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BARRISTERS AND SOLICITORS

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Dear Ms. Shaw and Mr. Rollo:

**Re: Submissions on the Draft Information Application Requirements / EIS Guidelines  
On behalf of CoalWatch Comox Valley Society**

These submissions are presented on behalf of the CoalWatch Comox Valley Society (“CoalWatch”) for the purpose of the public comment period on the Draft Application Information Requirements / Environmental Impact Statement Guidelines (“DAIR/EISG”).<sup>1</sup> Members of CoalWatch are providing separate submissions respecting many issues raised in the DAIR/EISG. The submissions below will focus on key scoping questions facing the BC Environmental Assessment Office (“BCEAO”) and Canadian Environmental Assessment Agency (“CEA Agency”). These submissions will comment upon the following scoping questions as they are raised in the DAIR/EISG:

1. What are the types of direct and indirect ‘environmental effects’ to be assessed?
2. What is the project, and what components of the project should undergo assessment?
3. How should the project be understood in relation to other activities or projects?
4. How should we assess the need for, purpose of, and alternatives to the project?

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**1. What are the types of direct and indirect ‘environmental effects’ to be assessed?**

The CEA Agency is conducting the federal environmental assessment (“EA”) of the Raven Underground Mine Project (the “Project”) as a comprehensive study. According to s. 16(1)(a) of the CEA Act, every comprehensive study must include a consideration of the “environmental

effects” of the project under review.<sup>2</sup> Section 2(1) of the CEA Act defines “environmental effect” to mean

... in respect of a project,

(a) any change that the project may cause in the environment, including any change it may cause to a listed wildlife species, its critical habitat or the residences of individuals of that species, as those terms are defined in subsection 2(1) of the Species at Risk Act,

(b) any effect of any change referred to in paragraph (a) on:

- (i) health and socio-economic conditions;
- (ii) physical and cultural heritage;
- (iii) the current use of lands and resources for traditional purposes by aboriginal persons; or
- (iv) any structure, site or thing that is of historical, archaeological, paleontological or architectural significance.

So, according to s. 16(1)(a) and the definition of “environmental effect” in s. 2, every comprehensive study requires a federal assessment of how changes to the biophysical environment may affect socio-economic conditions.

The proposed federal scope of the EA of the Project is described in section 2.4 of the DAIR/EISG. The CEA Agency has defined five major Environmental Components, each of which is broken down into constituent factors. These factors are to be used to assess each (on-site or off-site) component of the Project. These scoping “factors” are essentially categories describing the direct and indirect environmental effects to be assessed by the CEA Agency. Many of the factors are drawn directly from the definition of “environmental effects” found in section 2 of the CEA Act. However, there is no factor to address effects on “socio-economic conditions”:

*Table 2.4-1: Federal Scope of Factors*

Environmental Component	Scope of Review
Terrestrial physical environment	<ul style="list-style-type: none"> <li>• Freshwater quality</li> <li>• Hydrology</li> <li>• Hydrogeology</li> <li>• Air quality</li> <li>• Climate and meteorology</li> <li>• Terrain, soils and geology</li> <li>• Light &amp; noise emissions</li> <li>• Natural hazards</li> </ul>
Terrestrial biological environment	<ul style="list-style-type: none"> <li>• Vegetation and plant communities</li> <li>• Wetlands</li> <li>• Wildlife and wildlife habitat</li> <li>• Ecologically sensitive or significant areas, species of conservation concern, including species at risk and their habitats</li> <li>• Freshwater aquatic environment (e.g., aquatic life, fish and fish habitat)</li> <li>• Migratory birds and their habitats</li> </ul>

Environmental Component	Scope of Review
Marine physical environment	<ul style="list-style-type: none"> <li>• Water quality</li> <li>• Marine / coastal processes (erosion, sedimentation)</li> <li>• Navigation</li> <li>• Air quality</li> <li>• Natural hazards</li> </ul>
Marine biological environment	<ul style="list-style-type: none"> <li>• Marine aquatic environment (e.g., aquatic life, fish and fish habitat)</li> <li>• Ecologically sensitive or significant areas, species of conservation concern, including species at risk and their habitats</li> </ul>
Human environment (i.e., indirect effects resulting from a direct change in the environment)	<ul style="list-style-type: none"> <li>• Current use of lands and resources for traditional purposes by Aboriginal persons</li> <li>• Navigable waters</li> <li>• Fisheries (including aquaculture)</li> <li>• Human health (e.g., noise, drinking water quality, country foods)</li> <li>• Physical and cultural heritage</li> <li>• Structures / sites of archaeological significance</li> </ul>

