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MEMO

To: Marie-Ève Rousseau, Impact Assessment Agency of Canada

From: Chief Bruce Archibald, Taykwa Tagamou Nation
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Oliver MacLaren and Liora Zimmerman, Olthuis Kleer Townsend, LLP

Scott Mackay, Andrew Bubar and Mike Van Egmond, Shared Value Solutions

Date: February 16, 2021

Subject: Review of the Wasamac Gold Mine Project Federal Impact Assessment Draft Tailored Impact Statement Guidelines

Taykwa Tagamou Nation (TTN) and our technical and legal advisors have reviewed the draft Tailored Impact Statement Guidelines (TISG; the Guidelines) for Yamana Gold's (Yamana; the Proponent) Wasamac Gold Mine Project (Wasamac; the Project) Federal Impact Assessment (IA).

The Impact Assessment Agency of Canada (IAAC; the Agency) has correctly identified TTN as an Indigenous Nation requiring consultation on the Project. Our Nation has deep historical and family ties to the Project area, as well as traditional knowledge and land use in the Project area which we are currently documenting. TTN's Traditional Territory spans both sides of the Ontario-Quebec border within the Abitibi and Harricana river watersheds.

The Wasamac Gold Mine Project as currently proposed may have impacts on our rights, claims, interests, health, cultural heritage, and livelihoods which the Proponent must mitigate or accommodate for. For the Proponent and the Agency to properly consider the impacts on our rights, claims, interests, health, cultural heritage, and livelihoods, the Proponent and the Agency must enter in good faith into a meaningful engagement and consultation process that:

- Facilitates and supports TTN gathering its own project-specific traditional land-use, occupancy, and traditional knowledge information from its knowledge-holders for application and consideration in the impact assessment



- Facilitates and supports TTN’s full involvement in the regulatory process for the Project
- Facilitates and supports TTN informing and engaging with its citizens and community to support our Nation’s understanding and decision-making about the Project
- Creates a mechanism for TTN’s involvement in the government review process at key points
- Involves a process agreement between TTN and the Proponent to formalize how the Proponent will discharge the procedural aspects of the Duty to Consult with TTN, and any other measures required to ensure a meaningful consultation and accommodation process that creates a pathway to TTN’s free, prior, and informed consent for the Project

As the governing authority responsible for overseeing the Duty to Consult process and ensuring impacted Indigenous nations are meaningfully informed, engaged, consulted and accommodated, the IAAC must address TTN’s needs as outlined above in the consultation process for the project, including informing and directing the Proponent to address these needs.

COMMENTS AND RECOMMENDATIONS

Comment 1: In Section 6, the Guidelines set out the requirements for the proponent’s collaboration with Indigenous peoples in completing its Impact Statement. These requirements include supporting and funding the participation of Indigenous peoples, collecting and integrating Indigenous knowledge, sharing project information, and collaboratively identifying mitigation measures. IAAC notes that flexibility will be required of the proponent in its approach to engagement given the ongoing impacts of COVID-19. TTN further notes the additional inherent complexity presented in this Impact Assessment process given the inter-provincial rights of the Indigenous peoples to be consulted and the inter-provincial nature of the potential effects of the Project. While IAAC has developed a draft Indigenous Engagement and Partnership Plan which lays out their proposed approach to fulfilling their obligations to consult TTN and navigate this complexity, the proponent has not developed such an approach with TTN.

Recommendation 1a: Given the required level of involvement of Indigenous peoples in the development of the Impact Statement and the complexity presented to consultation by COVID-19 and the Project’s inter-provincial effects, IAAC should include the following addition to Section 6: *“In order to ensure the involvement of each Indigenous nation in the development of the Impact Statement is appropriately facilitated, the proponent is required to work with each of the nations in the list of Indigenous peoples identified in Table 1, including the affected Indigenous nations in Ontario, to establish a mutually agreed upon approach to their involvement prior to commencing any work related to the development of the Impact Statement.”*

Recommendation 1b: The list setting out the primary responsibilities of the proponent to involve Indigenous peoples in the Impact Statement should be revised to include, *“co-develop the list of Valued Components, objectives, and indicators.”*

