

2 Assessment Process

2.1 Regulatory Context

Baseline studies and consultation activities for the KSM Project (the Project) were started in 2007 in anticipation of the Project entering federal and provincial environmental assessment (EA) processes. These studies included collecting environmental baseline data, undertaking detailed engineering design studies, understanding socio-economic conditions, and conducting public and Aboriginal consultation. Many of these studies and all of the consultation activities are ongoing, and have been modified to address changes in mine design and to respond to issues and concerns raised by interested parties throughout the EA review process.

The KSM Project is subject to the British Columbia *Environmental Assessment Act* (BC EAA; 2002a), the *Canadian Environmental Assessment Act* (CEAA; 1992), and provisions of the Nisga'a Final Agreement (NFA; NLG, Province of BC, and Government of Canada 1998). Due to the Project's proximity with the State of Alaska, provisions under relevant international treaties also apply. In April of 2008, Seabridge Gold Inc. (Seabridge or the Proponent) entered the provincial and the federal EA processes in July 2009.

Chapter 2 describes applicable provincial and federal statutes, outlines the provincial and federal EA processes (including consultation requirements), identifies the key provincial and federal authorizations required to enable the Project to proceed, addresses transboundary regulatory issues, and identifies the applicable provisions of the NFA (NLG, Province of BC, and Government of Canada 1998).

2.1.1 British Columbia Environmental Assessment Requirements

2.1.1.1 British Columbia *Environmental Assessment Act*

The BC EAA (2002a) requires that certain large-scale project proposals undergo an EA and obtain an EA Certificate before they can proceed. The BC EAA requires a proponent to identify and assess any potential effects that may result from a proposed project and to mitigate any adverse effects.

The BC EAA and accompanying regulations establish the framework for delivering EAs. Within this framework, the scope, procedures, and methods of each assessment are tailored specifically to the circumstances of the proposed project. This approach allows for each assessment to focus on the issues relevant to the project when determining whether or not the project should proceed (BC EAO 2003).

2.1.1.2 Reviewable Projects Regulation

Criteria for determining whether proposed mining developments are subject to the BC EAA are laid out in Part 3 of the Reviewable Projects Regulation (the Regulation; BC Reg. 370/2002). As outlined in the Regulation, a new mineral mine facility that, during operations, will have a production capacity that is greater than 75,000 tonnes per annum (tpa) of mineral ore, is required to obtain an EA Certificate from the British Columbia Environmental Assessment Office

(BC EAO). Based on Seabridge Gold Inc.'s Prefeasibility Study Update (Tetra Tech-Wardrop 2012), the KSM Project's proposed annual mill feed rate of an average of up to 130,000 tpd exceeds the Regulation's threshold, which requires Seabridge Gold Inc. (Seabridge) to obtain an EA Certificate for the KSM Project.

2.1.2 Federal Environmental Assessment Requirements

2.1.2.1 Canadian Environmental Assessment Act

The KSM Project is also subject to the *Canadian Environmental Assessment Act* (1992), which was significantly amended in 2003 and 2010. The 2003 amendments (contained in Bill C-9) were aimed at promoting cooperation and enhanced coordination between federal and provincial governments with respect to EA processes for projects (Douglas and Hébert 2003). More recently, the amendments prescribed in the *Jobs and Economic Growth Act* (also called Bill C-9; 2010) gave the Canadian Environmental Assessment Agency (CEA Agency) the responsibility to conduct comprehensive studies as a Responsible Authority (RA) and to make recommendations to the Minister of the Environment as to whether a project should proceed. On July 6, 2012, the CEAA of 1992 was repealed and replaced by the *Canadian Environmental Assessment Act, 2012* (2012), which, among other things, focused the federal EA process on two types of EAs: standard or review panel. Transitional provisions were made for comprehensive study level EAs, and screening level assessments were terminated. Under the CEAA of 2012, comprehensive studies that entered the federal process prior to the *Jobs and Economic Growth Act* (2010) remain subject to the CEAA of 1992 and subsequent amendments.

2.1.2.2 Law List Regulations

Pursuant to Section 5 of the CEAA (1992), a federal assessment is required if an RA contemplates exercising or performing a power, duty, or function with respect to a project. A federal EA is required for the KSM Project because the following actions may occur:

- Environment Canada may issue a licence pursuant to Section 4 of the *International River Improvements Act* (1985d);
- Fisheries and Oceans Canada may issue an authorization pursuant to Subsection 35(2) of the *Fisheries Act* (1985b) for the harmful alteration, disruption, or destruction of fish habitat;
- Environment Canada, in consultation with Fisheries and Oceans Canada, may recommend to the Governor in Council, pursuant to Section 36(5) of the *Fisheries Act* (1985b), to amend Schedule 2 of the Metal Mining Effluent Regulations (SOR/2002-222) to list the upper tributaries of South Teigen and North Treaty creeks as a proposed tailing impoundment area (referred to in the KSM Project as a Tailing Management Facility [TMF]);

- Natural Resources Canada may issue a licence under paragraph 7(1)(a) of the *Explosives Act* (1985a); and Transport Canada may issue approvals under Section 5 of the *Navigable Waters Protection Act* (1985e).¹

2.1.2.3 Comprehensive Study List Regulations

The Government of Canada has determined that the Project will be reviewed as a comprehensive study type of EA, because two proposed Project components are described in the Comprehensive Study List Regulations (SOR/94-638) of the CEEA (1992), as follows:

Part V, Section 16: *The proposed construction, decommissioning or abandonment of:*

(b) *a metal mill with an ore input capacity of 4 000 t/d or more; and*

(c) *a gold mine, other than a placer mine, with an ore production capacity of 600 t/d or more.*

2.1.2.4 Establishing Timelines for Comprehensive Studies Regulations

Under the *Jobs and Economic Growth Act* (2010) amendments to CEEA (1992), two timelines were introduced for the federal EA process and prescribed in the Establishing Timelines for Comprehensive Studies Regulation (Timelines Regulation; SOR/2011-139). The Timelines Regulation mandated the federal government to decide whether a comprehensive study was required within 90 calendar days of receiving a Project Description, and allowed 365 calendar days of government time to complete the EA process, from the Notice of Commencement to the submission of the comprehensive study report to the minister. Under the transitional provisions of CEEA, 2012 (2012), an expedited timeline of six months to conclude the EA process is now prescribed for projects that began prior to the *Jobs and Economic Growth Act* (2010) amendments, which includes the KSM Project.

2.1.3 Joint Provincial and Federal Environmental Assessment Process

On March 11, 2004, the governments of Canada and British Columbia signed the Canada–British Columbia Agreement for Environmental Assessment Cooperation (the Agreement; 2004a). While maintaining their respective roles and responsibilities, under this bilateral agreement, the BC EAO and the CEA Agency have agreed to jointly administer the EA process and align key aspects, including conducting joint public comment periods, coordinating Aboriginal consultation, using common documents that meet the requirements of both governments, and

¹The *Navigable Waters Protection Act* (NWPA; 1985e) was subject to amendments in the *Jobs and Growth Act, 2012* (2012), which received Royal Assent on December 14, 2012. These amendments are not in force yet. The first amendment consists in replacing the name of the NWPA by the *Navigation Protection Act* (NPA; *Jobs and Growth Act, 2012*). Policy guidance on the implementation of the NPA has not been provided by Transport Canada with respect to projects that may require authorizations under the NWPA, but that won't be subject to the provisions of the NPA (Transport Canada, pers. comm.).

establishing common working groups to facilitate the review process. Subject to Section 12(1)(2) of the Agreement, where a proposed project is located on lands within provincial boundaries, BC is the Lead Party for the EA process. Although the Agreement is now expired, both governments continue to coordinate EA processes in keeping with the principles of the Agreement.

