

# Evaluation of an Application to Designate the Timicw Good Earth Recycling Landfill as Reviewable Under the *Environmental Assessment Act*

REQUESTED BY:

ASHCROFT INDIAN BAND AND  
VILLAGE OF CACHE CREEK

MAY 13, 2024

Pursuant to Section 11 of the *Environmental Assessment Act*, S.B.C. 2018, c.51.



**EAO**

Environmental  
Assessment Office

## TABLE OF CONTENTS

ACRONYMS AND ABBREVIATIONS .....	2
1.0 PURPOSE OF THIS REPORT .....	3
2.0 DESIGNATION REQUESTS .....	3
3.0 BACKGROUND .....	3
3.1 Project Background .....	3
3.2 Application Background .....	4
4.0 KEY CONCERNS RAISED IN THE APPLICATIONS.....	6
5.0 THE EAO’S DESIGNATION REVIEW PROCESS.....	6
6.0 REGULATORY HISTORY AND STATUS.....	7
6.1 Environmental Management Act .....	7
6.2 Mineral Tenure Act .....	8
6.3 Land Act .....	8
6.4 Heritage Conservation Act .....	9
7.0 DETAILS OF THE REVIEW GIVEN THE ISSUES RAISED.....	9
7.1 Area of Disturbance .....	9
7.1.1 Issues Raised by the Applicants .....	9
7.1.2 Response from the Proponents.....	10
7.2 Archeological Impacts .....	10
7.2.1 Issues Raised by the Applicants .....	10
7.2.2 Response from the Proponents.....	10
7.3 Impacts on Aboriginal Rights and Title .....	10
7.3.1 Issues Raised by the Applicants .....	10
7.3.2 Response from the Proponents.....	11
7.4 Impacts on Ashcroft Indian Band Community Members .....	11
7.4.1 Issues Raised by the Applicants .....	11
7.4.2 Response from the Proponents.....	11
7.5 Engagement by the EAO .....	11
8.0 EVALUATION OF THE PROJECT AGAINST SECTION 11 OF THE ACT.....	13
8.1 Eligible Project for the Purposes of Section 11(1) .....	13
8.1.1 Substantially Started .....	13
8.1.2 Reviewability under the Reviewable Projects Regulation.....	13

8.2 Whether the Applicant is a First Nation ..... 14

8.3 Whether the Project could have Effects on First Nations and Section 35 Rights ..... 14

8.4 Whether the Project’s Effects be Equivalent, or Greater than, Potential Effects of Projects in the Same Category 14

8.5 Whether an Assessment of the Project is Consistent with the Purposes of the EAO ..... 14

8.5.1 Promoting Sustainability by Protecting the Environment and Fostering a Sound Economy and the Well-Being of British Columbians and their Communities.....14

8.5.2 Supporting Reconciliation with Indigenous Peoples in British Columbia .....15

9.0 RECOMMENDATION .....15

## Acronyms and Abbreviations

the Act	the <a href="#">Environmental Assessment Act</a>
AIB	Ashcroft Indian Band
the Applicants	the Ashcroft Indian Band and Village of Cache Creek
Applications	the designation applications
BFN	Bonaparte First Nation
CFIB	Cook’s Ferry Indian Band
EA	environmental assessment
EAO	the Environmental Assessment Office
EMA	the <i>Environmental Management Act</i>
EMLI	the Ministry of Energy Mines and Low Carbon Innovation
ENV	the Ministry of Environment and Climate Change Strategy
ha	hectares
HCA	the <i>Heritage Conservation Act</i>
Minister	the Minister of Environment and Climate Change Strategy
OC	Operational Certificate
the Project	the Timicw Good Earth Recycling Landfill Project
Proponents	Bonaparte First Nation and 357999 BC Ltd.
RPR	the <a href="#">Reviewable Projects Regulation</a>
SCSA	the South Cariboo Sportsman Association
SWMP	Solid Waste Management Plan
TNRD	Thompson-Nicola Regional District
WLRS	the Ministry of Water, Land and Resource Stewardship

## 1.0 PURPOSE OF THIS REPORT

The Environmental Assessment Office (EAO) received letters dated May 8, 2023, and May 10, 2023, from the Ashcroft Indian Band (AIB) and Village of Cache Creek (the Applicants), respectively, to designate the Timicw Good Earth Recycling Landfill Project (the Project) as a reviewable project under Section 11 of the [Environmental Assessment Act](#) (the Act). The Project is proposed by Bonaparte First Nation (BFN) and 357999 BC Ltd. (the Proponents).

This report provides the EAO’s analysis of the designation applications (Applications), the input received from review participants, and an evaluation of the Project against the factors that must be considered by the Minister of Environment and Climate Change Strategy (the Minister) under Section 11 of the Act. The Minister’s powers and duties under Section 11 are delegated to the Chief Executive Assessment Officer. This is the final report and recommendation provided by the EAO to the Chief Executive Assessment Officer to inform their decision on whether to designate the Project as reviewable under Section 11 of the Act.

## 2.0 DESIGNATION REQUESTS

Eligibility to be designated to require an environmental assessment (EA) refers to a project that is not substantially started and is not reviewable under the [Reviewable Projects Regulation](#) (RPR). When a designation application is received, the EAO screens the application to understand: if the project is an eligible project; if the applicant has provided a statement of why the project should be considered reviewable under the Act; and if the project has undergone – or will undergo – a [Project Notification](#) process under the Act.

When a complete designation application has been received, and the project is determined to be an eligible project, the EAO seeks input on the application from the proponents of the project, potentially affected First Nations, local governments, provincial and/or federal agencies, and in some cases, the public. The EAO drafts a designation report based on the information received and provides the report with recommendations to the decision maker.

