

Environmental Assessment (EA) Revitalization Engagement

Gitanyow

Engagement Summary: April 5, 2018, 9:30 am - 4:00 pm

Participants:

Gitanyow Wilps:

Lax Gibuu of Gwass Hlaam - Chief George P. Daniels

Wii Litsxw - Chief Gregory Rush

Malii - Chief Glen Williams

Haizimsque - Chief Ken Russell

Lax Ganeda of Gamlakyeltxw -

Gwinuu - Chief Phyllis Haizimsque/Sol Haizimsque

Luuxhon - Chief Don Russell

Watakhayetsxw - Chief Deborah Good

Siidok – Kelly Marsden

Biiyosxw – Chief Harry Daniels

Regrets:

Gamlakyeltxw – Chief Wil Marsden

Gitanyow Hereditary Chief's Office:

Glen Williams, President

Tara Marsden, Wilp Sustainability Director

Joel Starlund, Executive Director

Kevin Koch, Biologist

Environmental Assessment Office (EAO):

Scott Bailey, Assistant Deputy Minister

Ricardo Toledo, Executive Director

Fern Stockman, Project Assessment Manager

Matt Rogers, Project Assessment Officer

EAO described the purpose of the meeting: to provide an opportunity for an open dialogue and discussion for Gitanyow to provide input into the EA revitalization process. EAO presented an overview of EA revitalization and provided handout of presentation to Gitanyow. The following represents what the EAO heard from Gitanyow during the discussion.

EA Advisory Committee

ACTION: EAO to send Gitanyow the EA advisory committee's terms of reference.

- Consultation should come before the EA Advisory Committee makes their recommendations. There should be an independent process that deals with Gitanyow, who have a Land Use Plan (LUP) and a Constitution.
- Gitanyow asked how many First Nations sit on the committee. Gitanyow noted the committee is formed to make recommendations directly to the Minister, and there should be representation

from First Nations in the north. Gitanyow expressed concern with choices being made in government based on the First Nations in the south of the Province.

- EAO clarified the role of the committee, noting that one of the engagement streams in the EA Revitalization process is the committee. The input from the three streams will form the Discussion Paper.
- Gitanyow asked how many of the First Nations members of the committee are hereditary leaders or represent hereditary systems of governance. The committee does not know about Gitanyow's system of governance.
- EAO stated it would carry that message forward.

Concerns with Current Process

- There must be meaningful engagement with First Nations if the process is going to change. Government needs to start treating First Nations like they know something.
- After all the damage is done, then government meets with First Nations. What is needed is a recovery plan, not assessment. Nations must have some funding/money to recover and restore the land.
- 'Transparency' needs to be defined.
- Two big issues are timelines and funding.
- EA certificate conditions should consider cost of implementation.
- How can government, proponents and Gitanyow share baseline data better?
- Concerned with proponent driven process and credibility of information. It would be better to have an expert overview built into the EA Act.
- Sometimes documents in EAs are huge and Gitanyow wastes time reviewing them. How is it possible to only capture relevant information for Gitanyow's review?
- New process should include a climate test for major projects: 1. Is BC/Canada on track to meet climate goals? 2. Is carbon pollution from projects being minimized? If no to either of these 2 questions, a project should not proceed.
- If real change is being sought, suggestion to change language from "consideration" of traditional knowledge to something more meaningful like "incorporation" or "integration".

Federal Proposed Impact Assessment Act

- Transparency is missing from legislation, as are measurable sustainability criteria and Indigenous involvement during decision making stage. How can Canada offer partnerships if they're not at the table? Throwing money at Gitanyow won't speak to traditional laws.

Traditional Knowledge

- Gitanyow stated that part of their traditional knowledge is their laws. Another Nation cannot speak on another's territory.
- EAO asked how these unique circumstances could be acknowledged or addressed in a revitalized EA process.
- Need to move away from desktop exercises and use on the ground knowledge instead. EAO should have Gitanyow monitors on the ground reporting directly to EAO, not through the proponent.

- Need to protect intellectual property rights.

Pre-EA Engagement:

- Higher up strategic level planning: Maybe a sustainability plan that follows UNDRIP? Regional cumulative effects assessment plan to understand what activities could work in the region. Make things more effective and efficient. Perhaps an energy corridor. Include a Gitanyow access plan. There is already regional work underway through ESI.
- ESI provides the ability to collect baseline information now, before the next project, collaboratively with BC.
- Regional or territorial assessment could be useful in new EA Act. There must be communication between government agencies and someone must have paramountcy.
- FLNRORD issued investigative use license over the objections of Gitanyow, claiming 'procedural fairness'. EAO informed railway proponent of risk of proceeding to EA process because of significant impacts to Gitanyow. No legislative mechanism to do this.
- How can EAO have ways to say no earlier on in the process? (conceptual model)
- There is recognition of the Gitanyow Lax'yip Land Use Plan (LUP) by EAO. Updating the LUP and territorial planning would be a good investment. The LUP is an important way to manage cumulative effects.
- EAO should already know what areas are going to be impacted because they have the LUP.
- Very successful review of some projects in the recent past with specific sections of the Assessment Report demonstrating how the projects were consistent with the LUP.
- There needs to be a collaborative message once EA Act is revised to educate and train other permitting agencies.

