

Environmental Assessment Revitalization Indigenous Implementation Committee Meeting December 10, 2019 – 8:45 AM to 3:00PM

Attendees:

Co-Chairs: Ang Smith and Scott Bailey

Attending IIC Members: Bruce, Dave, Anna, Nalaine (phone), Nicole, Angel

EAO Attendees: Trish, Danielle, Tanner, Amy, Mark (phone)

Guests: Zaria Stoffman, Paul Blom, Sara Millman

Committee Administration

- EAO noted that approximately five projects will be entering the environmental assessment process under the new Act.
- Action Items were reviewed to determine which items remained outstanding, ongoing or under development. (**ACTION – EAO to update Action Items table**)
- The development of two documents was discussed, a short (1-2 page), fact-based, communications summary regarding the IIC and a “what we heard report” of the IIC’s work.
 - EAO to provide a draft communications summary to the IIC by December 16. (**ACTION ITEM**). Note – this action was completed on December 16
 - The IIC Report would be developed collaboratively between the IIC and EAO with factual information regarding how topics were determined and what was accomplished. The EAO will circulate a draft outline of the IIC Report by December 16 for the IIC’s review (**ACTION ITEM**). Note – this action was completed on December 16

Linkages with Stakeholder Implementation Committee

- The most recent discussion topics of the stakeholder implementation committee (SIC) were provided (cumulative effects, notification thresholds, etc.)
- The SIC meeting on December 17, 2019 will be their last meeting.

Indigenous Knowledge Guide

- The primary feedback that was provided by the IIC to EAO was to condense the Indigenous Knowledge (IK) Guide to avoid repetition. The EAO will complete this in December and provide to IIC for review prior to public distribution. The IK Guide will be discussed on January 16.
- EAO and the IIC discussed the interest in working on a graphic and the integration of stories. Multiple IIC members stated their ability to support this work. However, as this will take time these resources may not be ready pre-release of the first version of the IK Guide. The IK Guide can easily be updated with inclusion of these graphic stories.

- An IIC member offered to provide a copy of the drawing for change graphics that were developed during a workshop in Fort St. John. **ACTION – Angel will circulate a graphic that was developed by the First Nations Major Projects Coalition.**
- IIC member noted that including graphics and case studies may help Indigenous communities see their interests better reflected in the guidance.
 - EAO asked how to ensure graphics such as this are agreed upon and ready for incorporation. It was determined that a graphics discussion would occur at the next IIC meeting on January 16.
- IIC expressed concern regarding the release of IK and that this decision would rest with EAO not with nations.
 - EAO noted that if there is a request for disclosure of IK or if, for procedural fairness reasons, disclosure may be contemplated, the EAO would work with the Indigenous Nation to seek their permission and determine what requirements may need to be placed on this disclosure and how the information could appropriately be released. As a backstop and additional safeguard, the EAO noted that a nation could also choose to withdraw the information to prevent its disclosure.
 - EAO noted that the new Act seeks includes confidentiality provisions and the purpose of the IK Guide is to provide additional detail on how confidentiality and disclosure of IK would be managed, with respect for Indigenous laws, practices and procedures for IK governance.
 - The EAO and IIC will review the IK document to ensure this guidance is accurately incorporated and confidentiality provisions are clear.
- IIC member commented that there was a lack of substance in the IK Guide and asked where IK would be incorporated in the EA process? All proponents may not understand how to integrate IK into their work.
 - EAO agreed that this was an important consideration to acknowledge and asked the IIC member provide specific recommendations to the IK Guide to assist with addressing this concern. The EAO offered to have a telephone call with the IIC member if needed to further discuss this concern.
- IIC member felt that substance was lacking with respect to where the actual IK will go and how it will be applied. IIC member suggested an example scenario (Valued Component example) be provided to clearly depict the process. The MBRB graphic showing a review board of interlinkages could be a good option to visually depict.
- IIC member noted that it may be difficult for a reader to understand what qualifies as a significant adverse effect particularly given that a Nation may make this determination based on a more holistic consideration of effects and effects pathways. The IIC member noted that federal guidelines provide an example situation to assist with this. An example should be included in the IK Guide, which may be presented through a graphic. IIC member noted that a graphic can help show how everything is interlinked to understand the impacts to a nation. IIC member offered to request permission to share graphics that their nation holds which may assist with updating the IK guidance (**ACTION**).
 - EAO strongly agreed that examples and graphics being provided in effects assessment, and in other locations within the IK guidance would be beneficial. EAO will include a note to draft as a placeholder to integrate this example (**ACTION**)