The Minister or delegate must consider a number of factors in their decision regarding a designation application, as set out in Section 11(4) of the Act. These factors include:

- Whether the applicant is a First Nation, and whether the eligible project could have effects on a First Nation and the Rights recognized and affirmed by Section 35 of the *Constitution Act, 1982*;
- If the eligible project is in a category of project listed in the RPR;
- Whether the potential effects of the eligible project will be equivalent to or greater than the potential effects of projects in that same category that are reviewable projects; and
- Whether an assessment of an eligible project is consistent with the purposes set out in Section 2 of the Act.

This report provides the EAO’s analysis of these matters and any recommendations to the decision maker. If the Minister or delegate declines to designate a project as reviewable, the Act requires that the decision maker must provide reasons for that decision to the applicant(s).

## 3.0 BACKGROUND

### 3.1 Project Background

The proposed Project would be a new waste management facility including municipal solid waste landfilling, composting, and waste recovery from commercial customers. The Project would be approximately 3 kilometres south of the Village of Cache Creek, west of Highway 1 and Northwest of the Cache Creek Airport. The existing Campbell Hill Landfill is approximately 500 metres north of the Project site.

The project includes the following components:

- Construction of a double lined landfill basin;
- Leachate and stormwater management systems;
- Double lined leachate evaporation pond(s); and
- Waste recovery area and scale house with scale(s).

In 2022, 357999 BC Ltd. was issued a permit by the Ministry of Energy Mines and Low Carbon Innovation (EMLI) for the purpose of core sampling minerals on the same site.

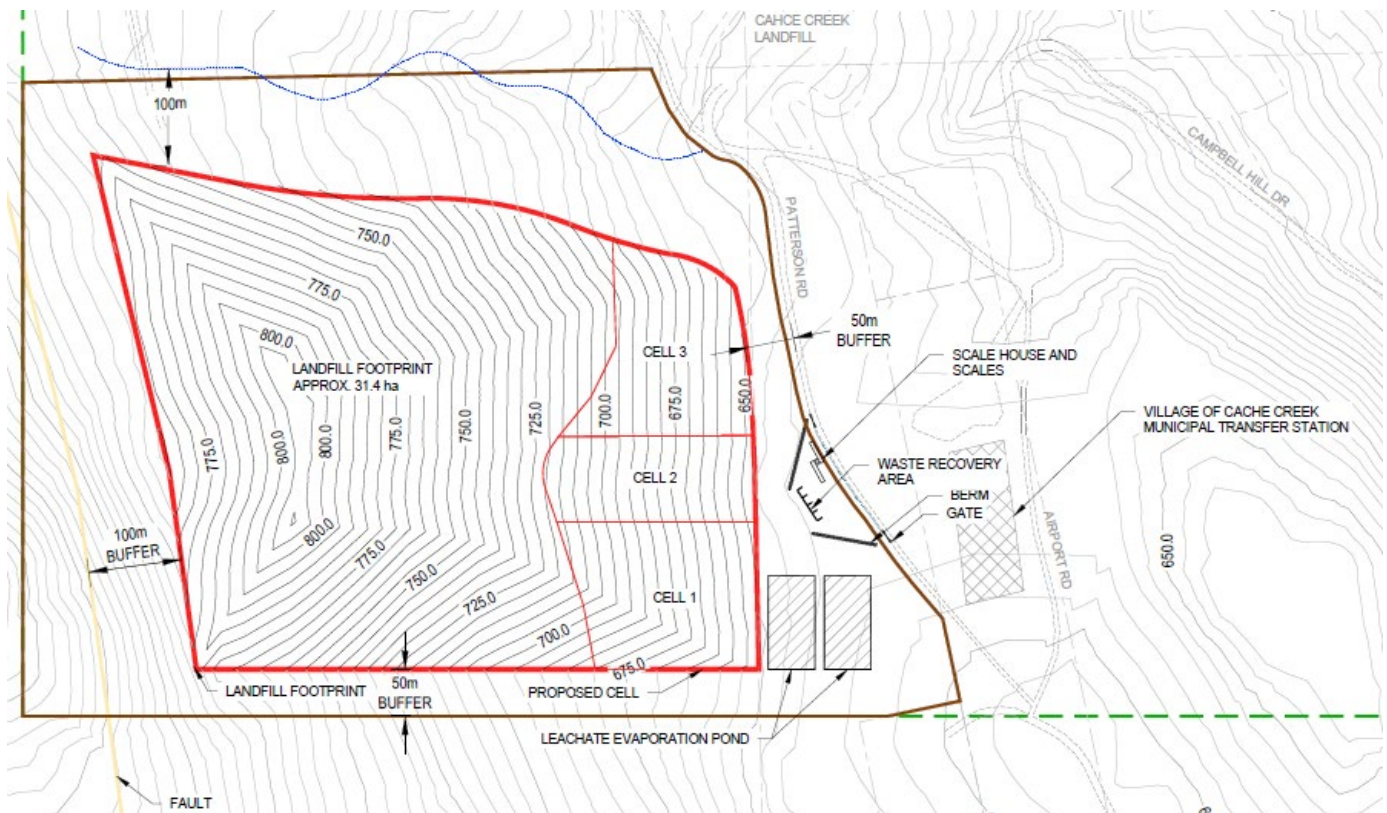


Figure 1: Timicw Good Earth Recycling Landfill Project Detail (source: Proponents’ submission)

### 3.2 Application Background

The Project was described in the Applications as a proposed landfill with a disturbance area of 39 hectares (ha) located directly adjacent to the existing Campbell Hill Landfill at Cache Creek. This was confirmed when the Ministry of Environment and Climate Change Strategy (ENV) provided the EAO with a copy of the Proponents’ Preliminary Application for a new Authorization to discharge waste under the *Environmental Management Act* (EMA) which indicated a discharge rate of up to 240,000 tonnes per year of municipal solid waste for a period of 75 years on a 39-ha footprint.