Early Engagement

- Early planning with proponents is helpful. Need a site selection process from the start. Successful experiences with proponents that engaged early in a site/route selection process based on the Gitanyow LUP.
- FLNRORD permitting should not be issuing investigative use licenses for protected areas such as Stewart Port Railway affecting multiple Gitanyow protected areas and inconsistent with the GLLUP.
- EAO stated that a revitalized EA must have enough teeth to enforce changes but must be broad enough to cover all First Nations' interests.
- Proponents often do their own studies and reviews but don't incorporate traditional knowledge. Early engagement needs to bring in those from Gitanyow that know the territory. Information gathering should start in the Early Engagement phase.

Impacts to Aboriginal Rights

- Government puts things into boxes. All actions impact Gitanyow's Aboriginal rights and title.
- Full consultation involves understanding what Aboriginal rights and title are and recognizing unceded land. Acknowledge impacts and share benefits. Government must come to the table with compromise and compensation.

- Compensation should be included in reconciliation. Any actions have impact on sustainability, this needs to be compensated for.
- Unless Gitanyow Aboriginal rights and title are recognized upfront in the process, public input is going to outweigh consideration of impacts to Gitanyow's rights in Government's decision making.
- EAO stated that while the public can comment on projects, the comments wouldn't influence how Gitanyow's rights and title would be impacted.
- Substantial benefits from projects often flow to other non-indigenous communities, but what about Gitanyow?
- First Nations in BC and the BC government need to force Canada to be involved. First Nations typically work better with BC government than Canada.
- The Impact Benefit Agreement (IBA) and the LUP should be the root to evaluating socio-cultural needs and impacts.
- Recommended having one Strength of Claim SoC assessment over Gitanyow territory that clarifies what the absolute title and rights are for Gitanyow. The SoC assessments Gitanyow has participated in have been fairly accurate. The courts have been very clear on the test that must be followed.

Assessment Agency

- EAO staff should be located up north. There is more accountability if government staff is local, need more people in the region.
- EAO should have more experts to support better decision making.

Impact Benefit Agreements

- Need to have conversation with the Crown on economic accommodation agreements to take pressure off of IBAs. Proponents pressure FNs for IBAs before EA Certificate is granted, this is not FPIC. Not free from coercion and not informed of the actual impacts of the project, which is not usually known until after the permitting and management plans.
- Pressure now is to sign an IBA prior to EA certificate being issued. New EA legislation could help uphold FPIC.
- Need to improve on an IBA. IBA isn't just about money, it's how to restore an area or compensate for losses. Gitanyow want to be involved in regional planning regarding health, education, etc.
- Need to discuss IBAs at the onset. IBA guidelines can be set by Gitanyow and some by EAO based on LUPs.

Decision Making

- Need to remove political interference from decision making.
- Legislation changes requiring panels that include First Nations.
- Political lobbying registry should be posted on the EAO Project Information Centre (ePIC).
- Having a United Nations declaration office or advocate for Gitanyow would be useful. The Crown still claims to have authority and instead should be thinking about co-management and joint decision making. The opportunity is now.

- Need to have an opportunity for government to government dialogue at the point of decision making, otherwise First Nations don't know why a decision is being made.
- At time of final EA decision, it would be good to have a joint record of consultation.
- EAO stated it should be clear where there's disagreement. Government hasn't been good at this historically.
- EAO clarified that Gitanyow would be heavily involved in the EA process and decision making.
- Gitanyow and BC have a Recognition and Reconciliation Agreement, with Schedule H being the Environmental Assessment Framework for the Gitanyow Lax'yip. Sometimes we need to remind BC that it is a legally binding agreement.

Monitoring and Enforcement

- Gitanyow has their own monitors, however their evidence is ignored. EAO should be listening to the monitors on the ground. Information gets changed as it moves from person to person.
- Need collaborative monitoring, and connection to ESI work.

Gitanyow presented their Sustainability Review

- LUP includes wildlife, ecosystems, Species at Risk. LUP identifies and maps zones of land important for sustainability. LUP manages cumulative effects.
- The language in LUP pulls together science and traditional knowledge.
- How can EAO work with other government agencies to ensure Gitanyow's Schedule H of the Agreement and LUP are considered?
- Gitanyow suggested a joint permitting process between Gitanyow and agencies that includes LUP or a Gitanyow/EAO oversight committee that is generally project-specific.
- Would like to see regional Gitanyow environmental management plans and socio-cultural needs assessments.

Gitanyow suggested next steps/ACTION: engage on development of wilp sustainability assessment process (in 6-12 months). Reflect on percentage of EA projects approved, summary of effectiveness of mitigation measures. Hold 2 to 3 meetings over the next 6 months between EAO and Gitanyow.

ACTION: EAO will follow up with Tara on opportunities for training Gitanyow could offer on their Land Use Plan, governance, constitution and sustainability framework.

Attachment: Gitanyow PPT.