**Note:** Table reproduced from the Agency's background information document (2011).

As seen above, there is a reference to some selected economic activities, such as aquaculture, navigation, and traditional land uses by aboriginal persons. But the scope of socio-economic conditions is much too narrow. It would completely preclude the consideration of the direct and cumulative environmental effects of the Project on a broad range of socio-economic conditions such as tourism, recreation, housing, regional transportation, visual and aesthetic resources, regional land use planning, and potential economic costs to the public in the event that the mine is not profitable and/or abandoned prior to effective closure and remediation (e.g. capital cost allowances and tax subsidies not compensated by Mineral Tax Revenue; costs of acid mine drainage not covered by reclamation bond).

Both Port Alberni and the Comox Valley have spent the last 15 years developing economic, social, and cultural plans leading to a vision of sustainability for their communities. Well over 100 studies and workshops have been undertaken, and hundreds of community members in both regions have participated. Yet, despite the clear legislative mandate, the DAIR/EISG does not provide a means to critically evaluate the costs and benefits of the project to BC, the region, or the local communities.

If the EA were to proceed on the basis of this unreasonable exclusion of socio-economic factors, it may render the decision of the Minister on the Project subject to being impugned for invalidity, especially given the wide-ranging implications of such a legal error.<sup>3</sup>

**Recommendation 1:**

CEAA should revise the EISG to add a sixth Environmental Component for the consideration of the Socio-Economic Environment. The factors within this category should include matters such as:

- Current and potential future uses of land and resources, as proposed in community planning documents such as the Comox Valley Regional Growth Strategy
- Tourism
- Recreation

- Housing
- Transportation
- Visual and Aesthetic Resources
- Public liability for mine abandonment

## 2. What is the Project, and what Components of the Project Should Undergo Assessment?

One cannot assess the environmental effects of a project unless there is a clear description of the components or activities that constitute that project. The decision concerning the scoping of the project is governed independently by provincial and federal legislation, examined below.

### *Federal Scope of the Project*

Section 15 of the CEA Act sets out how the scope of the project for the federal assessment must be determined. Under section 15(1), the Responsible Authority (“RA”) has the authority to determine the scope of the Project to undergo assessment. Section 15(3) sets out the specific Project components or undertakings that must be considered:

... every construction, operation, modification, decommissioning, abandonment or other undertaking in relation to that physical work that is proposed by the proponent or that is, in the opinion of ... the responsible authority... likely to be carried out in relation to that physical work.

### *Provincial Scope of the Project*

The scope of the provincial assessment is determined by an order made under section 11 of the British Columbia *Environmental Assessment Act* (the “Section 11 Order”):

(a) the facilities at the main site of the reviewable project, any off-site facilities and *any activities related to the reviewable project...*; [and] (b) the potential effects to be considered in the assessment, including *potential cumulative environmental effects.*”<sup>4</sup>

The executive director may issue an order under section 13 to vary the scope, procedures and methods determined under section 11 to take into account project modifications or “if necessary in his or her opinion to complete an effective and timely assessment of the reviewable project.”<sup>5</sup>

#### **a) Port Modifications, Activities, and Transport**

The list of Raven Project components proposed for the federal scope is found in section 2.4 of the DAIR/EISG. The federal list of project components includes the required port modifications, storage, loading, and shipping activities:

- facility upgrades at the existing port of Port Alberni: sheet piling; new mooring bollards, dolphin and catwalk; dredging of shipping berth involving upland dredge spoil disposal; covered ship loading conveyor; truck unloading facility; coal storage shed with associated conveyor and dust collection systems; and

- Operation of vessels associated with the Project within Alberni Inlet and Barkley Sound to the Cape Beale Pilot Station.

The provincial Section 11 Order, issued on March 5, 2010, omits the above undertakings with respect to the port. This means that any potential environmental effects or cumulative environmental effects associated with port dredging on fish habitat or human health, coal dust from storage, and potential safety and environmental hazards from shipment through the Alberni Inlet and Barkley Sound would escape provincial assessment and not form a part of the provincial Minister's decision.