However, the discharge rate and footprint were later reduced to a maximum of 190,000 tonnes per year and 31.4-ha, respectively, in a new Preliminary Application submitted to the ENV by the Proponents on September 18, 2023. At 190,000 tonnes per year, the new discharge rate is 24 percent lower than the RPR threshold of 250,000 tonnes per year. The EAO used the updated project design to evaluate the Applications and this design is what is being considered in this report.

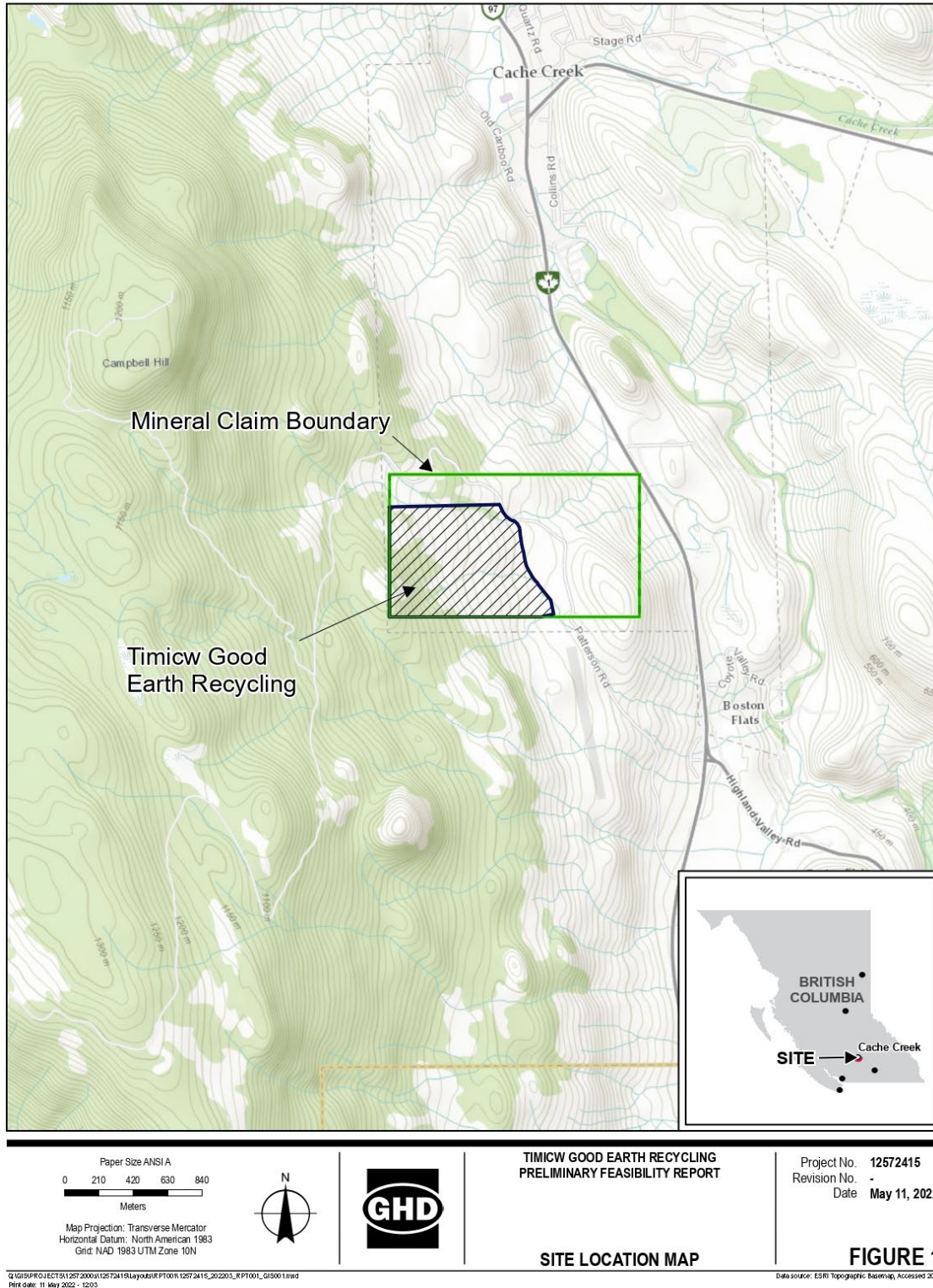


Figure 2: Timicw Good Earth Recycling Landfill Project Location (source: Proponents’ submission)

## 4.0 KEY CONCERNS RAISED IN THE APPLICATIONS

The Applicants raised the following specific views and concerns in their Application letters addressed to the Minister.

Concerns submitted by AIB:

- Area of disturbance:
  - Concerns about impacts of the project relative to the proposed scale and capacity, which is close to the threshold described in the RPR; and
  - If the Proponents obtain an Operational Certificate (OC) from ENV without an EA Certificate and associated conditions, operations could later be scaled up to be above the RPR threshold of 250,000 tonnes per year, without AIB consultation.
- Archeological Impacts from the project:
  - AIB’s letter referenced the Aboriginal Interest Consideration Report (November 6, 2008) prepared by the province that documents archaeological evidence of human activity and a high potential for archaeological finds in the proposed Project area.
- Impacts on AIB’s Aboriginal rights and title:
  - The Project would result in impacts on AIB Section 35 Rights;
  - Amendments made to the Act were to ensure that the AIB’s constitutionally protected Aboriginal rights and title were not affected by a project without full and complete consultation and an opportunity to participate in a fully transparent EA;
  - AIB has asserted Aboriginal rights and title over the lands where the landfill is being proposed; and
  - Both AIB and BFN were listed as ‘key First Nations’ in the 2008 Aboriginal Interest Consideration Report prepared by the Government of British Columbia for the development of the Cache Creek Landfill (now known as the Campbell Hill Landfill). Due to the proximity of the Campbell Hill Landfill to the Project, AIB believes they should also be considered a key First Nation for the proposed project.
- Impacts on AIB communities and community members:
  - AIB states that they have four sizable reserves that are within 5-10 kilometres of the Project ranging from 123.3 – 1,365.6 ha; and
  - Potential impacts identified in the Application include environmental, economic, social, cultural or health effects to their members and nearby reserves.