Comment 2: In Section 6, the Guidelines include a requirement that the proponent provide Indigenous peoples with the opportunity to reach their own conclusions about the potential effects of the project on the rights of Indigenous peoples that cannot be mitigated. Section 6.1 goes on to specify that the Impact Statement must provide “the rights of each Indigenous community, that the



peoples themselves have identified, that may be impacted by the project” and “the views of Indigenous peoples regarding the extent of impact on the exercise of their rights.” In a call with the IAAC on January 21, 2021, TTN raised a question about the process for ensuring accommodation measures were identified that correspond with the impacts of the Project on TTN’s rights and interests. In this conversation, IAAC stated that the identification of appropriate terms of accommodation and benefits were the responsibility of the proponent. TTN notes that the Guidelines do not currently set out this critical responsibility of the proponent.

Recommendation 2: IAAC should amend the Guidelines to describe the proponent’s obligation to identify appropriate benefit and accommodation measures with TTN and other affected Indigenous nations identified, reading as follows, *“Where a project may impact on the rights of Indigenous peoples and those impacts cannot be mitigated, the proponent and the given rights-bearing Indigenous nation must confirm that mutually agreed upon accommodation and benefit measures have been mutually agreed to, to address the impacts”*.

Comment 3: Section 6 of the Guidelines identifies that one of the primary responsibilities of the proponent in the development of the Impact Statement is to “collect available Indigenous knowledge and expertise and integrate it into its Impact Statement.” TTN notes that while some Indigenous nations that will be involved in the development of the Impact Statement may already have formally documented traditional knowledge and land use information relevant to the project that can be readily provided, other nations such as TTN will require time and resources to document and provide such project-specific and critical baseline information. TTN has not completed land use studies on TTN’s entire territory or the surrounding areas, and this work needs to be done in order to ensure that all potential impacts are identified and addressed. The formal documentation of this information is an ongoing process that must be facilitated during this impact assessment process in order for the Impact Statement to fully consider the effects of the project to the rights of TTN.

Recommendation 3: The Guidelines should be revised in recognition of the fact that the currently documented and available Indigenous Knowledge is limited, and that the Proponent has a responsibility to collect project-specific Indigenous Knowledge from impacted nations. As such, the Guidelines should state that *“the Proponent must provide Indigenous peoples with the time and schedule flexibility, resources and opportunity to document Indigenous knowledge and land use information and to verify that this information has been appropriately integrated into the Impact Statement before it is considered sufficient and complete by the Agency”*.

Comment 4: Section 7.4 of the Guidelines sets out the process for identifying spatial and temporal boundaries used for the Impact Assessment (“IA”). Given the project’s interaction with both the Abitibi and Moose River watershed and the Temiscamingue watershed, in addition to the involvement of Indigenous peoples from both Quebec and Ontario, it is essential that spatial and temporal study boundaries for the project IA are identified collaboratively with TTN and other Indigenous nations.

Recommendation 4: In Section 7.4, IAAC should include the statement that *“the proponent is required to consult and engage with Indigenous nations to define spatial and temporal boundaries used in assessing the potential adverse effects of the project on each valued component to ensure that boundaries are mutually acceptable and that all potential impacts are adequately assessed”*.

Comment 5: Section 12.1, 12.2, 12.3 and 12.4 of the Guidelines set out requirements for the characterization of baseline conditions for Indigenous peoples. TTN notes that only Section 12.4, Conditions Related to the Rights of Indigenous Peoples includes the requirement of including as part



of this characterization “*pre-existing impacts and cumulative effects that are already interfering with the ability to exercise rights or to pass along Indigenous cultures and cultural practices*”.

Recommendation 5: IAAC should include the requirement in Section 12.1, 12.2 and 12.3 to “*characterize pre-existing impacts and cumulative effects*”. Also, revise wording as per Comment 5 in section 12.1, 12.2, 12.3 and 12.4 to read “*...effects that are already interfering with the ability to exercise rights or to pass along **Indigenous knowledge** [our emphasis], cultures and cultural practices*”.

Comment 6: As shown in Figure 1, the primary existing environmental liability of the Project, the Tailings Management Facility, lies within the Abitibi Watershed, directly upstream of our Nation’s reserve land on the Abitibi River. TTN is concerned with the potential impacts of the Project in the upstream of the watershed of our Nation. The Abitibi Watershed has been subjected to a large amount of historical and present-day mining, forestry, agriculture and energy infrastructure development which has resulted in cumulative effects on the Abitibi watershed. As a potentially impacted nation with reserve land in Ontario, TTN is positioned to identify and be exposed to risks of cumulative impacts from the Project in the Abitibi Watershed.