Although the provisions in section 11 of the BC *Environmental Assessment Act* give the EAO discretion in determining the scope of the project under review, discretion must be exercised reasonably. We are not aware of any reason why provincial decision makers would wish to exclude potentially serious environmental effects from scrutiny.

### **Recommendation 2:**

The BCEAO should issue a section 13 order to amend the Section 11 order so as to add the following to the components of the Project under assessment:

- Port modifications, including dredging;
- Coal storage and loading; and
- Transport from the port to market.

### **b) Other Port Options**

In November 2009, Compliance identified three potentially viable options for shipping Raven coal to Asian markets, and agreed to have each option reviewed during the EA of the Project.<sup>6</sup> These options were:

1. Port Alberni via the Inland Island Highway and Highway 4;
2. Middle Point via the Inland Island Highway; or,
3. Duke Point via the Inland Island Highway.

But on April 2010, John Tapics wrote to the CEA Agency advising that it wished to submit only one option to EA: coal shipment from the port in Port Alberni. Compliance did not assert that the other options were no longer feasible, just that the Port Alberni option was its "preferred" option, indicating further that it may pursue alternative options at a later date.<sup>7</sup>

In addition, a June 2011 feasibility study reported that the Proponent was examining a new port location somewhere on the east coast of Vancouver Island:

An alternative port site has been identified on the east coast of Vancouver Island. A class 2 capital cost estimate of establishing a new port at this location should be undertaken. This site has the potential to lower the capital costs by approximately C\$20 million primarily because of the potential use of open air storage at this location versus enclosed storage facilities at Port Alberni and the opportunity to simplify the coal stacking and reclaim system. This study would cost an estimated

\$350,000.<sup>8</sup>

Each of the above options should be assessed during the EA. Members of the public have raised serious concerns regarding the transport of coal from Port Alberni, and associated effects. An assessment of each port option could demonstrate that other port options will have less adverse environmental effects than the option currently preferred by the Proponent. Furthermore, the CEA Act mandates an assessment of the “alternative means of carrying out the project that are technically and economically feasible...”<sup>9</sup> The public has been informed that there are at least three port options for the Raven project that are feasible. The fact that one of these feasible options is not preferred by the Proponent does not alleviate the statutory duty on the CEA Agency to ensure that alternative means of carrying out the Project are fully assessed.

**Recommendation 3:**

Both the provincial and federal scope of the EA should be revised to include an assessment of each feasible port option, including at minimum the three options identified by the Proponent in its November 2009 letter above, and the option referred to in the June 2011 feasibility report.

**c) Reclamation Bonds and Securities**

Serious concerns have been raised by CoalWatch and other members of the public regarding the adequacy of reclamation bonds and other financial securities required of the Proponent. Reclamation bonds and other forms of security have, in recent years, been regularly imposed as conditions of permits granted under the BC *Mines Act*. However, as a recent report by the Environmental Law Centre has concluded, inadequate securities, combined with an absence of compensatory funds available to the public for environmental damage (e.g. post closure), and poor environmental monitoring and enforcement, have resulted in the burden of millions of dollars in mine clean-up costs being placed onto British Columbian tax payers.<sup>10</sup> An inadequate reclamation bond could result in significant effects on the socio-economic condition of the public (namely, BC tax payers).

The DAIR/EISG indicates that neither the provincial nor federal lists of Project components/undertakings includes the reclamation bonds and securities required of the Proponent. Given this potential public liability, including reclamation bonds and security within the scope of the project is necessary to discharge the legal obligation under the CEA Act to consider the potential environmental effects of the Project on socio-economic conditions.<sup>11</sup>

**Recommendation 4:**

Both the EAO and CEA Agency should amend the scope of review to add reclamation bonding and related financial securities to the list of project components to undergo assessment in this EA.