Concerns submitted by Village of Cache Creek:

- Area of disturbance:
  - Size of the project (31.4-ha) in relation to the existing Campbell Hill Landfill Expansion (31-ha) that had received an EA Certificate in 2010<sup>1</sup>.

## 5.0 THE EAO’S DESIGNATION REVIEW PROCESS

Following receipt of the Applications, the EAO reviewed the [Project Information](#) provided by the Proponents. The Project Information included a project description, an assessment of the Project against applicable criteria under the RPR, consultation status, and a review of potential effects of the Project. The EAO’s initial review of the project confirmed that

<sup>1</sup> The Campbell Hill Landfill was formally known as the Cache Creek Landfill Extension Project (EA Certificate #WD09-02).

one of the Applicants, AIB, is a First Nation, and that the Project is a landfill, which is in a category of projects listed in the RPR.

To gather information necessary to evaluate the Applications, the EAO engaged potentially affected First Nations with territories overlapping the project footprint, including any comments or information regarding potential impacts of the Project on these Nations and their Section 35 Rights. The EAO consulted the following First Nations and tribal councils:

- Ashcroft Indian Band;
- Coldwater First Nation;
- Cook’s Ferry Indian Band (CFIB);
- Lower Nicola Indian Band;
- Neskonlith Indian Band;
- Nlaka’pamux Nation Tribal Council;
- Nooaitch Indian Band;
- Shackan Indian Band;
- Siska First Nation;
- Spuzzum First Nation;
- Nicomen Indian Band; and
- Whispering Pines/ Clinton Indian Band.

The EAO also engaged ENV, EMLI, the Ministry of Water, Land and Resource Stewardship (WLRS) and the Ministry of Forests regarding the status and scope of the current permitting processes and associated consultation and engagement requirements with the public and First Nations. The EAO was made aware of the tenure of the South Cariboo Sportsman Association (SCSA) who operate a gun range in the proposed project area. The EAO also sought information about whether and how the *Mineral Tenure Act*, the EMA, the *Heritage Conservation Act* (HCA) and/or the *Lands Act* processes may consider any of the concerns about potential effects and risks of the Project raised by the Applicants in the designation requests.

During the designation review process, feedback received by the EAO was reviewed to gain an understanding of the issues, which the EAO summarized in a tracking table. The tracking table was then provided to participants for comment and to confirm the EAO’s interpretation. Next, the EAO prepared a draft of this report, incorporating the details from the Applications and submissions by review participants. The draft report was shared with participants for review and comment from March 14 to March 28, 2024. The EAO received feedback on the draft report from SCSA, and the Applicants on March 15, 2024, and April 5, 2024, respectively. This feedback has been considered by the EAO and will be provided to the decision maker.

The Applications, letters and submissions are posted on the [EAO’s Project Information Centre \(EPIC\) page for the Project](#).

## 6.0 REGULATORY HISTORY AND STATUS

### 6.1 Environmental Management Act

The Project is currently at the preliminary application stage of the ENV authorization process. ENV have met with the Proponents and discussed what might be required to consider a final application for an OC for the Project. However, the authorization process to obtain an OC is currently on hold, as ENV waits for the EAO to review the designation applications.

The primary authorization for the Project is under the EMA, which enables the Province of British Columbia to regulate the introduction of waste to receiving environments. Solid waste management facilities require a Solid Waste Management Plan (SWMP) authorization and an OC under the EMA. The OC describes the specifics of how the landfill must be operated and includes more detailed design, operation, maintenance, performance, and closure requirements. As the waste products to be landfilled are Municipal Solid Waste, the type of authorization required is two-fold.

The proposed landfill must first be included in an amended Thompson-Nicola Regional District (TNRD) SWMP, as a pre-condition to the site-specific authorization for approval by the Minister. The TNRD will then determine whether to amend

the SWMP and submit it to the Minister for approval. The Environmental Protection Division completes a thorough assessment and creates a detailed report that includes recommendations and conditions for the Minister to consider when making their decision. During its assessment, the Environmental Protection Division considers environmental impacts for the protection of the environment.

The last step of the decision to issue an OC is called a “Notice of Intent”, as required under Section 4(6) of the *Public Notification Regulation*. When ENV notifies the Proponents of the intention to issue the OC the Proponents must publish an Environmental Protection Notice in a local newspaper and on their website and hold an Open House Information Session. A 30-day Public Comment Period occurs followed by a Public Consultation Report detailing the issues raised and their responses. This report is considered by ENV staff and the Minister in the decision to issue the OC and can inform the details of the final document.

The TNRD SWMP amendment process is expected to include significant consultation with the public as well as with First Nations. During this time, ENV would expect BFN to engage directly with AIB to discuss AIB’s concerns. ENV staff must consider whether the Proponents’ public and First Nation consultation are satisfactory and be confident that adequate consultation occurred throughout the TNRD plan amendment and OC application processes.

ENV highly recommends that the Proponents engage with First Nations early and often, as they are best positioned to provide Project details and consider proposed accommodations for impacted parties. ENV can proactively identify parties to be consulted, such as AIB, the Village of Cache Creek, SCSA, and CFIB, and solicit comments directly.

When determining whether to issue an OC, ENV staff will evaluate the consultation record to ensure that potentially affected First Nations were consulted and concerns were considered and addressed. This evaluation has the potential to affect the decision whether to issue the OC. Like the EAO, ENV has obligations under the *Declaration of the Rights of Indigenous Peoples Act* and associated Declaration Act Action Plan, and the duty to consult with First Nations. The consultation required during the SWMP amendment and OC processes provide opportunities for Applicants as well as the public and potentially affected First Nations to express concerns and provide comments about the Project.

