

# Environmental Assessment Revitalization Indigenous Implementation Committee Meeting January 16, 2019 – 9:30 AM to 12:00 PM – Teleconference Call

## Attendees:

**Co-Chairs:** Scott Bailey and Ang Smith

**Attending IIC Members (via phone):** Sunny LeBourdais, Verna Power, Nicole Kapell, Nalaine Morin, Ang Smith, Bruce Muir, Dave Nordquist, Jackie Thomas, Angel Ransom

**EAO Attendees:** Amy Avila, Trish Sterloff, Danielle Smyth, Nathan Braun, Mark Haines, Lindsay Luke, Fern Stockman, Melissa Westaff

**Guests:** Paul Blom, Zaria Stoffman, Sara Millman

## Committee Administration

- EAO noted that another in-person meeting will be scheduled for the first week of February to account for today's adjusted meeting time due to weather and travel cancellations. IIC members sent availability via email prior to meeting. **ACTION – EAO** to schedule meeting date for early February (COMPLETE, scheduled for February 7).
- EAO noted that meeting notes for November and December 2019 have yet to be posted. **ACTION – IIC** members to provide comments on notes by Jan. 28. Meeting notes up to December 10 to be posted by end of January.
- Action items were discussed. It was noted that a few items remain outstanding but are being worked through. EAO will follow up with members individually regarding actions.

## IIC Report and Priorities

- EAO noted that the IIC's Report outline was shared at the last meeting. **ACTION – IIC** members to provide comments by Jan. 28
- IIC member asked what the purpose of the report is and if it is to be one page in length. A comment was made about the title of the report being factually incorrect, and a suggestion was made to use the name "Progress Report" instead.

- EAO noted that the intent of the report is to serve as a communication tool that will transparently note the work IIC did together. The report will serve to outline the committee’s mandate and clarify the roles of its members. Once completed, the intent will be to share report with other Indigenous nations and the FNLC. It is undetermined how long the report will be.
- IIC member added that the report will be useful in informing other similar provincial implementation committees that are under way. IIC member also noted that it would be useful to include a section on recommendations based on what the committee has learned.
- EAO agreed that it is open to changing the name of the report to “Progress Report” and the inclusion of recommendations would be valuable if the committee agreed.
- IIC member asked if the report would be produced by EAO or IIC members, and another IIC member added that the preference would be to have EAO create a first draft of the report and then distribute to IIC to provide a review. Other IIC members were in agreeance.
  - **ACTION** – EAO noted that it will await to receive comments on the outline, as noted in an earlier action, then create a first draft of the report with an aim to allow 30-45 minutes to review together at the February 26 meeting.

## Dispute Resolution

- EAO noted general updates around Dispute Resolution, including an aimed timeline of having regulation be in place by late Spring or Summer.
- The Intentions Paper was distributed to the IIC and SIC in December and it was noted that some feedback was received but EAO was seeking feedback from as many members as possible. **ACTION** – EAO to resend Intentions Paper (COMPLETE) and IIC to provide feedback on Intentions Paper.
- Engagement with SIC and IIC as well as direct engagement with Indigenous nations has been informing the work being done on DR. It is targeted to have fulsome comment period towards end of February.
- EAO is looking to establish a framework regulation that is flexible in nature.
- **ACTION** – EAO would like the IIC to provide feedback on a couple of outstanding issues specific to the regulatory model and to answer the following questions:
  - How to define facilitator required qualifications for Indigenous competencies?
  - Facilitator’s report: should all or part of the report be published publicly?
- EAO noted that IIC should consider the Indigenous Relations Behavioral Competencies in selecting qualifications for facilitators. EAO explained that in developing these competencies, consultation on the development was led by a Human Resources group, and the competencies were created and developed by

Indigenous elders and staff. **ACTION** – IIC would like the Indigenous Relations Behavioral Competencies re-circulated (COMPLETE).