**3. How should the project be understood in relation to future, related activities or projects?**

*Federal Legislation*

Under section 15(2), the CEA Agency has the authority to “determine that [two or more] projects are so closely related that they can be considered to form a single project.” Alternatively, related projects or activities can be assessed in terms of the cumulative effect that they may have in combination with the effects of the Project. In fact, the CEA Act requires an assessment of cumulative effects, stating that each comprehensive study must include a consideration of “any cumulative environmental effects that are likely to result from the project in combination with other projects or activities that have been or will be carried out.”<sup>12</sup>

### *CEA Agency Policy*

As cited above, s. 16 of the CEA Act requires a consideration of effects from certain projects or activities that “will be carried out”. There is uncertainty regarding the probability that any future projects will *actually* be carried out, including the project under review. Therefore, the CEA Agency’s 2007 policy statement advises inclusion of “certain”, “reasonably foreseeable”, and even “hypothetical” projects within the scope of cumulative effects assessment.<sup>13</sup> The CEA Agency Practitioners Guide defines these terms as follows:

- Certain** – the action will proceed or there is a high probability the action will proceed;
- Reasonably foreseeable** – the action may proceed, but there is some uncertainty about this conclusion; and
- Hypothetical** – there is considerable uncertainty whether the action will ever proceed.<sup>14</sup>

In further defining “reasonably foreseeable”, the Practitioners Guide includes:

- activities “directly associated with [the] project under review, but [are] conditional on that project’s approval”; and
- activities “not directly associated with the project under review, but [that] may proceed if that project is approved.”<sup>15</sup>

### *Future Projects*

For present purposes, these scoping questions are important because there is evidence to suggest that the approval of the Raven Project would greatly increase the probability of the development of the nearby Bear and Anderson Lake tenures, the rights to both of which are held by the Proponent. In view of the evidence summarized below, Bear, in particular, could be understood as a phase of the Raven project, requiring a greater level of assessment than currently proposed by the CEA Agency and BC EAO.

### *The Bear Coal Project*

The Proponent holds majority interest in 8 coal licenses totalling 5,056 acres (2,046 hectares) for the Bear coal deposit, located approximately 10 kilometres northwest of the Raven Project. Compliance purchased the Bear property in 2004 (it was then known as the Hamilton Lake deposit). According to Compliance’s website (on a page now removed), Compliance spent \$750,000 on exploration at Bear. An April 2006 technical report<sup>16</sup> identified 8.5 million tonnes of high-volatile A-bituminous coal, of which 5 million tonnes would be mineable by open-pit methods.<sup>17</sup>

The Proponent made no reference to the Bear deposit in its Project Description or other draft application materials for this EA. Compliance CEO, John Tapics, has downplayed the significance of the Bear project in the public as well, stating, in a February 18, 2011 letter published in the Times Colonist, that “Compliance Coal Corp. has no plans to develop other properties on Vancouver Island at this time...”<sup>18</sup>

However, the Compliance website contained a number of pages describing the history, exploration, and next steps for the Bear project. The website made explicit reference to Compliance’s expectation to develop Bear in conjunction with Raven:

The Bear is approximately 10 km apart from the Raven and it is anticipated that it would be developed in conjunction with the Raven deposit.<sup>19</sup>

The website also indicated that showings in between Bear and Raven may contain in excess of 100 million tonnes of coal. References to Bear deposit were later removed from the Compliance website. But in April 2011, an investment newsletter published by Pathways Asset Management reported that it “wouldn’t take much” to complete exploration on the Bear project, and further that the infrastructure provided by Raven could be utilized for the Bear project:

Compliance’s strategy for developing its coal resources in the Comox Basin are geared toward proving itself as a responsible operator of the proposed underground mine at Raven in order to earn its “social license”. The Company then plans to apply for permits to further explore the Bear property where a historical resource of 8.5 million tonnes occurs near surface – one that wouldn’t take that much to bring into compliance with NI43-101 according to Tapics during a telephone interview last week.

“Given the current stage of exploration, developing Bear would not make sense without the Raven infrastructure. Further exploration on Bear and the showings between Bear and Raven would be required before applying for permits to mine Bear.”<sup>20</sup>

This evidence suggests that the approval of the Raven project would make the development of Bear highly probable. Given Mr. Tapics’ statements about the low costs of completing exploration for Bear and the impracticality of mining Bear without Raven infrastructure, the development of the Bear deposit should be considered a later phase of the same overall Raven project. The implications of this are examined below.

