



**EABAMETOONG FIRST NATION
SUBMISSION TO THE IMPACT ASSESSMENT AGENCY OF CANADA**

REGARDING

WEBEQUIE SUPPLY ROAD & MARTEN FALLS COMMUNITY ACCESS ROAD
TAILORED IMPACT STATEMENT GUIDELINES
AND
DRAFT INDIGENOUS ENGAGEMENT AND PARTNERSHIP PLAN

JANUARY 28, 2020

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GENERAL COMMENTS

Eabametoong First Nation (EFN) is supportive of the efforts of fellow First Nations, including Marten Falls and Webequie, to advance their vision of the future and work towards improving community life. Through the assessment and evaluation of these proposed road projects, **EFN will participate and contribute to the testing of how and if such projects can be reasonably expected to improve life within the region and our community.**

This most fundamental question is often muddled through complex assessment processes that test possible impacts, mitigation approaches, and residual effects through a vast suite of indicators and criteria that are not entirely reflective of community values or context. Therefore, many recent EA processes that EFN has participated in have failed to appropriately capture and/or respond to impacts, including cumulative effects, of projects and their real effects on community life. In order to avoid such regulatory and planning failure, and resulting unaccounted for, but locally-significant effects (e.g. possible impacts to culture, to wellbeing, cumulative effects upon Aboriginal and Treaty rights, etc.), EFN expects to be meaningfully involved in both the process of Impact Assessment and various stages of decisions under consideration in these project assessments.

As with any proposed development, EFN is concerned when Federal and Provincial Crown decision making processes are not reflective of the Treaty relationship and may result in unilateral decisions taken by the Crown that may have an impact on the Inherent Aboriginal

and Treaty rights of EFN. These two road development projects, Marten Falls Community Access Road and the Webequie Supply Road, are distinct and have specific objectives outlined in their TISGs. Most notably, the MFCAR is primarily described for community access but will enable access to substantive and highly prospective areas of mineralization along the corridor and later to the Ring of Fire. Whereas the WSR project is explicitly designed to enable commercial participation in the Ring of Fire, with the potential for community access if the so-called 'Northern Link Road' is constructed at some later time. These two projects are separate, and the IA analysis will be conducted from different perspectives and principles, as directed by their First Nation Proponents. As such, EFN will conduct our internal analysis and approach to participation in each IA in a separate manner, with the understanding that our comments and positions may be distinct regarding each project and IA process ongoing in parallel. These projects represent the greatest range of opportunities and possible impacts to our people and way of life since the making of Treaty #9.

For this reason, Canada must understand EFNs participation in the assessment of these two projects is not as merely an observer or stakeholder (e.g. forester, tourism operator, private company, ENGO or other interest group), but as a Treaty partner with strong rights and interests that have yet to be fully acknowledged by the Crown. In previous correspondence EFN identified that road planning and assessments involve strategic decisions that triggers the Crown's obligations to consult and also the Honour of the Crown in the conduct of assessment and consultation to promote reconciliation with EFN¹. In our region with minimal policy or planning guidance for development north of the Albany River, and tremendous mineral and other development potential, the stakes are very high for EFN's free, prior and informed participation in any of these road assessment processes. Given the changing regulatory environment with the advent of the new *Impact Assessment Act*, EFN regards participation these assessments as an opportunity to move towards reconciliation with Canada in at least one aspect of new partnership. Our concern is, however, that IAAC has neither the resources nor direction from decision-makers to realize the full potential of an open, informed and participatory assessment process appropriate to the context of tremendous potential positive and/or negative effects that these projects may have upon community life and our Aboriginal and Treaty rights.

As the IAAC 'Planning Phase' for these projects closes, EFN notes that the community has not yet been adequately consulted on the TISG or IEPP documents, but the grant support provided to EFN has enabled initial technical level review of the 620+ pages of information provided to EFN. Most importantly, there has neither been time or adequate capacity support to enable community-based dialogue regarding these documents and the referenced baseline information (e.g. geotechnical, wildlife and socio-economic) that are confidential to each respective proponent. In the next phase of assessment, EFN expects to be provided access to

¹ See EFN letter of February 27, 2018 referencing *Wii'litswx v. British Columbia (Minister of Forests)*, 2008 BCSC 1139: para 11-12; and see *Eabametoong First Nation v. Minister of Northern Development and Mines*, 2018 ONSC 4316: paras 11, 93-94 regarding conduct that promotes reconciliation, rather than distrust and misunderstanding.

relevant studies and especially those undertaken in EFN territory or areas of shared interest, and those which have resulted in the narrowing of alternatives in project design.