Recommendation 6: IAAC should include text in Section 22 of the Guidelines which specifies that “*because the Project will span the watershed divide, the Cumulative Effects Assessment must consider both the Abitibi-James Bay Watershed and the Ottawa-St-Laurence watersheds. Downstream Indigenous nations in both watersheds should be consulted for potential sources of cumulative effects and valued components.*”

Comment 7: Section 22 of the Guidelines identifies requirements for the identification of spatial and temporal boundaries used in the cumulative effects assessment and projects to be considered as sources of potential cumulative effects. TTN notes that there is no mention of the involvement of Indigenous nations in the determination of these sources to be used for the cumulative effects assessment.

Recommendation 7: TTN has observed the effects of Projects on our Traditional Territory and hold crucial knowledge that is essential for completing a comprehensive cumulative effects assessment. To ensure that the important information our elders and land users hold, IAAC must revise Section 22 to state that “*the Proponent is required to co-develop the spatial and temporal boundaries used in cumulative effects assessment and in identifying projects that should be considered as sources of potential cumulative effects in cooperation with Indigenous nations*”.

Comment 8: Section 27 of the Guidelines require the Proponent to prepare a plain language summary of the Impact Statement in both English and French. The Guidelines do not require the Proponent to publish the complete Impact Statement in English. While the summary of the Impact Statement provides valuable information, TTN expects to be able to review all information, including discipline-specific Technical Support Documents or similar, on Projects which impact our rights and interests in the language spoken by the majority of our members. This is essential for ensuring that our Nation is adequately informed on the potential impacts of the Project and can meaningfully participate in the Impact Assessment process.

Recommendation 8: To reflect the fact that some nations impacted by this Project are predominately English speaking, IAAC should revise Section 27 to state “*The Proponent must prepare the plain language summary of the Impact Statement and the complete Impact Statement in both of Canada’s official languages (English and French). All supporting technical appendices for the Impact Statement, and all other filings required as part of the Impact Assessment process must also be filed in both of Canada’s official languages*”.



Comment 9: In an email from the Agency to TTN leadership on February 2, 2021, the Agency indicated that based on the data they have, the Wasamac Project is outside of TTN's Traditional Territory. It is very important to note that TTN has rarely, if ever, had the opportunity to document our Traditional Knowledge, Occupancy, Land Use and history on the Quebec side of our Traditional Territory. As a result, the figure you have referenced must be considered only an estimate, and not a formally documented extent of our Traditional Territory. Territory maps remain living documents, as TTN continues to document the Traditional Knowledge and land use of the community, particularly near the boundaries and in Quebec. Watershed impacts are also of key concern, as noted previously.

Recommendation 9a: TTN is concerned that the ongoing lack of opportunities to participate in Projects in the Quebec part of our Traditional Territory will present a barrier to participation in this Impact Assessment. Section 5 of the Indigenous Engagement and Participation Plan states that the agency would like to know of barriers that may prevent Indigenous people from accessing participation opportunities in the Project. As such, TTN is requesting that the Agency acknowledge that misinterpretation of the boundary of our Traditional Territory may prevent our Nation from accessing participation opportunities for the Project.

Recommendation 9b: To ensure that TTN has no barriers to participating in the Project, the Agency must develop a community-specific engagement and consultation plan with TTN.

Comment 10: On a call between TTN and IAAC on the Wasamac Project on January 21, 2021, IAAC noted that the Project is also undergoing Provincial Environmental Assessment, which is being led by the Government of Quebec. TTN notes that neither the Proponent nor the Province of Quebec are facilitating TTN's engagement nor participation in the Quebec Provincial Environmental Assessment process. Furthermore, in the Proponent's Detailed Project Description Appendix B Issue #80, TTN is not included on the list the Proponent prepared of nations requiring consultation. TTN continues to be blocked from the opportunity to participate in Projects on the portion of our Traditional Territory in Quebec. Our Traditional Land Use and Occupancy predates the delineation of the border between Ontario and Quebec, and to this day the Provincial border serves to weaken our authority over our Traditional Territory and all of our sacred, ceremonial and culturally important sites in Quebec. As such TTN is concerned that this Project may serve to perpetuate the historical injustice of being excluded from participation in and oversight over Projects impacting our Traditional Territory.