### *The Anderson Lake Project*

According to the Proponent’s website, Compliance owns the coal licence application rights to the Anderson Lake coal deposit, located 7 km north of Cumberland and 8 km from Campbell River.<sup>21</sup> According to a 1983 report prepared for Weldwood of Canada Limited by Gardner Exploration Consultants, the Anderson Lake license area contained an estimated 1.675 Mt of coal resources, extractable via gravel pit mining. The report concluded that due to their small size, the Anderson Lake deposits were not at that time economical. However, the authors went on to suggest that the development of Anderson Lake could become economical if operated in

conjunction with a larger deposit with unused production plant capacity. The coal from Anderson Lake would then be blended with the feedstock for this production plant.<sup>22</sup>

This information suggests that development of Anderson Lake would become immediately more likely should the Raven or Bear projects go ahead, and supports the argument that the Anderson Lake project be scoped into the cumulative environmental effects assessment of the Raven project.

#### *The DAIR/EIS Guidelines*

Sections 4.2.4 and 4.2.5 address the cumulative effects methodology to be employed in this provincial EA. Section 22.13 sets out the federal requirements for cumulative effects assessment. The EISG does not prescribe which projects must be included within the federal cumulative effects assessment, saying only that it should follow the CEA Agency operational policy of 2007, and that the proponent must include a map of the projects included in the cumulative effects assessment. Section 4.2.4 of the DAIR goes somewhat further, listing some of the ongoing projects, such as the Quinsam Mine. With respect to the Bear project, the DAIR states ambiguously:

Note that the proponent has conducted exploration on the Bear Coal Project situated approximately 10 km to the northwest of the proposed Raven Project.

However, it fails to prescribe the consideration of the effects from the Bear and Anderson Lake projects.

The Proponent is required to conduct new studies or gather new information respecting the direct effects of the reviewable Project, but to date, the CEA Agency has allowed Proponents to rely on publicly available information to assess cumulative environmental effects. If a future activity such as the Bear development were included as a component of the larger Project under review, rather than as a stand-alone project to be considered within the cumulative effects assessment, the Proponent would therefore be required to provide more information on the Bear development than is currently available to the public.

#### **Recommendation 5:**

EAO and CEA Agency should mandate the inclusion of the Bear and Anderson Lake deposits as components of the Project to be directly assessed. Failing that, the EAO and CEA Agency should mandate the inclusion of those deposits within the list of projects to be considered in the cumulative effects assessment.

CoalWatch members have raised numerous concerns regarding potential impacts from Raven to groundwater resources in and around Comox Valley. Repeated requests have been made for aquifer mapping and improved groundwater studies. The Bear project is located above Comox Lake, the chief water supply for residents of Comox and Courtney. It may be difficult to assess potential cumulative effects in the absence of accurate baseline information and comprehensive groundwater studies respecting these developments. The scope of required information should be amended accordingly.

The evidence suggests that Bear is a future phase of the Raven Project. Reliance only on publicly available information about the effects of Bear would not fulfill the purposes of environmental assessment. The Agency's 2010 operational policy statement indicates that "future phases, unless these are connected actions, should be scoped as separate projects, but considered as much as possible as part of the cumulative effects assessment."<sup>23</sup>

**Recommendation 6:**

The EAO and CEA Agency should require the collection of detailed baseline information, and the assessment of the full range of potential effects, respecting the potential development of Bear and Anderson Lake. At a minimum, this should include:

- Aquifer mapping and groundwater studies for the entire Bear and Anderson Lake tenure areas; and
- Assessment of potential acid rock generation for deposits at Bear and Anderson Lake.

*Spatial Boundaries*

Section 22.13 of the EISG provides little insight into how the spatial boundaries of the federal cumulative effects assessment will be determined. It says only that effects within a "zone of influence" will be assessed, defining this term with the equally opaque "zone of potential effects":

The CEE assessment will consider the effects of the proposed Raven Project in combination with the effects of other past, present or reasonably foreseeable projects, and / or activities within the proposed Raven Project's zone of influence (or zone of potential effects).

This is particularly unhelpful given the considerable evidence that, in addition to other projects such as Quinsam, CEA Agency policy indicates that Bear and Anderson Lake should be included within the cumulative effects assessment to the extent possible.

The provincial approach to determining spatial boundaries is set out in section 4.1 of the DAIR. The application of spatial boundaries to the cumulative effects assessment is set out in 4.2.5. In general terms, the provincial methodology is to first identify the spatial boundaries associated with the anticipated effects respecting each Valued Component ("VC") of the Raven Project. Regional Study Areas and Local Study Areas are identified—both in relation to the anticipated direct impacts only of the Raven Project. Instead of expanding the LSA or RSA to include the anticipated effects of the projects/activities subject to cumulative effects assessment, the DAIR limits the cumulative effects assessment to those effects that may occur within the RSA/LSA of the Project.