EFN acknowledges the efforts of both Marten Falls and Webequie First Nation leadership in recent communication with EFN leadership regarding their projects, especially given the broad range of other commitments and responsibilities held by their Chiefs and Council members. We expect Canada, as the regulator, to facilitate an open and meaningful assessment process. To be clear, EFN has already identified and commented that a meaningful assessment is one where membership is involved in designing the process, undertaking relevant participatory studies, and provided genuine opportunities to participate in informed decision making along with our Treaty Partners. The alternative is not acceptable; half-day visits to the community for open houses where information is dumped on community members with very little understanding or forum for informed dialogue can no longer be the standard practice.

To make these assessments more meaningful, EFN requests an in-community meeting with IAAC to discuss the development of an EFN community-specific IEPP and the particular stages of decisions and review opportunities that EFN will be provided with throughout the assessment process.

At this point in the early stage of assessment, EFN offers the following specific comments and questions on the respective projects and IAAC documents.

COMMENTS AND QUESTIONS REGARDING THE WSR AND MFCAR TISG's

Sections 1.1 in the TISGs outlining the factors to be considered in the assessments of both projects are necessarily broad, as prescribed by the IAA. A clear risk to the quality of the assessment exercise is the potential to not achieve a sufficient level of interaction, information sharing, and supporting Indigenous Knowledge (or similar) studies with Indigenous communities like EFN to ensure that all of these factors are appropriately considered. Section 3.2 requires that evidence be provided to IAAC that information was sought from communities, but what is not clear is how communities will be supported to provide such information, jointly undertake IK studies, local Valued Component feedback development and other more detailed and intensive community participation in the WSR and MFCAR IAs. How will EFN be supported to participate meaningfully in these intensive processes?

Will the Agency be willing to work with Eabametoong and other communities to develop a contextually-appropriate method of assessing and considering impacts to rights within IA? Could a semi-technical community working group be developed to meet and establish a locally-relevant approach to assessing impacts to rights and other effects from projects among impacted FNs? If developed, such a working group could be involved in vital information exchange at government review team meetings.

Section 3.2.2. of the TISG includes a requirement for description of road access controls and management of industrial and other use by reasonably foreseeable projects (e.g. mineral

exploration, outfitters and tourism, vehicle and operator licensing requirements, insurance coverage requirements and general liability, and enforcement/policing responsibility etc.). This also includes possible major ROF projects, including the specific listing of Eagle's Nest, Blackbird, Black Thor, Black Label and Big Daddy. The inclusion of these road governance issues within the TISG is an important consideration, especially with respect to the anticipated scenarios of total road usage, maintenance, and cumulative effects of multiple projects within the region. Rather than merely describing current provincial policies for various road standards with this section, EFN suggests that all nearby and potentially-impacted First Nations be involved in a multi-lateral working group on road governance options in order to minimize harmful impacts and identify management strategies and policy considerations and/or accommodations required to promote net benefits through road usage.

The guidance on Gender Based Analysis + in Section 3.3. is vague. Can you describe how Gender Based Analysis + will be applied to examine not only the possible workforce requirements, but also a gendered and vulnerability analysis of the full suite of anticipated positive and negative impacts of increased participation in the workforce, training programs, or additional workers in proximity to communities upon various demographic groups, families, and youth? The guidance in this section could easily include community-involved studies and vulnerability assessment and or recommendations that could benefit the project and future project outcomes.

In Section. 6 of the TISG, the Agency commits to organize a series of meetings informed by the IEPP and in partnership with the Proponent(s). What is the anticipated scope of these meetings? Will these include options for in-community sessions, with working group participants from nearby First Nations? It is unclear how these potentially-important sessions will be resourced and what role these discussions will have in the various study and decision phases as the project(s) progress.

