



BIIGTIGONG NISHNAABEG

October 25, 2021

Jason Patchell
Co-Panel Manager, Marathon Palladium Project
c/o Impact Assessment Agency of Canada
160 Elgin Street, 22nd Floor, Ottawa ON K1A 0H3

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Dear Mr. Patchell,

Re: Draft Hearing Procedures the Marathon Palladium Project

Biigtigong Nishnaabeg First Nation would like to provide comments regarding the draft Hearing Procedures (the “Draft Procedures”) for the Marathon Palladium Project (the “Project”). The Draft Procedures correspond to document no. 933 of the public registry.

Our comments may be divided into three categories: the nature of the hearings, the need for clarity regarding the definition of the term “close community” as that term is used section 2(a) of appendix “A” of the Draft Procedures, and the need for the preservation of confidentiality protocols contemplated by the Final Procedure of March 2012.

Background:

Biigtigong Nishnaabeg First Nation is a “participant” as that term is defined in section 1(D) of the Draft Procedures. Biigtigong Nishnaabeg is not a signatory to the Robinson Superior Treaty of 1850 and has filed a claim for Aboriginal title in the Ontario Superior Court of Justice. Biigtigong Nishnaabeg and the federal and Ontario Crowns have been in ongoing negotiations to resolve these issues since 2016. As acknowledged by the proponent, GenPGM in a joint , the Project falls within the area of Biigtigong Nishnaabeg’s exclusive Aboriginal title jurisdiction.

Section 2(A) of the Draft Procedures describes the objectives of that Draft Procedures. These objectives are to allow:

- i. The Proponent to describe the Project and respond to concerns and questions raised by other Participants during the hearing;

- ii. Participants to provide their views on the potential environmental and socioeconomic effects of the Project;
- iii. The Panel to receive information and ask questions to help in their assessment of the potential environmental effects of the Project and associated mitigation measures; and
- iv. The panel to obtain information to complete its panel report.

Regarding Section 3(A): Virtual Hearings

As the indigenous community nearest to the Project site, Biigtigong Nishnaabeg suggests that the Public Hearings, or a portion thereof, take place within Biigtigong Nishnaabeg itself.

Section 3(A) of the Draft Procedures states that the “public hearing will take place virtually due to the ongoing Covid19 pandemic.” Section 3(B) states that the Public Hearing will consist of “Community, General and Topic-Specific hearing sessions.”

Despite the adoption of videoconferencing technology in response to the COVID-19 pandemic, Biigtigong Nishnaabeg submits that due to the complexity and volume of information to be provided, an exclusively virtual hearing format will be inferior to a hearing procedure that incorporates in-person hearing. As noted in numerous arbitral, judicial, and tribunal decisions from across Canada, where there are significant factual disputes or complex issues at play, the use of technology may not be as appropriate, or as efficient, as in-person hearings. Biigtigong Nishnaabeg submits that this is especially so in the context of the intervention of indigenous communities, many of which grapple with issues surrounding access to technology, particularly internet connectivity issues. Considering the complexities and breadth of the Project’s potential environmental effects on Biigtigong Nishnaabeg, Biigtigong Nishnaabeg submits that a hearing format that incorporates in-person hearings would be a more expeditious manner for the discharging of the objectives described in section 2(A) of the Draft Procedures.

Biigtigong Nishnaabeg takes seriously the need to stay healthy and safe during the COVID-19 pandemic. With that said, public health trends regarding the epidemic remain encouraging, and suggest that a hearing format that is exclusively virtual will not be necessary to protect the public from COVID-19. As described by the Ontario government, in consultation with the Chief Medical Officer of Health, in a document entitled “ A Plan to Safely Reopen Ontario and Manage COVID-19 for the Long-Term” dated October 22nd, 2021, a gradual removal of public health measures, including capacity limits, is expected to occur over the following months, with a full removal of COVID-19-related public health requirements anticipated by March 28th 2022. While not a judicial body, the Joint Review Panel may also find it encouraging to note that Courts, and Tribunals, have largely re-opened themselves to in-person trials and hearings. As well, and as demonstrated by Biigtigong Nishnaabeg’s hosting of an in-person site visit by the Joint Review Panel in September of 2021, health concerns can be appropriately balanced with the efficiencies of mixed (e.g. virtual and in-person) hearing procedures. For these reasons, Biigtigong Nishnaabeg submits that the Draft Procedures should incorporate, at a minimum, both virtual and in-person hearing procedures.

Biigtigong Nishnaabeg would like to formally invite the Joint Review Panel to the community to host public hearings in Biigtigong Nishnaabeg itself. Biigtigong Nishnaabeg could host General, Community, or Topic-Specific, or a combination thereof, hearing sessions.

Regarding Section 2(A) of Appendix “A”: The Definition of “Close Proximity”

Section 2(a) of the Draft Procedures states that “Community sessions are intended for Indigenous communities living in close proximity to the Project to present their community views.” However, the

JRP does not define the term “close proximity.” Biigtigong Nishnaabeg requests clarification by what is meant by “close proximity.”

Regarding Section 12: Confidentiality

Biigtigong Nishnaabeg requests that the Draft Procedures describe the process and protocols for requesting confidentiality.

Biigtigong Nishnaabeg requests that the confidentiality protocols identified in the previous iteration of the Joint Review Panel, more specifically the Final Procedure for Requesting Confidentiality, dated 26 March 2012, be affirmed within the Draft Procedures.

We thank the Joint Review Panel for the opportunity to comment on the Draft Procedures.

Respectfully,
BIIGTIGONG NISHNAABEG

<Original signed by>

Per: Chief Duncan Michano
<email address removed>