

BEAMISH LAW

Memorandum

To: Fort Albany First Nation - Chief and Council, Christopher Metatawabin

Date: November 25, 2019

Re: Meeting with Impact Assessment Agency re Marten Falls Access Road, November 26, 2019

Introduction

This memo is to assist Chief, Council, and relevant band staff with **preparing for your meeting with the Impact Assessment Agency** (the “Agency”) on November 26, 2019. Sarah Beamish will be joining that meeting by telephone.

The **purpose of this meeting** as stated in the agenda is to:

1. Provide an overview of the federal impact assessment process
2. Present the Agency’s understanding of the Marten Falls Community Access Road Project
3. Invite comments on valued components, the Tailored Impact Statement Guidelines, and input on the Indigenous Engagement and Partnership Plan for the proposed Project from Fort Albany First Nation

The **first two agenda items** are for your information. We suggest that your goal for these parts of the meeting should be to listen closely and ask questions to ensure that you all understand the basics about the new assessment process and the Project.¹

This memo mainly presents information to help you think about the **third agenda item**. It presents:

- a brief explanation of what agenda item three “means”;
- a summary of the comments submitted by FAFN so far; and
- suggested messages and questions for the meeting.

What does agenda item three mean?

¹ I am currently also doing training on the new assessment process to ensure that I understand it well on FAFN’s behalf.

Agenda item three is where **you will talk about some things that are important for the Planning Phase** of the impact assessment process. The Planning Phase includes getting the necessary information to ensure that the impact assessment considers the right things, in the right way.

Agenda item three contains **some terms you'll need to know**. Here are those terms and their meanings. The Agency can explain more about these and can answer your questions about them at the meeting.

Valued components - Valued components (VCs') are **elements of the human and natural environment that are perceived as important** by participants in an impact assessment process, and that should be carried forward into the assessment.

Identifying FAFN's VCs is important because it ensures that the assessment will consider **impacts on the things that matter most to your community**, and will consider those impacts **over the right length of time** (eg. some impacts might last months or years, while others might last for generations or forever).

Many things can be VCs. Just a few examples include:

- short or long-term employment opportunities for your members;
- habitat, breeding grounds, or food sources of certain animals that are especially important for your community;
- the use of the Albany River for recreation, fishing, etc.;
- sites with certain special cultural value (eg. important historical or ceremonial sites);
- traffic of outside people into the region;
- violence against women;
- use of your language by community members; and
- air or noise pollution.

It is also important to think about how **different VCs can be related and might impact one another**. For example, an increase in noise or pollution might affect certain animal habitat, which might affect their breeding or presence in the area, which might affect FAFN members' ability to rely on them for food or other purposes, which might affect FAFN members' nutritional and cultural wellbeing.

The Agency is providing you with a **preliminary list of VCs**, and FAFN will probably want to add to it. The summary of FAFN's comments about potential impacts of the Project (included at

the end of this memo) will be helpful when thinking about the VCs that FAFN wants to have included in the impact assessment.

Tailored Impact Statement Guidelines - Tailored Impact Statement Guidelines (TISGs) are guidelines developed by the Agency that **tell the Proponent (Marten Falls) what information has to be in its impact assessment, and how they should get that information.**

The TISGs are called “tailored” because they are **unique to each Project**, and are **shaped partly by what the Agency has heard through consultations** with Indigenous groups, the public, technical experts, and others.

This means that **the TISGs can be influenced by FAFN’s comments.** For example, if FAFN says that the impact assessment must look at potential impacts on certain VCs in a certain way (eg. if certain people in the community would need to be consulted at a certain time), then the Agency might include that as part of the TISGs. If Marten Falls doesn’t then follow that part of the TISGs, the impact assessment would be considered incomplete.

Indigenous Engagement and Partnership Plan - The Indigenous Engagement and Partnership Plan (IEPP) is a plan that **describes how Indigenous groups such as FAFN will be engaged throughout the impact assessment process.** It is developed jointly with Indigenous groups.

What has FAFN said to the Agency so far? Are these comments reflected in the Agency’s Summary of Issues and proposed list of Valued Components?

We have attached a list summarizing most of **FAFN’s areas of concern** which you have included in various written comments to the Agency so far. It is at the end of this memo.

We have reviewed each of the comments submitted by FAFN, and compared them with the Summary of Issues prepared by the Agency. We believe that **the Summary of Issues captures most or all of the concerns raised by FAFN**, which is positive.

However, just because FAFN’s concerns are captured in the Summary of Issues does not mean they will become part of the impact assessment. For that to happen, **FAFN’s concerns and priorities should also be reflected in the Valued Components list, and in the Tailored Impact Statement Guidelines.**

Suggested messages and questions for the meeting

These are messages and questions you may want to use during the meeting. Many of them come from FAFN's comments and concerns already expressed to date. We have also added some more based on potential concerns about the impact assessment process.