In Section 6.1 the Proponent(s), another First Nation, is required to identify the rights of each Indigenous group in addition to the extent of potential effects on each group. This determination establishes a potential conflict of interest whereby the Proponents are incentivized to restrict the already-limited consultation activities and simply not identify or acknowledge possible data sources that could establish shared rights and interests in lands impacted by the project. How will the Agency mitigate this risk, or enable appropriate study of ethno-history, documentation of lineage and other linkages among rights holders within the area?

In Section 7.3 the Proponents are directed to inform and finalize their Valued Components through engagement with Indigenous groups among other parties. How are EFN and other communities expected to participate in detailed and intensive engagement on VCs early in the process? Will there be resourcing available to EFN to undertake local community deliberation and internal engagement on the project-specific VC guidance suggested in S.7.3?

Eabametoong has, in fact, undertaken previous community-based research on wellbeing indicators and developed a generalized set of sustainability objectives and criteria for inclusion

in assessment processes. These sets of community data are confidential, but could be adapted and adjusted to the project-specific context of the ongoing IAs through community dialogue and technical research support. For example, the broad categories EFN developed for community sustainability criteria (an analogue to VCs) includes:

Core Community Objectives and Sustainability Criteria

Drawing upon historical and recent studies in EFN (e.g. Ogoki Road Socio Economic and Environment Study 1984, UMA Road Corridor Study 2001, Community Wellbeing Baseline Study 2013, All-Season Community Road Study 2016) and Regional Framework Agreement community discussion feedback over years of community dialogue (2014-18), categories of EFN community objectives and decision criteria have been analyzed and developed. These are the broad domains that are supported with sub-categories of 8-15 specific items (e.g. each domain includes a set of indicators not detailed in this public format).

This list can function as a community sustainability criteria, or set of general valued components, to test and evaluate current and future projects. This follows EFNs community guidance for a sustainability-based impact assessment, that tests projects based on their potential contribution to a better future, rather than just against significant adverse environmental impacts.

1. Improving Community Wellbeing

Livelihood sufficiency and opportunity, in ways that don't compromise future generations

- 1.1. Community health
- 1.2. Cultural vitality and traditional practices
- 1.3. Community safety
- 1.4. Family, youth, and children
- 1.5. Social life and interaction
- 1.6. Education
- 1.7. Community infrastructure
- 1.8. Economic development, emphasizing local and regional livelihood opportunities – lasting jobs, avoidance of boom/bust pitfalls; local enterprises based on renewable resources, skill building, local control, etc.]

2. Healthy Environment and Relationships

Socio-ecological system integrity (and relationships) must be maintained and improved

- 2.1. Community stewardship values and principles
- 2.2. Socio-ecological systems and stewardship relationships
- 2.3. Cumulative environmental effects and conditions

3. Wisdom and Equity for Generations

Intra-generational & Inter-generational (equity within current generation, and into future)

- 3.1. Community values and decision-making priorities
- 3.2. Community-based wisdom and knowledge maintenance and passing to next generations

- 3.3. Equity in opportunities for livelihoods, engagement in skills development
- 3.4. Jurisdiction expressed through knowledge, including community and regional authority and engagement in governance

4. Open and Responsible Governance

Free, prior, and informed decision making and increasingly respectful processes

- 4.1. Indigenous jurisdiction and decision-making context
- 4.2. Participatory community governance and processes with links to inter-community and inter-jurisdictional deliberations

5. Walking together in a Precautionary and Adaptive Way

Respecting uncertainty, planning for surprise and need for adaptation

- 5.1. Processes of community learning
- 5.2. Strategic level guidance for projects and programs
- 5.3. Community and regional adaptive management including participation in socio-economic and biophysical monitoring

6. Combining Action and Planning

Integrate community-based principles immediately with long term benefits and multiple gains over time

- 6.1. Progress towards local opportunity
- 6.2. Increasingly strategic and informed planning across scales: community, EFN traditional territories, Matawa region, and broader watersheds; and at multiple time horizons – 5 yr, 20 yr, 100 yr+
- 6.3. Mutually-reinforcing and strategic gains (building improvements that complement each other)