- IIC would like to see graphics throughout new EA documents while also ensuring that there is flexibility to allow for further edits and updated diagrams, examples and other graphics over time as new version of the guidance documents are developed.
 - EAO will work on integrating graphics into policy and guidance documents.
- IIC asked to ensure that the context how the effects assessment is being completed is acknowledged. Without the proper context for data collection the assessment could become inaccurate and not useful in decision-making. IIC member commented that traditional use studies can often “decontextualize” information by breaking apart information into pieces and not taking into account a place-based approach. Pulling apart information occurs as a product of the in EA process, but this can limit context from being respected. The “art” of an EA is balancing how to pull apart information without losing the context. The limitations of methods and data collection can be improved to work better for Indigenous communities.
- IIC noted that the goal is to align the EA as closely as possible with Indigenous priorities.
- IIC member noted that FOIPPA needs to be amended in light of DRIPA (property rights and knowledge rights of Indigenous People) as currently FOIPPA does not provide Nations with full control of the information they may share. (**ACTION** – EAO noted that a review of provincial legislation will be undertaken for alignment with DRIPA. EAO will provide this feedback to the appropriate provincial agency).
- EAO noted that other agencies and parties are very interested in the IK Guide that the IIC and EAO are developing and that EAO has been clear with those asking for the information to avoid simple replication.
- EAO noted that Alberta has a disclaimer box appear on the screen before being able to read IK guidance. EAO noted that this could be an option of the IK Guide.

Undertaking Assessments with Indigenous Nations

- IIC member asked what the status of early engagement materials for IIC review was.
 - EAO noted that an earlier draft of the Early Engagement Policy is located on the IIC SharePoint site (along with other documents that were not identified as IIC priorities for review). The next draft of the Early Engagement Policy and Readiness Decision Policy will be shared with the IIC by December 16 (**ACTION**). Both of these policies will be posted in draft in January 2020.
 - Note – this action was completed on December 16
- IIC member asked if there will be a “product” regarding “understanding of interests”
 - EAO stated that this concept is to be incorporated into other guidance documents including the Early Engagement, Readiness Decision and Process Planning policies.
 - EAO would not necessarily envision a standalone written document being produced during an EA to summarize the understanding of interests but rather, the information from these discussions would inform and feed into the Process Order.
- IIC stated that the funnel graphic would be more effectively presented as concentric circles.
 - EAO responded that this will be updated (**ACTION**)
- IIC member noted that four lines of inquiry should be considered: procedural, substantive, transactional, legitimacy. The member expressed that the “transactional” line of inquiry appears to be missing from the guidance and “legitimacy” is unclear.
 - EAO asked for clarification on what was meant by transaction and legitimacy.