FAFN's overall approach to the impact assessment process

- For us, this is about our inherent and treaty rights as Peetabeck Inninowuk, the original inhabitants of the Albany River Watershed/Treaty #9 territory.
- We have a right to be equal partners in all decisions that affect Peetabeck Inninowuk land, culture, and way of life.
- FAFN is committed to a positive consultation process for the Project.
- The initiative to connect the community of Marten Falls with the provincial highway system will result in positive changes for Marten Falls First Nation.
- However, FAFN does still require meaningful involvement in the regulatory process to allow full consideration of the process for developing and constructing such a road, and to ensure understanding of any potential negative impacts.
- This is particularly relevant for FAFN as another fly-in community.

Considerations for the impact assessment

- We are glad to see many of our written comments and concerns reflected in the Summary of Issues.
- We can also see some of our likely valued components reflected in the Preliminary List you have shared with us, but we think we will need to add more. We can begin today but will need more time to consider this.
- It is very challenging for us to categorize valued components and impacts into “cultural”, “environmental”, “health”, “economic” and so on because they are all related. This means one valued component might have to be looked at in many ways, and several might have to be looked at together. The process needs to be flexible.
- Our section 35 rights mean that the process can't just look at rights like harvesting alone. It also has to consider how, when, and where we prefer to exercise those rights.
- It is very important that the impacts be considered cumulatively - both within this project, and between this and other projects.
- This impact assessment may be challenging because there is very little available environmental baseline information for most of the Treaty #9 homelands, which is mostly mushkeg or water-based lands.
- Cree people have harvesting knowledge of the Hudson and James Bay region. Our traditional knowledge must be incorporated into planning, management, and operational decisions in a manner acceptable to the Peetabeck Inninowuk. We need adequate funding for this.

Engaging with FAFN

- *Communications and materials*
 - Do not bring information using a lot of scientific terminology and jargon.
 - Do bring information that is presented in a user-friendly way that includes things like spreadsheets, graphics, infographics, audio-visual materials, powerpoint presentations, multimedia, etc.
 - Provide simple explanations of important terms, concepts, steps, processes, etc.
 - Provide education about the IAA processes.

- *Language*
 - Our Cree language is a treasure and we are blessed to have community members who speak it.
 - Not all of our community members are fluent in English or comfortable with very technical language.
 - It is important that our community's language needs are accounted for in all parts of the regulatory phase that may affect us.
 - This is both because our Cree-speaking members have an equal right to participate, and because our Cree language holds information that is important for understanding our traditional territory and culture and the potential impacts on them.
 - We need translation/interpretation available and paid for at every stage where the community needs to be able to read important materials or be engaged in consultation.
 - The translators and interpreters need to be fluent in our local Mushkegowuk language, and they should be familiarized with the relevant information and materials before being asked to translate/interpret.
 - Translators and interpreters should be given user-friendly summaries, fact sheets, infographics, powerpoints, booklets, photo-voice materials, etc. to be presented verbally and/or in written Cree syllabics
 - Translation/interpretation costs should be funded on top of "normal" funding, so that we are not disadvantaged relative to those communities where most members' first language is English.
 - It is important to do outreach to Cree speaking elders in particular.
 - Our preferred interpreter is Elizabeth Metatawabin-Baptiste

- *Working with the community*
 - Observe and respect our customs and traditions
 - The community would appreciate community feasts and gifts, and funds to pay for this (venue, catering, taxis, etc.).

- Plan for things to mark key points in the process: hand shakes, group photo ops, news articles.
- Do not fly in last minute and inform the community that you have to fly out in half an hour. You need to stay overnight or more, depending on interest from the membership.
- Recognize that our members are diverse and have different needs. Design (and fund) workshops, interviews, meetings, etc. to accommodate low-income families, unemployed youth, single parent households, persons with disabilities, and so on

Funding

- This project may impact on our inherent, treaty, and constitutional rights.
- In order to fully understand the impacts of this Project, Fort Albany First Nation needs full involvement throughout the regulatory phase of this Project, including fair compensation for participation that includes adequate funding for the necessary community engagement and legal and technical support.
- We also need funding for organizational capacity-building and knowledge sharing/education around the new assessment process.
- The opportunities to participate are meaningless if FAFN cannot afford to actually do it well.
- We have knowledgeable people in the community, but they have a lot of demands on them, and do not have all of the technical, legal, and scientific expertise we may need. This means we need outside help.
- But we cannot afford to pay for the costs of these impact assessments. FAFN is a community with a lot of financial poverty, resource scarcity, and challenges. Our resources need to go to our people.
- Further, because of the region we are in, we have to go through impact assessments for multiple projects
- We should not have to take money out of the community to pay costs related to projects we have never asked for and that may have few or no benefits for us.
- If proponents want to build projects, and if the government wants to let them do that, then proponents and government should pay the costs associated with making sure those projects don't harm us or impact on our rights.
- We know that there will be some funding available in the next stages, but we have not been able to get good details about this.
- It is important that we know as soon as possible at each stage what funding will be available to us, and how this amount was calculated.
- It is not appropriate for every Indigenous group to get the same amount of funding no matter what. It is important that the funding amounts take into account the very high costs

of living, travel, services, and so on in a fly-in community in our region, and that we may need to bring people in to help us.

