

## Summary of Environmental Assessment (EA) Revitalization Engagement Tsleil-Waututh Nation

Tsleil-Waututh Treaty Lands and Resource Office, North Vancouver

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### Tsleil-Waututh Nation Participants

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### EAO Participants

Nathan Braun

Fern Stockman

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## Final Summary Notes

The Environmental Assessment Office (EAO) met with Tsleil-Waututh Nation (TWN) to consider their views, experiences and proposed options to revitalize the environmental assessment (EA) process. Nathan Braun and Fern Stockman (EAO) presented an overview of the EA Revitalization process as well as a draft conceptual model designed to present a possible future state for discussion purposes. The following is a thematic summary of what the EAO heard from TWN:

TWN described their engagement with the First Nations Energy and Mining Council (FNEMC) in November 2016 and referenced their February 2017 recommendations paper that was submitted to both FNEMC and the EAO. Key themes of the February 2017 submission include: cumulative effects, co-governance and joint decision making, and process. TWN noted that they are actively engaged in the federal *Impact Assessment Act* process.

### *What's broken?*

- TWN agreed with several bullets in the presentation materials, including black box decisions, lack of support for relationships with Indigenous Groups, and little to no meaningful incorporation of or responses to traditional Indigenous knowledge
- Strength of claim (SOC) assessments should be on the list – SOC assessments and negotiations should not start discussions within EAs
- EAs could benefit from anti-colonial language, and less of a proponent-led process.
- The conditional approach (ensuring that a project is built consistent with the EA certificate conditions) needs adjusting in order to ensure better oversight of post-certificate compliance; the conditional approach causes the assessment to gloss over impacts, relying too heavily on the conditions where they fall of the EA radar
- Independent data analysis would increase confidence in the process
- TWN expressed frustration in attending workshops and larger, town hall-style working group meetings, which are less conducive for meaningful dialogue that is able to address the details of projects
- TWN suggested mutually-agreed upon timelines between Indigenous groups and the Province; TWN considers EA a government-to-government process, and appropriate timelines allow each jurisdiction to participate effectively

### *Early engagement, proponent engagement and readiness test*

- TWN explained the importance of understanding why proponents should engage Indigenous Groups early in the process
- Education about Indigenous jurisdictions, consultation and early engagement is key
- Proponents should be asked how much they understand about engaging Indigenous groups before entering into the EA process and determining their consultation obligations
- The best approach is for a proponent to approach TWN with their idea and ask “Is this a good project? Can we work together on these lands?”
- Proponents are nervous of the increased role of Indigenous groups, which creates delays and uncertainty. As assertions of the legitimacy of Indigenous laws increases in North America, engagement and accountability will become more widespread
- TWN is engaging early with some proponents (e.g., sharing maps, TUS, etc.)
- Taking a proactive approach and working through issues earlier would create a stronger likelihood of support for the project

### *Indigenous jurisdictions*

- Is there space in the proposed early engagement phase of EA for TWN land use plans and stewardship policy to be considered?
- Proponents often overlook the TWN Stewardship Policy and Indian River Watershed Land Use Plan when preparing their proposals
- Consider listing links to all First Nations’ consultation boundaries and stewardship agreements on EAO’s website (EPIC)
- Concerns with the use and interpretation of traditional knowledge (TK). The incorporation of TK into project proposals used to be a progressive concept, but the responsibility of TWN’s jurisdiction becomes flattened when it is presented as TK to inform Crown decisions. Staff encourage moving away from the term “Traditional knowledge” and instead use “Indigenous knowledge” to reflect the multifaceted and contemporary forms of knowledge that Indigenous groups contribute to EA processes.
- TWN’s Treaty, Lands & Resources team reviews projects from a multidisciplinary perspective – how projects would play out in social, economic, cultural and environmental realms
- TWN wants to be engaged as its own jurisdiction, with a goal of joint decision making to alleviate a wide range of community concerns

### *Strength of claim assessments and depth of consultation*

- TWN expressed frustration in entering the process fighting for recognition of rights when the Province has already recognized TWN’s Consultation Area
- Arguing against strength of claim assessments distracts from the EA process and drains time and resources away from assessing impacts

- Indigenous groups should be empowered to make their own decisions based on their laws, standards, and policies. For example, the TWN Stewardship Policy sets out consultation obligations which are required throughout the process

#### *Joint decision making*

- Make joint recommendations to leadership and implement forward-looking regulations and land use planning
- Consider trigger points for collaborative consent throughout the EA (e.g., readiness test, between information gathering and impacts assessment) and a dispute resolution process; that way, Indigenous groups can decide how their TK is used and ensure the information needs of their decision makers is included in the EA

#### *Dispute Resolution*

- Dispute resolution procedures would improve the EA process
- Do EAs truly consider Indigenous groups' decision making if the ministers have the final decision?
- TWN suggested statutory right of appeal or other mechanisms, such as an independent tribunal that considers both Indigenous and provincial law, in the lead up to a decision (and if there is disagreement on a decision)

#### *Collaboration*

- Collaborative approaches can occur if the Province recognizes the jurisdictions of Indigenous groups that self-identify their capacity and terms for engagement
- Promote mutually beneficial examples of Indigenous groups expressing confidence in projects to communicate that their views, efforts, and compromises were considered in the process
- TWN agreed with the collaborative approach from EA through to permitting on the Kemess Underground Project, which included a list of issues to be carried forward in permitting included in the assessment report

#### *Linkages between EA and permitting*

- Concern about the EAO's reliance on permitting for substantive mitigation, and a need for stronger linkages and consistency between EA and permitting
- TWN loses its leverage point after an EA certificate is issued. Post-EA, there is little incentive for agencies to resolve TWN's concerns
- Concerns raised by Indigenous groups need to be meaningfully and substantively addressed throughout the EA process

#### *Regional assessments*

- TWN would like to see more focus on land use plans and regional assessments with proactive considerations

### *EA Methodology*

- TWN disagrees with the existing EA methodology (e.g., EAO determination of “low to negligible effects” in cases where other factors are ranked “high”)