In general, the provincial and federal EA processes include four main elements:

1. provide opportunities to all interested parties, including Aboriginal groups, to identify issues and provide input;
2. conduct a technical assessment of the potential environmental effects, and additional social, economic, heritage, and health effects of a proposed project;
3. implement mitigation measures that avoid, minimize, control, or compensate for adverse effects, and that enhance beneficial outcomes; and
4. consider issues and comments raised by interested parties when evaluating the significance of likely, adverse effects, and when making recommendations about whether a project may proceed.

The BC EAO and the CEA Agency processes move through several stages:

1. determine if an EA is required;
2. establish a Working Group that will be involved in the EA review process;
3. prepare and plan for the Application for an Environmental Assessment Certificate (Application) / Environmental Impact Statement (EIS) report;
4. review and analyze the Application/EIS;
5. prepare the EA (provincial) and comprehensive study (federal) reports; and
6. submit a referral to the appropriate federal and provincial ministers for a decision.

The decision to approve or reject a provincial EA for a mining project is made by the Minister of Energy, Mines, and Natural Gas² and by the Minister of Environment. The federal decision to approve or reject the EA for a major resource project is made by the Minister of the Environment. In making their ministerial referrals, the BC EAO and the CEA Agency consider the information presented in the Application/EIS, along with any issues raised throughout the review process, to inform their conclusions regarding the potential for the Project to result in significant adverse effects.

² The name of this ministry changed to the Ministry of Energy and Mines after the May 2013 provincial election.

Figure 2.1-1 summarizes the stages of the provincial EA review process. Figure 2.1-2 summarizes the stages of the federal EA review process.

2.1.3.1 Provincial Pre-application and Federal Pre-submission Environmental Assessment Phase

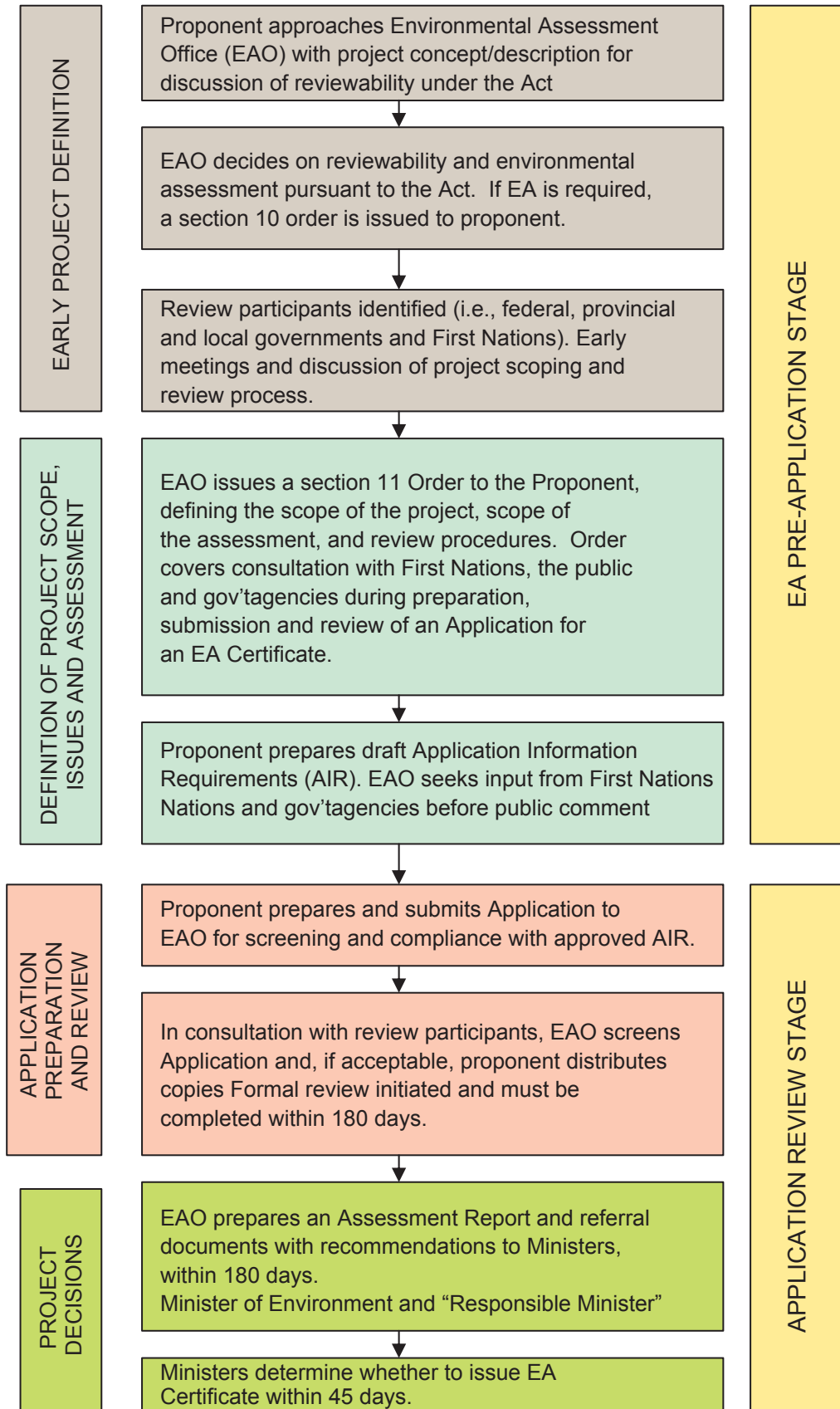
The EA process begins with the provincial pre-application and the federal pre-submission phases, which are initiated by the submission of a Project Description. Seabridge submitted a Project Description to the BC EAO on March 7, 2008, and to the CEA Agency on April 25, 2008. The Major Projects Management Office (MPMO), a department within Natural Resources Canada that provides overall federal coordination, management, and accountability for major resource development projects throughout the entire federal regulatory review process, received the Project Description on May 5, 2008. Pursuant to the Cabinet Directive on Improving the Performance of the Regulatory System for Major Resource Projects, the MPMO was established to work collaboratively with federal departments and agencies and to serve as a single window into the federal regulatory process. The objective of the MPMO is to improve the performance of the federal EA and regulatory process for major resource projects. Subsequent to MPMO confirming that the KSM Project met the criteria of a major resource project, the MPMO became a member of the joint EA Working Group for the KSM Project.

2.1.3.1.1 Provincial Orders

After reviewing the Project Description and deeming it acceptable, an Order under Section 10(1)(c) of the BC EAA (2002a) was issued by the BC EAO on April 25, 2008. This order constituted the Project as reviewable under part 3 of the Reviewable Projects Regulation (BC Reg. 370/2002). On November 6, 2009, the BC EAO issued an Order pursuant to Section 11 of the BC EAA, which prescribed the scope, procedures, and methods for the provincial EA, including public, government agency, Treaty Nations, and First Nations consultation requirements. Pursuant to the Public Consultation Policy Regulation under the BC EAA, proponents are required to undertake a public consultation program related to the EA process; these requirements are described in detail in Chapter 3, Information Distribution and Consultation, Section 3.5.