- An IIC member suggested that there should be an option to select more than one facilitator, particularly within the context of G2G agreement pieces, to ensure that all needs and sensitivities are accurately addressed when working with Indigenous nations.
- An IIC member added that it would be useful to keep qualifications for facilitators very broad and simple in nature, leaving space for the Indigenous nations involved to decide if a facilitator is well-qualified.
- Another IIC member added that it would be useful to have applicants provide references from residents of communities in which they have previously worked in. This would allow for increased community input as well as verification and transparency in selecting a facilitator.
  - EAO agreed that these were valid and useful suggestions.
- EAO noted that during DR the facilitator will prepare a report and discussed the idea that some information surrounding DR may be published publicly. While looking to maintain a balance between transparency and confidentiality, EAO noted three options that can be undertaken:
  1. The report is not made public, instead EPIC will have an acknowledgement that a project has entered into DR, followed by a status update when DR has finished;
  2. The report is to be posted on EPIC using a specific high-level template, noting the issue that is currently under dispute and whether or not there is consensus; or
  3. The fulsome report will be posted on EPIC, allowing for facilitator discretion, with the participants involved in DR to review and approve the report prior to being posted.
- EAO asked IIC members to think about the factors in deciding upon either a high-level framework with minimal amounts of detail, or a larger framework that includes more detail.
  - IIC member noted that it would be useful to build flexibility into the policy behind this, and that it would be useful to include all three options in policy so that the parties could determine which option will be the most relevant or helpful in that circumstance. Other IIC members were in agreement to this statement.
- EAO discussed implementing an interim model in order to make DR available prior to the regulation coming into force. EAO noted that an interim model will follow the regulatory model as closely as possible, but will require some modifications, including:
  - The process for facilitator selection; there will be no standing roster or DR advisory committee. Selection will be made by consensus of all parties.

- Process of submitting an initiating document; which includes an opportunity for the triggering party to propose an individual to serve as a facilitator.
- Calculation of time limit; the 60 day time limit will begin when once all parties agree to a facilitator rather than upon receipt of the initiating document by EAO.
- EAO asked if there would be an imposed time limit on selection of a facilitator in the interim model.
  - EAO noted that it will be considered.

Next Steps:

- An interim model will be finalized by end of January and will be applicable until regulation comes into force. It will be as flexible as possible and offer customization. Additional feedback from the IIC on this model is welcomed.
- The Intentions Paper will be finalized and posted for public comment by late February or early March. EAO is currently developing a plan for direct engagement with Indigenous nations.
- The regulation is targeted to be in force by summer 2020. EAO is currently working with Legislative Counsel to begin drafting but this drafting will be fed by input from the IIC.
  
- An IIC member asked if Indigenous nations would be provided adequate funding to participate in DR, and whether or not this was mentioned in the Intentions Paper.
  - EAO noted that this may be contemplated as part of Capacity Funding and is currently being discussed in broader conversations. It was noted that in order for this to be resolved, this question would need to be addressed under the Capacity Funding piece.
- An IIC member noted that the lack of resources available for Indigenous nations is what limits participation in situations such as DR. It was suggested to include a piece that notes this in the regulation and have a dedicated section that discusses capacity funding. An IIC member supported this comment.
  - EAO acknowledged this concern and noted that while there may be administrative challenges to referencing capacity funding in the DR regulation that could lengthen the process of progressing the DR regulation, this was something that the EAO could look into.
- An IIC member asked if the interim will have a note that says it requires capacity funding.
  - EAO acknowledged that there is a need for it to be addressed in policy and regulation as well as in the interim model. **ACTION** – EAO would like to revisit the topic of DR and Capacity Funding with the IIC for more input.

## Undertaking Assessments with Indigenous Nations: Process Planning and Effects Assessment Policies

- EAO provided a status update on the key policy guidance documents that are under development with components related to undertaking assessments with Indigenous nations:
  - Early Engagement and Readiness Decision Policy documents that had been previously shared and reviewed by the IIC are now posted online as versions 1.0 (draft).
  - Process Planning and Effects Assessment Policies targeted to be released end of January in versions 1.0 (draft).
  - Guide to Consensus Seeking in Environmental Assessments and Indigenous Knowledge Guide to be released likely in February – more work is currently being done on these pieces, including discussions with the First Nations Leadership Council in regards to Guide to Consensus Seeking in Environmental Assessments.
    - EAO proposes to use February 26 IIC meeting to discuss the Indigenous Knowledge Guide and workshop ideas for integrating case-studies with potential linkages to the Effects Assessment Policy.
- In regards to the Indigenous Participation Guide the aim will be to create a standalone, brief, graphic-based document that demonstrates key concepts, outcomes and objectives and provides linkages to the more detailed guidance and policies that contain more information.