Recommendation 10a: Section 6 of the Guidelines should specifically state that Indigenous nations' participation in the Impact Assessment for the Project will be based on the Project's proximity to asserted territory and will not be arbitrarily limited by Provincial jurisdiction.

Recommendation 10b: To reflect the fact that the Project could serve to perpetuate TTN's exclusion from participation in activities on our Territory, IAAC should revise the first bullet in Section 19.2 of the Guidelines to read "*How the project may contribute cumulatively to any existing impacts on the exercise of rights and the perpetuation of historical injustices* [our emphasis], as identified by the Indigenous people".

Recommendation 10c: As part of the community-specific consultation plan which IAAC will develop with TTN, IAAC should facilitate TTN's participation in the Quebec Environmental Assessment for the Project, as a rights-bearing potentially affected nation.

Recommendation 10d: In Section 6.1 of the Guidelines IAAC should state that "*any time when the Proponent is referring to Indigenous nations requiring consultation in a list, all of the nations identified by IAAC as requiring consultation must be listed and considered.*"





Figure 1: Approximate watershed boundary and Location of the Wasamac Project



TAYKWA TAGAMOU NATION

Technical Review of the Wasamac Gold Mine Project Federal Impact Assessment Draft Tailored Impact Statement Guidelines

COMMENT TRACKING TABLE

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1.	In Section 6, the Guidelines set out the requirements for the proponent’s collaboration with Indigenous peoples in completing its Impact Statement. These requirements include supporting and funding the participation of Indigenous peoples, collecting and integrating Indigenous knowledge, sharing project information, and collaboratively identifying mitigation measures. IAAC notes that flexibility will be required of the proponent in its approach to engagement given the ongoing impacts of COVID-19. TTN further notes the additional inherent complexity presented in this Impact Assessment process given the inter-provincial rights of the Indigenous peoples to be consulted and the inter-provincial nature of the potential effects of the Project. While IAAC has developed a draft Indigenous Engagement and Partnership Plan which lays out their proposed approach to fulfilling their obligations to consult TTN and navigate this complexity, the proponent has not developed such an approach with TTN.	<p>a. Given the required level of involvement of Indigenous peoples in the development of the Impact Statement and the complexity presented to consultation by COVID-19 and the Project’s inter-provincial effects, IAAC should include the following addition to Section 6: <i>“In order to ensure the involvement of each Indigenous nation in the development of the Impact Statement is appropriately facilitated, the proponent is required to work with each of the nations in the list of Indigenous peoples identified in Table 1, including the affected Indigenous nations in Ontario, to establish a mutually agreed upon approach to their involvement prior to commencing any work related to the development of the Impact Statement.”</i></p> <p>b. The list setting out the primary responsibilities of the proponent to involve Indigenous peoples in the Impact Statement should be revised to include, <i>“co-develop the list of Valued Components, objectives, and indicators.”</i></p>
2.	In Section 6, the Guidelines include a requirement that the proponent provide Indigenous peoples with the opportunity to reach their own conclusions about the potential effects of the project on the rights of Indigenous peoples that cannot be mitigated. Section 6.1 goes on to specify that the Impact Statement must provide “the rights of each Indigenous community, that the peoples themselves have identified, that may be impacted by the project” and “the views of Indigenous peoples regarding the extent of impact on the exercise of their rights.” In a call with the IAAC on January 21, 2021, TTN raised a question about the process for ensuring accommodation measures were identified that correspond with the impacts of	IAAC should amend the Guidelines to describe the proponent’s obligation to identify appropriate benefit and accommodation measures with TTN and other affected Indigenous nations identified, reading as follows, <i>“Where a project may impact on the rights of Indigenous peoples and those impacts cannot be mitigated, the proponent and the given rights-bearing Indigenous nation must confirm that mutually agreed upon accommodation and benefit measures have been mutually agreed to, to address the impacts”</i> .