## 6.2 Mineral Tenure Act

In 2022, 357999 BC Ltd. was issued a permit by EMLI for the purposes of core sampling for minerals and which includes authorization for 25 drill sites and 10 trenches for a total disturbance of 0.03 ha. To date, six test holes have been drilled. EMLI notified the EAO of a complaint submitted by AIB on August 23, 2023, under the *Mineral Tenure Act (Section 40)*. AIB claimed that 357999 BC Ltd. is not holding the mineral claim for a ‘mining activity’ as defined in the *Mineral Tenure Act*, but instead have been carrying out groundwater monitoring to determine the suitability of the lands for the development of a recycling depot and landfill. As such, EMLI is reviewing the *Mineral Tenure Act* complaint with an anticipated timing for a decision on whether to retract the permit in Spring 2024. EMLI will provide notification to AIB, as well as the Proponents once the decision has been made.

In response to this concern, the Proponents stated to the EAO that under the mineral claim, a drilling permit was granted to explore the mineral property on what BFN claim to be their traditional territory. The Proponents stated that the permit application and drilling activities followed EMLI protocols and regulations and were for mineral testing. A summary of results from these activities were reported to EMLI on March 10, 2023. Additionally, the Proponents claimed that WLRS allows for multiple land uses on the 150-ha mineral property and suggest that both mining exploration and the proposed landfill activities may occur simultaneously on the site.

## 6.3 Land Act

In a letter submitted by the SCSA to the Minister on September 11, 2023, they claim to hold two Licences of Occupation to use Crown land under the *Land Act*, both of which substantially overlap with the proposed Project footprint. The SCSA feel the Proponents’ consultation and compensation considerations have not been adequate to date.

WLRS informed the EAO of a letter they received from BFN on May 26, 2023, notifying the ministry of the Proponents’ intent to lease Crown lands at the Project location. A new tenure application was also submitted to WLRS by 357999 BC Ltd. for the Project on November 30, 2023.

WLRS also confirmed with the EAO that a pre-existing Licence of Occupation is held by the SCSA over much of the same area that the Proponents intend to lease. A replacement application for the SCSA’s Licence of Occupation is currently under review, along with an application to extend the Licence of Occupation boundary, which is awaiting review by WLRS. On June 26, 2023, WLRS approved a modification to the SCSA’s existing tenure to extend the term by two years to continue working through the technical assessment of their application. This was considered reasonable, given it would allow the SCSA to continue operations and provide additional time for the Proponents who had not yet submitted an application for the Project. BFN was first made aware of WLRS’s intent to grant the SCSA an extension on June 20, 2023. WLRS have encouraged the Proponents to re-engage with the SCSA and develop a process to resolve the conflict in proposed land use.

When reviewing *Land Act* applications, WLRS considers environmental, economic, social and cultural impacts. These factors are assessed before making a recommendation on an application to the Statutory Decision Maker. WLRS acknowledges there are impacts on First Nations as well as socio-economic benefits resulting from the Project for BFN and as such, they believe reconciling the existing non-compatible, pre-existing tenure issue is a key step that the Proponents must actively participate in resolving.

## 6.4 Heritage Conservation Act

The Ministry of Forests has confirmed with the EAO that there are no recorded archaeological sites within the footprint of the Project but recognize the area has a high potential for unrecorded archaeological sites to be present, as there are numerous sites recorded nearby. As such, the Ministry of Forests recommends the Proponents undertake an archaeological impact assessment, under an HCA 12.2 Permit, to identify any sites that may be present. To date, the Proponents have not applied for an HCA 12.2 Permit.

Under the HCA, archaeological sites are protected whether they are recorded or not and if an unrecorded site were discovered during Project activities, work must stop until an HCA 12.4 Site Alteration Permit is issued, at minimum. If a party is concerned about an archaeological site being present on site, they are encouraged to reach out to the Archaeology Branch.

## 7.0 DETAILS OF THE REVIEW GIVEN THE ISSUES RAISED

The following section outlines how the EAO’s review of the Applications considered the issues raised.

### 7.1 Area of Disturbance

#### 7.1.1 Issues Raised by the Applicants

The AIB and Village of Cache Creek Applications raised concerns about the potential impacts of the Project related to the size of its footprint. Both Applications stated that the existing Campbell Hill Landfill, formally known as the Cache Creek Landfill Extension Project (EA Certificate #WD09-02), had undergone an EA and was issued an EA Certificate in 2010, prior to obtaining regulatory permits and approvals. Campbell Hill Landfill has an annual maximum input of 750,000 tonnes, with a total capacity of 15 million tonnes.

AIB also stated the following additional concerns relating to the size of the Project’s footprint:

- The annual design capacity of 250,000 tonnes per year with a lifespan of 75 years could be met with a smaller footprint than what is being proposed;

- Given the size of the project footprint, the potential effects appear to be equivalent to, or greater than the potential effects for landfills with a design capacity greater than the RPR threshold of 250,000 tonnes per year; and
- If the Proponents obtain an OC from ENV without an EA Certificate and associated conditions, operations could later be scaled up to be above the RPR threshold of 250,000 tonnes per year, without AIB consultation.

### 7.1.2 Response from the Proponents

In response, the Proponents stated that they are in the process of applying for an OC, in which the ENV will assess potential environmental effects. Should they obtain an OC from ENV, the Proponents state that they are committed to complying with the associated conditions, which will include an annual allowable tonnage for waste discharge. The Proponents also note that any potential changes to the operational requirements of the Project would be subject to applicable regulatory requirements including those specified in the RPR. Also, the annual design capacity was reduced to 190,000 tonnes per year with a 31.4-ha footprint in a new Preliminary Application submitted by the Proponents September 18, 2023, after the Applications had been submitted to the EAO.