Section 17.6 on assessment of Culture provides some guidance on the changes or effects to structures, sites, significant plants and wildlife and traditional activities. This section in particular requires further tailoring and feedback from community members, especially regarding possible project-induced changes to:

- i. traditional/subsistence use of and access to EFN lands or other traditionally-accessed areas in south of EFN territory (re MFCAR) and northern reaches of EFN territory (re WSR), as well as those areas newly-opened via road access;
- ii. effects upon Indigenous knowledge and skill transfer, especially via extended periods of hunting/trapping/fishing or other harvesting on the land. EFN community research has identified participation in extended harvesting and hunting trips (e.g. 5+ days) as a substantial knowledge and skills transfer indicator; and,
- iii. effects upon perceived quality of harvesting in project area or those opened via new road access.

The guidance provided in Section 19 and 19.1 regarding the practice of assessing effects to Indigenous people and the exercise of Aboriginal and Treaty rights is generally positive and welcomed. However, Section 19 identifies a tremendous opportunity for collaboration and also

places the burden of this challenging and engagement-dependent assessment upon the Proponents. EFN notes this is another situation where the Agency may be required to assist Proponent First Nations and EFN (among others) with capacity resources to implement the ambitious goal of incorporating vital Indigenous Knowledge into the assessment. Informed participation in this section of the IA process, especially regarding appropriate measures of possible positive outcomes and/or negative impacts will have a dramatic influence on the quality of assessment. Will the Agency be working with the Proponents to identify appropriate capacity supports to undertake relevant IK gathering studies?

Finally, at the January 14th 2020 meeting with IAAC, EFN asked when and if IAAC will provide a response to the December requests made by other interest groups and First Nations for a regional assessment and a review panel IA process. No answer was provided at that time. Is IAAC in the position to provide an answer to these important process questions?

COMMENTS AND QUESTIONS REGARDING THE WSR AND MFCAR IEPP's

The Draft Indigenous Engagement and Partnership Plan (IEPP) developed and circulated by IAAC is a positive step towards outlining a reasonable approach to engagement and consultation activities on the WSR and MFCAR. However, EFN notes the IAAC objectives for Engagement and Partnership (S.3), and those understood by IAAC to be the summary of objectives of Indigenous Groups are lofty indeed. It is unlikely that these objectives will be achieved through the plan described in the subsequent 9 pages of the IEPP and unknown capacity funds to implement such plans. For each of the 5 objectives identified by IAAC and the 7 summary objectives noted from Indigenous Groups, EFN has questions regarding the extent of 'engagement' or performance measures to be used by IAAC to evaluate when and if these objectives have been achieved, and at what stage of the assessment process.

Section 3 identifies that multiple requests for regional-scale assessment have been made and Indigenous Groups have identified the logical requirement to assess and accommodate regional effects due to reasonably foreseeable developments. Further comment on both the TISGs and IEPPs will depend on how the Agency responds to these requests. Can IAAC provide EFN with a response prior to the end of the Planning Phase of IA?

One of the important consultation and engagement issues addressed in the Amended Noront EA TOR (2015) that EFN recommended, was providing community access to baseline studies, other decisions and pre-assessment information as well as ongoing information generated throughout the assessment phases. Will the Agency provide EFN access to this kind of valuable information, and opportunities for discussion? For example, some of the MFCAR maps provided by IAAC have shown outcomes of wildlife baseline studies (e.g. showing stick nest locations) that EFN does not have access to. The assessment process, mitigation and management options, as well as eventual decisions could be enriched and informed through the involvement of EFN and other nearby communities in baseline data review and further study.

Moreover, the general IAAC summary of objectives of Indigenous Groups (S.3 of IEPP) omitted the following objectives of EFN sent to IAAC on August 26th, 2019:

- EFN request to work with IAAC to discuss and collaborate on an approach to assessing possible impacts to Aboriginal and Treaty rights from projects, including joint studies;
- IAAC working with EFN and other remote FNs (including those downstream) to establish a joint approach to assessing the most likely effects of the project with possible residual impacts/effects following mitigation efforts;
- A dedicated approach to assessing the full suite of effects and co-developing appropriate mitigation strategies that are scaled to the cumulative and regional impacts of industrial road development in the area; and,
- The establishment of a joint decision-making approach regarding consideration of EFN and other FN decision protocols and customs as part of final project conditions and approvals.