This methodology excludes cumulative effects by design. It results in the absurd conclusion that even if approval of the Project under review would make the occurrence of subsequent projects highly certain, those subsequent effects will be ignored unless they occur within the predetermined spatial scope of the Project under review. This would be like police assessing the

potential effects of a riot by considering only those buildings within a few city blocks of few suspected troublemakers, and ignoring the larger area occupied by the crowd as a whole.

**Recommendation 7:**

The federal and spatial boundaries should be expanded to include any potential biophysical and socio-economic effects from the Bear and Anderson Lake deposits and any other identifiable potential sources of cumulative effects, rather than only the effects of those projects that may overlap with the RSAs or LSAs, or “zone of influence”, defined in relation to Raven.

*Temporal Boundaries*

The DAIR currently indicates that the temporal scope of the provincial review will include post-closure environmental effects, though CoalWatch members have submitted numerous comments indicating that the temporal boundaries have been fixed too early to properly assess anticipated effects.

The federal scoping section, however, is unclear in this regard, failing to mandate that the effects and cumulative effects of the Project be assessed until initial conditions have been restored. It appears that the CEA Agency’s default position is that the effects are only considered for the lifespan of the mine (i.e. until mine closure), rather than for the lifespan of *the potential effects of the mine, including post-closure effects*. The CEA Agency appears to be proposing that the effects of acid mine drainage will only be considered up until the time of reclamation rather than for as long as it might take to address those impacts:

The temporal boundaries will encompass the entire lifespan of the proposed Raven Project, which is the duration of use until it is deemed necessary to be decommissioned. The Application / EIS will discuss the effects of the proposed Raven Project on each factor beginning with the construction phase and throughout the operations phase, including maintenance and / or modifications, and through to the completion of the decommissioning phase. However, it should be noted that the temporal boundary for certain components of the proposed Raven Project, such as mine reject piles and treatment / tailings management ponds / facilities, would extend into the closure and reclamation phase, as appropriate. Potential malfunctions and accidents that could occur during any phase will also be considered, along with the likelihood and circumstances under which these events could occur. (emphasis added)<sup>24</sup>

The exclusion of environmental effects potentially extending beyond the closure of the Raven mine is inconsistent with CEA Agency policy, which states:

The boundary in the past *ideally* begins before the effects associated with the action under review and possibly before the effects of most major actions were present. The boundary in the future typically ends when pre-action conditions become re-established (i.e., VECs have recovered and effects become trivial).<sup>25</sup>

The CEA Agency Practitioner’s Guide recommends using scenario modeling in order to assess the future environmental and cumulative environmental effects of the Project.<sup>26</sup> For instance,

this would mean conducting an analysis of the anticipated future effects if the Project is carried out and another for a scenario in which it is not; a scenario in which all of the reasonably foreseeable projects/activities (e.g. Bear and Anderson Lake) are carried out and other scenarios in which those projects/activities are not.

**Recommendation 8:**

The provincial and federal temporal boundaries should ensure that any potential direct or cumulative effects occurring after closure are within the scope of the assessment, including potential effects on groundwater, the marine environment, and acid rock drainage until pre-action conditions become re-established.

**4. Need for, Purpose of, and Alternatives to the Project**

Section 16(1)(e) of the CEA Act provides a federal mandate to assess “the need for the project and alternatives to the project”. However, the provincial and federal governments propose to assess these factors “from the perspective of the proponent”:

The Application / EIS will include a description of the need for, and purpose of, the proposed Raven Project. This information will be provided as described in Part A, Section 2, and will be referenced as appropriate.<sup>27</sup>

This section of the Application / EIS will describe the need for and purpose of the proposed Raven Project. The “need for” the project is defined as the problem or opportunity that the proposed Raven Project is intending to solve or satisfy. The “purpose of” the project is defined as what is to be achieved by carrying out the proposed Raven Project. The “need for” and “purpose of” the project will be established from the perspective of the proponent.<sup>28</sup>

The purpose of environmental assessment is not to subsidize the financial planning of resource development companies. It is not clear what utility a description of the “need for” and “purpose of” the project from the perspective of the proponent might serve. The proponent’s need for the project, quite simply, is to earn a profit by developing the resource. At the very least, this section should be supplemented with a description of the public need for and purpose of the Project—if any.