## 7.2 Archeological Impacts

### 7.2.1 Issues Raised by the Applicants

AIB’s letter referenced the Aboriginal Interest Consideration Report (November 6, 2008) prepared by the province that documents archaeological evidence of human activity and a high potential for archaeological finds in the proposed Project area. As noted in section 6.4, the Ministry of Forests share this concern with AIB.

### 7.2.2 Response from the Proponents

The Proponents have stated that during drilling activities, an Archaeological Chance Find Procedure was completed, and no suspected archaeological sites were encountered. They also note that they carried out a Preliminary Field Reconnaissance on September 2, 2023, of which the findings were summarized in a Preliminary Field Reconnaissance Report on October 14, 2023. Preliminary Field Reconnaissance studies are non-permitted field studies and are designed to assess the potential for archaeological sites to be present within the area. The results from a Preliminary Field Reconnaissance guide whether to complete additional archaeological work, such as an Archaeological Impact Assessment. No archaeological sites were discovered during the Preliminary Field Reconnaissance and therefore the Proponents did not continue archaeological assessments.

## 7.3 Impacts on Aboriginal Rights and Title

### 7.3.1 Issues Raised by the Applicants

AIB raised the following issues in their Application relating to potential impacts on their Aboriginal rights and title:

- The Project would result in impacts on AIB Section 35 Rights;
- Amendments made to the Act were to ensure that the AIB’s constitutionally protected Aboriginal rights and title were not affected by a project without full and complete consultation and an opportunity to participate in a fully transparent EA;
- AIB has asserted Aboriginal rights and title over the lands where the landfill is being proposed; and
- Both AIB and BFN were listed as ‘key First Nations’ in the 2008 Aboriginal Interest Consideration Report prepared by the Government of British Columbia for the development of the Cache Creek Landfill (now known as the Campbell Hill Landfill). Due to the proximity of the Campbell Hill Landfill to the Project, AIB believes they should also be considered a key First Nation for the proposed project;

- The 2008 Aboriginal Interest Consideration Report confirmed four AIB reserves within 5-10 kilometres of the Project ranging from 123.3 – 1,365.6 ha.

### 7.3.2 Response from the Proponents

In response, BFN noted that the Proponents have engaged with some of the First Nations recognized under their Timicw Consultation and Engagement Plan, however the formal consultation is planned to begin under the TNRD and ENV authorization processes. They also note that the Proponents look forward to any comments raised by AIB, as they are committed to working with the Nation to resolve any concerns.

## 7.4 Impacts on Ashcroft Indian Band Community Members

### 7.4.1 Issues Raised by the Applicants

In their Application, AIB state that they have four reserves that are in proximity to the Project, ranging from 123.3 – 1365.6 ha. Potential impacts from the proposed Project that were identified in the Application include environmental, economic, social, cultural or health effects to their members and nearby reserves.

### 7.4.2 Response from the Proponents

In response, the Proponents noted that environmental, economic, social, and cultural or health effects are being considered and will be presented during the TNRD and ENV authorization processes. However, they have developed a high-level summary of findings to date, which include:

- **Environment and Health:** The proposed landfill design includes a double liner system, which provides double the protection from potential effects to the environment and human health, such as drinking water, freshwater aquatic life, and livestock. The Proponents claims this design feature exceeds ENV landfill design requirements.
- **Environment:** Since 2022, baseline groundwater and surface water assessments have been on-going to characterize water quality prior to any site developments. In addition to this, in 2023, a baseline wildlife assessment was completed across the site to understand if sensitive ecosystems are present.
- **Economic:** The Proponents claim that the Project will provide the local community, including BFN, new economic opportunities, jobs, and training that is keeping with the BFN’s principle of sustainability. With an expected long-term life of 30+ years, the Proponents expect the Project to provide economic stability.
- **Social:** The Proponents predict that the Project will require local staffing, which they anticipate will create a housing demand and a need for funding to develop housing in the area. As such, the Proponents claim that the proposed Project will create growth in the community and improve overall social capital.

## 7.5 Engagement by the EAO

The EAO engaged with the Applicants, Proponents, and potentially impacted First Nations on the designation request to identify any additional concerns. The key issues and concerns provided to the EAO by First Nations have been summarized in the table below. Key issues and concerns raised by provincial government ministries, and other organizations are presented in section 6 of the report. No concerns were provided to the EAO by local or regional governments during the engagement process.

Table 1: Issues and Concerns Raised by First Nations

First Nation	Issues and Concerns Raised	Summary of Proponents’ Response
AIB	AIB are particularly concerned by a reference made in a September 18 letter from the Proponents’ consultant, GHD,	A federal application is currently on-going to re-claim a specific portion of land, which is where the