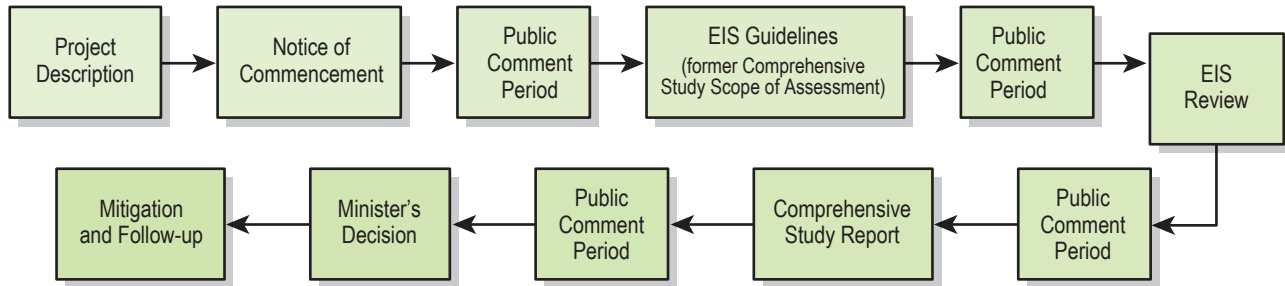
The BC EAO issued an Order pursuant to Section 13 of the BC EAA (2002a) on September 29, 2011, which amended the Section 11 Order, as follows:

- By replacing the last bullet under section 3.1 that reads “transportation of ore processing reagents and other hazardous chemicals to the plant site, and of explosives to the mine, along the access roads” with the following new bullet: “Use of the access roads to the proposed Project site, and Highway 37 between the proposed Project site and its junction with Highway 16 at Kitwanga (as shown in Figure 2), including those potential effects arising from the transport of people, goods and materials, including, but not limited to, fuel, hazardous chemicals and explosives.”
- By adding a new section 4.2 as follows: “For purposes of section 4.1.2, the term ‘First Nations’ includes Gitanyow wilp Malii, wilp Gamlaxyeltxw, wilp Gwaas Hlaam, and wilp Gwinuu.”



British Columbia Environmental Assessment Process under the British Columbia Environmental Assessment Act (2002)

Figure 2.1-1



Summary of Each Phase

Phase	Action
<i>Project Description</i>	<ul style="list-style-type: none"> Determine whether project requires EA Project Description requirements are outlined in the Establishing Timelines for Comprehensive Studies Regulations
<i>Notice of Commencement (NOC)</i>	Agency notifies Public of Posting of the NOC
Public Comment Period	
<i>Comprehensive Study Scope of Assessment</i>	Public invited to comment on the conduct of the Comprehensive Study including: <ul style="list-style-type: none"> Scope of the proposed project, and Scope of the factors that must be considered in the Comprehensive Study
Public Comment Period	
<i>EIS Review</i>	<ul style="list-style-type: none"> EA Working Group reviews EIS (e.g., methodologies, completeness), and evaluates proponents assessment of environmental effects, after taking mitigation into account Confirms conclusions of significance
Public Comment Period	
<i>Comprehensive Study Report</i>	Report summarizes all effects mitigation and evaluation of significance, including public concerns and identifies outstanding issues; summarizes Aboriginal consultation issues and adequacy of Crown consultation
Public Comment Period	
<i>Minister's Decision</i>	<ul style="list-style-type: none"> Section 23 EA Decision Statement Section 37 Course of Action Decisions
<i>Mitigation and Follow-up</i>	Responsible Authorities (RAs) develop follow-up programs in consultation with Proponent

Comprehensive Study Environmental Assessment Process under the Canadian Environmental Assessment Act (1992)

Figure 2.1-2

- By adding a new section 20.8 as follows:

20.8 The Environmental Assessment Office will, in relation to the environmental assessment of the proposed Project, consult with Gitanyow wilp Malii, wilp Gamlaxyeltxw, wilp Gwaas Hlaam and wilp Gwinuu (either directly or, if requested, through the Gitanyow Hereditary Chief's Office) in the following manner:

20.8.1 The Environmental Assessment Office will form a technical working group to discuss road use and potential effects on the aboriginal interests of the Gitanyow wilp Malii, wilp Gamlaxyeltxw, wilp Gwaas Hlaam, wilp Gwinuu and other potentially affected First Nations and the Nisga'a Nation arising from the use of Highway 37 by Project-related traffic. The Environmental Assessment Office will inform the proponent that they are required to participate in these technical working group meetings.

20.8.2 The Environmental Assessment Office will inform Gitanyow wilp Malii, wilp Gamlaxyeltxw, wilp Gwaas Hlaam, wilp Gwinuu of all major milestones with respect to the environmental assessment of the Project.
- In sections 23.1, 24.1, 25.1 and 27.1.1 by adding “Gitanyow wilp Malii, wilp Gamlaxyeltxw, wilp Gwaas Hlaam, and wilp Gwinuu” after “First Nation.”
- By adding a new section 25.2 as follows:

25.2 The Nisga'a Nation, First Nations and wilp Malii, wilp Gamlaxyeltxw, wilp Gwaas Hlaam, and wilp Gwinuu will have the opportunity to provide the Environmental Assessment Office their respective written submissions about the Assessment Report, which written submissions will be included in the package of materials sent to ministers when the Project is referred to ministers for decision.
- By adding Figure 2.
- By deleting sections 27.1.2.

A second Section 13 Order was issued by the BC EAO on November 30, 2012, which replaced Section 15.4 of the Section 11 Order as follows:

- *The Proponent, if applying for concurrent review of one or more applications for approvals under other enactments, must submit the request to the Executive Project Director within seven days after the date on which the Executive Project Director notifies the Proponent under section 16(4) of the Act that the Proponent's Application has been accepted for review.*

2.1.3.1.2 Federal Notice of Commencement

A Notice of Commencement stipulating that a comprehensive study type of federal EA was required for the KSM Project was posted to the Canadian Environmental Assessment Registry Internet Site in July 2009.

After the *Jobs and Economic Growth Act* (2010) was introduced and the amendments to the CEAA (1992) came into force, the Notice of Commencement was updated on July 19, 2010 to reflect the CEA Agency's new responsibilities to conduct the comprehensive study as an RA.

A mandatory public comment period was held between July 19, 2010 and August 20, 2010 to notify the public of the CEA Agency's new role and to enable the public to comment on the conduct of the comprehensive study.

2.1.3.1.3 Establishment of the Joint Environmental Assessment Working Group by the British Columbia Environmental Assessment Office and Canadian Environmental Assessment Agency

After receipt of the Project Description, federal departments were notified of the Project in accordance with the Regulations Respecting the Coordination by Federal Authorities of Environmental Assessment Procedures and Requirements (SOR/97-181). Federal departments that either have expertise to provide (Federal Expert Authorities) or that are required to issue an authorization for the Project (Responsible Authorities) are both invited to participate in the Working Group. Because the information required to determine whether federal departments may have a Law List Regulations (SOR/94-636) trigger is usually not available in the early stages of an EA process, under a federal "in until out" policy, federal departments participated in the Working Group despite not having reached a determination of whether the Project would require a federal EA. Seabridge met with the CEA Agency and other relevant federal agencies on October 20, 2008 to describe the Project and to provide information to assist with identifying Law List Regulations (SOR/94-636) triggers.