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	<p>the Project on TTN’s rights and interests. In this conversation, IAAC stated that the identification of appropriate terms of accommodation and benefits were the responsibility of the proponent. TTN notes that the Guidelines do not currently set out this critical responsibility of the proponent.</p>	
3.	<p>Section 6 of the Guidelines identifies that one of the primary responsibilities of the proponent in the development of the Impact Statement is to “collect available Indigenous knowledge and expertise and integrate it into its Impact Statement.” TTN notes that while some Indigenous nations that will be involved in the development of the Impact Statement may already have formally documented traditional knowledge and land use information relevant to the project that can be readily provided, other nations such as TTN will require time and resources to document and provide such project-specific and critical baseline information. TTN has not completed land use studies on TTN’s entire territory or the surrounding areas, and this work needs to be done in order to ensure that all potential impacts are identified and addressed. The formal documentation of this information is an ongoing process that must be facilitated during this impact assessment process in order for the Impact Statement to fully consider the effects of the project to the rights of TTN.</p>	<p>The Guidelines should be revised in recognition of the fact that the currently documented and available Indigenous Knowledge is limited, and that the Proponent has a responsibility to collect project-specific Indigenous Knowledge from impacted nations. As such, the Guidelines should state that <i>“the Proponent must provide Indigenous peoples with the time and schedule flexibility, resources and opportunity to document Indigenous knowledge and land use information and to verify that this information has been appropriately integrated into the Impact Statement before it is considered sufficient and complete by the Agency”</i>.</p>
4.	<p>Section 7.4 of the Guidelines sets out the process for identifying spatial and temporal boundaries used for the Impact Assessment (“IA”). Given the project’s interaction with both the Abitibi and Moose River watershed and the Temiscamingue watershed, in addition to the involvement of Indigenous peoples from both Quebec and Ontario, it is essential that spatial and temporal study boundaries for the project IA are identified collaboratively with TTN and other Indigenous nations.</p>	<p>In Section 7.4, IAAC should include the statement that <i>“the proponent is required to consult and engage with Indigenous nations to define spatial and temporal boundaries used in assessing the potential adverse effects of the project on each valued component to ensure that boundaries are mutually acceptable and that all potential impacts are adequately assessed”</i>.</p>



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5.	<p>Section 12.1, 12.2, 12.3 and 12.4 of the Guidelines set out requirements for the characterization of baseline conditions for Indigenous peoples. TTN notes that only Section 12.4, Conditions Related to the Rights of Indigenous Peoples includes the requirement of including as part of this characterization “<i>pre-existing impacts and cumulative effects that are already interfering with the ability to exercise rights or to pass along Indigenous cultures and cultural practices</i>”.</p>	<p>IAAC should include the requirement in Section 12.1, 12.2 and 12.3 to “<i>characterize pre-existing impacts and cumulative effects</i>”. Also, revise wording as per Comment 5 in section 12.1, 12.2, 12.3 and 12.4 to read “<i>...effects that are already interfering with the ability to exercise rights or to pass along Indigenous knowledge [our emphasis], cultures and cultural practices</i>”.</p>
6.	<p>As shown in Figure 1, the primary existing environmental liability of the Project, the Tailings Management Facility, lies within the Abitibi Watershed, directly upstream of our Nation’s reserve land on the Abitibi River. TTN is concerned with the potential impacts of the Project in the upstream of the watershed of our Nation. The Abitibi Watershed has been subjected to a large amount of historical and present-day mining, forestry, agriculture and energy infrastructure development which has resulted in cumulative effects on the Abitibi watershed. As a potentially impacted nation with reserve land in Ontario, TTN is positioned to identify and be exposed to risks of cumulative impacts from the Project in the Abitibi Watershed.</p>	<p>IAAC should include text in Section 22 of the Guidelines which specifies that “<i>because the Project will span the watershed divide, the Cumulative Effects Assessment must consider both the Abitibi-James Bay Watershed and the Ottawa-St-Laurence watersheds. Downstream Indigenous nations in both watersheds should be consulted for potential sources of cumulative effects and valued components.</i>”</p>
7.	<p>Section 22 of the Guidelines identifies requirements for the identification of spatial and temporal boundaries used in the cumulative effects assessment and projects to be considered as sources of potential cumulative effects. TTN notes that there is no mention of the involvement of Indigenous nations in the determination of these sources to be used for the cumulative effects assessment.</p>	<p>TTN has observed the effects of Projects on our Traditional Territory and hold crucial knowledge that is essential for completing a comprehensive cumulative effects assessment. To ensure that the important information our elders and land users hold, IAAC must revise Section 22 to state that “<i>the Proponent is required to co-develop the spatial and temporal boundaries used in cumulative effects assessment and in identifying projects that should be considered as sources of potential cumulative effects in cooperation with Indigenous nations</i>”.</p>