First Nation	Issues and Concerns Raised	Summary of Proponents’ Response
	<p>to the EAO, where they state, ‘the lands the Project is located on were formerly part of the BFN reserve lands’. AIB notes they have found no evidence to demonstrate that BFN had a reserve at the proposed location in their research and have requested BFN provide evidence to support this claim.</p>	<p>Project is being proposed. BFN claim that this portion of land was previously classified as Federal BFN Reserve land and BFN recognize the area as such.</p> <p>BFN suggests disagreements related to this land claim be addressed through traditional government-to-government processes.</p>
AIB	<p>AIB note the Province has an obligation to ensure that it discharges its constitutional obligations to consult and, where appropriate, accommodate the AIB with respect to the Proposed Project. In addition, the Province has obligations pursuant to the <i>Declaration on the Rights of Indigenous Peoples Act</i>.</p>	<p>This concern is addressed in section 9.2.2 of the report.</p>
AIB	<p>AIB has the following concerns about ENV’s processes:</p> <ul style="list-style-type: none"> <li>• The proposed Project could be assessed without adequate information regarding the impacts on AIB;</li> <li>• ENV is reliant on the Proponents to engage in consultation;</li> <li>• EMA consultation requirements do not meet the same standards as those outlined in the Act; and</li> <li>• The broader effects of the Project may not be considered through ENV processes.</li> </ul>	<p>This concern is addressed in section 9.2.2 of the report.</p>
CFIB	<p>CFIB continues practices within the Traditional Territory in which the Project is being proposed and fear potential impacts from the Project will erode their Nation’s ability to continue with these traditional activities. CFIB feel this would be an infringement of rights, contrary to reconciliation and inconsistent with the principles of the United Nations Declaration on the Rights of Indigenous Peoples.</p>	<p>To date, the Proponents have engaged with some of the First Nations recognized under the Timicw Consultation and Engagement Plan. Though, they note that formal consultation will begin under the TNRD and ENV authorization processes.</p> <p>The Proponents noted that they look forward to any comments raised by CFIB and are committed to working with the Nation to resolve any concerns.</p>
CFIB	<p>CFIB have several reserves located nearby and downstream of the Project and feel there is a significant potential for adverse impacts on their Aboriginal and Treaty rights and interests, traditional land use, and health and safety.</p> <p>Given the proximity of the Project to the Campbell Hill Landfill, CFIB are concerned about the potential for cumulative effects from the Project, in addition to existing developments and ongoing cumulative impacts to their Aboriginal rights and territory, water resources, community health, wildlife, and protected cultural practices.</p>	<p>A federal application is currently on-going to re-claim a specific portion of land, which is where the Project is being proposed. BFN claim that this portion of land was previously classified as Federal BFN Reserve land and BFN recognize the area as such.</p> <p>BFN have suggested disagreements related to this land claim be addressed through traditional government-to-government processes.</p>

First Nation	Issues and Concerns Raised	Summary of Proponents’ Response
		BFN have not responded to concerns on cumulative effects.
CFIB	<p>Though the design capacity is below the RPR thresholds established for a new waste management facility, given the scale of the footprint, CFIB anticipate the capacity to increase rapidly.</p> <p>CFIB are concerned that the Project has been approved and permitted without appropriately engaging title- and interest-holding First Nations and the Nation expects to be included in every stage of an EA process.</p>	<p>The Proponents submitted an application to ENV to obtain an OC for the Project. Should they obtain an OC, the Proponents commit to complying with the conditions of the OC, including annual allowable tonnage for waste discharge. They also commit to continuing to follow ENV processes and requirements throughout the application process.</p> <p>The Proponents note that the Project has not yet been approved or permitted.</p>
BFN	<p>BFN feel the development and operation of the Project could further advance reconciliation with BFN, because the Nation would directly own and participate in a significant industrial development in their claimed territory. BFN believe the Project is an economic opportunity that would provide long-term sustainable training, employment, and funding to BFN, an opportunity that the BFN community needs now.</p>	

## 8.0 EVALUATION OF THE PROJECT AGAINST SECTION 11 OF THE ACT

### 8.1 Eligible Project for the Purposes of Section 11(1)

In accordance with Section 11(1) of the Act, the Minister or delegate must consider if the Project is an eligible project for the purposes of Section 11(1) of the Act. In the sections below, the EAO has considered the information provided and determined that since the Project has not substantially started and is not reviewable, it is eligible for the request for the designation.

#### 8.1.1 Substantially Started

In considering if the Project is substantially started, the EAO has reviewed the Substantial Start Considerations and Information Requirements in the [Substantially Start Determination Policy](#).

The primary considerations to determine if a project has substantially started are in relation to physical project activities (e.g. construction or operation) and project components. The EAO concludes that the Project has not substantially started as it is currently in the development stage, pursuing a potential amendment to the SWMP to include a landfill, and no physical construction or operation activities have begun.

#### 8.1.2 Reviewability under the Reviewable Projects Regulation

An EA is required if a new waste management facility were to exceed the prescribed design capacity limits of  $\geq 250\,000$  tonnes/year, or if the design included the use of a device that destroys the waste using high temperatures and a design capacity of  $\geq 225\,000$  tonnes/day, as per Part 6, Table 11 of the RPR.

The information provided to the EAO by the Proponents indicates that the proposed average discharge rate is 50,000 tonnes to a maximum of 190,000 tonnes/year and that waste will not be destroyed using high temperatures. As such, the proposed project remains below the thresholds established for a new waste management facility.

AIB shared that the size of the Project’s footprint was a concern, noted in section 7.1.1. While the EAO recognizes the Applicants’ concern, there is no threshold for disturbance areas under Table 11, Column 2 of the RPR. As such, these concerns have not been considered when determining reviewability under the RPR.

The EAO has concluded, based on the Applications and additional information provided by the Proponents, that the proposed Project will not meet or exceed the effects thresholds.

## 8.2 Whether the Applicant is a First Nation

One of the Applicants that are seeking to have the eligible project designated as a reviewable project is a First Nation relevant to the evaluation under Section 11(4)(a) of the Act.

## 8.3 Whether the Project could have Effects on First Nations and Section 35 Rights

The Chief Executive Assessment Officer must also consider whether the Project could result in effects on a First Nation and its rights for the purposes of Section 11(4) of the Act. While Section 11(4) sets out a list of matters that the decision maker must consider in determining whether to designate an eligible project as reviewable, that list is not exhaustive. In this section, the EAO also describes other matters that are relevant to the decision maker’s consideration in the context of this Application.

The EAO notified First Nations with territories overlapping the Project footprint (as described in section 5.2 above) regarding the Applications and requested their input. In addition to the Application from AIB, the EAO considered all information received from other potentially affected First Nations, namely CFIB, regarding concerns and potential impacts of the Project. AIB communicated their view that the Project would result in impacts on their Section 35 Rights. Similarly, CFIB expressed concern that the project would have cumulative impacts on and be an infringement of their rights.

BFN assert that the development and operation of the Project could further advance reconciliation with their Nation, as they would directly own and participate in a significant industrial development in their claimed territory, providing an economic opportunity that their community needs now.