The BC EAO likewise identified relevant provincial agencies with expertise to provide during Project review and extended invitations to participate in the Working Group.

The BC EAO and the CEA Agency established the Working Group and began to hold Project-related meetings in June 2008. The purpose of the Working Group is to review and comment on key EA documents, including the Application Information Requirements (AIR), the Comprehensive Study Scope of Assessment, the Application/EIS, and the EA and comprehensive study reports. Members of the Working Group also reviewed and provided comments on annual baseline fieldwork plans beginning in 2008 (Chapter 3, Section 3.4.1).

Sub-working groups were also formed for the KSM Project to review key technical issues, including committees for the following topics:

- Project traffic effects;
- hydrology and hydrogeology;
- water quality;
- geochemistry, specifically metal leaching and acid rock drainage;
- fisheries;
- wetlands; and
- wildlife.

Typical membership of an EA Working Group includes representatives from all levels of government (federal, provincial, regional, and municipal), potentially affected Aboriginal

groups, and other stakeholders as required. The members for the KSM EA Working Group are identified in Table 2.1-1.

Table 2.1-1. Membership of the British Columbia Environmental Assessment Office/Canadian Environmental Assessment Agency-led KSM Project Environmental Assessment Working Group

Membership of the British Columbia Environmental Assessment Office/Canadian Environmental Assessment Agency-led KSM Project Environmental Assessment Working Group
BC Environmental Assessment Office
BC Ministry of Advanced Education and Labour Market Development
BC Ministry of Energy, Mines and Natural Gas
BC Ministry of Environment
BC Ministry of Forests, Lands and Natural Resource Operations
BC Ministry of Health
BC Ministry of Transportation and Infrastructure
BC Oil and Gas Commission
Canadian Environmental Assessment Agency
Canadian Wildlife Service
District of Stewart
Environment Canada
Fisheries and Oceans Canada
Gitanyow Hereditary Chiefs' Office
Gitxsan Hereditary Chiefs' Office
Health Canada
Major Projects Management Office (Canada)
Natural Resources Canada
Nisga'a Lisims Government
Regional District of Kitimat-Stikine
Skeena Fisheries Commission
Tahltan Heritage Resources Environmental Assessment Team (THREAT)
Transport Canada
Wilp Skii km lax Ha
Alaska Department of Fish and Game
Alaska Department of Natural Resources
US Environmental Protection Agency
US Forest Service
US National Oceanographic and Atmospheric Administration, Fisheries Service

2.1.3.1.4 Provincial Draft Application Information Requirements

Seabridge prepared a draft Application Information Requirements (dAIR) document (formerly referred to as the Terms of Reference) outlining the information to be included in the Application/EIS. The preparation of the dAIR was an iterative process with drafts distributed to the Working Group members for comment on May 21, 2009 and March 8, 2010. A draft of the

document was made available to the public on the BC EAO's electronic project information centre (e-PIC) on June 16, 2010. Details of many of the process activities, such as announcements and correspondence, can be found on e-PIC (BC EAO n.d.). A series of open houses were also held during the formal 30-day public comment period between June 25, 2010 and midnight on July 26, 2010 to solicit public comments on the dAIR (see Chapter 3, Section 3.5 for more details). Accordingly, changes to incorporate government, Nisga'a Nation, Aboriginal, and public concerns were made, and the BC EAO issued Seabridge's finalized AIR on January 31, 2011.

The CEA Agency contributed to the provincial AIR to shape the scope of the joint EA, and ensured that all federal information requirements were included. Federal departments participated in the review of the dAIR document and attended the public open houses during the comment period.

2.1.3.1.5 Federal Participant Funding Program

Pursuant to Subsection 58(1.1) of the CEA (1992), a participant funding program was established for comprehensive studies, mediation processes, and review panels to facilitate the participation of the public and to support consultation activities for potentially affected Aboriginal groups in federal and joint EA processes. A Funding Review Committee (FRC), independent of the review process, is established to assess applications for funding and to recommend funding allocations for applicants. Two funding envelopes are established: a Regular Funding Envelope (RFE) to support members of the public and an Aboriginal Funding Envelope (AFE). Disbursements are allocated to support participation and/or consultation activities during two Project phases: Phase I (pre-EIS submission) and Phase II (post-EIS submission).

Participant Funding Program – Aboriginal Funding Envelope

Under the Participant Funding Program – Aboriginal Funding Envelope (PFP-AFE), funding may be provided to Aboriginal groups who plan to engage in Aboriginal consultation activities with the federal government that are linked to the EA of a proposed project. The funds can be used to support their engagement in consultation activities and to provide input into the EA process. The applicants must meet at least one of three eligibility criteria. They must:

1. have a direct, local interest in the Project, such as a residence in the area or historical or cultural ties to the area likely affected by the Project;
2. have community knowledge or Aboriginal traditional knowledge relevant to the EA; and/or
3. have expert information relevant to the anticipated environmental effects of the proposed Project.

For the KSM Project, five Aboriginal groups applied for and requested a total of \$692,213.75 to support their involvement in the entire EA process for the KSM Project. All five groups were found to be eligible for PFP-AFE funding, and a total of \$80,000 was granted to support the following Phase I activities:

1. education of communities about the proposed Project and the EA process to be followed;

2. consultation on the Comprehensive Study Scope of Assessment document to be issued by the federal RAs; and
3. meetings with the CEA Agency and the federal responsible authorities.

Funding for the above activities was disbursed to the following applicants: Gitksan Treaty Society (\$20,000); wilp Wiiltsx–Txawokw (\$8,750); the TseTsaut Consultation Society – Skii km Lax Ha (\$7,875); Nisga’a Nation (\$23,375); and Tahltan Central Council (\$20,000). The FRC’s decision was posted on the CEARIS on January 29, 2010.

Under the AFE-Phase II for the KSM Project, a total of \$104,150 was made available to support Aboriginal participation in the EA, and related consultation and community engagement activities linked to the:

- review and comment on the EIS Summary or the EIS; and
- review and comment on the Comprehensive Study Report (CSR).

Five complete applications were received requesting a total of \$83,200. The FRC recommended that \$82,700 of available AFE funding be allocated to support the participation of five Aboriginal groups in the review of the EIS: Gitksan Treaty Society (\$20,950); Gitanyow Huwilp Society (\$13,150); Tahltan Central Council (\$20,950); Métis Nation of British Columbia (\$6,700); and Nisga’a Nation (\$20,950). The FRC’s decision was posted on the CEA Registry (CEARIS) on December 6, 2012.

Participant Funding Program – Regular Funding Envelope

Under the Participant Funding Program – Regular Funding Envelope (PFP-RFE), individuals, Aboriginal groups, and incorporated not-for-profit organizations are eligible to receive funding to participate in the EA review process, if they meet the following criteria:

1. have a direct or local interest in the Project, such as living in or owning property in the Project area;
2. have community knowledge or Aboriginal traditional knowledge relevant to the EA; or
3. have expert information relevant to the anticipated environmental effects of the Project.