**ACTION** – Discuss Guide to Consensus Seeking in Environmental Assessments at the February 26 meeting and Indigenous Knowledge Guide at meeting February 7.

- EAO noted that the FNLC met with the Minister regarding engaging in political oversight discussions. EAO wanted to make the IIC aware that components of the guidance pieces are being discussed within the FNLC. EAO expressed its intent to adjust the title of the consensus seeking guidance to better reflect its focus on consensus-seeking under the Act, rather than consent which is a decision made by the Indigenous nation according to their own processes and decision-making requirements.
- An IIC member asked a question regarding technical administrative aspects of the consensus-seeking process and why these are not noted as points where nations would provide consent.
  - EAO noted that the intent is not to take things such a mitigation measures and final conclusions as technical pieces. The process of consensus-seeking occurs at the technical level. Based on this consensus-seeking, technical recommendations would then be provided to inform political decisions. Consensus and consent in the conduct of EA is a process to build free, prior

and informed consent over a period of time to inform a nation's decision on consent.

- An IIC member noted that if differentiation is being sought to identify two levels of engagement, which includes separating political leadership from the decision-making process, that this should be discussed in the guidance and acknowledging the relationship between the two.
  - EAO answered that the name of the guidance should speak to the consensus-seeking obligations under the Act and the consideration of consent will not be removed completely but it will be specific to the notification of consent referenced in the Act rather than the decision of consent which rests with Indigenous nations. An example was used that describes it as being technical consensus points that EAO will be seeking along the way while being mindful and sensitive to where conversations and work need to be carried out at a political level.
- An IIC member noted concern of the way consent is laid out in the process; consent is coming through as appearing limited and that the approach appears flawed when comparing it alongside the UN Declaration. The concern is that political aspects will be limited and claimed as technical in nature.
- The FNEMC observer expressed that there may be interest in revisiting the new Act and changing “seeking consensus” to just “consent”.
  - EAO answered that the intent of this is not to create divisions between technical and political, and that the Political Oversight Committee will focus on some aspects of this conversation. At this time, EAO is not aware that this change will take place.
- IIC member asked if anything has changed in the Guide to Consensus -Seeking version that the committee members currently have.
  - EAO noted that additional clarifying and editorial edits are being made on the guidance and that for efficiency, IIC members should likely wait to review the next draft. **ACTION** – EAO to work on drafts and will send out as soon as possible so that they can be reviewed at February meeting.
- FNLC observer asked if there is opportunity to extend the timelines of the review and release of the guidance to account for the meeting of the Political Oversight Committee. IIC member asked why a new draft would be brought forth to a technical committee for review before political committee discussions are had.
  - EAO answered that moving forward with a technical conversation is important and acknowledged that technical and political conversations can move forward in parallel. Any input taken from political discussions will be worked in as necessary.
- IIC member asked if anyone could confirm the timeline of when Political Oversight Committee meetings would begin.
  - EAO verified that four monthly meetings were scheduled to take place, with each taking place at the end of the month starting in January.

- EAO discussed an overview of each policy document as noted above and explained which pieces of Indigenous nation guidance could be found in each:
  - Early Engagement Policy
    - How Indigenous nations are involved during early engagement
    - Indigenous engagement requirements for the proponent
    - Indigenous nation information requirements for IPD and DPD
    - Participating Indigenous Nation confirmation process, including DR provisions
    - Preliminary understanding of interests and scope of engagement
  - Readiness Decision Policy
    - Explanation of the potential decision pathways
    - Consensus seeking and consent requirements
    - Extraordinary adverse effects
    - DR provisions
  - Process Planning Policy
    - Undertaking Assessments with Participating Indigenous Nations
    - Section 19(4) Assessments
    - Process Order Guidelines, including Assessment Plan template, AIR template (including requirements for assessment matters under S 25(1) and Permitting Plan template
    - Consensus seeking requirements for Process Order
  - Effects Assessment Policy
    - **ACTION** – Seeking IIC input on Effects Assessment case studies (Nicole agreed to provide examples at the Feb 7 meeting). Wanting to integrate case studies into guidance.
    - Guidance regarding conducting assessment of effects on Indigenous nations
    - Role of proponent to support assessment of effects on Indigenous nations
- EAO provided an overview of Process Planning and the Process Order. Process Planning determines **what** information must be provided, **how** the information must be gathered, **who** must be involved in the EA and how they are to be engaged and **when** the timing of each subsequent phase takes place. It was noted that earlier work informs Process Planning.
- Content of the main body of the Process Order includes:
  - Defining the scope of the project: facilities and activities included in the EA;
  - Defining the scope of the assessment (including scope of interests of each Indigenous nation in the project area that will be assessed);
  - Identifying the participating Indigenous nations that have been determined under section 14 of the Act and other Indigenous nations;
  - If applicable, identify portion of the assessment to be carried out by participating Indigenous nations under section 19(4) of the Act and timing in which it must be completed;