The EAO concludes the potential physical changes to the environment from the Project could result in effects on AIB and on other First Nations and their Rights as recognized and affirmed by Section 35 of the *Constitution Act, 1982*.

## 8.4 Whether the Project’s Effects be Equivalent, or Greater than, Potential Effects of Projects in the Same Category

The EAO has considered whether the Project meets effects thresholds for requiring an assessment and the criteria for waste management facilities set out in the RPR. The proposed average discharge rate of 190,000 tonnes per year is 24 percent below the RPR thresholds for new waste management facilities. The EAO has concluded, based on the Applications and additional information provided, that the effects of the Project would be less than the effects of a reviewable Project.

## 8.5 Whether an Assessment of the Project is Consistent with the Purposes of the EAO

The Chief Executive Assessment Officer is required to consider whether or not an EA of the Project would be consistent with the purposes of the EAO, as listed in [Section 2 of the Act](#). These purposes include the EAO carrying out its responsibilities under the Act, promoting sustainability by protecting the environment and fostering a sound economy and the well-being of British Columbians and their communities, and supporting reconciliation with Indigenous peoples in British Columbia.

### 8.5.1 Promoting Sustainability by Protecting the Environment and Fostering a Sound Economy and the Well-Being of British Columbians and their Communities.

EAs review major projects that could result in significant adverse effects without duplicating other regulatory processes. Based on the information reviewed, the EAO is of the view that environmental effects related to the Project are within the normal range of effects to be considered through the permitting processes of existing best-placed regulatory regimes,

such as the EMA. Whether or not the Project is designated for an EA, it would be subject to a comprehensive review process under ENV using a coordinated authorizations process which allows for a thorough, timely, transparent, and impartial assessment of the project’s components and activities and the potential effects related to the environment, healthy, safety, Indigenous rights, and other values and factors.

The EAO and ENV both engage government experts to provide technical advice and guidance whether through an EA or EMA permitting process. The EAO is of the view that the key issues identified in the Applications are considered within existing provincial permitting processes within ENV’s purview, including environmental protection measures and monitoring and management plans, limitations on the proximity to archaeological sites and sensitive land use sites, and consultation with First Nations. In addition, WLRS will also be considering socio-economic and cultural factors when reviewing the *Land Act* applications and when making recommendations on an application to the Statutory Decision Maker.

### 8.5.2 Supporting Reconciliation with Indigenous Peoples in British Columbia

Through the *Declaration on Rights of Indigenous Peoples Act*, the Province has adopted a distinctions-based approach to advance reconciliation and implement the United Nations Declaration on Rights of Indigenous Peoples. During the engagement process, the EAO worked with potentially affected First Nations in a manner that acknowledges the rights, interests, priorities and concerns of each First Nation while respecting and acknowledging their unique practices, traditions and cultures. The EAO consulted all potentially affected parties to understand potential impacts and benefits of the Project and how they may reflect on the matters considered under Section 11(4) of the Act. The EAO received feedback from AIB, CFIB and BFN and note that both benefits and negative impacts were presented.

In their Application, AIB expressed the potential for adverse effects on their rights from the Project proceeding as proposed; a concern that CFIB also shared with the EAO. However, BFN claim that the advancement of this project will further advance reconciliation with BFN due to the economic opportunity to the Nation and the local community. The EAO recognizes that AIB, CFIB and BFN have territorial claims in the Project location, that the Project has the potential to infringe on Rights and title under Section 35 of the *Constitution Act, 1982* and that the Project may negatively impact, or benefit affected First Nations differently.

In a letter to the EAO, AIB raised concerns about ENV’s consultation processes, including whether consultation requirements under the EMA met the same standards as those outlined in the Act. The purposes of the Act only apply to the EAO carrying out the responsibilities under the Act, which do not include reviewing consultation processes of other regulatory bodies. The EAO recognizes that the consultation obligations under the *Declaration of the Rights of Indigenous Peoples Act* and associated Action Plan, and the duty to consult with First Nations lies with the Province of British Columbia and applies equally to all branches of the government including the EAO and ENV.

The EAO is of the view that the approach used in this review is consistent with carrying out our responsibilities under the Act and that designating the Project as reviewable and proceeding with an EA in addition to ENV, *Mineral Tenure Act*, EMA, HCA and/or the *Lands Act* review processes does not support reconciliation with all First Nations potential implicated by the Project.

The EAO finds that requiring the proposed Project to undergo an EA would not be consistent with the purpose of the EAO as set out in Section 2(2) of the Act and as is relevant to the evaluation under Section 11(4)(b) of the Act.

## 9.0 RECOMMENDATION

In developing this report, the EAO reviewed the Application, information provided by AIB, the Village of Cache Creek, CFIB, SCSA, Provincial ministries, the Proponents, and engagement with First Nations. Having considered this information the EAO concludes that:

- The Project **is** an eligible project for consideration for designation;
- One of the Applicants **is** a First Nation;
- The Project **could** have potential effects on First Nations and their rights;
- The Project **would not** have effects equivalent to or greater than the potential effects of projects in the same category;
- An EA of the Project **would not be consistent** with the purposes of the EAO set out in Section 2 of the Act; and
- The ENV authorizations process includes collaboration and opportunities to seek consensus with potentially affected First Nations during the review of the Project.

Neither the designation applications nor the EAO’s subsequent engagement and analysis in this report have demonstrated that conducting an EA process on the Project would provide substantially greater value to the public, the environment, or any parties engaged in an EA than would be offered through the existing best-placed provincial authorizations processes. That process provides for a technically comprehensive and robust regulatory approach that will consider all the issues raised by the Applicants, offers opportunities for public input, and includes substantial First Nations engagement and collaboration opportunities.

**For the reasons listed above, the EAO recommends that the Chief Executive Assessment Officer decline to designate the Project as reviewable under Section 11 of the Act.**