On August 4, 2010, the FRC met to review one application under the PFP-RFE program submitted by K.T. Industrial Development Society. The FRC found the applicant to be eligible and awarded \$6,550 to support them in the following five activities:

1. holding meetings (within the applicant’s own membership only) to collect local knowledge of the capacity of the community;
2. reviewing documentation relevant to the proposed Project;
3. reviewing the EIS submitted by the Proponent;
4. reviewing the CSR; and

5. giving information to or collecting information from community members who belong to the applicant's own membership.

An additional criteria of funding was recommended by the FRC requiring the applicant to submit written comments on the EIS and CSR to the CEA Agency. The FRC funding decision was posted to the CEARIS on September 21, 2010.

2.1.3.1.6 Federal Comprehensive Study Scope of Assessment

Pursuant to Section 21(1) of the CEAA (1992), the federal RAs, coordinated by the CEA Agency, released a Comprehensive Study Scope of Assessment for the KSM Project on May 26, 2010 for public comment until June 30, 2010. The scoping document solicits input from interested parties on the proposed scope of the EA for the KSM Project, in addition to clarifying the ability of the comprehensive study to address issues related to the proposed Project. The scoping document also identifies potentially affected Aboriginal groups and clarifies public participation requirements.

Milestones for the provincial pre-Application and federal pre-submission EA phase for the KSM Project joint EA process are summarized in Table 2.1-2.

**Table 2.1-2. British Columbia Environmental Assessment Office
Pre-Application and Canadian Environmental Assessment Agency
Pre-submission Milestones for the KSM Project**

EA Process Milestones	Date
BC EAO receives Project Description	March 7, 2008
CEA Agency receives Project Description	April 25, 2008
BC EAO issues Section 10 Order	April 25, 2008
MPMO receives Project Description	May 5, 2008
BC EAO distributes dAIR to the KSM Project EA Working Group	May 21, 2009; March 8, 2010
CEA Agency issues Notice of Commencement	July 23, 2009
BC EAO issues Section 11 Order	November 6, 2009
CEA Agency announces participant funding – Aboriginal Funding Envelope – Phase I	January 29, 2010
CEA Agency issues Comprehensive Study Scope of Assessment	May 26, 2010
CEA Agency holds public comment period on Comprehensive Study Scope of Assessment	June 1 to June 30, 2010
BC EAO holds public comment period on dAIR	June 25 to July 26, 2010
CEA Agency holds public comment period to notify public of CEA Agency's new role and to enable the public to comment on conduct of comprehensive study	July 19, 2010
CEA Agency issues updated Notice of Commencement	
CEA Agency announces participant funding – Regular Funding Envelope	September 21, 2010

(continued)

**Table 2.1-2. British Columbia Environmental Assessment Office
Pre-Application and Canadian Environmental Assessment Agency
Pre-submission Milestones for the KSM Project (completed)**

EA Process Milestones	Date
BC EAO issues approved AIR	January 31, 2011
BC EAO issues Section 13 Order, amending Section 11 Order	September 29, 2011
BC EAO issues Section 13 Order amending Section 11 Order	November 30, 2012
CEA Agency announces participant funding – Aboriginal Funding Envelope – Phase II	December 6, 2012

2.1.3.2 Provincial Application and Federal Environmental Impact Statement Preparation and Review Phase

2.1.3.2.1 Preparation of the Application for an Environmental Assessment Certificate / Environmental Impact Statement

After receiving the final AIR and Comprehensive Study Scope of Assessment documents, the proponent completes all required baseline studies and conducts an effects assessment for each valued component to identify whether the project is likely to result in any potentially significant adverse effects. Mitigation measures that are required to avoid, reduce, control, or compensate any adverse effects are identified. Additional monitoring requirements may also be identified. Public and Aboriginal consultation activities are ongoing during this period. Provincially, all of this information is compiled into an Application for an EA Certificate, while federally, this document is referred to as the EIS. Under a joint EA process, the proponent may submit one document that meets the requirements of both governments.

2.1.3.2.2 Screening of the Application for an Environmental Assessment Certificate / Environmental Impact Statement

After the proponent submits the Application/EIS, a 30-day screening period (required by the BC EAA [2002a]) is initiated (which may be extended at the discretion of the BC EAO). A Table of Concordance is used by the Working Group to evaluate the Application/EIS by comparing it to the AIR to determine whether the required information has been adequately provided. The CEA Agency will also lead a 30-day screening period for the federal EA team. Although not a federal requirement, as a member of the Working Group, the federal authorities will participate in the provincial and federal screening periods and provide comments to the BC EAO and the CEA Agency. If the BC EAO and CEA Agency determines the Application/EIS is inadequate, the Application/EIS will be rejected, and the proponent is directed to address information deficiencies. If the Application/EIS contains all of the required information, the BC EAO and the CEA Agency notifies the proponent that the Application/EIS is accepted for a detailed review by the Working Group.

2.1.3.2.3 Review of the Application for an Environmental Assessment Certificate / Environmental Impact Statement

Under the BC EAA (2002a), if the Application/EIS is accepted for review by the BC EAO, a legislated 180-day review period commences. Under the transitional provisions of the CEAA,

2012 (2012), the CEA Agency also requires the EA process to conclude within 180 days (six months) of submission of the Application/EIS. The proponent provides paper and electronic copies of the Application/EIS to the Working Group, Aboriginal groups, and public libraries stakeholders as directed by the BC EAO and the CEA Agency.

During the review period, a joint federal-provincial public comment period on the Application/EIS will be held to provide the public with an opportunity to review and comment on the Application/EIS. Comments are compiled, tracked, and responded to by the proponent using an issues-tracking table. The Working Group reviews the responses provided by the proponent and determines whether they are adequate. Comments received during the public comment period are posted to the BC EAO's online e-PIC website. Working Group meetings are held throughout the 180-day period to review the Application/EIS and to discuss and resolve outstanding technical issues. Aboriginal consultation activities by the provincial and federal governments and by the proponent are ongoing during this period.

Pursuant to Section 24(2) of the BC EAA (2002a), the BC EAO may suspend the time limit if additional information is required from the proponent to complete the review, the review is delayed at the request of the proponent, or because of action taken or not taken by the proponent.

Pursuant to Section 5(2) of the Timelines Regulation (SOR/2011-139), the federal government clock may be stopped in either of the following circumstances:

1. while the proponent collects any information necessary to complete the requirements of the terms of reference (EIS Guidelines), unless the CEA Agency has sufficient information allowing it to continue the comprehensive study during this period; or
2. during the period for which the proponent requests in writing that the comprehensive study be suspended.

The MPMO Project Agreement for the KSM Project outlines some additional situations in which the MPMO may pause the timelines during the regulatory review, which includes:

1. the regulatory review cannot proceed as a result of circumstances related to Aboriginal consultation; or
2. litigation or other court action prevents the completion or continuation of the regulatory review.

2.1.3.2.4 Assessment Report / Comprehensive Study Report

During the later stages of the Application/EIS review, the BC EAO prepares an Assessment Report, and the CEA Agency prepares a CSR, which summarize all residual effects of the proposed project, identifies proposed mitigation, includes an evaluation of significance of adverse effects, summarizes all public concerns and how they have been addressed, and identifies outstanding issues. A summary of all Aboriginal consultation issues that were raised during the EA process is also included, and the adequacy of the Crown's consultation effort is provided. Both reports contain recommendations as to whether the project should receive an EA approval. The reports are provided to the Working Group, to Aboriginal groups, and to the proponent for their review and comment prior to being referred for a ministerial decision.