- The member clarified that transactional links to funding is provided, who provides the funding, the volume of funding, and what (if any) the required application of the funds is, who's the money is, how much, and what the application of it is.
 - EAO noted that this would be addressed through Capacity funding discussions and the regulation associated.
 - Legitimacy is used to assess a process, such as requiring two governments to work together to ensure information is clear to the public.
- IIC member asked how long it would take to develop an understanding of a nation's interests.
 - EAO stated that this would vary based on how established the relationships are with nation pre-EA/review process.
 - IIC suggested that if the information shared by nations during an may be used for other purposes, this be made clear.
- IIC member asked how "properly" is defined under the new Act and noted that a nation's definition of properly may differ.
 - EAO agreed that different ways of defining may create confusion and will remove "*properly scoped*" before "EA process" when describing the understanding of interests.
- IIC member asked about interpretation of "should" vs "must" when describing consultation with nations prior to submission of IPD.
- FNLC observer noted that in Early Engagement the EAO cannot require items prior to IPD, however, in the Act section 13 appears to give the CEAO the power to set requirement for the IPD.
 - **ACTION Item** – EAO will follow up from this meeting with clarification on the requirements for engagement on the IPD and DPD. Note – this action item was completed on December 16.
- SIC comment asked how much involvement the EAO will have prior to the submission of the IPD and how this would be tracked. This could be multiple years prior to IPD.
 - EAO is always willing and encouraging early conversations prior to projects coming in.
- IIC inquired how often projects enter the EA without EAO having been notified in advance.
 - EAO stated this occurs very rarely but this is a possibility.
- IIC suggestions to consider whether the consensus seeking of the CEAO on the recommendations re: sustainability need to be reflected in the process diagram or whether this is achieved through the consensus seeking that occurs when preparing the recommendations. EAO to consider this revision to the process diagram. EAO noted a box is missing regarding a nation's decision and the process diagram will be revised to reflect this.
- IIC felt that circling back with the community post-decision regarding reasons for decisions could be very valuable. This would be in addition to the formal reasons for decision that decision makers prepare.
 - EAO noted that has been done in the past and it was found extremely useful.
- IIC noted that there are opportunities for overlap to occur between the options for the methods of undertaking an EA (for example spiritual considerations could be taken into account as a VC [if nation wishes])

Consensus Seeking and Consent Guidance Document

- EAO provided an overview of the Guide to Consensus and Consent Seeking in the EA
 - This will be revisited on January 16 meeting.

- **ACTION ITEM – IIC members to provide feedback prior to Jan 16 meeting**
- The EAO clarified what will be posted on December 16:
 - User Guide
 - Regulations
 - Public Engagement Policy and Guidance
 - Closer to end of December:
 - Compliance and Enforcement Policy
 - Early Engagement (potentially)
 - January
 - Human Environment Policy (renamed)
 - **ACTION ITEM – the EAO will re-circulate the Human Environment Policy**
- **ACTION – EAO will provide a list of the policies and guidance that are expected to be completed in Phase 1, 2 and 3 of the implementation of the new Act and the timelines associated with each** (note – this was provided by the EAO on December 16 via email from EAO).

Dispute Resolution

- IIC asked if it is possible to ensure dispute resolution is effective without involvement of excess parties.
 - EAO noted that proponents cannot trigger DR or be compelled to participate but may be invited by the EAO and Nation agreed to by both parties
 - IIC member expressed that the scope of DR should be tied to the scope of the EA Act and Project.
 - EAO agreed and that how DR applies has been incorporated into the Dispute Resolution document. The EAO requested for feedback between this meeting and the January 16 meeting.
- IIC member noted that 60 days for dispute resolution may not be sufficient because (1) skilled facilitators have lower availability, and (2) that the topic may be difficult to include in the agenda of chief and council. Another justification for extension would be a community referendum or chief and council change (aka election).
 - EAO suggested including a comprehensive option that would allow all these, and potential other, situations to be considered.
- IIC member noted there is a need to ensure that the respect is both ways in terms of justification for extensions on the provincial and nation fronts.
 - EAO noted that page 13 and 14 of the intentions paper focus on these concerns.
- **ACTION – send the documents that are currently publicly available regarding [Indigenous Behaviour Competences](#) to IIC**
 - IIC asked to consider renaming the competencies to a more culturally appropriate title.
 - **EAO will send recommendation along to the ministry responsible for the Indigenous Relations competencies. (ACTION ITEM)**

Capacity Funding

- IIC asked what the status of funding amounts and how/when the funds will be provided.

- EAO has now looked a variety of options in terms of yearly funding, staged based on where in EA project is in, ratio of EAO vs Proponent payment, etc.
- EAO wants to complete further engagement and development before providing formal numbers and models rather than provide something now that may still undergo significant changes.
- IIC member brought up the necessity to ensure funds were available when something is required to be produced (ahead of time).
 - EAO will ensure this is taken into consideration.

January 16th Meeting Preparation

- IK Guide will be discussed
 - IIC members to provide examples and feedback on how to integrate graphics and stories
- Updates and discussion on the Guide to Consensus and Consent seeking were deferred to the January 16 IIC meeting
- Early Engagement policy and Readiness Decision policy will be shared with IIC for their review.
Note – this was completed on December 16 through email from EAO.