

KSM BRIEFER #4: SUBSTANTIALLY STARTED?

On July 26, 2024, KSM Mining ULC, a wholly owned subsidiary of Seabridge Gold, Inc. received its "substantially started" determination from the British Columbia (B.C.) Environmental Assessment Office (EAO) for its Kerr-Sulphurets-Mitchell (KSM) project. KSM is a huge proposed open-pit and underground gold-copper-silver mine targeting coastal mountains of northwestern B.C., within the headwaters of both the Nass River, which lies entirely within B.C., and the transboundary Unuk River which flows into Southeast Alaska near Ketchikan.

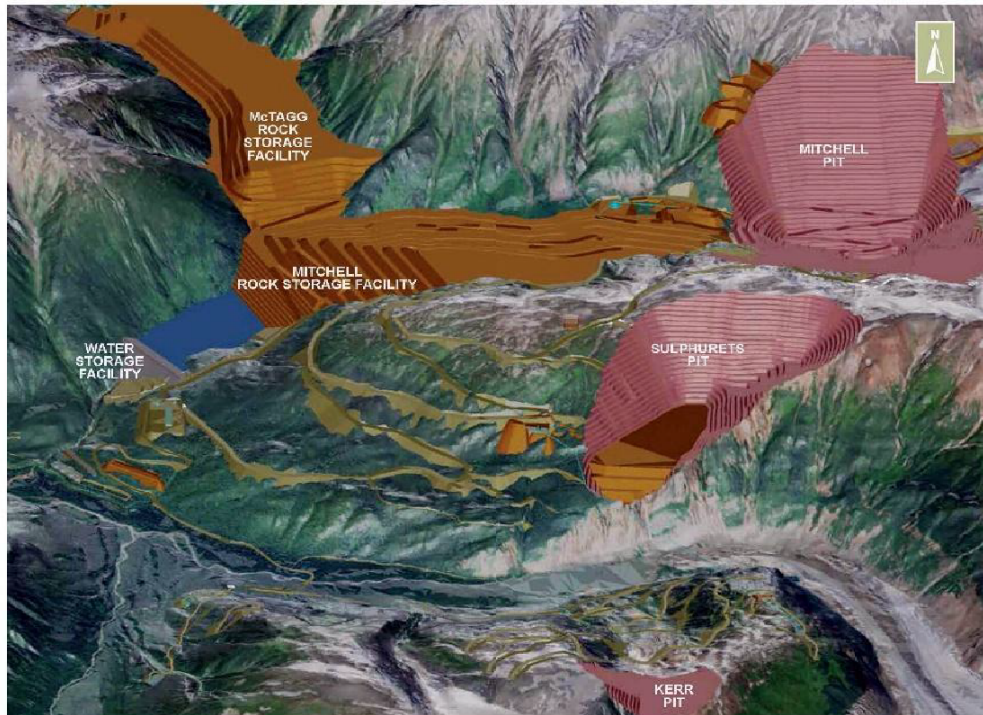
Why does this matter? According to B.C. regulations, an Environmental Assessment Certificate is the key overarching permit required for a reviewable development project to go forward. With the Certificate comes a stipulation that the project must be "substantially started" within ten years, with an opportunity for a one-time five-year extension. The rationale behind the 10-year stipulation is that environmental analyses and the studies on which they are based should be relatively current. If a project is not launched in a reasonably timely way, environmental reviews, and the studies on which they are based, should be revisited to consider changing circumstances, new data, evolving environmental concerns, etc.

However, if a project is deemed "substantially started" by the specified deadline, the Environmental Assessment Certificate remains in effect for the life of the project, be it many years or even many decades further on. Substantially started determinations pose significant environmental risk to downstream communities by fixing Environmental Assessment Certificates and project approvals in time, regardless of climate change, new scientific information, cumulative impacts, or significant regulatory reforms. For KSM, because of this determination, its Certificate now has essentially permanent status.

This means that all environmental impact analyses that are the basis of the Environmental Assessment Certificate for one of the world's largest proposed mines are now virtually locked in place. Data and studies informing the Environmental Impact Study and the Certificate approval for KSM, some already sixteen years old, are now, unfortunately, good indefinitely. These studies also took place before the disastrous Mount Polley tailings dam failure and before revamped provincial mine review processes were implemented. With climate change and fast melting glaciers (and evolving implications for salmon and other species), KSM's remote setting is in dramatic flux, an on the ground reality that can now be all but ignored by B.C. mining regulators. The supreme irony here is that B.C.'s KSM substantially started determination upends the very basis on which the policy was implemented in the first place!

B.C.'s Environmental Assessment Office Substantial Start Determination Policy sets benchmarks in a Certified Project Description (CPD) to guide decision making. Amazingly, according to B.C.'s *Analysis of a Substantially Started Determination Request* for the KSM project, "Of the 32 physical components identified in the CPD, KSM has completed construction of one permanent component..."

KSM Project Mine Site Layout during Operation Phase



Application for an Environmental Assessment Certificate/Environmental Impact Statement for the KSM Project

The decision also appears contrary to a B.C. Court of Appeal's ruling providing guidance on the meaning of "substantially started" which states: "... proponents may fail to commence a project through no fault of their own. While we might sympathize with a proponent that has tried its best but failed to make a substantial start on a project, it does not change the fact that the statutory test has not been met." In other words, the test is about on the ground progress as opposed to external factors. Regardless, B.C. made clear that part of its substantially started rationale for KSM is the fact that Seabridge, like most other mining companies, is seeking investment partners for its project.

This decision was about as rubber-stamp as it gets and calls into question if B.C.'s "substantially started" policy has any relevance to mine development and oversight. The reality is the KSM mine is not yet close to getting started.

What really matters here is whether or not B.C. is giving the KSM proposal the rigorous, thorough environmental review it warrants. This substantially started determination suggests there is reason for concern in this regard. With high stakes for salmon runs, biodiversity, and the interests of downstream communities closely tied to the Unuk and Nass watersheds, B.C.'s substantially started gift to Seabridge is nothing short of a travesty.

The Skeena Wild Conservation Trust has filed a legal challenge, arguing the decision was unreasonable and should be reviewed. Additionally, the [Tsetsaut Skii km Lax Ha Nation](#) has also filed a legal challenge, focusing on inadequate consultation. The challenges are ongoing.