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8.	<p>Section 27 of the Guidelines require the Proponent to prepare a plain language summary of the Impact Statement in both English and French. The Guidelines do not require the Proponent to publish the complete Impact Statement in English. While the summary of the Impact Statement provides valuable information, TTN expects to be able to review all information, including discipline-specific Technical Support Documents or similar, on Projects which impact our rights and interests in the language spoken by the majority of our members. This is essential for ensuring that our Nation is adequately informed on the potential impacts of the Project and can meaningfully participate in the Impact Assessment process.</p>	<p>To reflect the fact that some nations impacted by this Project are predominately English speaking, IAAC should revise Section 27 to state <i>“The Proponent must prepare the plain language summary of the Impact Statement and the complete Impact Statement in both of Canada’s official languages (English and French). All supporting technical appendices for the Impact Statement, and all other filings required as part of the Impact Assessment process must also be filed in both of Canada’s official languages”</i>.</p>
9.	<p>In an email from the Agency to TTN leadership on February 2, 2021, the Agency indicated that based on the data they have, the Wasamac Project is outside of TTN’s Traditional Territory. It is very important to note that TTN has rarely, if ever, had the opportunity to document our Traditional Knowledge, Occupancy, Land Use and history on the Quebec side of our Traditional Territory. As a result, the figure you have referenced must be considered only an estimate, and not a formally documented extent of our Traditional Territory. Territory maps remain living documents, as TTN continues to document the Traditional Knowledge and land use of the community, particularly near the boundaries and in Quebec. Watershed impacts are also of key concern, as noted previously.</p>	<p>a. TTN is concerned that the ongoing lack of opportunities to participate in Projects in the Quebec part of our Traditional Territory will present a barrier to participation in this Impact Assessment. Section 5 of the Indigenous Engagement and Participation Plan states that the agency would like to know of barriers that may prevent Indigenous people from accessing participation opportunities in the Project. As such, TTN is requesting that the Agency acknowledge that misinterpretation of the boundary of our Traditional Territory may prevent our Nation from accessing participation opportunities for the Project.</p> <p>b. To ensure that TTN has no barriers to participating in the Project, the Agency must develop a community-specific engagement and consultation plan with TTN.</p>
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	<p>being led by the Government of Quebec. TTN notes that neither the Proponent nor the Province of Quebec are facilitating TTN's engagement nor participation in the Quebec Provincial Environmental Assessment process. Furthermore, in the Proponent's Detailed Project Description Appendix B Issue #80, TTN is not included on the list the Proponent prepared of nations requiring consultation. TTN continues to be blocked from the opportunity to participate in Projects on the portion of our Traditional Territory in Quebec. Our Traditional Land Use and Occupancy predates the delineation of the border between Ontario and Quebec, and to this day the Provincial border serves to weaken our authority over our Traditional Territory and all of our sacred, ceremonial and culturally important sites in Quebec. As such TTN is concerned that this Project may serve to perpetuate the historical injustice of being excluded from participation in and oversight over Projects impacting our Traditional Territory.</p>	<p>on the Project's proximity to asserted territory and will not be arbitrarily limited by Provincial jurisdiction.</p> <ul style="list-style-type: none"> b. To reflect the fact that the Project could serve to perpetuate TTN's exclusion from participation in activities on our Territory, IAAC should revise the first bullet in Section 19.2 of the Guidelines to read <i>"How the project may contribute cumulatively to any existing impacts on the exercise of rights and the perpetuation of historical injustices [our emphasis], as identified by the Indigenous people"</i>. c. As part of the community-specific consultation plan which IAAC will develop with TTN, IAAC should facilitate TTN's participation in the Quebec Environmental Assessment for the Project, as a rights-bearing potentially affected nation. d. In Section 6.1 of the Guidelines IAAC should state that <i>"any time when the Proponent is referring to Indigenous nations requiring consultation in a list, all of the nations identified by IAAC as requiring consultation must be listed and considered."</i>

