18th letter was not forthcoming, however, in telephone meetings with FNNND officials, it was made clear that FNNND did not think it would be able to engage in consultation on the Application until the COVID-19 state of emergency was lifted. In a letter dated August 5, 2020, FNNND Chief Simon Mervyn advised the Honourable Ranj Pillai, Minister of Energy, Mines and Resources, of the following:

- a. The FNNND had deep concerns about the Application as construction and use of the Road and ancillary activities would “undoubtedly be significant and permanent with respect to our aboriginal and treaty rights and bring adverse environmental and socio-economic impacts”.
- b. A consultation plan would be required to provide direction and guidance to the Yukon government for the fulfillment of its legal duty to consult with the FNNND and its citizens.
- c. Consultation on the Application would have to be community based and would require funding support from Yukon government.
- d. The FNNND continued to be concerned about the COVID-19 pandemic but was prepared to proceed with the consultation using arrangements and processes that respected all direction of the appropriate public health officials and orders made under the *Civil Emergencies Measures Act*.

The FNNND, in its August 5th letter, sought to rely upon an agreement made in 2018 (the “2018 Agreement”) between Yukon government and the FNNND that provided that a land use plan for the Beaver River area, which is the area through which the Road will pass,

must be completed prior to any authorization being issued. The FNNND acknowledged in this same letter, however, that Yukon government advised that notwithstanding the 2018 Agreement, Yukon had a statutory obligation to process the Application, including consultation on the Application, despite the fact that the land use plan was not completed and that the FNNND would participate in the consultation.

Yukon government and the FNNND completed a consultation plan on August 28, 2020. Four meetings were subsequently held with members of the FNNND; two in Whitehorse and two in Mayo. The Chief of Mining Land Use attended each of these meetings. On September 25, 2020, the FNNND provided the Chief of Mining Land Use with a document entitled “What We Heard: Consultation with NND – Summary Document. YG Consultation on ATAC’s Permit Application for an all-season road to its Rau Property”. On the same date, the FNNND, by letter to the Director of Mineral Resources Branch, provided a thirteen-page letter summarizing the views of the FNNND on the Application (the “September letter”).

The September letter set out a number of concerns related to the Application, as well as articulating the FNNND’s views on the role of the 2018 Agreement and the First Nation of Na-Cho Nyäk Dun Final Agreement and the Application.

All of the material submitted to the Chief was reviewed and considered by the Chief. The following list sets out a number of the concerns identified by the FNNND and considered by the Chief.

- The Road will have significant adverse impacts on the aboriginal and treaty rights of the FNNND and will fundamentally alter an untouched portion of FNNND’s traditional territory.
- Approving the Application would permanently impair the process of reconciliation that FNNND, YG and Canada have been engaged in for more than 30 years.
- What makes this region special to FNNND is it’s ‘unroaded’ character, something that will be forever changed if the Application is approved.
- The Road would “hug” the perimeter of two significant blocks of FNNND’s Category A Settlement Land; land that represents those areas within the Traditional Territory that are most significant to FNNND and its future.
- Heritage values alongside the route would be permanently impacted.
- The Road will alienate FNNND citizens from their own Traditional Territory.
- There are insufficient tools in place to manage cumulative impacts of development in this area of the Traditional Territory.

- FNNND citizens feel a loss of control of relatively inaccessible areas of their Traditional Territory in relation to the pace and scale of mining related development.
- There is insufficient evidence about the impact the Road would have on specific land use practices of FNNND citizens.
- Approval of the Application would be in breach of the honour of the Crown and would be seen as a betrayal of FNNND people and leave the impacts of the Road on its aboriginal and treaty rights and Traditional Territory entirely unaddressed and unaccommodated.

These impacts are broad in nature, and offer no simple mitigations. The clear statement of the FNNND is that the Application must be rejected.

G. The Decision

The above information leads to the following conclusions.

1. *The scale of the Project and the remaining term of the current Class 3 operating plan.*

Other than seeking approval to construct and use the Road, ATAC did not request any other changes to the Class 3 exploration program that was previous approved. This means that the current operating plan for the Class 3 exploration program expires on August 13, 2024. Further, the Application refers to decommissioning of the Road as part of the exploration program. This is a relatively small-scale Class 3 exploration project that has, to date, been carried out by air access or winter road. No rationale was provided by ATAC to indicate why the Road is required to complete the approved Class 3 exploration program. It may be required to support more advanced exploration or to support mine development or production, but it is not evident that the Road is required to support the currently approved Class 3 exploration program.

2. *Adverse Effects on Aboriginal and Treaty Rights*

FNNND is strongly opposed to construction and use of the Road and identified a number of concerns that speak to adverse impacts on its aboriginal and treaty rights. This includes impacts on hunting, fishing and trapping, as well as a more general adverse impact on its ability to exercise these rights in one of the few remaining wilderness areas in its Traditional Territory. The FNNND does not support the issuance of an approval to construct the Road at this time because of these impacts.

3. *Adverse Environmental and Socio-economic Effects*

That the Road will have significant adverse environmental and socio-economic effects was previously identified in the Evaluation Report for Project 2016-0129. No information was provided by ATAC that would vary or contradict this conclusion.

4. *Mitigation of Adverse Effects*

Appropriate mitigation of the identified adverse environmental and socio-economic effects and the identified adverse effects on the aboriginal and treaty rights of the FNNND is required if the Application is to be approved. A central component of the mitigation of adverse environmental effects is the RAMP and the FWMAMP. To date, these Plans are not sufficient to mitigate the significant adverse environmental and socio-economic effects identified in the Evaluation Report, and it is not clear from the Application that in the limited remaining term of the currently approved operating plan that these matters can be effectively addressed. Further, the mitigation proposed in the Application is not sufficient to address the significant adverse impacts identified by the FNNND on their aboriginal and treaty rights.

Having regard to the review of the adverse environmental or socio-economic effects, consultation with FNNND as to the effects the Road may have on its aboriginal or treaty rights and the determination of whether the proposed mitigation will appropriately mitigate the adverse effects, the Application is not approved and will be returned to ATAC.

Reasons Prepared by:



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Chief Mining Land Use

November 27, 2020