A final opportunity for the public and Aboriginal groups to comment on the federal CSR is provided over a 30-day public comment period via the CEARIS.

2.1.3.2.5 Referral and Ministerial Decision

The BC EAO compiles a referral package that includes the Assessment Report, recommendations from the Executive Director regarding whether the provincial Minister of Environment and Minister of Energy, Mines and Natural Gas should grant an EA Certificate for the proposed project and a draft EA Certificate. If approval is granted, the EA Certificate includes conditions that the proponent must meet, in addition to identifying key mitigation measures and monitoring requirements that the proponent must follow. The EA Certificate is legally binding. The ministers' decision is made within 45 days of a referral and is posted to the BC EAO's e-PIC website.

The CSR is submitted to the federal Minister of the Environment seeking a decision under Section 23(1) of the CEAA (1992) for the project. After taking into consideration the CSR and any public comments, the Minister of the Environment will issue an environmental assessment decision statement that sets out:

1. the minister's opinion as to whether, taking into account the implementation of any mitigation measures that the minister considers appropriate, the project is, or is not, likely to cause significant adverse environmental effects; and
2. any mitigation measures or follow-up program that the minister considers appropriate, after having taken into account the views of the RAs and other federal authorities concerning the measures and program.

The minister shall then refer the project back to the RAs to take their course of action decisions under Section 37. If the RAs consider the project not likely to cause significant adverse environmental effects, then the RAs may exercise any power or perform any duty or function that would permit the project to be carried out in whole or in part. The decision is posted on the CEARIS.

Milestones and their anticipated dates for the Application/EIS review phase of the EA process for the KSM Project are shown in Table 2.1-3, while Figure 2.1-3 outlines the combined provincial and federal pre-Application/pre-EIS and Application/EIS stage regulatory review and approvals schedule.

2.1.4 Provincial Authorizations

2.1.4.1 Concurrent Permitting

While the BC EAA (2002a) prohibits issuance of provincial permits before an EA Certificate is issued, the Concurrent Approval Regulation (BC Reg. 371/2002) allows for parallel review of related provincial permit applications. This regulation applies to provincial permits, authorizations, and approvals necessary to undertake works that are within the scope of the assessment under the BC EAA. The Concurrent Approval Regulation (BC Reg. 371/2002) sets out the provisions related to concurrent permit approvals. Statutory permit approval processes are normally more specific than those required for the EA level of review and, for example, require detailed and possibly final engineering design information for certain permits, such as the road and bridge designs.

Table 2.1-3. British Columbia Environmental Assessment Office and Canadian Environmental Assessment Agency Anticipated Milestones for the Application for an Environmental Assessment Certificate / Environmental Impact Statement Review Phase of the KSM Project

Milestone	Anticipated Date
BC EAO issues BC EAA (2002a) Section 24(4) Order extending Application/EIS screening from 30 days to 45 days	January 30, 2013
BC EAO issues BC EAA (2002a) Section 24(4) Order issued extending Application/EIS screening by further 21 days	May 13, 2013
Application/EIS screening initiated	March 28, 2013
EAO accepts Application for review	June 3, 2013
CEA Agency accepts EIS for review	June 6, 2013
BC EAO accepts provincial permit applications for concurrent review	June 7, 2013
BC EAO/ CEA Agency initiate 180-day Application/EIS review	Mid-July 2013
Public comment period on Application/EIS	August to mid-September 2013
Public comment period/Aboriginal consultation on CSR	December 2013
BC EAO refers Project to provincial ministers for decision	Mid-January 2014
Provincial ministers issue EA decision (45 days from the end of 180-day Application/EIS review)	March 2014
Provincial concurrent permit decisions	May 2014
Federal minister issues EA decision (12 weeks from the close of the CSR comment period)	April 2014
Federal permit decisions	July 2014 to 2015 (MMER Schedule 2)

To be eligible for concurrent review, the approval must be required to construct, operate, modify, dismantle, abandon, or otherwise undertake part or all of the “reviewable project” that is the subject of the EA. Any such authorization is eligible for concurrent review except a Certificate of Public Convenience and Necessity under the *Utilities Commission Act* (1996k).

Under the Concurrent Approval Regulation (BC Reg. 371/2002) an applicant must submit concurrent permit applications within seven days of notification of the acceptance of the Application for review by the BC EAO. The provincial ministry responsible for the permit must identify any additional information required for the permit(s) within 75 days of the notification of acceptance of the Application. The ministry responsible for the permit must make a decision to issue, reject, or postpone the decision, within 60 days of the EA Certificate being issued. Seabridge is seeking only those authorizations under the Concurrent Approval Regulation (BC Reg. 371/2002) that are required to start construction in June 2014, as listed in Table 2.1-4.

Table 2.1-4. Provincial Authorizations under Concurrent Review with Application / Environmental Impact Statement

KSM Project Component/Permit	Enabling Legislation
Eskay Creek Mine Road	
Road Use Permit (km 0-4 Bob Quinn)	<i>Forest and Range Practices Act (2002b)</i>
Special Use Permit (km 43.5 to 54.6 Barrick Gold reassignment)	<i>Forest Practices Code of BC Act (1996d)</i>
Special Use Permit (km 54.6 to end of new construction at Mitchell Creek Bridge km 88.5; new or Barrick Gold reassignment)	<i>Forest Practices Code of BC Act (1996d)</i>
Coulter Creek Access Road	
Occupant Licence to Cut	<i>Forest Act (1996c)</i>
Special Use Permit	<i>Forest Practices Code of BC Act (1996d)</i>
Treaty Creek Access Road	
Occupant Licence to Cut	<i>Forest Act (1996c)</i>
Special Use Permit	<i>Forest Practices Code of BC Act (1996d)</i>
Wildlife Salvage and Removal	<i>Wildlife Act (1996k)</i>
Construction Camps	
Licence of Occupation (Camps 3, 7 and 8, and 11)	<i>Land Act (1996g)</i>
Waterworks Construction Permit (Camps 2 to 11, and Treaty and Mitchell Operating Camps)	<i>Drinking Water Protection Act (2001)</i>
Water System Operation Permit (Camps 2 to 11, and Treaty and Mitchell Operating Camps)	<i>Drinking Water Protection Act (2001)</i>
Sewage Permit (Camps 2, 3, 7, 8, and 11)	<i>Public Health Act (2008)</i>
Sewage Permit (Municipal Effluent Discharge Registration; Camps 4, 5 and Treaty Operating, 6, 9 and 10, and Mitchell Operating)	<i>Environmental Management Act (2003), Municipal Wastewater Regulation (BC Reg. 87/2012)</i>
Water Licence - Purpose: Work Camps (Camps 4 and 6)	<i>Water Act (1996i) and Water Protection Act (1996j)</i>
Air Emissions Discharge (Incinerator and Generator; Camp 6)	<i>Environmental Management Act (2003)</i>
Mine Site and PTMA Limited Site Construction	
Temporary Water Treatment Facilities (Effluent Discharge for three facilities)	<i>Environmental Management Act (2003)</i>
Air Emissions Discharge (Camps 4, 5 and Treaty Operating, 9 and 10, and Mitchell Operating)	<i>Environmental Management Act (2003)</i>
Solid Waste Discharge (Mine Site and PTMA landfills and landfarms)	<i>Environmental Management Act (2003)</i>
Permit Approving Work System and Reclamation Program (Mine Site and PTMA limited site construction)	<i>Mines Act (1996h)</i>
Treaty Creek Transmission Line	
Licence of Occupation	<i>Land Act (1996g)</i>
Occupant Licence to Cut (combined with the Treaty Creek Access Road Occupant Licence to Cut)	<i>Forest Act (1996c)</i>