Given the significance of the MFCAR and WSR projects, the full suite of ‘tools’ identified and summarized by IAAC in Section 5 will need to be applied. However, these tools must be used in a manner and process that EFN and other communities are involved in shaping through an EFN community-specific engagement plan. For example, at the January 14 meeting with IAAC, EFN staff identified the need for building understanding in the language and dialect that EFN members understand (especially regarding consultation on VCs, criteria, indicators and other vital aspects of the assessment) and with adequate time and capacity to build understanding and develop collective positions prior to making formal responses to the regulator or proponent.

In addition to the use of engagement tools or approaches, EFN members will need to know specifically how their feedback will be applied to the process and how sensitive project decisions will be to EFN participation. For example, if engagement processes are successful and EFN membership provides rich feedback regarding project VCs, indicators, or IK studies but that feedback is not incorporated in a joint decision making process or, at a minimum, no evidence is available that such feedback influenced the decision, then the effective use of engagement tools become an exercise in frustration (i.e. not achieving the IAAC objectives of recognition of rights, respect, cooperation and partnership) rather than meaningful involvement.

As communicated to IAAC representatives at the January 14th 2020 meeting, EFN expects that the IEPP and EFN-specific engagement plan to be developed with IAAC will include, at a minimum:

- Clear delineation of Crown and Proponent roles and responsibilities to undertake consultation and consultation-supporting activities in respect of the projects. EFN appreciates that IAAC does not officially delegate consultation duties to Proponents, but many aspects of EFN and Proponent engagement will have an effect on the quality and nature of consultation (e.g. Proponent engagement with EFN to discuss and collaborate on rights assessment, related IK studies, communications approaches, etc.);

- Recognition of the level of intensive engagement efforts required of EFN to inform and involve some 1600 on reserve and 1200 off-reserve band members (800+ in Thunder Bay alone) in this important IA process. EFN is the largest remote community in the area. As community members have recently stated, even if an IA process identifies lower levels of particular effects (beneficial or negative) upon EFN members from these proposed and future projects, those impacts are multiplied across a much larger population and therefore increases the sum of residual effects (beneficial or negative) upon EFN beyond what may be estimated by Crown decision makers or Proponents;
- Recognition and appropriate planning of IAAC or Proponent community visits rather than one-day meetings that are often one-way communication of rushed details or project summaries and not meaningful consultation. For real informed information exchange to occur, multi-day meetings should be held on specific topics and issues and sequenced to interact with project studies and other phases of assessment;
- Direct support for at least one full-time local EFN Impact Assessment coordinator to implement a jointly-developed work plan of engagement activities, including working with EFN technical staff to develop a community-accessible glossary of Ojibway terms and concepts for dialogue in the assessment process, hosting focus groups, radio and multi-media engagement approaches (local TV/video/web-based outreach), and other related gathering of feedback and integration with the progressive information and consultation phases of the projects;
- Facilitate the development of EFN capacity to undertake relevant IK studies and participation in baseline or other studies as part of the assessment process through providing capacity funds and access to IAAC resources and other information or relevant studies to the projects;
- Provide for a coordination function between both MFCAR and WSR processes in order to maximize use of in-community and off-reserve education opportunities and adequate provision of consultation capacity, technical support and involvement in the regional community and technical working groups outlined in S.6. of TISG;
- Provide EFN with capacity and opportunities to meet with the government review team and senior members of the Proponent's project team at regular intervals throughout the Impact Statement and Impact Assessment phases, and opportunities to engage directly with IAAC decision makers at stages within the project assessment requiring evaluation of participation, and eventual draft conditions of approvals and/or discussions of accommodation measures (e.g. end of Planning Phase, end of Impact Statement Phase, end of Impact Assessment, Decision and Post Decision phases).

Prior to our next meeting with IAAC staff, EFN requests feedback on the initial points outlined above. We suggest that a positive relationship will require clear communication and mutual understanding as we work together to establish an EFN specific IEPP and work plan that can enable genuine participation in both MFCAR and WSR projects. We look forward to continuing this important dialogue over the coming weeks.