Furthermore, the EA should include an assessment of alternatives to the Project, as indicated in s. 16(1)(e) of the CEA Act. The proposed project benefits (described in section 2.7) can only properly be assessed against alternative scenarios of land use development – including scenarios in which the Project is not developed. Presumably, the alleged need for and purpose of Raven is to create jobs and raise public revenue. These potential benefits may only be available at the cost of significant adverse environmental effects. Considering alternative scenarios allows the public to discuss whether there are other projects or potential land uses that could produce these same benefits, yet with less or no significant adverse effects. Conducting this assessment without examining alternative scenarios is to proceed on the basis that the development of the Project is a foregone conclusion. Such assumptions are contrary to the expressed purposes of the CEA Act. Alternative scenarios for land use should be conducted based on regional and local planning

documents, public comments submitted on the issue in the EA, and submissions from all levels of government, including First Nations.

**Recommendation 9:**

The provincial and federal sections of the DAIR/EISG should be revised to include a section on the need for, purpose of, and alternatives to the Project from the perspective of the public.

We look forward to seeing your agencies and the Proponent consider these recommendations in the development of the DAIR/EISG.

Yours truly,  
DEVLIN GAILUS



Tim Thielmann

THT/jml  
cc: client

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<sup>1</sup> The submissions have been prepared by Tim Thielmann of Devlin Gailus, Barristers and Solicitors, with the assistance of CoalWatch members; law student, Ryan Schubert; and Calvin Sandborn, legal director of the University of Victoria Environmental Law Centre.

<sup>2</sup> *Canadian Environmental Assessment Act*, S.C. 1992, c. 37 (“CEA Act”), s. 16. (1)

Every screening or comprehensive study of a project and every mediation or assessment by a review panel shall include a consideration of the following factors:

(a) the environmental effects of the project, including the environmental effects of malfunctions or accidents that may occur in connection with the project and any cumulative environmental effects that are likely to result from the project in combination with other projects or activities that have been or will be carried out;

(b) the significance of the effects referred to in paragraph (a);

<sup>3</sup> *MiningWatch Canada v. Canada (Fisheries and Oceans)* 2010 SCC 2

<sup>4</sup> British Columbia *Environmental Assessment Act*, S.B.C. 2002, c. 43 (“BCCEA”), s. 11(2).

<sup>5</sup> *BCEAA*, at s. 13.

<sup>6</sup> Letter from John Tapics to Rachel Shaw, November 24, 2009, available online:

[http://a100.gov.bc.ca/appsdata/epic/documents/p351/1259189959073\\_ac71c2ef6dd962ad093326dda104c21eacfa3791ff0e2c74f669372d7a2e7214.pdf](http://a100.gov.bc.ca/appsdata/epic/documents/p351/1259189959073_ac71c2ef6dd962ad093326dda104c21eacfa3791ff0e2c74f669372d7a2e7214.pdf)

<sup>7</sup> Letter from John Tapics to Rachel Shaw, April 19, 2010 available online:

[http://a100.gov.bc.ca/appsdata/epic/documents/p351/1273516110914\\_a8f9af96262d9ff325e4452109b72a5c6e2c4828796e47dd8ed0c732bc322dfb.pdf](http://a100.gov.bc.ca/appsdata/epic/documents/p351/1273516110914_a8f9af96262d9ff325e4452109b72a5c6e2c4828796e47dd8ed0c732bc322dfb.pdf)

<sup>8</sup> “Technical Report on the Raven Underground Coal Project, Comox Valley, British Columbia”

June 8, 2011 Pincock, Allen, and Hoit, p. 1.9 - 1.10, available at:

<http://www.coalwatch.ca/sites/default/files/TechnicalReportRavenProject-PincockAllenHolt-08Jun2011.pdf>

<sup>9</sup> *CEA Act*, at s. 16(2)(b).