(continued)

Table 2.1-4. Provincial Authorizations under Concurrent Review with Application / Environmental Impact Statement (completed)

KSM Project Component/Permit	Enabling Legislation
Other Provincial Permits and Authorizations	
Licence of Occupation and Statutory Right-of-Way for Mitchell-Treaty Twinned Tunnels	<i>Land Act (1996g)</i>
Mining Lease	<i>Mineral Tenure Act (1996g)</i>
Amendment of Occupant Licence to Cut for the Mine Site	<i>Forest Act (1996a)</i>
Mineral Exploration (Notice of Work)	<i>Mines Act (1996h)</i>
Provincial Highway Permit Application (to connect Treaty Creek Access Road to Highway 37)	<i>Transportation Act (2004b)</i>
Controlled Access Permit (Highway 37)	<i>Transportation Act (2004b)</i>

2.1.4.1.1 Other Provincial Authorizations

Subsurface rights are granted to proponents through the issuance of mineral claims under the *Mineral Tenure Act (1996g)*, while the *Mining Right of Way Act (1996b)* provides a legislated framework for authorizing access off of the mineral claims. Table 2.1-5 presents a list of provincial authorizations, licences, and permits that are required to enable the KSM Project to proceed, but which are not being pursued concurrently. The list is not intended to be exhaustive due to the complexity of government regulatory processes and the large number of minor permits, licences, approvals, consents and authorizations, and potential amendments that will be required throughout the life of the mine.

2.1.5 Federal Authorizations

The following section identifies key federal authorizations that are required to enable the Project to proceed.

An authorization under Section 35(2) of the *Fisheries Act (1985b)* to cause a Habitat Alteration, Disturbance, or Destruction (HADD) of fish habitat is required from Fisheries and Oceans Canada. An explosive factory licence will be required under the *Explosives Act (1985a)*. The Metal Mining Effluent Regulations (MMER; SOR/2002-222) under the *Fisheries Act (1985b)*, administered by Environment Canada (and described below), will require a Schedule 2 amendment because the area proposed for the TMF contains fish habitat. A licence will likely be required under the International River Improvements Regulations (CRC, C. 982) because the Water Storage Facility (WSF) is expected to alter seasonal flows to the Unuk River above the threshold criterion of 0.3 m³ per second during some periods of the year. Other federal requirements, such as radio communication activities, will need licences. The federal approvals required include, but are not limited to, those identified in Table 2.1-6.

2.1.5.1 Metal Mining Effluent Regulations

The MMER (SOR/2002-222), enacted under the *Fisheries Act (1985b)*, came into law on June 6, 2002, and applies to all metal mines in Canada. These regulations impose effluent discharge limits for cyanide, arsenic, copper, lead, zinc, nickel, radium-226, and total suspended solids, as well as maximum and minimum pH levels. They also prohibit the discharge of effluent

that is acutely lethal to fish (rainbow trout). Under the regulations, proponents must conduct environmental effects monitoring programs to monitor and report on mine effluent quality, flows, and the results of periodic effluent scans to identify adverse effects of mine effluent (if any) on fish, fish habitat, and on the use of fisheries resources. Environmental effects monitoring studies include effluent characterization, receiving water quality monitoring, sub-lethal effluent toxicity tests, site characterization, fish population surveys, fish tissue analysis and benthic invertebrate community surveys (MMER, SOR/2002-222). An Aquatic Effects Monitoring Plan to satisfy MMER requirements can be found in Chapter 26, Section 26.18.2.

Table 2.1-5. Additional Provincial Authorizations Required for the KSM Project

Provincial Authorizations	Enabling Legislation
Amendment to Permit Approving Work System and Reclamation Program (Pre-production)	<i>Mines Act (1996h)</i>
Amendment to Permit Approving Work System and Reclamation Program (Bonding)	<i>Mines Act (1996h)</i>
Amendment to Permit Approving Work System and Reclamation Program (Operation)	<i>Mines Act (1996h)</i>
Approvals to Construct and Operate TMF	<i>Mines Act (1996h)</i>
Camp Operation Permits (Sanitation and Food Handling)	<i>Health Act (1996e), Drinking Water Protection Act (2001), Public Health Act (2008)</i>
Groundwater Well Registration	<i>Water Act (1996i)</i>
Special Waste Generator Permit (Waste Oil)	<i>Environmental Management Act (2003)</i> Municipal Wastewater Regulation (BC Reg. 27/2012)
Public Highway Permit	<i>Transportation Act (2004b)</i>
Heritage Inspection and Heritage Investigation Permit	<i>Heritage Conservation Act (1996f)</i>
Application for Alteration Permit	<i>Heritage Conservation Act (1996f)</i>
Surface Lease – Mine Site Facilities	<i>Mineral Tenure Act (1996g)</i>
Waste Management Permit – Air (Crushers, Concentrator)	<i>Environmental Management Act (2003)</i>
Waste Management Permit – Effluent (Tailing, Sewage, and Environmental Effects Monitoring)	<i>Environmental Management Act (2003)</i>
Waste Management Permit – Refuse (Landfill and Landfarm)	<i>Environmental Management Act (2003)</i>
Water Licence – Notice of Intention (Application)	<i>Water Act (1996i)</i>
Water Licence – Storage and Diversion	<i>Water Act (1996i)</i>
Water Licence – Use	<i>Water Act (1996i)</i>
Section 9 Approval or Notification for Changes In or About a Stream (Mine Site and PTMA)	<i>Water Act (1996i)</i>

PTMA = Processing and Tailing Management Area.

Table 2.1-6. Federal Authorizations Required for the KSM Project

Federal Authorizations	Legislation/Regulations
Ammonium Nitrate Storage Facilities	<i>Canada Transportation Act</i> (1996a); Ammonium Nitrate Storage Regulations (CRC, C. 1145)
Environmental Assessment Decision Statement	<i>Canadian Environmental Assessment Act</i> (1992)
Licence	<i>International River Improvements Act</i> (1985d)
Explosives Factory Licence	<i>Explosives Act</i> (1985a)
Explosives Magazine Licence	<i>Explosives Act</i> (1985a)
HADD	<i>Fisheries Act</i> (1985b)
MMER Schedule 2 Amendment	<i>Fisheries Act</i> (1985b); Metal Mining Effluent Regulations (SOR/2002-222)
Navigable Waters Approvals	<i>Navigable Waters Protection Act</i> (1985e) ³
Radio Licences	<i>Radiocommunication Act</i> (1985f)
Radioisotope Licence (Nuclear Density Gauges/X-ray analyzer)	<i>Nuclear Safety and Control Act</i> (1997)

Schedule 2 Amendment to the Metal Mining Effluent Regulations

Section 5(1)(a) of the MMER authorizes a proponent to deposit waste rock or effluent that contains any concentration of a deleterious substance into a tailing impoundment area (referred to as TMF for the KSM Project) that is listed as a waterbody set out in Schedule 2 – Tailings Impoundment Areas. The Project will require an amendment to Schedule 2 of the MMER (SOR/2002-222) in order to construct the TMF and dispose of tailing in the upper tributaries of South Teigen and North Treaty creeks, which are natural waterbodies frequented by fish. Environment Canada administers the Schedule 2 Amendment process. Under Section 27.1 of the MMER (SOR/2002-222), a Fish Habitat Compensation Plan is required to offset losses of fish habitat associated with the deposit of a deleterious substance into the waterbodies that are added to Schedule 2. The MMER Fish Habitat Compensation Plan can be found in Chapter 15, [Appendix 15-Q](#).