- Identify other Indigenous nations;
  - Confirm the Technical Advisory Committee; and
  - Establish the Community Advisory Committee(s), if any.
- There are Three Appendices: Assessment Plan, Application Information Requirements and Permitting Plan.
- The Process Order includes standard documents that are then customized by the specific project, beginning in Early Engagement.
- EAO gave an overview of the Assessment Plan and Application Information Requirements.
- A standard version has been developed that includes typical information requirements with an emphasis on importance of engagement with Indigenous nations, recognizing the importance of early engagement in identifying interests and information requirements.
- EAO gave an overview of Indigenous Information Requirements, noting that information requirements would be outlined in process order.
- IIC member asked if Land Use Plans would be considered as part of these requirements.
  - EAO answered that Land Use Plans are required to be considered according to the Act. Land Use Plans would typically be identified during Early Engagement and considerations would be identified in the IPD with a confirmation in the DPD, and would be incorporated into Process Planning.
- IIC member asked that, in aligning Indigenous Information Requirements with the Indigenous Knowledge Guide, how Indigenous Knowledge can be considered a requirement in instances where a nation does not have a positive relationship with a proponent and does not wish to share their knowledge.
  - EAO answered that according to the language woven into the Application Information Requirements, this is not the intent. Guidance will be customized for each project and each Nation. It is important that proponents recognize that it is essential to make good efforts to work with Nations to bring forward the information required and to make and maintain respectful relationships throughout the process. EAO wants to ensure that there is a balance of flexibility but that the expectations of proponents is reflected.
- EAO provided an overview of the Permitting Plan, which is to identify:
  - Primary permits required for the project;
  - Proponent's expected timelines for the submission of their permit applications;
  - How information generated in the EA supports the subsequent permitting process; and
  - Indigenous and public engagement activities associated with subsequent permitting.



- The Permitting Plan is a document that is attached to the Process Order and serves as a communication tool that outlines standard requirements for permitting. It is maintained by the EAO during the EA to:
  - Reflect any changes to project design and required permits;
  - Provide details regarding how assessment topics are addressed in the EA and may be further addressed in subsequent permitting; and
  - The updated plan informs the development of the list of issues identified for permitting, that is part of the referral package.
- It is documentation that serves as a starting place for permitting with identified issues.
- EAO provided an overview of the Effects Assessment Policy and updates on current draft, including the clean-up of language throughout the document, placeholders added where diagrams, examples and case studies can be incorporated, and a section added around Section 5.0 – Assessing Effects to Indigenous Nations, which complements the Application Information Requirements. EAO noted that content additions were covered in earlier slides shown during the meeting.
- The purpose of the Effects Assessment Policy is to provide guidance on how to consider the assessment matters under S. 25(1 and 2) including how to identify, assess and manage potential environmental, economic, social, health and cultural effects (referred to as the five pillars) and the potential effects of a project on Indigenous nations and their rights recognized and affirmed by section 35 of the Constitution Act, 1982.

**ACTION:** Immediate and pressing feedback/comments on the Effects Assessment Policy to be received by IIC members by the end of next week – Jan 24.

**ACTION:** Canada’s released interim guidance on Assessment of Impacts on Indigenous Peoples is to be circulated to group. EAO to review with consideration to BC policies.

**ACTION:** EAO to send email to IIC members outlining what is requiring their feedback. This is to be sent out by end of today (COMPLETE).

### February Meeting Preparation

- Revisit case studies intended to place in Indigenous Knowledge guidance and discuss where they can be used in Effects Assessment Policy
- Discuss status of consensus piece and where
- Mitigation policies
- Regulatory continuum
- Request to share Human Health Guidance (expected to be available mid-February)
- Work on updates on Capacity Funding