<sup>10</sup> See Maya Stano, Environmental Law Centre, University of Victoria, “The Raven Mine: A Regulatory and Fiscal Black Hole? A Look at Environmental enforcement & Securities at Mines in BC.” Spring 2011. Available online: [http://www.elc.uvic.ca/publications/documents/2010-02-03-RavenMine-RegulatoryandFiscalBlackHole\\_Stano.pdf](http://www.elc.uvic.ca/publications/documents/2010-02-03-RavenMine-RegulatoryandFiscalBlackHole_Stano.pdf), and Maya Stano, “Bearing the Heavy Burden of Coal Mining: Compensating Victims of Environmental Damage Caused by Coal Mining in British Columbia.” April 2011, available online at:

<http://www.coalwatch.ca/sites/default/files/Bearing-Burden-of-Coal-Mining-in-BC-MayaStano-Apr2011.pdf>

<sup>11</sup> British Columbia has asserted that the content of reclamation bonds is confidential. CoalWatch takes the position that the public interest in assessing the significance of environmental effects on socio-economic conditions such as public costs resulting from mine abandonment outweighs any prejudice that could be suffered by Raven due to the disclosure of this information.

<sup>12</sup> *CEA Act*, at s. 16(1)(a). Emphasis added.

<sup>13</sup> “Cumulative Effects Assessment Practitioners Guide,” Canadian Environmental Assessment Agency (February 1999), p. 18-19. Available online: [http://www.ceaa.gc.ca/43952694-0363-4B1E-B2B3-47365FAF1ED7/Cumulative\\_Effects\\_Assessment\\_Practitioners\\_Guide.pdf](http://www.ceaa.gc.ca/43952694-0363-4B1E-B2B3-47365FAF1ED7/Cumulative_Effects_Assessment_Practitioners_Guide.pdf) (“Practitioners Guide”).

<sup>14</sup> Practitioners Guide, p. 18-19.

<sup>15</sup> Practitioners Guide, at p. 19.

<sup>16</sup> “Report on 2006 Exploration Work Bear Project (Hamilton Lake Area).” Owen Cullingham, April 6, 2006. Available online: <http://www.em.gov.bc.ca/DL/COALReports/887.pdf>

<sup>17</sup> CoalWatch website, <http://www.coalwatch.ca/background-bear-deposit-and-anderson-lake-deposit>

<sup>18</sup> Available online at: <http://www.coalwatch.ca/no-other-coal-mines-planned-island>

<sup>19</sup> Available online at: <http://www.coalwatch.ca/sites/default/files/CWCV-Review-Panel-request-letter-and-appendices-Aug17.10.pdf>, p. 92.

<sup>20</sup> Pathway Mining, Energy & Investment Standard, April 2011. Available online at: [http://mineralfields.com/newsletter/PW\\_NEWS0411.pdf](http://mineralfields.com/newsletter/PW_NEWS0411.pdf)

<sup>21</sup> Available at <http://www.coalwatch.ca/sites/default/files/CWCV-Review-Panel-request-letter-and-appendices-Aug17.10.pdf>, p. 93. Although it is not clear whether Compliance or another company owns the coal licence(s) to the Anderson Lake tenure, the construction of a coal processing plant at nearby Raven would nevertheless make the development of the Anderson Lake deposit immediately more probable, justifying its inclusion as a reasonably foreseeable project to be included within the scope of cumulative effects assessment.

<sup>22</sup> I Stephen L Gardner, *1983 Exploration Work: The Geology and Coal Resources of the Anderson West Coal Licences* (Gardner Exploration Consultants, 1983), COALFILE 039, at p. 22. Available online at: <http://www.em.gov.bc.ca/DL/COALReports/039.pdf>

<sup>23</sup> “Operational Policy Statement: Establishing the Project Scope and Assessment Type under the CEAA,” Canadian Environmental Assessment Agency (February 2010), p. 3-4. Available online: [http://www.ceaa.gc.ca/C3BD5DA2-76E5-4655-ABC4-B26E99EBAF73/Establishing\\_the\\_Project\\_Scope\\_and\\_Assessment\\_Type\\_under\\_the\\_CEEA.pdf](http://www.ceaa.gc.ca/C3BD5DA2-76E5-4655-ABC4-B26E99EBAF73/Establishing_the_Project_Scope_and_Assessment_Type_under_the_CEEA.pdf) (“2010 Operational Policy Statement”).

<sup>24</sup> DAIR/EIS, section 22.4

<sup>25</sup> Practitioners Guide, at p. 15. Emphasis added.

<sup>26</sup> Practitioners Guide, p. 16.

<sup>27</sup> DAIR/EISG Section 22.3

<sup>28</sup> DAIR/EISG Section 2.2.1