Issuance of Federal Authorizations

Subject to the MPMO Project Agreement (2012) established between the federal members of the EA Working Group, federal authorizations will be issued and regulatory decisions taken within three months (90 calendar days) from the EA course of action decision if all applications are received no later than the time of the formal submission of the EIS. All related content (e.g., Fish Habitat Compensation plans) must be considered acceptable, and any required financial

³ The *Navigable Waters Protection Act* (NWPA; 1985e) was subject to amendments in the *Jobs and Growth Act, 2012* (2012) which received Royal Assent on December 14, 2012. These amendments are not in force yet. The first amendment consists in replacing the name of the NWPA by the *Navigation Protection Act* (NPA; *Jobs and Growth Act, 2012*). Policy guidance on the implementation of the NPA has not been provided by Transport Canada with respect to projects that may require authorizations under the NWPA, but that won't be subject to the provisions of the NPA (Transport Canada, pers. comm.).

securities must also be provided. Issuance of *Fisheries Act* (1985b) authorizations may be dependent on the timing of the Governor in Council's decision regarding the listing of the TMF on Schedule 2 of the MMR (SOR /2002-222), and would be issued no later than eight months from the EA course of action decision.

2.1.6 Transboundary Management

The KSM Project is approximately 35 km from the BC–Alaska border. The Mine Site of the Project is situated in the Sulphurets Creek and Mitchell Creek watersheds, which flow into the Unuk River, transboundary with the State of Alaska. The Unuk River contains three species of Pacific Salmon, which can be observed in the reach upstream of the confluence with Sulphurets Creek. The lower Unuk River draining from the border to Burroughs Bay supports the fourth largest escapement of sockeye salmon in south-east Alaska. The Water Storage dam required to attenuate flows for water treatment purposes may result in an approximately 1% flow reduction downstream in the Unuk River during certain periods of the year. Under the *International Rivers Improvement Act* (1985d), a permit is required because of the construction of the Water Storage dam, which has the ability to decrease the natural flow of an international river. For these reasons, the State of Alaska and the United States (US) have an interest in the Project and its potential environmental, social, and economic implications. Details of the involvement and interaction with the US regulators and public are covered in Chapter 3.

Approvals from federal Canadian and US customs authorities may also be required should the Project transport materials across the border, an important factor in the selection of the current access plan for the Project. Seabridge has included Alaskan and federal US officials in discussions regarding Project development. It is expected that Alaska and US federal officials will review and comment on this Application/EIS and that their comments will be considered by both the BC EAO and CEA Agency in their recommendations to their respective ministers on a final decision regarding whether to issue an EA approval for the Project.

International treaties are also relevant to the regulatory framework overseeing the KSM Project. In particular, the *International Rivers Improvement Act* (1985d) was enacted to ensure Canada can meet its obligations under the *1909 Boundary Waters Treaty*. The intent of the Boundary Waters Treaty is to ensure that Canada's water resources in international waters (listed on schedule 5) and in international rivers (subject to the *International Rivers Improvement Act*) are developed and used in the best national interest. A bill to amend the *International Boundary Waters Treaty Act* (1985c) and the *International River Improvements Act* (1985d) to the *Transboundary Waters Protection Act* was tabled before Parliament in Bill C-26 in May 2010. Bill C-36 has only passed first reading. Bill C-36 would expand the definition of a transboundary water to not only those waters that flow across borders, but to boundary waters that flow along the border.

The *Treaty between the Government of the United States of America and the Government of Canada Concerning Pacific Salmon* (1985g; as renewed in 1999) is a bi-lateral treaty binding on the federal governments of Canada and the US. The intent of this Treaty is to prevent over-fishing and provide for optimum production, and both countries agreed to take measures to avoid the undue disruption of existing fisheries. Chapter 2 and Annex IV of the Treaty specifically

prescribe management measures for northwest BC and south-east Alaska to manage the Nass and Skeena sockeye salmon fisheries to achieve an annual catch share of 2.45% of the annual allowable harvest of the Nass and Skeena sockeye stocks for any particular year. There are no permits or authorizations required under this Treaty for the Project.

2.1.7 Nisga'a Final Agreement

The *Nisga'a Final Agreement* (NFA) is a treaty that was signed between Nisga'a Nation, the Government of Canada, and the Government of British Columbia in 1998 (NLG, Province of BC, and Government of Canada 1998). The NFA came into effect in 1999 under the BC *Nisga'a Final Agreement Act* and in May of 2000 under the federal *Constitution Act* (1982); these statutes set out Nisga'a rights over approximately 27,000 km² of land in the Nass River system and surrounding drainages (see Chapter 29).

The NFA establishes three categories of lands with different specified Nisga'a interests: Nisga'a Lands (approximately 2,000 km²), the Nass Wildlife Area (NWA; more than 16,000 km²), and the Nass Area (approximately 27,000 km², incorporating Nisga'a Lands and the NWA within it). The NFA affords title to Nisga'a Nation within Nisga'a Lands and defines the rights of Nisga'a Nation to self-government and law-making authority in this area. The NFA also specifies Nisga'a Nation rights to access and make use of natural resources in the NWA and the Nass Area (NLG, Province of BC, and Government of Canada 1998).

Seabridge proposes to develop some components of the KSM Project footprint within the Nass Area, including the Treaty Process Plant, the TMF, and the northern portion of the conveyor. No Project components will physically occupy any portion of Nisga'a Lands or the NWA, both of which are located south of the affected portion of the Nass Area.

The NFA makes explicit provision for Nisga'a participation in federal or provincial EAs of projects sited anywhere within the outer Nass Area boundary (see Chapter 29). Seabridge has been directed by the federal and provincial governments to ensure that it conducts its EA responsibilities for the KSM Project in compliance with all relevant Nisga'a Treaty rights, including those dealing with economic, social, cultural, and environmental interests. Chapter 10 of the NFA ("Environmental Protection and Assessment"), paragraphs 6 to 10, provide for meaningful Nisga'a participation in the EA through effective coordination, timely notice and provision of information, studies to Nisga'a Nation, and a clear focus on assessment of potential adverse Project effects on residents of Nisga'a Lands, Nisga'a Lands themselves, or more generally, on Nisga'a interests as set out in the NFA. Paragraph 8(e) of the NFA requires that any EA subject to the NFA assesses whether the Project can reasonably be expected to have adverse environmental effects on residents of Nisga'a Lands, or Nisga'a interests set out in the NFA, and where appropriate to make recommendations to prevent or mitigate those effects. Paragraph 8(f) of the NFA requires an assessment of the effects of the Project on the existing and future economic, social, and cultural well-being of Nisga'a citizens who may be affected by the Project. In addition to taking EA decisions under their respective acts, both provincial and federal governments will make separate recommendations with respect to whether 8(e) and 8(f) requirements of the NFA have been met by Seabridge with respect to the KSM Project (NLG, Province of BC, and Government of Canada 1998).

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