- It is also important for us to know where the government expects us to get enough funds for the impact assessment, if the government funds are not enough.
- If we are expected to negotiate with the proponent for funds, it is also important that we know this and get funding for necessary meetings and legal or other support with that negotiation.

Opportunities for further input

- We want to ensure there are more chances after today to give input about our valued components, and to influence the Tailored Impact Statement Guidelines and the Indigenous Engagement and Partnership Plan. We would like a chance to reflect on this meeting and discuss the issues further.
- Until what date can we send written submissions about our valued components?
- Until what date can we send comments for the Tailored Impact Statement Guidelines?
- Until what date can we send comments for the Indigenous Engagement and Partnership Plan?

Holidays and exceptional events

- Will the normal regulatory timelines be slowed down to reflect the December holidays?
- Can we get extensions on short deadlines for comments when we are dealing with things like deaths in the community, which can require our leadership's attention?

Summary of potential impacts identified by FAFN

Below are lists of potential impacts identified by FAFN in its written comments, which have been condensed and grouped roughly into categories. These lists may help FAFN think about its valued components.

These categories overlap and many of these impacts could go into other categories.

FAFN also made written comments about other things. Not all of those are in these lists.

Environmental impacts

- Changes in the physical attributes of the land (air, noise, visual quality, etc.)
- Impacts to important species (for harvest or culture), which could result in secondary effects to Fort Albany First Nation members' ability to access those species
- Environmental impacts to the Albany River (eg. granular material uses affecting river bed; damage to river banks)
- Changed access to and use of Albany River by boats and fish
- Impacts on water bodies (river crossings, streams, lakes, creeks, ponds, rapids) including water flow, quality, and levels
- Impacts on underground water passageways/flows
- Impacts on surface and groundwater quality
- Impacts on fish (habitat, food, migration, spawning)
- Impacts on soil (disturbance, erosion, pollution)
- Impacts to air (noise, pollution)
- Damage to mushkeg and marshy areas (eg. from blasting)
- Unforeseen and cumulative impacts
- Waste, garbage, and debris from worksites
- Impacts on beavers and beaver damming
- Impacts on plant life
- Impacts on insects (including butterflies, mosquitoes, horseflies)
- Impacts on amphibians (including frogs)
- Impacts on land animals
- Climate change-related impacts
- Impacts related to aggregates and sediments
- Impacts related to acid rain and ozone holes
- Plastics and hazardous waste
- Unpredictable ice break-up
- Forest fires causing destruction
- Food chain impacts

Social/cultural/political impacts

- Changes to abilities and means of exercising inherent and treaty rights
- Changes in access to homelands by FAFN members (including cultural and heritage sites)
- Changes in the perception of land
- (increased avoidance by FAFN members due to perceived environmental, aesthetic or safety concerns)
- Traditional land use activities (trapping, fishing, hunting, harvesting)

- All season road traffic and transport
- Loss of Cree language
- International impacts
- Acculturation; change of values between Cree and English lifestyle
- Difficulty in river navigation/travel
- MNR land use permitting versus Cree family trap lines
- Impacts on spirituality
- Impacts on families (child rearing, single parenting, parenting skills, family trap lines, abuse of children, abuse of women, abuse of elders)
- Impacts on Cree Nationhood
- Impacts on quality of life
- Erosion impacts (grave sites, camp grounds, harvesting grounds are disappearing into the river)
- Issues re youth delinquency
- Urbanization attraction
- Abandonment of homelands
- Loss of bush survival skills
- No Cree culture teachers
- Xenophobia issues
- End of life vehicles

Health impacts

- Child hunger
- Poor living conditions
- Poverty among youth, women, elders
- High cost of living
- High cost of electricity
- Technology demand by youth
- Displacement
- STDs
- Substance use and abuse (drugs, alcohol, smoking, vaping)
- Disability-related factors
- Malnutrition
- Diabetes
- Cardiovascular issues

Economic impacts

- Permitting process (work authorization permits, forest product permits, temporary camp permits, bridge building permits, aquatic habitat protection permits, temporary water use permits)
- Revenue sharing
- Impacts on traditional economy and subsistence activities (hunting, fishing, trapping, harvesting)
- Fibre to the community
- Employment and training
- Choice of livelihood and vocation
- High cost of food
- Poverty and scarcity issues
- Unmarketable/unemployed youth
- Ring of Fire Project Planning